

**STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION**

BitWise Communications, Inc.)	
)	
vs.)	No. 09-0052
)	
AT&T)	
)	
Complaint as to over-billing and threatened termination of service.)	
)	

ILLINOIS BELL TELEPHONE COMPANY'S INITIAL POST-HEARING BRIEF

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ILLINOIS BELL TELEPHONE COMPANY’S INITIAL POST-HEARING BRIEF

Now comes Illinois Bell Telephone Company (“IBT”), by and through its counsel, and for its Initial Post-Hearing Brief states as follows:

I. INTRODUCTION

The matter before this Commission relates to a host of charges that IBT has billed to BitWise Communications, Inc. (“BitWise”) over the past six years and which BitWise, by and large, has refused to pay. While BitWise occasionally submitted disputes to IBT challenging some of the unpaid bills (mostly prior to 2004), it often did not. And when it did submit disputes, the bases for its claims that it was not responsible for the billed charges were far from clear. All that IBT could muster from BitWise was that BitWise believed that IBT was improperly charging BitWise for certain services under IBT’s Access Tariff (Tariff No. 21), when, in BitWise’s view, IBT should be charging under the interconnection agreement (“ICA”) between IBT and BitWise. Even still, BitWise did not explain in detail why it believed that the services provided by IBT to BitWise were governed by the parties’ ICA, rather than the Access Tariff. BitWise largely abandoned its obligation to submit billing disputes by early 2004 and, by late 2006, it simply stopped paying the amounts invoiced. This situation continued for several years, as IBT continued to bill BitWise under IBT’s Access Tariff (including accrued late payment charges) and BitWise continued to ignore its bills.

In the second half of 2008, the parties engaged in informal dispute resolution under the auspices of the Commission Staff. Through that process, IBT remained in the dark about specifically why BitWise believed the services at issue were being provided pursuant to the parties' ICA and not the Access Tariff. Not surprisingly, informal dispute resolution did not resolve these issues (although it did clear up some issues unrelated to BitWise's access accounts).

BitWise filed its Formal Complaint on January 22, 2009. But even with the filing of this action and its subsequent pre-filed testimony, BitWise's basis for refusing to pay the outstanding charges remained less than clear, as Staff and the Administrative Law Judge ("ALJ") concluded. At the urging of the ALJ, the parties worked together to present agreed network diagrams and narrative descriptions of the facilities and services at issue. The ALJ also gave BitWise an opportunity to file additional testimony, to which IBT and Staff responded. With those diagrams and BitWise's additional testimony in hand, IBT finally had some clarity as to what BitWise was disputing and why. Staff apparently did too: in its Additional Testimony, Staff agreed with IBT that all of the services at issue were properly billed under IBT's Access Tariff, not the ICA between IBT and BitWise.

As detailed below, IBT has been properly billing BitWise for the services that BitWise has been using since 2003, but not paying for since 2006. As of the filing of the Formal Complaint, the amount owed by BitWise had grown to more than \$373,000, and there is no indication that BitWise is ever going to pay. The time has come for BitWise's free ride to end. IBT therefore requests that the Commission affirm that all of the charges in dispute between the parties (including accrued late payment charges) are properly due and owing from BitWise pursuant to IBT's Access Tariff. IBT further requests that the Commission permit IBT to

disconnect BitWise's service if BitWise does not pay the amounts determined by the Commission to be owed within 30 days of the Commission's Order.

II. STATEMENT OF FACTS

BitWise Communications, Inc. ("BitWise") is a competing local exchange carrier ("CLEC"), with its principal place of business at 331 Fulton Street in Peoria, Illinois. BitWise Ex. 1.0 (Shuler Direct), lines 3-4, 18. The company provides local, interexchange and internet services in a number of areas in downstate Illinois, including the Champaign, Peoria, Quincy, and Springfield Local Access Transport Areas ("LATA").¹ BitWise Ex. 1.0 (Shuler Direct), line 22 & Ex. 1.1. BitWise has ICAs with IBT, as well as Verizon North, Inc. ("Verizon"). BitWise Ex. 1.0 (Shuler Direct), lines 24-26. Michael Shuler is BitWise's President and Chief Executive Officer. BitWise Ex. 1.0 (Shuler Direct), line 2.

A. Overview of BitWise Network

The 331 Fulton Street building in Peoria is the location of BitWise's central office. Jt. Resp. to ALJ Data Request 1(c), 1(d). In the Peoria LATA, BitWise uses its own facilities to get from its central office to the IBT central office at 320 Fulton Street in Peoria, as well as to the McLeod central office in Peoria. BitWise Ex. 1.0 (Shuler Direct), lines 31-33; Jt. Resp. to ALJ Data Request 1(c). In the Champaign, Quincy and Springfield LATAs, BitWise leases DS3 facilities from McLeod to get from Peoria to the IBT central offices in those three cities. BitWise Ex. 1.0 (Shuler Direct), lines 33-34 & Ex. 1.1. BitWise has only a "virtual switch" in the three LATAs and backhauls its traffic to its host switch in Peoria, via the facilities it leases from McLeod. Tr. at 167, 168-69 (Shuler).

¹ As noted below, BitWise began modifying its networks in the affected LATAs following the filing of its Formal Complaint. Except as noted, the facts presented are based on the situation as known to IBT at the time of the initial evidentiary hearing in April 2009.

BitWise has retail end-users in the Peoria LATA (Tr. at 175 (Shuler)), but not in the other three LATAs. Tr. at 160-61 (Springfield), 168-69 (Quincy), 169-170 (Champaign) (all Shuler).² Almost all of BitWise's traffic in the three non-Peoria LATAs consists of calls originated by non-BitWise customers (*e.g.*, customers of IBT or Verizon); BitWise has "virtually no calls" going back to IBT and Verizon. Tr. at 125 (Shuler).

BitWise provides internet access, on a wholesale level, for a number of nationally known internet service providers ("ISP"). Tr. at 101-02 (Shuler).³ For example, if a retail customer of one of these ISPs uses dial-up service to access the internet in certain areas of downstate Illinois (including areas in the Champaign, Quincy and Springfield LATAs), that customer calls a telephone number controlled by BitWise, and BitWise carries the call traffic. Tr. at 104-05 (Shuler).⁴ The traffic is routed to the BitWise central office in Peoria, where calls are answered by one of a pool of 5,000 modems, and then the traffic "goes out to the Internet from there." Tr. at 107, 108 (Shuler).

BitWise purchases its upstream internet connectivity, on a wholesale basis, through a company called Network Innovations. Tr. at 103 (Shuler). The internet connectivity service is actually provided by NTT Verio and Legacy AT&T.⁵ Tr. at 102-03 (Shuler); *see* BitWise Ex. 1.0 (Shuler Direct), lines 132-34; BitWise Ex. 2.0 (Shuler Rebuttal), lines 110-12. Regardless of

² In the Champaign LATA, BitWise provides wholesale switching services to a company called Conxxus, which provides telephone service to end-users in Paxton, Illinois, a Verizon exchange. Tr. at 170, 172-73 (Shuler).

³ Although Mr. Shuler declined to name his ISP customers, he agreed that America Online would be an example of the type of company for which he provided service. Tr. at 100-01.

⁴ The fact that BitWise routes ISP-bound traffic is presumably why Bitwise receives so much traffic from IBT and Verizon.

⁵ The service is provided by AT&T Corp. in its role as an interexchange carrier. AT&T Illinois Ex 1.0 (McPhee Direct), lines 88-98. For purposes of this brief, AT&T Corp. will be referred to as "Legacy AT&T."

whether Legacy AT&T or Verio provides the connectivity, the traffic is routed from Peoria to Chicago and beyond. Tr. at 193-94 (Shuler).

B. IBT and Legacy AT&T Peoria Central Offices

IBT and Legacy AT&T have central offices in adjoining buildings in downtown Peoria, located at 320 Fulton and 120 SW Jefferson, respectively. Jt. Resp. to ALJ Data Request 1(d); AT&T Illinois Ex. 2.2 (Neinast Addit.), lines 115-17. The buildings were part of one central office prior to the divestiture of the Bell System in 1984, when that larger central office, and the facilities it contained, was partitioned between IBT and the Legacy AT&T interexchange carrier (“IXC”). AT&T Illinois Ex. 2.2 (Neinast Addit.), lines 126-34. The Legacy AT&T switch in the 120 SW Jefferson building was installed and assigned a CLLI⁶ code prior to divestiture. AT&T Illinois Ex. 2.2 (Neinast Addit.), lines 165-67. That CLLI code was not changed at divestiture, so the same eight-digit code (PEORILPJ) is used for equipment in both the IBT and Legacy AT&T central offices. AT&T Illinois Ex. 2.2 (Neinast Addit.), lines 167-71. That does not mean that the two buildings constitute the same central office, however. AT&T Illinois Ex. 2.2 (Neinast Addit.), lines 169-72.

Legacy AT&T does not have a collocation arrangement with IBT in the IBT Peoria central office and has not had one at any time since 2003. AT&T Illinois Ex. 2.2 (Neinast Addit.), lines 103-06. Instead, Legacy AT&T, acting as an IXC, has established its network point of presence (“POP”) for the Peoria LATA at the 120 SW Jefferson building. AT&T Illinois Ex. 2.2 (Neinast Addit.), lines 82-83, 121.⁷ That POP is designated by the CLLI code PEORILPJW12. AT&T Illinois Ex. 2.2 (Neinast Addit.), lines 119-20 & Attachment 1; *see* Jt.

⁶ “CLLI” is the abbreviation for Common Language Location Identifier, an industry code that is used to identify equipment in central offices. Tr. at 314 (Neinast); AT&T Illinois Ex. 2.2 (Neinast Addit.), lines 161-62.

