

**FILED**

**JAN 29 2021**

**MISS. PUBLIC SERVICE  
COMMISSION**

**BEFORE THE MISSISSIPPI PUBLIC SERVICE COMMISSION**

IN RE: AIRUS, INC. v. )

BELLSOUTH )  
TELECOMMUNICATIONS, LLC )  
D/B/A AT&T MISSISSIPPI )

**DOCKET NO. 2020-AD-200**

**BELLSOUTH TELECOMMUNICATIONS' ANSWER TO COMPLAINT**

In Compliance with Rule 11 of the Mississippi Public Service Commission (the "MPSC") and the Mississippi Public Utilities Staff (the "MPUS") *Public Utilities Rules of Practice and Procedure* ("Rules"), BellSouth Telecommunications, LLC d/b/a AT&T Mississippi ("AT&T" or "AT&T ILEC") submits its Answer to Complaint filed by Airus, Inc. ("Airus").

**I. OVERVIEW OF THE DISPUTE**

This dispute in this case is simple: Airus is erroneously attempting to charge AT&T "access" (long distance) rates for a facility Airus leases to receive AT&T's end-users' local traffic. Despite Airus' convoluted claims, the traffic AT&T is sending is 100% local and each party is physically and financially responsible to provide such a facility on its side of the Point of Interconnection ("POI"). Of course, charging access rates for local traffic is contrary to the plain language of the parties' ICA. As will be detailed below, all of the traffic in dispute is originated by an AT&T end-user and, due to switch translations, cannot be transmitted as anything other than local traffic and delivered over "local trunks." While Airus claims AT&T was obligated to provide a Percent Local Factor ("PLF") notice classifying this traffic as local, this step is not required of AT&T under the ICA. Instead, per the Jurisdictional Factors Usage Guide, which determines when and how the types of traffic are to be reported to another party (e.g., long-distance, entrance facility, or local), AT&T had no obligation to report to Airus the obvious fact that AT&T's local traffic delivered to Airus over local trunks was anything other than local traffic.

## A. NETWORK BACKGROUND AND OVERVIEW

From a network perspective, the dispute relates to who pays for facilities on each side of the POI. As background, the POI is a point on the AT&T ILEC network “where the Parties deliver Section 251(b)(5)/IntraLATA Toll Traffic to each other and also serves as a demarcation point between the facilities that each Party is physically and financially responsible to provide.<sup>1</sup> The Airus POI is located in an AT&T ILEC central office building on the AT&T ILEC network. On the Airus side of the POI, Airus leases a facility from a 3<sup>rd</sup> party to send traffic to the AT&T ILEC from the Airus network and receive both “local” traffic from the AT&T ILEC’s end-users as well as “transit” traffic. Local traffic (Section 251(b)(5) traffic) includes only traffic that originates and terminates within the same local calling area. Transit traffic (which should consist solely of local/intraLATA traffic) is originated by an entity other than the AT&T ILEC and merely traverses across the AT&T’s network enroute to a 3<sup>rd</sup> party (Airus, or some other carrier).<sup>2</sup> As further background, and unrelated to this complaint, “access” traffic (including intraLATA toll) originated by AT&T ILEC end-users is sent by AT&T to interexchange carriers (“IXC”) via separate facilities (e.g., Feature Group D switched access tariffed facilities).

With this context, the MPSC should know that Airus’ Complaint is an attempt to charge AT&T “access” for local interconnection facilities, as illustrated in the following diagram:

