

**STATE OF ILLINOIS**  
**BEFORE THE ILLINOIS COMMERCE COMMISSION**

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**Docket No. 09-0052**

**Direct Testimony of Scott McPhee**

**On Behalf of AT&T Illinois**

**AT&T Illinois Exhibit 1.0**

**PUBLIC**

**March 26, 2009**

1           **I. INTRODUCTION AND PURPOSE**

2   **Q. PLEASE STATE YOUR NAME AND BUSINESS ADDRESS.**

3   A. My name is J. Scott McPhee. My business address is 2600 Camino Ramon, San Ramon,  
4       California 94583.

5  
6   **Q. BY WHOM ARE YOU EMPLOYED AND WHAT IS YOUR POSITION?**

7   A. I am an Associate Director – Wholesale Regulatory Policy & Support for Pacific Bell  
8       Telephone Company d/b/a AT&T California. I work in the Wholesale Customer Care  
9       organization on behalf of the AT&T incumbent local exchange carriers (“ILECs”)  
10      throughout AT&T’s 22-state Regional Bell Operating Company region, including Illinois  
11      Bell Telephone Company (“AT&T Illinois”). I am responsible for researching,  
12      supporting, and communicating AT&T’s product policy positions in regulatory  
13      proceedings across the 22 AT&T ILEC states, including Illinois.

14  
15   **Q. PLEASE OUTLINE YOUR WORK EXPERIENCE.**

16   A. I began employment with SBC, AT&T’s predecessor company, in 2000 in the Wholesale  
17      Marketing – Industry Markets organization as Product Manager for Reciprocal  
18      Compensation throughout SBC’s 13-state region. My responsibilities included  
19      identifying policy and product issues to assist negotiations and witnesses addressing  
20      SBC’s reciprocal compensation and interconnection arrangements, as well as SBC’s  
21      transit traffic offering. In June of 2003, I moved into my current role as an Associate  
22      Director in the Wholesale Marketing Product Regulatory organization. In this position,  
23      my responsibilities include helping define AT&T’s positions on certain issues for  
24      Wholesale Marketing, and ensuring that those positions are consistently articulated in

25 proceedings before state commissions. Prior to joining SBC, I spent nine and a half years  
26 working in the insurance industry, primarily as an underwriter of worker's compensation  
27 insurance.

28

29 **Q. WHAT IS YOUR EDUCATIONAL BACKGROUND?**

30 A. I received my Bachelor of Arts degree with a double major in Economics and Political  
31 Science from the University of California at Davis.

32

33 **Q. HAVE YOU PREVIOUSLY TESTIFIED BEFORE REGULATORY**  
34 **COMMISSIONS?**

35 A. Yes, I have filed testimony and/or appeared in regulatory proceedings in 12 of the 13  
36 former SBC states where AT&T provides local service, as well as in the states of  
37 Alabama, Georgia, Louisiana, North Carolina and South Carolina. I have provided  
38 written and/or live testimony before the Illinois Commerce Commission ("Commission")  
39 in Docket No. 04-0469 (MCI/SBC Illinois arbitration); Docket No. 04-0428 (Level  
40 3/SBC Illinois arbitration); Docket No. 04-0746 (*Illinois Bell Telephone Company vs.*  
41 *Data Net Systems, L.L.C.*); and Docket No. 07-0629 (*Sprint Communications LP et al. v.*  
42 *Illinois Bell Telephone Company*).

43

44 **Q. WHAT IS THE PURPOSE OF YOUR DIRECT TESTIMONY?**

45 A. My testimony explains AT&T Illinois' position with regard to the appropriate pricing for  
46 various services purchased by BitWise Communications, Inc. ("BitWise") from AT&T  
47 Illinois. I will explain that the interconnection agreement ("ICA") between BitWise and  
48 AT&T Illinois only provides for the interconnection of the parties' network for the

49 exchange of traffic directly between each other. I will also explain that AT&T Illinois  
50 provides other services via tariff in circumstances in which AT&T Illinois is not  
51 obligated to provide such services under the terms of an ICA. The services BitWise  
52 disputes in this proceeding are not services which provide for the interconnection and  
53 exchange of traffic directly between BitWise and AT&T Illinois, and as such, BitWise is  
54 appropriately being charged AT&T Illinois' tariff rates.