⁷ IXCs do not have points of interconnection (“POI”) because they are not local exchange carriers. AT&T Illinois Ex. 2.2 (Neinast Addit.), lines 74-75, 96.

Resp. to ALJ Data Request 1(d). The facilities carrying BitWise's internet traffic from the IBT central office are connected to this Legacy AT&T POP. AT&T Illinois Ex. 2.2 (Neinast Addit.), lines 112-14; Jt. Resp. to ALJ Data Request 1(d).

C. Network Arrangement and Billing in Each LATA

Each of the charges at issue in this proceeding relate to one of the four LATAs in which BitWise operates in IBT's territory – Peoria, Springfield, Quincy and Champaign. Each is described below. The Peoria LATA presents issues unique from the other three LATAs, as the single largest charge at issue in this case relates to services provided to BitWise to carry internet traffic to Legacy AT&T (and, ultimately, to BitWise's ISPs). The network configurations in the Springfield, Quincy and Champaign LATAs are substantially similar to one another; most of the disputed charges in those LATAs relate to facilities used to exchange traffic between BitWise and Verizon. There are also charges related to 911 traffic at issue in the Peoria and Champaign LATAs.

1. Peoria LATA

a. Present Peoria Network Configuration

BitWise reaches the IBT central office at 320 Fulton in downtown Peoria (designated by the CLLI code PEORILPJ) via fiber BitWise has constructed from its central office at 331 Fulton (designated by the CLLI code PEORILTC). The fiber is routed through IBT's building into BitWise's collocation bay, which is identified by the CLLI code PEORILPJH54. From BitWise's bay there are prewired cables, owned by BitWise, that are connected to IBT's DSX panels. There are 6 DS3s and 56 DS1s prewired between BitWise and the IBT DSX panels. (DSX3s are for DS3 circuits and DSX1s are for DS1 circuits.) Jt. Response to ALJ Data Request 1(c), 1(d); Jt. Response to ALJ Data Request 2, pp. 1-2. IBT's facilities begin at these DSX panels.

One of the six BitWise DS3s going to an IBT DSX3 panel is connected to an IBT owned M13 multiplexer identified as 805/T3/PEORILPJH54/PEORILPJK01. This multiplexer then breaks down the DS3 into 28 individual DS1s. Jt. Response to ALJ Data Request 1(c); Jt. Response to ALJ Data Request 2, p. 2. Two DS1s run from the multiplexer through IBT transport equipment to the Peoria Bluff 911 selective router (PEORILPBDS0). Jt. Resp. to ALJ Data Request 1(c); Jt. Resp. to ALJ Data Request 2, p. 2; Staff Ex. 3.0(R) (Zolnierek Rev. Addit.), lines 27-31.

Another of the six BitWise DS3 cables going to IBT's DSX3 panels is connected to a second IBT DSX3 panel which is dedicated to Legacy AT&T. Tr. at 472 (Neinast). Legacy AT&T then has a cable running from this second IBT DSX3 panel to Legacy AT&T's DSX3 panel located at the Legacy AT&T central office at 120 SW Jefferson and identified by the CLLI code PEORILPJW12. Legacy AT&T then carries this circuit to the internet. Jt. Resp. to ALJ Data Request 1(d); Jt. Resp. to ALJ Data Request 2, p. 2.

IBT began billing BitWise for access services in the Peoria LATA in January 2003, under Billing Account Number ("BAN") 217-s60-4619-619. AT&T Illinois Ex. 3.1 (Ellis Rebuttal), Attachment R7 at 12. As of early April 2009, IBT was billing BitWise two types of monthly special access charges related to the multiplexer used for 911 services: a \$1.01 Cross-Connection charge designated by USOC⁸ CXCEX; and a \$490.00 DS3-to-DS1 Multiplexing charge (for a 60-month term plan in Zone 4) designated by USOC QM3XD. AT&T Illinois Ex. 3.1 (Ellis Rebuttal), p. 4 & Attachment R4. IBT also was billing BitWise two types of monthly charges for special access transport services for the two 911-related DS1s: a \$105.00 DS1 Channel Mileage

⁸ "USOC" is the abbreviation for Universal Service Ordering Code, a three- or five-character alphabetical or alphanumeric code that is used to identify services billed via IBT's Carrier Access Billing System. AT&T Illinois Ex. 3.0 (Ellis Direct), p. 4, n.3.

Termination charge designated by USOC CZ4XD, and a \$34.10/mile DS1 Channel Mileage charge designated by USOC 1YZXD. AT&T Illinois Ex. 3.1 (Ellis Rebuttal), Attachment R4.

IBT also was billing BitWise two types of monthly special access charges related to the circuit connecting BitWise's internet traffic to Legacy AT&T: a \$1.01 Cross-Connection charge designated by USOC CXCEX; and a \$3700.00 DS3 Local Distribution Channel ("LDC") charge designated by USOC TZUPD. AT&T Illinois Ex. 3.1 (Ellis Rebuttal), Attachment R4. The Cross-Connection and LDC charges represent distinct services that IBT provides. The cross-connection encompasses the wiring running from the BitWise POI to the DS3 cable that goes to the IBT DSX3 panel dedicated to the Legacy AT&T POP (Tr. at 472 (Neinast)), while the LDC encompasses the dedicated DSX3 panel and channel capacity equipment and other electronics needed to provide functionality to the circuit. Tr. at 317-18, 472 (Neinast).

b. Prior Peoria Network Configuration

BitWise and IBT had a different network set-up in the Peoria LATA prior to the configuration described in the preceding section. The two companies first agreed to a network architecture plan for the Peoria LATA in 2002-03. *See* BitWise Ex. 2.0 (Shuler Rebuttal), lines 71-73 & Ex. 2.3; AT&T Illinois Ex. 2.1 (Neinast Rebuttal), lines 203-20 & Diagram 6R. That configuration changed subsequent to 2003, after BitWise made arrangements for cageless collocation in the IBT Peoria central office. BitWise Ex. 2.0 (Shuler Rebuttal), lines 72-73; AT&T Illinois Ex. 2.1 (Neinast Rebuttal), lines 222-24; Tr. at 93-94 (Shuler).

In February 2006, BitWise submitted an order to the AT&T Access Service Center for a new DS3 in the Peoria LATA. AT&T Illinois Ex. 3.1 (Ellis Rebuttal), lines 107-10; *see* BitWise Ex. 1.0 (Shuler Direct), lines 132-36. (A copy of the first six pages of that order is Attachment R6 to AT&T Illinois Ex. 3.1 (Ellis Rebuttal).) Through this order, BitWise requested a DS3 circuit running from its collocation space in the IBT Peoria central office (PEORILPJH54) to the

Legacy AT&T IXC POP at 120 SW Jefferson (PEORILPJW12). The order also asked IBT to provide the facilities to connect the two locations. AT&T Illinois Ex. 3.1 (Ellis Rebuttal), lines 116-26. IBT's provision of the facilities for this connection meant that special access channel charges were appropriate. *Id.*, lines 126-27. The code "04QB" used on one section of the order could designate a circuit used for local interconnection running between two CLEC collocation spaces (*see* BitWise Ex. 1.0 (Shuler Direct), lines 146-48), but the code also could be used to order an access service billed at tariff rates. AT&T Illinois Ex. 2.0 (Neinast Direct), lines 201-11.

2. Springfield LATA

BitWise reaches the IBT Springfield central office (designated by the CLLI code SPFDILES) from Peoria through facilities it leases from McLeod; these facilities include a DS3 cable running from McLeod's collocation space in the IBT Springfield central office to an IBT DSX3 panel. Jt. Resp. to ALJ Data Request 1(a); Jt. Resp. to ALJ Data Request 2, p. 1. That DSX3 panel is "the location of the BitWise and Illinois Bell POI for calls that are exchanged between the two carriers"; it is identified by the CLLI code SPFDILES9MD. Jt. Resp. to ALJ Data Request 1(a); Jt. Resp. to ALJ Data Request 2, p. 1.

IBT's facilities begin at this point. The IBT DSX3 panel is connected by a DS3 cable to an IBT M13 multiplexer identified as 829/T3/SPFDILESH04/SPFDILESK02. Jt. Resp. to ALJ Data Request 1(a). This multiplexer then breaks down the DS3 into 28 individual DS1s. As of early April 2009, 11 of the DS1s coming from the multiplexer connected to Verizon switches, while others connected to IBT switches. Jt. Resp. to ALJ Data Request 1(a); Jt. Resp. to ALJ Data Request 2, p. 1. The multiplexer thus allows BitWise to reach the Verizon exchanges, but also allows it to exchange local traffic with IBT. Jt. Resp. to ALJ Data Request 2, p. 1; Staff Ex. 3.0(R) (Zolnierek Rev. Addit.), lines 224-32.

IBT and Verizon jointly provision the 11 DS1 circuits running to the Verizon exchanges, with the boundary between each carrier's facilities designated by a meet point. Tr. at 504, 506-07 (Neinast). Each carrier bills BitWise for the facilities on that carrier's side of the meet point (Tr. at 505), calculated as a percentage of the length of the circuit. This percentage is known as the billing interconnection percentage or "BIP." AT&T Illinois Ex. 2.0 (Neinast Direct), lines 125-29. The facilities at issue in the Complaint run between the IBT DSX3 panel and the fiber meet point with Verizon, but do not include any DS1s running to the IBT tandem (SPFDILES52T) or local switches (SPFDILES1 & SPFDILES2). Jt. Resp. to ALJ Data Request 2, p. 1.