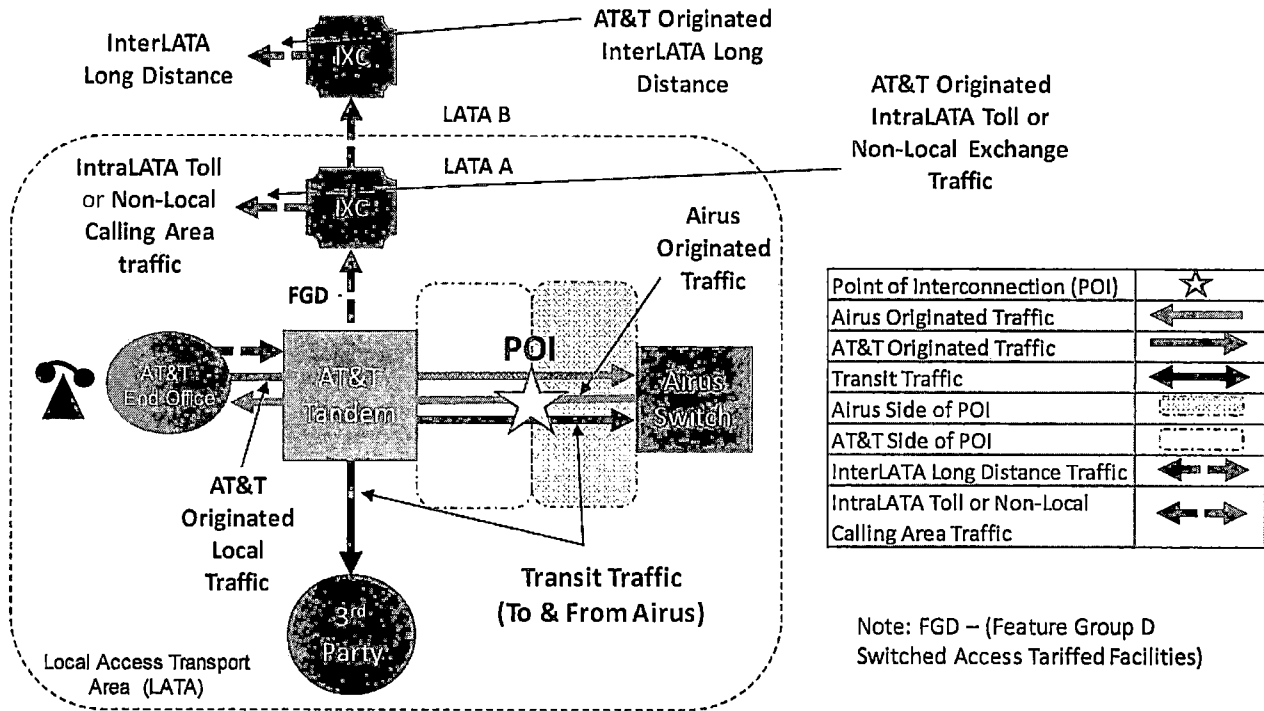
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<sup>1</sup> See ICA, Attachment 2, Section 2.27 (emphasis added).

<sup>2</sup> See Exhibit A: Wholesale Agreement, Transit Traffic Service Attachment, Section 2.89: ““Transit Traffic Service” is an optional switching and intermediate transport service provided by AT&T-11 STATE for Transit Traffic between CLEC and a Third Party Originating or Terminating Carrier, where CLEC is directly interconnected with an AT&T-11 STATE Tandem.”

See also, Wholesale Agreement, Transit Traffic Service Attachment, Section 4.1: “CLEC shall not charge AT&T-11 STATE when AT&T-11 STATE provides Transit Traffic Service as the Transit Service Provider for calls terminated to CLEC.”

## AT&T/AIRUS INTERCONNECTION DIAGRAM



The red, blue, green and brown arrows show the traffic that flows over various trunks. Trunks are virtual communications paths that are provisioned over a facility (e.g., copper or fiber). The red arrow depicts AT&T ILEC end-user originated local traffic sent to Airus over local trunks. The brown dashed arrow shows AT&T ILEC end-user originated access traffic bound for an IXC. The blue arrow is Airus end-user originated traffic (local and intraLATA) sent to the AT&T ILEC and destined for AT&T's end-users. The green arrow shows transit traffic (two-way), which is originated and terminated by parties other than the AT&T ILEC. Finally, the light blue box (touching the Airus Switch) represents the Airus leased facility it is "physically and financially responsible to provide." This facility carries the traffic on the Airus side of the POI as depicted in the red, green and blue arrows. Airus claims, incorrectly, that AT&T owes it access charges for the AT&T local traffic that passes through this Airus-leased facility over the trunks depicted by the red arrow.

**B. AIRUS IS NOT ENTITLED TO CHARGE AT&T ACCESS FOR LOCAL AND TRANSIT TRAFFIC SENT VIA LOCAL INTERCONNECTION FACILITIES**

**1. AT&T Only Delivers Local and Transit Traffic Over Local Interconnection Facilities.**

In the diagram above, the “access” facility for which Airus is claiming AT&T must pay access charges is on the Airus side of the POI. However, this facility is not used for access traffic at all. It solely receives AT&T ILEC end-user local traffic and transit traffic. This is shown in the illustration in the “one-way” red arrow (local AT&T ILEC end-user to local Airus end-user) and two-way green arrow (transit traffic). It is important to note that these are the only types of traffic delivered to Airus from AT&T over local interconnection trunks. All of the AT&T ILEC’s end-user originated traffic is processed through “switch translations” that separate this traffic from other traffic (e.g., long distance) and this local traffic is transferred to the local interconnection trunks. Any AT&T ILEC end-user originated traffic that is not local is translated to be sent to an IXC for termination.