55

56 **II. THE DISPUTE**

57 **Q. PLEASE DESCRIBE THE DISPUTE.**

58 A. In general terms, the dispute results from BitWise's fundamental misunderstanding of  
59 how the various services it obtains from AT&T Illinois are provided under the governing  
60 regulatory framework. BitWise is disputing AT&T Illinois invoices for four separate  
61 Billing Account Numbers ("BANs"), each of which bills services provided by AT&T  
62 Illinois to BitWise in a particular Local Access Transport Area ("LATA").<sup>1</sup> As is clear  
63 from the testimony of BitWise witness Michael Shuler, as well as most of the claims  
64 submitted by BitWise to AT&T Illinois,<sup>2</sup> BitWise believes the parties' ICA should  
65 govern the pricing for these services. AT&T Illinois' position is that all of the disputed  
66 services were appropriately ordered out of AT&T Illinois C.C. Tariff No. 21, and as such  
67 are subject to applicable special access charges pursuant to the tariff.

68

69 **Q. PLEASE DESCRIBE THE SERVICES ASSOCIATED WITH EACH DISPUTED**  
70 **BAN.**

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<sup>1</sup> The following BANs are in dispute in this proceeding: 217 S60-3848 376; 217 S60-4625 625; 271 S60-1710 710; and 217 S60-4619 619.

<sup>2</sup> The testimony of AT&T Illinois witness Chris L. Ellis (AT&T Illinois Exhibit 3.0) discusses BitWise's claims in more detail.

71  
72 A. While there are four separate BANS in dispute in this proceeding, three of the four BANS  
73 involve similar services and issues, but in different locations – and LATAs – in Illinois.  
74 These three BANS are 217 S60-3848 376 (Quincy LATA); 217 S60-1710 710  
75 (Springfield LATA); and 217 S60-4625 625 (Champaign LATA). Each BAN represents  
76 a DS3 connection, and its associated multiplexing<sup>3</sup> provisioned between a McLeod  
77 collocation cage in each city to an AT&T Illinois multiplexer at the same location.

78 **\*\*\*BEGIN CONFIDENTIAL\*\*\*\*\***

79 **\*\*\*\*\*END CONFIDENTIAL\*\*\***

80 Each of these respective DS3 connections is located completely within an AT&T Illinois  
81 central office. AT&T witness Mark Neinast describes the network connections and  
82 functions in more detail; however the common characteristic of each of these disputed  
83 BANS is that the services purchased by BitWise from AT&T Illinois are the facilities that  
84 enable Bitwise, through the collocation it obtains from McLeod, to be able to pass traffic  
85 to Verizon.

86

87 **Q. WHAT SERVICE IS PROVIDED UNDER THE FOURTH DISPUTED BAN?**

88 A. The dispute under BAN 217 S60-4619 619 (Peoria LATA) also involves a DS3  
89 connection, but this DS3 provides BitWise connectivity with AT&T Corp., the Legacy  
90 AT&T long distance inter-exchange carrier (“AT&T IXC”), instead of with Verizon.  
91 The DS3 connection in this BAN is provisioned between a BitWise collocation in the  
92 AT&T Illinois central office in Peoria to an AT&T IXC Point of Presence (“POP”) for

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<sup>3</sup> Multiplexing is the process of aggregating (or separating) circuits on a facility into a different bandwidth. An example would be the aggregation of multiple DS1 circuits which are multiplexed up to a DS3 for transport across a network. At the other end of the transport facility, the DS3 may be multiplexed down to DS1s, and further multiplexed to DS0 circuits for the provisioning of individual phone lines.

93 the purpose of providing BitWise end users with InterLATA and Interstate access.  
94 Although AT&T Illinois and AT&T IXC now have common ownership, they are separate  
95 business entities and had no corporate affiliation when BitWise established the Peoria  
96 BAN in 2003. AT&T IXC is a separate company that originally was split from local  
97 operating companies (such as AT&T Illinois) with the break-up of the Bell System in  
98 1983.