IBT began billing BitWise for access services in the Springfield LATA in October 2003, under BAN 217-s60-1710-710. AT&T Illinois Ex. 3.1 (Ellis Rebuttal), Attachment R7 at 8. As of early April 2009, IBT was billing BitWise two types of monthly special access charges related to the circuit for the multiplexer: a \$1.01 Cross-Connection charge designated by USOC CXCEX; and a \$780.00 DS3-to-DS1 Multiplexing charge (for Zone 2) designated by USOC QM3XB. AT&T Illinois Ex. 3.1 (Ellis Rebuttal), p. 4 & Attachment R3 at 4. IBT also was billing BitWise two types of monthly switched access direct transport charges related to the 11 DS1s⁹ going to Verizon: a \$15.60 Channel Mileage Termination charge designated by USOC CZ8XE; and a \$4.50 Channel Mileage charge designated by USOC 1YLXE. AT&T Illinois Ex. 3.1 (Ellis Rebuttal), Attachment R3 at 1-4.

The amount of Channel Mileage for the individual DS1s varies according to the particular Verizon exchange to which the DS1 connects, as does the BIP applied to the Channel Mileage rate. For example, the circuit on the first line of AT&T Illinois Ex. 3.1 (Ellis Rebuttal),

⁹ As of January 2004, BitWise was only billed for five DS1s on its access bill for this LATA. See AT&T Illinois Ex. 3.0 (Ellis Direct), lines 126-31.

Attachment R3 (designated as 7001 T1ZF CHHMILXCDS0 SPFDILESH04) is a DS1 running to Verizon's Chatham exchange, a distance of nine miles. IBT's BIP for that circuit is 36 percent. Accordingly, the total Channel Mileage charge for that circuit is \$14.58 (\$4.50/mile times 9 miles times 0.36). *See* AT&T Illinois Ex. 3.1 (Ellis Rebuttal), Attachment R3 at 1; Attachment R5 at 2.

3. Quincy LATA

BitWise reaches the IBT Quincy central office (designated by the CLLI code QNCYILQY) from Peoria through facilities it leases from McLeod; these facilities include a DS3 cable running from McLeod's collocation space in the IBT Quincy central office to an IBT DSX3 panel. *Jt. Resp. to ALJ Data Request 1(e); Jt. Resp. to ALJ Data Request 2, p. 2.* That DSX3 panel is "the location of the BitWise and Illinois Bell POI for calls that are exchanged between the two carriers"; it is identified by the CLLI code QNCYILQYJMD. *Jt. Resp. to ALJ Data Request 1(e); Jt. Resp. to ALJ Data Request 2, p. 2.*

IBT's facilities begin at this point. The IBT DSX3 panel is connected by a DS3 cable to an IBT M13 multiplexer identified as 813/T3/QNCYILQY/QNCYILQYH01. *Jt. Resp. to ALJ Data Request 1(e).* This multiplexer then breaks down the DS3 into 28 individual DS1s. As of early April 2009, three of the DS1s coming from the multiplexer connected to Verizon switches, while others connected to IBT switches. *Jt. Resp. to ALJ Data Request 1(e); Jt. Resp. to ALJ Data Request 2, p. 2.* The multiplexer thus allows BitWise to reach the Verizon exchanges, but also allows it to exchange local traffic with IBT. *Jt. Resp. to ALJ Data Request 2, p. 2; Staff Ex. 3.0(R) (Zolnierrek Rev. Addit.), lines 224-32.*

As in Springfield, IBT and Verizon jointly provision the three DS1 circuits running to the Verizon exchanges, with the boundary between each carrier's facilities designated by a meet point. *Tr. at 504 (Neinast).* Each carrier bills BitWise for the facilities on that carrier's side of

the meet point (Tr. at 505 (Neinast), calculated using a BIP. The facilities at issue in the Complaint run between the IBT DSX3 panel and the fiber meet point with Verizon, but do not include any DS1s running to the Illinois Bell Quincy switch (QNCYILQYDS0). Jt. Resp. to ALJ Data Request 2, p. 2.

IBT began billing BitWise for access services in the Quincy LATA in November 2004, under BAN 217-s60-3848-376. AT&T Illinois Ex. 3.1 (Ellis Rebuttal), Attachment R7 at 1. As of early April 2009, IBT was billing BitWise two types of monthly special access charges related to the circuit for the multiplexer: a \$1.01 Cross-Connection charge designated by USOC CXCEX; and an \$825.00 DS3-to-DS1 Multiplexing charge (for Zone 4) designated by USOC QM3XD. AT&T Illinois Ex. 3.1 (Ellis Rebuttal), p. 4 & Attachment R1 at 1. IBT also was billing BitWise two types of monthly switched access direct transport charges related to the three DS1s going to Verizon: a \$15.60 Channel Mileage Termination charge designated by USOC CZ8XE; and a \$4.50 Channel Mileage charge designated by USOC 1YLXE. AT&T Illinois Ex. 3.1 (Ellis Rebuttal), Attachment R1 at 1-2.

4. Champaign LATA

BitWise reaches the IBT Champaign central office (designated by the CLLI code CHMPILCP) from Peoria through facilities it leases from McLeod; these facilities include a DS3 cable running from McLeod's collocation space in the IBT Champaign central office to an IBT DSX3 panel. Jt. Resp. to ALJ Data Request 1(b); Jt. Resp. to ALJ Data Request 2, p. 1. That DSX3 panel is "the location of the BitWise and Illinois Bell POI for calls that are exchanged between the two carriers"; it is identified by the CLLI code CHMPILCPX5X. Jt. Resp. to ALJ Data Request 1(b); Jt. Resp. to ALJ Data Request 2, p. 1.

IBT's facilities begin at this point. The IBT DSX3 panel is connected by DS3 cable to two IBT M13 multiplexers identified as 810 & 816/T3/CHMPILCPH18/CHMPILCPK01. Jt.

Resp. to ALJ Data Request 1(b). These multiplexers then break down the two DS3s into 28 individual DS1s for each DS3. As of early April 2009, 25 of the DS1s coming from the two multiplexers connected to Verizon switches, other DS1s connected to IBT switches, and two DS1s coming from the 816 multiplexer connected to the 911 selective router¹⁰ in the IBT Champaign central office. Jt. Resp. to ALJ Data Request 1(b); Jt. Resp. to ALJ Data Request 2, p. 1.¹¹ The multiplexers thus allow BitWise to reach the Verizon exchanges and to provide 911 services, but also allow it to exchange local traffic with IBT. Jt. Resp. to ALJ Data Request 2, p. 1; Staff Ex. 3.0(R) (Zolnierrek Rev. Addit.), lines 224-32.

As in Springfield and Quincy, IBT and Verizon jointly provision the 25 DS1 circuits running to the Verizon exchanges, with the boundary between each carrier's facilities designated by a meet point. Tr. at 504, 506-07 (Neinast). Each carrier bills BitWise for the facilities on that carrier's side of the meet point (Tr. at 505 (Neinast)), calculated using a BIP. The facilities at issue in the Complaint run between the IBT DSX3 panel and either the fiber meet point with Verizon or the 911 selective router, but do not include any DS1s running to the IBT tandem (CHMPILCP51T) or local switch (CHMPILCPDC0). Jt. Resp. to ALJ Data Request 2, p. 1.

IBT began billing BitWise for access services in the Champaign LATA in October 2003, under BAN 217-s60-4625-625. AT&T Illinois Ex. 3.1 (Ellis Rebuttal), Attachment R7 at 4. As of early April 2009, IBT was billing BitWise two types of monthly special access charges related to the two multiplexer circuits: a \$1.01 Cross-Connection charge designated by USOC CXCEX; and a \$795.00 DS3-to-DS1 Multiplexing charge (for Zone 3) designated by USOC QM3XC. AT&T Illinois Ex. 3.1 (Ellis Rebuttal), p. 4 & Attachment R2 at 5, 10. IBT also was billing

¹⁰ Unlike the Champaign LATA, there are no 911-related charges at issue in the Springfield and Quincy LATAs.

¹¹ Five other DS1s are used by Conxxus to provide services in Paxton, Illinois. Tr. at 170, 172-73 (Shuler). IBT bills these facilities to a carrier other than Bitwise. Tr. at 172 (Shuler).

BitWise two types of monthly switched access direct transport charges related to the 25 DS1s going to Verizon: a \$15.60 Channel Mileage Termination charge designated by USOC CZ8XE; and a \$4.50 Channel Mileage charge designated by USOC 1YLXE. AT&T Illinois Ex. 3.1 (Ellis Rebuttal), Attachment R2 at 1-9. There were no charges for any transport services for the two DS1s used for 911 traffic; the multiplexer and the selective router are in the same central office. See AT&T Illinois Ex. 3.1 (Ellis Rebuttal), p. 4 & Attachment R2 at 5; Jt. Resp. to ALJ Data Request 1(b).

D. BitWise Payment History and Disputes

BitWise made occasional payments on the four BANs identified above from their establishment in 2003 and 2004 until late 2006. AT&T Illinois Ex. 3.1 (Ellis Rebuttal), Attachment R7 at 1-2, 4-5, 8-9, 12-14. By December 2006, however, BitWise stopped paying IBT for any of the BANs. AT&T Illinois Ex. 3.0 (Ellis Direct), lines 261-63; AT&T Illinois Ex. 3.1 (Ellis Rebuttal), Attachment R7. As of March 2009, the past due amount owed on each account, including late payment charges, was as follows:

- Peoria (217-s60-4619-619) \$157,793.16
- Springfield (217-s60-1710-710) \$70,517.10
- Quincy (217-s60-3848-376) \$45,628.10
- Champaign (217-s60-4625-625) \$99,912.69

AT&T Illinois Ex. 3.0 (Ellis Direct), lines 266-74; AT&T Illinois Ex. 3.1 (Ellis Rebuttal), Attachment R7 at 3, 7, 11, 16.