The traffic delivered to Airus over these local interconnection trunks is not subject to reciprocal compensation or access charges of any kind. Instead, this local traffic is subject to the bill and keep compensation method, meaning no payments are made by either party for the exchange of local traffic. This legal fact is clear from both federal law and the parties ICA, Attachment 2, Section 6.2.5.<sup>3</sup> Similarly, AT&T is not responsible for paying Airus for transit traffic the AT&T ILEC receives from 3<sup>rd</sup> parties and delivers to Airus over local interconnection trunks. This is because transit traffic is originated by other CLECs, Wireless Carriers and Independent Companies; AT&T does not have control of the jurisdiction (i.e., local/long distance)

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<sup>3</sup> ICA Attachment 2, Section 6.2.5. Beginning July 1, 2017, pursuant to the Report and Order and Further Notice of Proposed Rulemaking issued by the FCC in the Matter of Developing an Unified Intercarrier Compensation Regime, FCC 11-161 and FCC 11-189 in CC Docket No. 01-92 (rel. November 18, 2011 and December 23, 2011) the Parties will implement bill and keep in lieu of reciprocal compensation rates for the termination of Section 251(b)(5) Traffic, Traffic, Non-toll VoIP-PSTN Traffic and ISP Bound Traffic as set forth in the Pricing Sheets.

of that traffic. This concept is embodied in the parties Wholesale Agreement, Transit Traffic Service Attachment (attached to this Answer as Exhibit A) in several sections, including Section 3.1 (CLEC Originated Transit Traffic): “CLEC acknowledges and agrees that it is solely responsible for compensating Third Party Terminating Carriers for Transit Traffic that CLEC originates”; Section 4.1 (CLEC Terminating Transit Traffic): “CLEC shall not charge AT&T-11 STATE when AT&T-11 STATE provides Transit Traffic Service for calls terminated to CLEC”; and, Section 4.3 (CLEC Terminating Transit Traffic): “CLEC agrees to seek terminating compensation for Transit Traffic directly from the Third Party Originating Carrier. AT&T-11 STATE, as the Transit Service Provider, is not obligated to pay CLEC for such Transit Traffic, and AT&T-11 STATE is not to be deemed as the default originator of such Transit Traffic or be considered as the default originator.”<sup>4</sup> This demonstrates beyond question that AT&T has no obligation to compensate Airus for transit traffic, regardless of whether AT&T receives the traffic from Airus or delivers it to Airus from a 3<sup>rd</sup> party.

## **2. The ICA Does Not Mandate That AT&T Provide Airus Usage Factors.**

The entire basis of Airus’ claim is that AT&T did not send Airus a “Percent Local Factor” to classify the traffic sent to Airus over AT&T’s local interconnection trunks. Therefore, Airus asserts it is entitled to use a 50% access factor and bill AT&T for the facility Airus uses on its side of the POI. This position is nonsense and completely ignores controlling language in the ICA and other referenced documents. To begin with, Section 6.13.3.3 (Attachment 2) of the ICA states:

**6.13.3.3** Each Party shall report to the other a PLF factor...Requirements associated with PLF calculation and reporting shall be as set forth in AT&T SOUTHEAST REGION 9-STATE’s Jurisdictional Factors Reporting Guide. Emphasis added.

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<sup>4</sup> On the other hand, Airus is responsible for compensating AT&T for transit traffic it delivers to AT&T, though this point is not a component of the Complaint at this time.

The underlined portion of the contract language is significant because according to the BellSouth Jurisdiction Factor Reporting Guide, AT&T has no obligation to send a CLEC a PLF. Rather, only Facility Based CLECs and IXC's that function like CLECs are required to report a PLF:

**BellSouth Jurisdictional Factors Reporting Guide – “4.11.** Reporting of this factor is required by Facility Based CLECs utilizing BellSouth Local Interconnection transport services. In addition, IXC's that also function as CLECs and utilize Switched Dedicated Transport and/or Local Interconnection transport to interconnect with the BellSouth Network for the exchange of local traffic are required to report a PLF.” Emphasis added.

Additionally, the same document also addresses how the parties would exchange IntraLATA toll traffic utilizing Feature Group D (“FGD”) trunks:

**BellSouth Jurisdictional Factors Reporting Guide – “4.11.** 4.3. Usage based rate elements are billed for FGD in both the originating and terminating directions. BellSouth is able to determine the jurisdiction of BellSouth-originated FGD traffic (“originating usage”) per its own billing records generated with each call. Therefore, a factor to apportion usage for originating FGD traffic is not required from the reporting carrier.”