99

100 **III. THE PARTIES' ICA**

101 **Q. WHAT DOES THE ICA BETWEEN BITWISE AND AT&T ILLINOIS**  
102 **CONTEMPLATE?**

103 A. The ICA contains the terms and conditions for the interconnection of the BitWise  
104 network to the AT&T Illinois network for the purpose of exchanging local traffic  
105 between these two carriers.<sup>4</sup> The ICA was entered into pursuant to Sections 251 and 252  
106 of the federal Telecommunications Act of 1996 (“1996 Act”), which addresses the  
107 obligations of an ILEC such as AT&T Illinois to interconnect with other Local Exchange  
108 Carriers.

109

110 **Q. DOES THE ICA SPECIFICALLY LIMIT INTERCONNECTION TO THE**  
111 **EXCHANGE OF TRAFFIC BETWEEN THE PARTIES?**

112 A. Yes, it does. The very first paragraph of the ICA General Terms and Conditions  
113 “GT&Cs”) states that this contract is

114

115 ...by and between one or more of the SBC Communications Inc.-owned ILEC’s  
116 Illinois Bell Telephone, Indiana Bell Telephone Company Incorporated, Michigan

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<sup>4</sup> “Interconnection” is a defined term in the ICA, which is defined as in the Act. GT&C, Section 1.1.63. The duty to provide “interconnection” that the Act imposes on ILECs includes interconnection “for the transmission and routing of telephone exchange service and exchange access.” 47 U.S.C. § 251(c)(2)(A).

117 Bell Telephone Company d/b/a Ameritech Michigan, Nevada Bell Telephone  
118 Company (a Nevada corporation), The Ohio Bell Telephone Company, Pacific  
119 Bell Telephone Company (a California corporation), The Southern New England  
120 Telephone Company (a Connecticut corporation) and Southwestern Bell  
121 Telephone Company (a Missouri corporation), Wisconsin Bell, Inc. d/b/a  
122 Ameritech Wisconsin, (only to the extent that the agent for each such SBC-owned  
123 ILEC executes this Agreement for such SBC-owned ILEC and only to the extent  
124 that such SBC-owned ILEC provides Telephone Exchange Services as an ILEC in  
125 each of the state(s) listed below) and, BitWise Communications, Inc. (CLEC),  
126 (An Illinois corporation).  
127

128 GT&C, p. 5. The ICA also describes the type of service contemplated by the agreement:

129 WHEREAS, the Parties want to Interconnect their networks at mutually agreed  
130 upon points of interconnection to provide, directly or indirectly, Telephone  
131 Exchange Services and Exchange Access to residential and business End Users  
132 over their respective Telephone Exchange Service facilities in the states which are  
133 subject to this Agreement.  
134

135 GT&C, p. 5. Telephone Exchange Service and Exchange Access are defined as those  
136 terms are defined by the 1996 Act,<sup>5</sup> and therefore describe the types of traffic governed  
137 by the ICA, that being local and IntraLATA toll traffic.

138  
139 The ICA is clear: all provisions within the agreement are for the purposes of provisioning  
140 local and IntraLATA toll services exchanged directly between AT&T Illinois and  
141 BitWise. The ICA does not govern the provisioning of services between any other  
142 parties. Any services between BitWise and a carrier not named in the ICA – even if

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<sup>5</sup> GT&C, Sections 1.1.134 and 1.1.50. The Act defines “telephone exchange service” as either “service within a telephone exchange, or within a connected system of telephone exchanges within the same exchange area operated to furnish subscribers intercommunicating service of the character ordinarily furnished by a single exchange, and which is covered by the exchange service charge” or “comparable service provided through a system of switches, transmission equipment, or other facilities (or combination thereof) by which a subscriber can originate and terminate a telecommunications service.” 47 U.S.C. § 153(47). The Act defines “exchange access” as “the offering of access to telephone exchange services or facilities for the purpose of the origination or termination of telephone toll services.” 47 U.S.C. § 153(16). As the ICA is between BitWise and AT&T Illinois, and AT&T Illinois only provides “local toll” or IntraLATA toll services, the term “exchange access” does not apply to the Parties for purposes of provisioning services to third-party interexchange carriers.

143 AT&T Illinois is an intermediary in the provision of that service -- are services that are  
144 provisioned via terms other than the ICA.

145

146

147 **Q. WHAT IS SPECIAL ACCESS SERVICE?**

148

149 A. In general terms, Special Access Service consists of a dedicated transmission path,  
150 provided by the ILEC, that connects the facilities of the customer (including a CLEC  
151 such as BitWise) with an interexchange carrier or other carrier.