According to Mr. Shuler, BitWise had “an ongoing dispute with IBT over the billing of the four BANs . . . since the first billings to Bitwise” (BitWise Ex. 1.0 (Shuler Direct), lines 173-75), and it had disputed the charges for the BANs “[s]ince the inception of these services.” *Id.*, lines 66-67.

The AT&T Access Service Center processed disputes on the BANs 10 times since the accounts were established. AT&T Illinois Ex. 3.0 (Ellis Direct), lines 103-07. Eight of the disputes were submitted prior to February 2004. AT&T Illinois Ex. 3.0 (Ellis Direct), lines 105-07. Seven dispute submissions involved only charges on the Peoria BAN (*id.*, lines 111-21, 144-52), two submissions involved only charges for the Springfield BAN (*id.*, lines 126-39), and one submission involved only charges from BitWise's September 2008 bills for the Champaign, Quincy and Springfield BANs. *Id.*, lines 164-80. IBT denied each set of disputes, either because BitWise did not provide enough information to allow evaluation of its claims (*id.*, lines 117-20), because the services were being billed as BitWise ordered them (*id.*, lines 137-39, 150-51), or because the services were correctly billed at access rates. *Id.*, lines 133-34, 150-52, 175-80.

In the fall of 2008, BitWise contacted the Commission's Telecommunications Staff to assist with informal dispute resolution of various disputes that BitWise had with IBT, including disputes involving the four access BANs. AT&T Illinois Ex. 3.1 (Ellis Rebuttal), lines 147-50. BitWise's descriptions of many of its access disputes were confusing, suggesting that it was not liable for certain charges under its ICA, that it was liable for only a fraction of those same charges under its ICA, or that the charges should have been billed pursuant to a term plan. *Id.*, Attachment R8, pp. 1-6. IBT provided Staff with an explanation of its position on each of the disputes. *Id.*, lines 151-55 & Attachment R8.

E. Procedural History and Developments Since Initial Evidentiary Hearing

BitWise filed its formal complaint on January 22, 2009. The parties and Staff submitted two rounds of written testimony, with the Staff witness frequently taking the position that he did not have enough information to determine whether either company's position was correct. Staff Ex. 1.0 (Zolnierек Direct), lines 186-249; Staff Ex. 2.0 (Zolnierек Rebuttal), lines 141-54, 180-95.

The ALJ held an evidentiary hearing on April 21 and 22, at which the written testimony was admitted into evidence and the various witnesses were cross-examined. At the conclusion of the hearing, the ALJ expressed concern that she did not have a sufficiently clear understanding of the network configurations involved in the case to allow her to close the record. Tr. 423. The parties accordingly developed agreed diagrams of the network configurations in the four LATAs. Jt. Response to ALJ Data Request 1(a)-1(e). They also submitted agreed narrative descriptions of those diagrams. Jt. Response to ALJ Data Request 2.

BitWise requested (and received) the opportunity to submit additional testimony regarding the agreed diagrams and descriptions. Tr. at 454-55. IBT and Staff also submitted additional testimony. The ALJ then held another evidentiary hearing on August 18.

Since the first evidentiary hearing in April, BitWise has submitted orders to modify the access facilities it obtains from IBT in three LATAs. First, Bitwise decided to exit the Quincy market, so that it disconnected the services that IBT had been providing in that LATA. Tr. at 587, 588 (Shuler). Second, BitWise decided to reconfigure its service in the Peoria LATA, so that it could eliminate the multiplexing charge. Tr. at 587-88; AT&T Illinois Ex. 2.2 (Neinast Addit.), lines 327-28. Mr. Shuler explained that the new Peoria configuration “could have been that way to begin with.” Tr. at 588. Third, BitWise disconnected enough of its DS1 circuits in the Champaign LATA so that it could consolidate the remaining DS1s onto one multiplexer and eliminate the other multiplexer. Tr. at 587, 588 (Shuler); AT&T Illinois Ex. 2.2 (Neinast Addit.), lines 324-27.¹²

Mr. Shuler described these various changes as “housecleaning.” Tr. at 586. He explained that BitWise “had basically not paid much attention [to those circuits] and had a lot of

¹² Between March and July 2009, BitWise reduced the number of DS1s going to Verizon exchanges in the Champaign LATA from 25 to 9. AT&T Illinois Ex. 2.2(a) (IBT response to Staff Data Request 2.04).

extra circuits that we no longer needed.” Tr. at 496; *see also* Tr. 586 (Shuler). The parties anticipate that the changes will lower BitWise’s access bills in the three LATAs going forward. Tr. at 589 (Shuler); AT&T Illinois Ex. 2.2 (Neinast Addit.), lines 328-30.

III. ARGUMENT

As detailed below, IBT has been properly billing BitWise for the services that BitWise has been using, but not paying for, in each of the four LATAs at issue in this proceeding. As of the filing of the Formal Complaint, the amount owed by BitWise had grown to over \$373,000, and with new monthly charges and additional late payment charges, that figure grows.¹³

A. IBT Properly Charged BitWise A Local Distribution Channel Charge and a Cross-Connect Charge In Connection With The Special Access Service IBT Provided To BitWise in the Peoria LATA To Enable BitWise To Pass Internet Traffic to Legacy AT&T.

The first dispute between the parties relates to services that IBT provides to BitWise in the Peoria LATA that allow traffic to be passed between BitWise’s facilities that are collocated in IBT’s central office at 320 Fulton Street and Legacy AT&T’s central office at 120 SW Jefferson Street via an IBT-owned DS3 cable and DSX3 Panel.

It is indisputable that the traffic at issue is not local interconnection traffic. Rather, it is exclusively and solely traffic destined for BitWise’s internet service provider (“ISP”) located outside of the LATA. It is therefore interLATA traffic.

BitWise takes the position that the service being provided to it by IBT is provided pursuant to the parties’ ICA and is subject to the rates set forth therein. IBT takes the position that the service is special access being provided pursuant to IBT’s Tariff and that BitWise is responsible for the applicable Local Distribution Channel (“LDC”) and cross-connect charges

¹³ Per the ALJ’s request, each party is to append to its initial brief a chart that identifies the BANs at issue, the applicable rate categories and the applicable monthly charges. IBT’s chart is attached hereto as Exhibit A. It is identical to the charts attached to Chris Ellis’ rebuttal testimony as Attachments R1 to R4.

under that tariff. Staff agrees with IBT that the service being provided is special access pursuant to the Access Tariff, but opines that IBT should be charging only a \$1.01 cross-connect charge. As shown below, all the charges that IBT has billed to BitWise under IBT's Tariff are appropriate, and the Commission should direct BitWise to pay all outstanding amounts due, including late payment charges.

1. The service being provided to BitWise for internet access is properly billed under IBT's Access Tariff, not the ICA.

There is no dispute between the parties that the charges at issue in the Peoria internet dispute pertain to facilities that are used for traffic between BitWise and another carrier for purposes of reaching the internet. As IBT witness Mark Neinast explained in his Additional Testimony, the agreed diagram for the Peoria LATA internet cross connect dispute (Jt. Resp. to ALJ Data Request 1(d)) shows that the IBT DS3 cable depicted in red at the top of the box representing the IBT central office at 320 Fulton connects via an IBT DSX3 panel in the same central office to a Legacy AT&T DS3 cable that runs to the Legacy AT&T central office at 120 SW Jefferson, and then onward to BitWise's ISP. *See* AT&T Illinois Ex. 2.2 (Neinast Addit. Rebuttal), lines 46-54; BitWise Ex. 5.0 (Shuler Addit.), lines 57-59 (purpose of connection to Legacy AT&T was for upstream connectivity needed by BitWise's ISP).¹⁴ It is these IBT facilities (the DS3 cable and DSX3 panel each located in the 320 Fulton central office) that give rise to the charges in dispute here.

The traffic at issue is clearly being routed to the IXC network of Legacy AT&T, an entity distinct from IBT. AT&T Illinois Ex. 2.2 (Neinast Addit. Rebuttal), lines 54-57. There is

¹⁴ BitWise confirmed in its written testimony and at the hearing that the ultimate destination of the traffic carried along these facilities is its ISP, which is located outside of the Peoria LATA. *See* Tr. at 193:7-11, where Mr. Shuler testified that BitWise's internet traffic carried by Legacy AT&T goes from the Legacy AT&T IXC POP in Peoria to Chicago; *see also* BitWise Ex. 2.0 (Shuler Rebuttal), lines 309-12.

nothing in the record to remotely suggest that this traffic is destined for an IBT end user, or any other end user, located in the Peoria LATA. BitWise's protestations notwithstanding, none of the facilities at issue involve interconnection arrangements between IBT and BitWise. AT&T Illinois Ex. 2.0 (Neinast Direct), lines 111-117. Rather, the circuit arrangement at issue is between BitWise and an interexchange carrier, Legacy AT&T. BitWise has established this circuit solely for its end users' interexchange access service and not for the exchange of traffic between BitWise's end users and AT&T Illinois' end users within the Peoria LATA. AT&T Illinois Ex. 2.0 (Neinast Direct), lines 154-161; *see also* AT&T Illinois Ex. 1.0 (McPhee Direct), lines 88-98 (noting that, although IBT and Legacy AT&T now have common ownership, they are distinct legal entities and had no corporate affiliation at the time BitWise established the Peoria BAN in 2003).