As illustrated in the diagram above, AT&T sends all non-local calls to an IXC over FGD trunks; AT&T then bills the IXC for originating FGD Switched Access Tariffed Service (See diagram, brown dashed arrow, FGD Service to an IXC). Thus, according to the Jurisdictional Factors Reporting Guide, which controls all “requirements associated with PLF calculation and reporting,” AT&T is not obligated to send Airus a PLF. This arrangement makes perfect sense given that AT&T does not, and indeed could not, send anything other than local AT&T ILEC end-user and transit traffic over the AT&T local interconnection trunks.

### **3. There is No Basis For Airus to Charge AT&T Access For Local Traffic.**

Even if AT&T was supposed to send Airus a PLF (AT&T was not), there is no basis in the ICA, any tariffs, or any other controlling document for Airus to bill AT&T access rates for facilities Airus maintains on its side of the POI. None of the ICA language listed by Airus supports this proposition. Nor does the Jurisdictional Factors Reporting Guide impose such a

remedy to allow Airus to assess access charges for the delivery of local traffic. The invoices submitted by Airus are for facilities on the Airus side of the POI; AT&T never ordered any such facilities and the use of those facilities for the delivery of local traffic is subject to bill and keep compensation. Therefore, they are simply the responsibility of Airus to maintain and there is no argument that supports Airus' attempt to bill AT&T for these facilities. As such, Airus' Complaint should be dismissed.

## **II. ANSWER TO SPECIFIC ALLEGATIONS**

**General Denials:** Any and all allegations in the Complaint that are not expressly admitted herein are denied. AT&T expressly denies that Airus is entitled to the relief requested or to any relief whatsoever.

**Section I. Identification of the Parties.** Regarding the allegations in **paragraphs 1 and 2**, these paragraphs name the Parties, Counsel and Designated Contacts to this dispute and do not require a specific response.

**Section II. Jurisdiction.** Regarding the allegations in **paragraphs 3 and 4**, these paragraphs address jurisdiction and do not require a specific response. AT&T acknowledges that the MPSC has statutory jurisdiction to address disputes arising from the ICA but denies the MPSC has jurisdiction to award the relief sought in Sections VI. (Quantum Meruit) and Section VII. (Unjust Enrichment).

**Section III. Background Information.** Regarding the allegations in **paragraphs 5, 6 and 7**, AT&T admits that these paragraphs address the status of the contract and its language. AT&T notes that the ICA incorporates regional differences depending on the state in which the CLEC is operating, which will be discussed as appropriate within this Answer.



**Paragraph 8.** AT&T states that the contract language speaks for itself and denies the statement by Airus that this section of the ICA speaks to ordering “facilities”; instead this provision addresses trunks.

**Paragraphs 9 and 10.** AT&T states that the contract language speaks for itself and no specific response is required.

**Paragraph 11.** AT&T states that the contract language speaks for itself and no specific response is required. The contract allows Airus to use a 3<sup>rd</sup> party for collocation; AT&T denies that the AT&T/Airus POI is located in any Airus collocation space.

**Paragraph 12.** AT&T states that the contract language speaks for itself and Airus has not accurately recited the language in the contract.

**Paragraph 13.** AT&T denies these allegations except as specifically admitted herein. AT&T states that “facilities” and “trunks” are distinct elements of the network and these meanings cannot be conflated. Please see the discussion on Page 3, above. Upon information and belief, AT&T admits that Airus provisioned facilities from its switch through a third-party collocation space to the Airus/AT&T Point of Interconnection (“POI”). Upon information and belief, AT&T admits that this Airus facility carries trunks used to exchange Section 251(b)(5)/IntraLATA traffic between the parties’ networks.

**Paragraph 14.** Based on information and belief, AT&T agrees that Airus did not, at the time of the filing of the Complaint, utilize “Entrance Facilities” in Mississippi, given that Airus is collocated within AT&T central offices.

**Paragraph 15.** AT&T states that federal law and regulations speak for themselves and no specific response is required. AT&T admits that the parties did not bill each other for reciprocal compensation.



**Paragraph 16.** AT&T states that the contract language speaks for itself and no specific response is required. AT&T denies Airus' narrative interpretation of the contract language. Rather, AT&T states that the ICA does not permit AT&T to charge Airus for facility usage on the AT&T side of the POI for local traffic; however, for access traffic, Airus should rightfully compensate AT&T under the applicable AT&T access tariff.

**Paragraphs 17, 18 and 19.** AT&T states that the contract language speaks for itself and no specific response is required. AT&T denies Airus' narrative interpretation of the contract language.