152

153 **Q. WHY DOES AT&T ILLINOIS OFFER SPECIAL ACCESS SERVICES**  
154 **PURSUANT TO TARIFF?**

155

156 A. As part of the proceedings arising from the break-up of the Bell System, the Federal  
157 Communications Commission ordered the establishment of an access charge regime  
158 pursuant to tariff to replace the contractual relationships that had previously existed  
159 among most carriers. To implement this regime on a state level, the Commission here  
160 initiated Docket No. 83-0142, which considered the appropriate methodology for  
161 calculating intrastate access charges for Illinois carriers. The Commission's orders in  
162 that docket directed local and Interexchange carriers to file "access charge tariffs"  
163 governing the use of local distribution facilities by intrastate Interexchange carriers for  
164 the origination and termination of intrastate traffic.<sup>6</sup>

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<sup>6</sup> See Fourth Interim Order – Exchange/Interexchange Carrier Compensation, Docket No. 83-0142 (Nov. 23, 1983).

166 Q. BITWISE WITNESS MICHAEL SHULER DISCUSSES IN HIS DIRECT  
167 TESTIMONY<sup>7</sup> VARIOUS SECTIONS OF THE ICA’S APPENDIX NIM THAT  
168 APPLY TO THE EXCHANGE OF TRAFFIC BETWEEN BITWISE AND AT&T  
169 ILLINOIS. DOES APPENDIX NIM APPLY TO THE SERVICES AT ISSUE  
170 HERE?

171 A. No, it does not.

172

173 Q. WHY NOT?

174 A. Because the BANs in dispute do *not* provide interconnection between AT&T Illinois and  
175 BitWise. Instead, they are for interconnection between BitWise and Verizon in three  
176 cases, and between BitWise and AT&T IXC in the fourth case. These facilities are  
177 therefore not provided by AT&T Illinois under the terms of the BitWise/AT&T Illinois  
178 ICA. Because the disputed facilities are for the provisioning of service with third party  
179 carriers, BitWise and the carrier with which BitWise is interconnecting are responsible  
180 for any such arrangement, either via their own ICA or another form of agreement.

181

182 Q. BITWISE WITNESS SHULER CONTENDS BITWISE DOES NOT OWE  
183 PAYMENT FOR THREE OF THE DISPUTED BANS BECAUSE “BITWISE  
184 SHOULD HAVE BEEN BILLED \$0/MONTH FOR LOCAL  
185 INTERCONNECTION PAST THE POI.”<sup>8</sup> DO YOU AGREE?

186 A. No. Mr. Shuler is confused as to the use of the disputed facilities billed via the  
187 Champaign, Quincy and Springfield BANs. They are not for “local interconnection”  
188 with AT&T Illinois. Instead, as discussed above, **\*\*\*BEGIN CONFIDENTIAL\*\*\*\***

189 \*\*\*\*\*

190 **\*\*\*\*\*END CONFIDENTIAL\*\*\***. That is not “interconnection” with AT&T

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<sup>7</sup> Shuler Direct, lines 79-106.

<sup>8</sup> Shuler Direct, line 109.



212 **Q. IF THE FACILITIES IN DISPUTE ARE NOT FOR INTERCONNECTION**  
213 **BETWEEN BITWISE AND AT&T ILLINOIS, THEN WHY DID BITWISE**  
214 **ORDER THE FACILITIES FROM AT&T ILLINOIS?**

215 A. While I am not privy to BitWise’s business plan, I do know that BitWise exercised one of  
216 several options for provisioning these facilities; that is, BitWise leased facilities from  
217 AT&T Illinois. As an alternative, BitWise could have leased facilities from another  
218 carrier or provisioned the facilities itself. However, the fact that BitWise elected to  
219 provision the facilities through AT&T Illinois does not mean that these facilities are  
220 subject to the terms of the parties’ ICA. Instead, because these facilities are not for the  
221 interconnection of the parties’ networks, BitWise can only purchase these facilities from  
222 the AT&T Illinois Special Access Tariff, Tariff C.C. No. 21.

223

224 **Q. DOES THIS CONCLUDE YOUR DIRECT TESTIMONY?**

225 A. Yes.