Since the traffic at issue is on a dedicated facility between a CLEC and another carrier, the services being provided by IBT over its facilities are special access services, which are provided via IBT's Access Tariff No. 21. As IBT witness Scott MCPhee explained, special access service consists of a dedicated transmission path provided by the incumbent local exchange carrier ("ILEC") that connects the facilities of the customer (including a CLEC such as BitWise) with an IXC or other carrier. AT&T Illinois Ex. 1.0 (McPhee Direct), lines 149-51; *see also* IBT Tariff 21, 2nd Rev. Page 232, AT&T Illinois Late Filed Ex. 4.0, p. 131 (describing Special Access services). The facilities leased by BitWise from IBT are special access facilities because they are dedicated facilities used to connect BitWise to an IXC (Legacy AT&T). AT&T Illinois Ex. 2.2 (Neinast Addit. Rebuttal), lines 68-70; Tr. at 474:1-3 (Neinast), 511:4-5 (Neinast).

There is simply no tenable basis under which BitWise can establish that the service being provided by IBT is available to BitWise pursuant to the parties' ICA. BitWise has not pointed to any provision in the ICA that supports its position, Staff agrees that the ICA contains no such provision. *See* Staff Ex. 3.0(R) (Zolnierek Rev. Addit.), lines 157-62.

Nor are the facilities at issue part of a collocation-to-collocation arrangement, as BitWise has argued. BitWise Ex. 1.0 (Shuler Direct), lines 132-36, 139-142. Legacy AT&T is not collocated anywhere in the IBT central office. AT&T Illinois Ex. 2.0 (Neinast Direct), lines 177-195; AT&T Illinois Ex. 2.2 (Neinast Addit. Rebuttal), lines 103-110 (stating that no collocation-to-collocation cross-connect exists between BitWise and Legacy AT&T since Legacy AT&T does not have a collocation arrangement with IBT in the Peoria central office and has not had one at any time since 2003.) Therefore, this is not a collocation-to-collocation arrangement. Staff concurs. Staff Ex. 3.0(R) (Zolnierek Rev. Addit.), lines 116-26. Similarly, the arrangement in Peoria is not a CLEC to CLEC cross-connect, as BitWise has repeatedly posited. BitWise Ex. 2.0 (Shuler Rebuttal), lines 110-115, 184-88, 313-315. Legacy AT&T is not acting as a CLEC when it provides internet access to BitWise; instead it is acting as an IXC. BitWise concedes that the traffic being passed to Legacy AT&T is for internet access destined for outside the Peoria LATA. BitWise Ex.2.0 (Shuler Rebuttal), lines 111-12; Tr. at 193:7-11 (Shuler).

Moreover, and in any event, BitWise is incorrect in its assertion that BitWise's ICA allows for a collocator-to-collocator cross-connect with an IXC. BitWise Ex. 2.0 (Shuler Rebuttal), lines 184-88. The BitWise ICA only allows for collocation-to-collocation connection

between CLEC collocators to be used for interconnection or access to UNEs.¹⁵ Staff agrees. Staff Ex. 3.0(R) (Zolnierek Rev. Addit.), lines 133-155.

BitWise also asserts that the Access Service Request (“ASR”) it submitted to IBT for these facilities supports its claim that it ordered these facilities as interconnection out of its ICA. BitWise Ex. 1.0 (Shuler Direct), lines 146-49. BitWise is incorrect. The purported evidence to which BitWise points – that the code 04QB is used on ASRs to designate circuits between two collocation spaces – does not support its position at all. As noted above, this is not a collocation-to-collocation scenario. Moreover, as Mr. Neinast explained, the code 04QB is used for both UNE requests under an ICA and access requests under the tariff. AT&T Illinois Ex. 2.0 (Neinast Direct), lines 197-204. Thus, the fact that it was used here does not answer the question before the Commission.

2. IBT appropriately imposed both a Local Distribution Channel Charge and a Cross-connect charge pursuant to its Access Tariff.

As detailed in Chris Ellis’ testimony, IBT has billed BitWise, on a monthly basis, an LDC charge and a cross-connect charge. AT&T Illinois Ex. 3.1 (Ellis Rebuttal), pp. 4-5 and Attachment R4. Both of these charges are appropriate under IBT’s Access Tariff for several reasons. First, the plain language in IBT’s Tariff No. 21 supports IBT’s position that both the LDC charge, and the cross-connect charge, are appropriately billed to a carrier obtaining special access services from IBT in the manner BitWise has obtained them. Second, as IBT’s witnesses explained, IBT is providing more than just a cross-connect function to BitWise. The cross-connect is just a piece of the special access service; IBT is also providing the electronics and equipment necessary to transmit BitWise’s traffic which is properly recovered through the LDC

¹⁵ See Staff Cross Ex. No. 10 McPhee (ICA Appendix Physical Collocation, Section 6.1): In accordance with Section 251(c)(6) of the Telecommunications Act, CLEC may collocate equipment “necessary for interconnection or access to unbundled network elements.”

charge. Third, the ASR submitted by BitWise supports IBT's position that BitWise ordered special access services, including the LDC.

Tariff 21 Original Page 234.1 states clearly that there are four basic rate categories applicable to special access services:

- 1) Local Distribution Channel;
- 2) Channel Mileage Termination;
- 3) Channel Mileage; and
- 4) Optional Features and Functions

AT&T Illinois Late Filed Ex. 4.0, p. 136.

IBT does not assess Channel Mileage Termination or Channel Mileage charges against BitWise, given the short length of the IBT-provided DS3 at issue here. Tr. at 474:15-21 (Neinast). *See also* Tariff 2nd Rev. Page 235 ("The Channel Mileage Termination charge does not apply to circuits which have no Channel Mileage."). AT&T Illinois Late Filed Ex. 4.0, p. 137.

Thus, the only two charges applicable here are (1) the Local Distribution Channel and (2) "Optional Feature and Functions," if any.

The LDC is described at Tariff 21, 2nd Rev. Page 235, as follows:

7.1.2 Rate Categories (Cont'd)

(A) Local Distribution Channel

The Local Distribution Channel rate category provides for the communications path between a customer designated premises and the serving wire center of that premises. Included as part of the Local Distribution Channel is a standard network channel interface arrangement which defines the technical characteristics associated with the type of facilities to which the access service is to be connected at the Point of Termination (POT) and the type of signaling capability, if any. The signaling capability itself is provided as an optional feature as set forth in (D) following. One

Local Distribution Channel charge applies per customer designated premises at which the channel is terminated. This charge will apply even if the customer designated premises and the serving wire center are collocated in a Telephone Company building.

AT&T Illinois Late Filed Ex. 4.0, p. 137.

IBT is providing a DS3 communications path between the BitWise POI and an IBT DSX3 panel in the IBT Peoria central office at 320 Fulton; thus, IBT is providing a local distribution channel to BitWise and therefore may properly bill the LDC charge to BitWise. Since the communications path involves only one customer premises (*i.e.*, what is labeled as the BitWise POI in the Joint Response to ALJ Data Request 1(d)), only one LDC charge is appropriate, which is all that IBT is charging BitWise.

The final sentence of Section 7.1.2(A) makes clear that LDC charge is levied even if the communications path runs within the same building, as is the case here. There is therefore no merit to any suggestion that the relatively short path the traffic flows somehow absolves BitWise from paying the LDC charge.¹⁶ Indeed, neither BitWise nor Staff has pointed to any provision in the tariff that provides any circumstances under which the LDC charge, one of the four basic rate categories for special access, is not to be charged when IBT is providing special access services.

Regarding the cross-connect charge that IBT imposes, the Access Tariff provides that cross-connects are one of the optional feature and functions available in connection with special access services. Tariff 21 Original Page 235.1 states that the Optional Features rate category “provides for optional features and functions which may be added to a Special Access Service to improve its quality or utility to meet specific communications requirements.” AT&T Illinois

¹⁶ The suggestion that the LDC charge is excessive in light of the fact that the traffic does not travel a significant distance is a non-starter for several other reasons. First, such an attack on the tariff rate runs afoul of the filed rate doctrine. This is not the appropriate proceeding in which to suggest that AT&T’s tariffed rate is too high. Second, it is a red herring. While it is true that the traffic does not traverse a significant distance, the impact of that fact is not on the LDC charge, but on the channel termination and channel mileage charges, which in this instance IBT has not charged BitWise.

Late Filed Ex. 4.0, p. 138. For example, according to Tariff 21 Original Page 236, among the Optional Features available are “cross-connection functions provid[ing] for the connection of two digital services of the same bit rate.” AT&T Illinois Late Filed Ex. 4.0, p. 139.

Tariff 21 3rd Rev. Page 615 describes the type of cross-connection between the BitWise POI and the Illinois Bell DS3 cable at issue in the diagram of the Peoria internet dispute:

16.4. Ameritech Cross-Connection Service for Interconnection (ACCSI)

Ameritech Cross-Connection Service for Interconnection (ACCSI) provides for the connection of customer provided Voice Grade, 1.544 Mbps and 44.736 Mbps channels to specified Telephone Company provided interstate Switched Access and/or Special Access services. ACCSI also provides for the connections of customer provided 0 to 75 baud, 0 to 150 baud, 300 - 3,000 Hz, 2.4 Kbps, 4.8 Kbps, 9.6 Kbps, 19.2 Kbps, 56.0 Kbps, 64.0 Kbps, 155.52 Mbps, and 622.08 Mbps channels to specified Telephone Company provided interstate Special Access services and 56.0 Kbps Digital Network Access Lines for Signal Transfer Point (STP) Access.

AT&T Illinois Late Filed Ex. 4.0, pp. 158, 160 (Tariff 21, 3rd Rev. Page 615); AT&T Illinois Ex. 3.1 (Ellis Rebuttal), p. 4 and Attachment R4.