**Section IV. Nature of the Dispute.** Regarding the allegations in **paragraph 20**, AT&T admits the parties participated in a dispute in the general timeframe identified by Airus. AT&T denies the dispute was solely related to the ICA provisions identified by Airus.

**Paragraph 21.** AT&T admits it denied Airus' claim and states that the contract provision cited by Airus speaks for itself and requires no specific response.

**Paragraph 22.** AT&T states that the contract provision cited by Airus speaks for itself and requires no specific response.

**Paragraph 23.** AT&T admits Airus has submitted invoices along the lines of what was described in this paragraph; AT&T denies Airus has correctly interpreted the ICA and denies all remaining statements in this paragraph.

**Paragraph 24.** AT&T denies these allegations.

**Paragraph 25.** AT&T admits the parties did not resolve their dispute; AT&T denies the remaining allegations in this paragraph.

**Paragraph 26.** AT&T denies these allegations.

**Paragraph 27.** Upon information and belief, these amounts appear to be those claimed by Airus in this Mississippi dispute.

**Paragraph 28.** AT&T agrees it has not paid the erroneous amounts Airus has attempted to bill AT&T.

**Section V. First Cause of Action (Declaratory Judgement Interpreting the ICA and Declaring breeches of Contract and Damages).** Regarding the allegations in **paragraphs 29, 30, 31, 32, 33 and 34**, AT&T denies all allegations and asserts that Airus is not entitled to any of the relief it has claimed.

**Section VI. Second Cause of Action (Alternative Claim – Declaration of Quantum Meruit).** Regarding the allegations in **paragraphs 35, 36, 37, 38 and 39**, AT&T denies all allegations and asserts that Airus is not entitled to any of the relief it has claimed. Additionally, AT&T denies that the MPSC has legal authority to award damages under a Quantum Meruit theory.

**Section VII. Third Cause of Action (Alternative Claim – Unjust Enrichment).** Regarding the allegations in **paragraphs 40, 41, 42, 43, 44 and 45**, AT&T denies all allegations and asserts that Airus is not entitled to any of the relief it has claimed. Additionally, AT&T denies that the MPSC has legal authority to award damages under an Unjust Enrichment theory.

**Section VIII. Prayer for relief.** AT&T denies all allegations and asserts that Airus is not entitled to any of the relief it has claimed.

**WHEREFORE**, for the reasons set forth herein, AT&T respectfully requests that Airus' Complaint be dismissed with prejudice, and for all other proper relief.

Respectfully submitted, this 29<sup>th</sup> day of January, 2021.

**BELLSOUTH TELECOMMUNICATIONS,  
LLC d/b/a AT&T MISSISSIPPI**

By: /s Samuel D. Gregory  
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# VERIFICATION

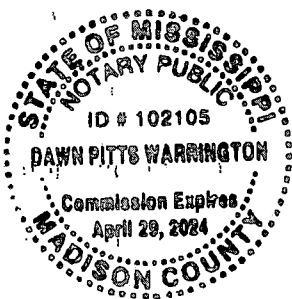
STATE OF MISSISSIPPI )  
COUNTY OF HINDS )

PERSONALLY appeared before me, the undersigned authority in and for the jurisdiction aforesaid, the within named Samuel D. Gregory, who being by me first duly sworn, stated on oath that he is the attorney for BellSouth Telecommunications, LLC d/b/a AT&T Mississippi in this cause, and that he has read the above and foregoing, that the best of his knowledge, information and belief there is a good ground to support it, that it is not imposed for delay.

Samuel Gregory

SWORN TO AND SUBSCRIBED BEFORE ME, this the 29<sup>th</sup> day of January, 2021.

My Commission Expires:



Dawn Pitts Warrington

**CERTIFICATE OF SERVICE**

I, Samuel D. Gregory, attorney of record for BellSouth Telecommunications, LLC d/b/a AT&T Mississippi, hereby certify that I have this day caused to be electronically filed and delivered by overnight delivery, the original and twelve (12) copies of the above and foregoing Answer to Katherine Collier, the Executive Secretary of the Mississippi Public Service Commission, 2nd Floor, Woolfolk Building, Jackson, Mississippi 39201 and one copy of same to Chad Reynolds, the General Counsel of the Mississippi Public Utilities Staff, 3rd Floor, Woolfolk Building, Jackson, Mississippi 39201.

I further certify that I have this day caused to be delivered by electronic mail and U.S. mail, a true and correct copy of the foregoing Answer to the following:

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**ATTORNEYS FOR AIRUS, INC.**

This the 29th day of January, 2021.

/s/ Samuel D. Gregory  
SAMUEL D. GREGORY