The Tariff further makes clear that the purpose of the ACCSI cross-connect is to provide for the connection of a customer provided channel to switched access and/or special access services being provided by IBT.¹⁷ That is precisely what the cross-connect is being used for in the instant case. BitWise has provided its own DS3 cable going into the DSX3 panel shown on the upper left-hand side of the Joint Response to ALJ Data Request 1(d). BitWise’s cable is then cross-connected at that DSX3 panel to the IBT-provided special access services that are provided in the IBT-owned DSX3 panel that is dedicated to Legacy AT&T. Tr. at 472:3-10 (Neinast).

¹⁷ The Staff witness, Dr. Zolnierok, agreed that this tariff section provides that the cross-connect service that IBT provided to BitWise is used to connect a BitWise-provided channel to an IBT-provided special access or switched access service. Tr. at 568:21-569:3.

Staff suggests that it is possible that the cross-connect itself is the sum total of the special access service being provided by IBT. Tr. at 569:10-14 (Zolnierek). Such a hypothesis is inconsistent with the plain language of Section 16.4 of the tariff. The language of Section 16.4 does not make sense if the special access service to which one is cross-connecting is the cross-connect itself, which is apparently what Staff is suggesting. Moreover, Tariff 21 Original Page 235.1 makes clear that “Optional Features” “are features and functions which *may be added to a Special Access Service.*” AT&T Illinois Late Filed Ex. 4.0, p. 138 (emphasis added). A reading of the tariff that treats a cross-connect as the special access service itself renders the language on Page 235.1 incoherent.

IBT’s testimony is fully consistent with the tariff. As IBT witness Neinast explained during both the original hearing and the additional hearing in this matter, IBT provides more than just a cross-connect to BitWise. During the additional hearing, Mr. Neinast succinctly explained the nature of both the cross-connect charge and the LDC charge that IBT has imposed:

[T]his cross-connect charge on the BitWise bill represents the cross-connect from the BitWise POI to that [DS3] cabling that goes to the panel that’s dedicated to the AT&T IXC POP. And that cabling and the other DSX3 panel represents that Special Access local distribution channel charge out of AT&T’s tariff.

Tr. at 472:3-10 (Neinast).¹⁸ See also *id.* at 473:22-474:4 (cross-connection is between BitWise POI and IBT cable going to dedicated Legacy AT&T POP); *id.* at 476:15-21, 477:3-5.

Mr. Neinast further explained that the cross-connect:

gives an interconnected carrier access to an Illinois Bell Special Access service. So the cross-connect is required to get them access to the Special Access service. *It’s not the Special Access service itself.*

¹⁸ As detailed in his direct testimony, Mr. Neinast has 33 years of experience working for AT&T in a variety of different network-related positions. AT&T Illinois Ex. 2.0 (Neinast Direct), lines 16-30.

Tr. at 475:15-20 (Neinast) (emphasis added). *See also id.* 477:18-21 (“But to get to [the special access service] requires also a cross-connect which was ordered out of ... and being billed out of that Section 16 of that Tariff 21.”) Mr. Neinast testified similarly during the original hearing that the services being provided by IBT are more than just a cross-connect. Tr. at 317-18 (Neinast).

BitWise did not present evidence to rebut Mr. Neinast’s testimony on this topic at the original or additional hearing, nor even cross-examine Mr. Neinast regarding it. Dr. Zolnierrek, on behalf of Staff, did not present any specific evidence that IBT was merely providing a cross-connect; Dr. Zolnierrek just posits, without much elaboration, his belief that what is depicted on the Joint Response to ALJ Data Request 1(d) is simply a cross-connect. Staff Ex. 3.0(R) (Zolnierrek Rev. Addit.), lines 177-80. Moreover, Dr. Zolnierrek’s hypothesis ignores the presence of the IBT-owned DSX3 panel that is dedicated to Legacy AT&T (located at the upper right hand corner of the IBT central office in Jt. Resp. to ALJ Data Request 1(d)). As Mr. Neinast explained:

A single piece of wire does not make a circuit; you have to have components and electronics at each end of that wire in order to make the circuit.

The circuit that BitWise had ordered was for Internet access to an interexchange carrier. And part of that was ordered out of the AT&T Illinois tariff [and] associated all of the channel capacity equipment necessary to make that piece of wire actually transmit Internet services.

Tr. at 318 (Neinast)(emphases added). Dr. Zolnierrek fails to account for the need to provide functionality to this IBT DSX3 Panel so that it can transmit BitWise’s internet traffic and ignores the fact that, in order to make the circuit work, more than just a cross-connect is needed. There are necessary components (channel capacity equipment) and electronics too. *See* AT&T Illinois Late Filed Ex. 4.0, p. 137 (describing Local Distribution Charge rate category: “[i]ncluded as part of the Local Distribution Channel is a standard network channel interface arrangement

which defines the technical characteristics associated with the type of facilities to which the access service is to be connected ...”).

In light of Mr. Neinast’s extensive telecommunications experience and his uncontroverted testimony, the Commission should give no credence to Staff’s speculation that IBT is only providing, and should only charge for, a cross-connect.

There is also no merit to Staff’s suggestion that the cross-connect might be being used to connect to special access service ordered by some other party, as Dr. Zolnierek intimated during the additional hearing. Tr. at 573: 12-16 (Zolnierek). Dr. Zolnierek conceded that the only two possible carriers who could order special access from IBT in this situation are BitWise and Legacy AT&T (since the DSX3 panel depicted in the upper right corner of the IBT central office in Jt. Resp. to ALJ Data Request 1(d) is dedicated to Legacy AT&T). Tr. at 574:14-21 (Zolnierek). No one presented any evidence that Legacy AT&T had ordered special access from IBT. (Indeed, why would Legacy AT&T do so when it was BitWise looking to pass traffic through Legacy AT&T destined for the internet?) Moreover, Mr. Neinast testified that Legacy AT&T orders neither switched nor special access in Peoria. Tr. at 480:12-22 (Neinast). In light of Mr. Neinast’s unrebutted testimony, there is no basis to conclude that the cross-connect provided to BitWise is being used to enable BitWise to connect to a special access service being ordered by someone else.

Indeed, the only evidence in the record points to the conclusion that the cross-connect in the IBT Peoria central office is being used by BitWise to connect to the special access services *BitWise ordered*, and should pay for. In his rebuttal testimony, IBT witness Chris Ellis included Attachment R6, which is a copy of the first six pages of the February 2006 ASR through which

BitWise requested the DS3 facility in the Peoria LATA. AT&T Illinois Ex. 3.1 (Ellis Rebuttal), lines 108-111 and Attachment R6. As Mr. Ellis explained:

The “Remarks” section on the first page of the ASR states: “Install DS3 from our collo to AT&T and SBC assign phsy. [sic] to secloc [secondary location] of PEORILPJW12.” BitWise [] provided the information in the “Remarks” section. The quoted language shows that BitWise wanted a DS3, and that this DS3 was to run from BitWise’s collocation facility in Peoria (designated elsewhere on the page as “ACTL PEORILPJH54”) to an AT&T facility (PEORILPJW12). BitWise also asked “SBC” – an entity different from “AT&T” – to provide the physical facilities for this connection. This aspect of the request is confirmed by the third page of the ASR, where there is a blank space next to the field for secondary facilities (“SCFA”). The blank meant that AT&T Illinois was to provide these facilities, and thus that the special access channel charge was appropriate.

AT&T Illinois Ex. 3.1 (Ellis Rebuttal), lines 116-127. Based on how BitWise filled out the ASR, it is clear that BitWise intended to order special access services from IBT, and intended for IBT to provide the Local Distribution Channel.

3. For charges prior to 2006, BitWise has not presented any evidence to support its claim that it is not liable for the charges as billed by IBT.

As explained immediately above, in Parts III.A.1 and III.A.2, IBT has been properly charging BitWise the LDC charge and the cross-connect charge each month in connection with the Peoria internet dispute. And, as explained in Part III.D below, BitWise’s claims, including those involving the charges at issue in the Peoria internet dispute, are barred by the statute of limitations to the extent the invoices bore due dates prior to January 22, 2007.

There is another reason why BitWise is obligated to pay IBT the charges that IBT has billed with respect to the Peoria LATA for those charges that were billed prior to February of 2006. As the evidence shows, BitWise reconfigured its network in Peoria no later than in February of 2006. *See* BitWise Ex. 1.0 (Shuler Direct), lines 132-37 (BitWise submitted order for DS3 cross-connect in early 2006); BitWise Ex. 2.0 (Shuler Rebuttal), lines 71-73 & Ex. 2.3

(shows Peoria network architecture plan from 2002, which later changed); AT&T Illinois Ex. 3.1 (Ellis Rebuttal), lines 108-110 & Attachment R6 (February 2006 ASR through which BitWise ordered DS3 to Legacy AT&T); Tr. at 96-97 (Shuler) (Peoria architecture change occurred 4-5 years ago and sometime prior to February 2006). Although this change in configuration undoubtedly affected the billing for the Peoria BAN, BitWise submitted no specific evidence explaining the supposed problems with the billing under the earlier configuration, and thus the Commission has no way of knowing whether the record here – which focuses on the current Peoria configuration – is even relevant to the earlier period. Therefore, there is no basis for the Commission to disallow the charges imposed by IBT for the period prior to February of 2006.

B. IBT Properly Billed BitWise for Facilities Used to Reach Verizon Exchanges.

In the Champaign, Quincy and Springfield LATAs, BitWise purchases facilities that allow it to provide services in Verizon exchanges in those LATAs. The network configuration is similar in each of the three LATAs. That is, BitWise obtains from IBT DS3 cross-connection and DS3-to-DS1 multiplexing services,¹⁹ as well as DS1 transport services (*e.g.*, channel mileage and channel mileage termination) running from the IBT central office to various Verizon exchanges.²⁰ See AT&T Illinois Ex. 3.1 (Ellis Rebuttal), p. 4 & Attachments R1 (Quincy), R2 (Champaign), R3 (Springfield); Jt. Resp. to ALJ Data Request 1(a) (Springfield), 1(b) (Champaign), 1(e) (Quincy); Jt. Resp. to ALJ Data Request 2, pp. 1, 2; Staff Ex. 3.0(R) (Zolnierrek Rev. Addit.), lines 192-220. In each LATA, the cross-connection and multiplexing services not only allow BitWise to reach the Verizon exchanges, but also allow it to exchange

¹⁹ As of March 2009, BitWise had two DS3 cross-connection and multiplexing facilities in the Champaign LATA (Jt. Resp. to ALJ Data Request 2, p. 1), but only one of each such facility in the Quincy and Springfield LATAs. Jt. Resp. to ALJ Data Request 2, p. 1, 2.

²⁰ As of March 2009, BitWise had 25 DS1s going to Verizon exchanges in the Champaign LATA (Jt. Resp. to ALJ Data Request 1(b)), 3 DS1s going to Verizon exchanges in the Quincy LATA (Jt. Resp. to ALJ Data Request 1(e)), and 11 DS1s going to Verizon exchanges in the Springfield LATA. Jt. Resp. to ALJ Data Request 1(a).

local traffic with IBT. Jt. Resp. to ALJ Data Request 2, pp. 1, 2; Staff Ex. 3.0(R) (Zolnierек Rev. Addit.), lines 224-32.²¹

IBT bills the cross-connection and multiplexing charges in each LATA at special access rates. AT&T Illinois Ex. 3.1 (Ellis Rebuttal), p. 4 & Attachments R1 (Quincy), R2 (Champaign), R3 (Springfield); Staff Ex. 3.0(R) (Zolnierек Rev. Addit.), lines 196-98, 207-09, 216-18. IBT bills the DS1 transport services at switched access rates. AT&T Illinois Ex. 3.1 (Ellis Rebuttal), p. 4 & Attachments R1 (Quincy), R2 (Champaign), R3 (Springfield); Staff Ex. 3.0(R) (Zolnierек Rev. Addit.), lines 198-200, 209-10, 219-20. IBT's special access rates for DS1 transport services are substantially higher than its switched access rates for that service. Staff Ex. 3.0(R) (Zolnierек Rev. Addit.), lines 303-05.²²

The IBT and Staff witnesses agree that the cross-connection and multiplexing facilities in each LATA should be billed at special access rates because BitWise is not using them exclusively to exchange local or exchange access traffic with IBT. AT&T Illinois Ex. 1.0 (McPhee Direct), lines 186-91; Staff Ex. 3.0(R) (Zolnierек Rev. Addit.), lines 254-60; Tr. at 507-08 (Neinast).²³ The IBT/BitWise ICA contains no rates that would apply in a situation where IBT provides services that allow BitWise to deliver traffic from its space in an IBT central office to third-party carriers in exchanges where IBT is not the ILEC. Staff Ex. 3.0(R) (Zolnierек Rev. Addit.), lines 260-66. The Staff witness thus opined that the DS1 transport

²¹ In the Champaign LATA, BitWise uses two DS1s from one of the multiplexers to send traffic to the E911 selective router. Jt. Resp. to ALJ Data Request 2, p. 1; *see* discussion of E911 facilities at Section III.C.

²² For an approximate example of the rate difference, see AT&T Illinois Ex. 3.1 (Ellis Rebuttal), p. 4 (USOC CZ8XE (switched access channel mileage termination – Zone 5) billed at \$15.60/month; USOC CZ4XD (special access channel mileage termination – Zone 4) billed at \$105.00/month).

²³ Staff also concluded that the dual use of the DS3 facilities (*e.g.*, multiplexing for both Verizon traffic and local interconnection with IBT) did not affect the applicability of the special access rates billed by IBT. Staff Ex. 3.0(R) (Zolnierек Rev. Addit.), lines 276-85.

services going to Verizon exchanges also should be billed at special access rates. Staff Ex.

3.0(R) (Zolnierrek Rev. Addit.), lines 291-96.

BitWise offered two reasons why it should not have to pay *any* charges for these facilities and services. Neither reason is compelling.

First, Mr. Shuler testified that, because the facilities at issue are on the IBT side of the POI in each LATA, they are not the financial responsibility of BitWise under the ICA:

BitWise established a POI inside the ATT CO [central office] for the entire LATA for both Verizon and AT&T. Anything past the POI is their problem, not BitWise's. The MUX is past the POI and all DS1's to both Verizon and AT&T are past the POI.

BitWise Ex. 2.0 (Shuler Rebuttal), lines 168-71; *see also* BitWise Ex. 1.0 (Shuler Direct), lines 113 (stating that IBT improperly charged for “mux’ing past the POI”), 124-26 (stating that IBT improperly charged for DS1s to Verizon because “my local interconnection to Verizon should also be considered part of my local interconnection since it is past the POI”).

It is correct that, under the ICA, each party is responsible for providing the facilities on its side of the parties' POI. *See* AT&T Illinois Cross Ex. 2 (Shuler) (Appendix NIM, Section 2.2). It is also correct that the multiplexing and DS1 facilities in each of the three LATAs are on IBT's side of the POI. *See* Jt. Resp. to ALJ Data Request 1(a) (Springfield), 1(b) (Champaign), 1(e) (Quincy).

However, this allocation of responsibility under the ICA applies only to facilities used for the exchange of local exchange traffic between BitWise and IBT. AT&T Illinois Ex. 1.0 (McPhee Direct), lines 139-41; AT&T Illinois Ex. 2.1 (Neinast Rebuttal), lines 31-40; Staff Ex. 3.0(R) (Zolnierrek Rev. Addit.), lines 237-39, 256-58. It is inapplicable where, as here, the facilities at issue are used for the exchange of traffic between BitWise and a carrier (such as

Verizon) that operates in an exchange where IBT is not the ILEC.²⁴ AT&T Illinois Ex. 2.1 (Neinast Rebuttal), lines 79-85; AT&T Illinois Ex. 1.0 (McPhee Direct), lines 142-44; Staff Ex. 3.0(R) (Zolnerek Rev. Addit.), lines 254-58. This distinction is confirmed by the parties' Joint Response to ALJ Data Request 2, which states – for each of the three LATAs – that the IBT DSX3 panel containing the BitWise POI is “the location of the BitWise and Illinois Bell POI for calls that are exchanged *between the two carriers.*” Jt. Resp. to ALJ Data Request 2, p. 1 (Springfield, Champaign), p. 2 (Quincy) (emphasis added).

Indeed, accepting BitWise's position would validate its assertion that the IBT central offices in Champaign, Quincy and Springfield are the location of not only BitWise's POIs with IBT, but also its POIs with Verizon. BitWise Ex. 2.0 (Shuler Rebuttal), lines 212-16; Tr. at 122 (Shuler). That assertion is absurd, because BitWise's POI with Verizon can only be somewhere on Verizon's network. AT&T Illinois Ex. 2.2 (Neinast Addit. Rebuttal), lines 359-66; Tr. at 505, 506 (Neinast).

Second, Mr. Shuler repeatedly questioned the need for direct trunks between BitWise and Verizon (and thus, by implication, the propriety of the charges for those facilities), stating that BitWise should be allowed to exchange traffic with Verizon through IBT's tandems in the different LATAs. BitWise Ex. 1.0 (Shuler Direct), lines 127-29; BitWise Ex. 2.0 (Shuler Rebuttal), lines 155-65, 247-55; BitWise Ex. 5.0 (Shuler Addit.), lines 184-85, 194-95. Mr. Shuler's position directly contradicts the Third Amendment to the ICA, which makes clear that BitWise had to establish direct trunks to a third-party carrier (such as Verizon) operating in a non-IBT exchange once traffic between BitWise and that carrier reached a certain threshold. AT&T Illinois Ex. 2.2 (Neinast Addit. Rebuttal), lines 247-58; AT&T Illinois Cross Ex. 3, p. 2

²⁴ During cross-examination, Mr. Shuler confirmed that BitWise's disputes in the three LATAs involved a claim that the provisions of the ICA apply to facilities that BitWise is using to serve the non-IBT exchanges. Tr. at 135-36.

(Third Amendment to ICA). This Complaint involves only the validity of IBT's charges; it is not an opportunity for BitWise to challenge provisions of the parties' ICA. BitWise voluntarily entered into the Third Amendment (*see* Tr. at 132-33 (Shuler)), so it cannot now use its dislike of the requirements of that amendment as a reason to challenge charges resulting from orders it placed pursuant to the amendment.

As mentioned above, Staff asserts that IBT incorrectly billed the DS1 transport charges in the three LATAs at switched access rates, rather than special access rates. Staff Ex. 3.0(R) (Zolnierrek Rev. Addit.), lines 295-303.²⁵ BitWise, however, has never made the argument that IBT should have billed these charges at the higher, special access rates. If the Commission rules that the DS1 transport charges should be billed at special access rates, IBT will take steps to modify the billing for these services.

What remains unresolved is how to address the charges for these services going back over the period covered by the Complaint. Neither IBT nor BitWise offered testimony on what to do about such "underbilled" charges. Dr. Zolnierrek, the Staff witness, simply stated on cross-examination that IBT's right to correct the billing and raise the rate could be limited by the terms of its tariff. Tr. at 558-59. However, none of the tariff pages in the record addresses this situation.

There is no question that IBT provided the services at issue; it simply billed BitWise for those services at a substantially lower rate than it should have. *See* Staff Ex. 3.0(R) (Zolnierrek Rev. Addit.), lines 303-05 (discussing rate differential). To the extent that BitWise submitted disputes on the three BANs, those disputes did not assert that IBT made a mistake by charging

²⁵ The two types of service at issue are Direct Transport Channel Mileage (designated by USOC 1YLXE) and Direct Transport Channel Mileage Termination (designated by USOC CZ8XE). *See* AT&T Illinois Ex. 3.0 (Ellis Direct), Attachment 1 (providing tariff pages); AT&T Illinois Ex. 3.1 (Ellis Rebuttal), Attachments R1 through R3 (listing services billed).

switched access rates. See AT&T Illinois Ex. 3.0 (Ellis Direct), lines 126-39, 164-80 (discussing disputes received from BitWise).²⁶ And BitWise has paid IBT *nothing* for these BANs since 2006. *Id.*, lines 261-63; BitWise Ex. 1.0 (Shuler Direct), lines 60-62. Under the circumstances, it would be appropriate for the Commission to find that BitWise should pay for the DS1 services as IBT billed them – at switched access rates. If the Commission were to rule otherwise and absolve BitWise from all responsibility for the DS1 charges simply because IBT may have billed them at an incorrect (but lower) rate, BitWise would receive an undeserved and unfair windfall.

In summary, BitWise has provided no credible evidence showing why it should not have to pay for the facilities and services it ordered from IBT to reach Verizon exchanges in the Champaign, Quincy and Springfield LATAs. The Commission accordingly should follow Staff's recommendation and find that IBT's special access charges for cross-connection and multiplexing in these LATAs are correct and should be paid, along with any late payment charges that have accrued. The Commission also should find that BitWise is obligated to pay the switched access rates billed by IBT for DS1 transport services to the Verizon exchanges (plus late payment charges), even though those rates are lower than the special access rates that IBT could have billed.

C. IBT Properly Billed BitWise for E911-Related Facilities.

In the Peoria and Champaign LATAs, BitWise purchases from IBT facilities that allow BitWise to send traffic from its customers to the E911 selective routers in those LATAs. In particular, in the Peoria LATA, BitWise obtains a DS3 cross-connection and DS3-to-DS1 multiplexing service, as well as DS1 transport services (*e.g.*, channel mileage and channel mileage termination) to the selective router in Peoria Bluff. See AT&T Illinois Ex. 3.1 (Ellis

²⁶ Given that switched access rates were lower than special access rates, BitWise would have little incentive to bring such an error to IBT's attention.

Rebuttal), p. 4 & Attachment R4; AT&T Illinois Ex. 2.2 (Neinast Addit. Rebuttal), lines 268-74; Jt. Resp. to ALJ Data Request 1(c); Jt. Resp. to ALJ Data Request 2, p. 2. In Champaign, BitWise obtains two DS3 cross-connections and DS3-to-DS1 multiplexing services. *See* AT&T Illinois Ex. 3.1 (Ellis Rebuttal), p. 4 & Attachment R2, pp. 5, 10; AT&T Illinois Ex. 2.2 (Neinast Addit. Rebuttal), lines 266-68; Jt. Resp. to ALJ Data Request 1(b); Jt. Resp. to ALJ Data Request 2, p. 1.²⁷ In both LATAs, the cross-connection and multiplexing not only allow BitWise to send traffic to the E911 selective router, but also allow BitWise to exchange local traffic with IBT. Jt. Resp. to ALJ Data Request 2, p. 1, 2; Staff Ex. 3.0(R) (Zolnierrek Rev. Addit.), lines 27-31. In the Champaign LATA, these DS3 services also allow BitWise to exchange traffic with Verizon. Jt. Resp. to ALJ Data Request 2, p. 1.

The parties' ICA makes clear that BitWise has an obligation to have 911-related facilities in place. AT&T Illinois Ex. 2.2 (Neinast Addit. Rebuttal), lines 292-300. The ICA also makes clear that, if IBT provides facilities to BitWise for 911 purposes, those facilities will be billed pursuant to the IBT Access Tariff. *Id.*, lines 300-04 & Attachment 3 (911 Appendix) at Section 3.3.2. IBT accordingly bills for these facilities at special access rates. *Id.*, lines 274-75.

The Commission Staff agreed that the charges for DS3 facilities and for DS1 transport services should be billed at special access rates. Staff Ex. 3.0(R) (Zolnierrek Rev. Addit.), lines 63-65, 85-92 (discussing Peoria LATA); Tr. at 554 (discussing Champaign LATA). Staff also concluded that any dual use of the DS3 facilities (*e.g.*, multiplexing for both 911 and local interconnection traffic) did not affect the applicability of special access rates. Staff Ex. 3.0(R) (Zolnierrek Rev. Addit.), lines 72-80; Tr. at 522-23.

²⁷ There is no charge for DS1 transport in the Champaign LATA; the IBT multiplexer and the selective router are in the same central office. *See* AT&T Illinois Ex. 3.1 (Ellis Rebuttal), p. 4 & Attachment R2, p. 5; Jt. Resp. to ALJ Data Request 1(b).

To the extent that BitWise offered any specific testimony about why it disputed the 911-related charges, that testimony related *only* to the multiplexing charge in the Peoria LATA. In particular, Mr. Shuler offered two reasons why BitWise should not be liable for that multiplexing charge. Neither reason is persuasive.

First, Mr. Shuler suggested that it is inappropriate for IBT to charge BitWise the full multiplexing charge in Peoria when only two of the DS1 circuits coming from the multiplexer are used for 911 purposes. BitWise Ex. 5.0 (Shuler Addit.), lines 166-72.²⁸ BitWise, however, pointed to nothing in the Access Tariff or the ICA supporting its position, and the Staff witness expressly rejected it. *See* Tr. at 521-23. There is thus no basis in the record to disagree with the positions of IBT and Staff.

Second, Mr. Shuler stated that BitWise would have configured its 911 service differently if it had known that it would be billed the full special access multiplexing charge in Peoria. BitWise Ex. 5.0 (Shuler Addit.), lines 174-75. BitWise's expectation about how it *hoped* to be billed for service provides no reason to invalidate how it actually was billed for service. Moreover, assuming that BitWise could reconfigure its 911 service in Peoria to avoid the multiplexing charge, it has provided no explanation why it did not do so years ago, after it became aware of the charge. (Indeed, BitWise apparently could have arranged the 911 service this way from the time it was established. Tr. at 588 (Shuler).) Although such a reconfiguration may allow BitWise to eliminate the multiplexing charge going forward, it does not excuse BitWise from paying an otherwise valid charge for the past six years.

²⁸ In Champaign, as of March 2009, more than half of the 28 DS1 circuits coming from the 816 multiplexer were used either for 911 purposes or for the exchange of traffic with Verizon. *See* AT&T Illinois Ex. 2.2(a) (AT&T Illinois response to Staff Data Request 2.04).

Mr. Shuler's testimony mentions neither the 911-related DS1 transport charges in the Peoria LATA, nor any of the 911-related charges in the Champaign LATA. BitWise thus has failed to prove that any of those charges are invalid.

In summary, BitWise has provided no credible evidence showing why the 911-related facilities and services it ordered from IBT should not be charged at special access rates. The Commission accordingly should follow Staff's recommendation, find those charges are correct, and order BitWise to pay them, along with any late payment charges that have accrued.

D. Any Billing Claims Arising Prior to January 22, 2007, Are Time-Barred.

Independent of any other arguments raised by IBT, the Commission should deny the Complaint to the extent that it seeks relief for bills sent to BitWise with a due date prior to January 22, 2007, because such relief is barred by the applicable statute of limitations.²⁹ Under the relevant provision of the Public Utilities Act, “[a]ny complaint relating to an incorrect billing must be filed with the Commission no more than 2 years after the date the customer first has knowledge of the incorrect billing.” 220 ILCS 5/9-252.1.

The record establishes that IBT was billing BitWise for the four BANs, and BitWise was disagreeing with those bills, long before January 2007. IBT issued its first invoice to BitWise for the Peoria BAN in January 2003; for the Champaign and Springfield BANs in October 2003; and for the Quincy BAN in November 2004. AT&T Illinois Ex. 3.1 (Ellis Rebuttal), lines 131-38 & Attachment R7, pp. 1, 4, 8, 12. Mr. Shuler testified that BitWise had “an ongoing dispute with IBT over the billing of the four BANs ... since the first billings to BitWise.” BitWise Ex. 1.0

²⁹ IBT raised this argument in a motion to dismiss early in the proceeding. The ALJ declined to dismiss the case at that time, but suggested that the limitations argument could be raised again “when the facts of the case are better developed.” ALJ Ruling of March 27, 2009 (“ALJ Ruling”), p. 2.

(Shuler Direct), lines 173-75; *see also id.*, lines 66-67 (stating that BitWise had disputed charges “[s]ince the inception of these services”).

Accordingly, it is clear that BitWise had knowledge of the supposedly incorrect billing since it first began receiving invoices from IBT. Since the Complaint was filed on January 22, 2009, any claim based on invoices issued prior to January 22, 2007, is barred by 220 ILCS 5/9-252.1. Order, *Shah v. Illinois Bell Telephone Co.*, Ill. C.C. Docket No. 03-0494 (Nov. 23, 2004), pp. 9-10 (attached hereto as Exhibit B).

In denying IBT’s earlier limitations argument, the ALJ questioned whether the parties’ ICA addressed the topic. ALJ Ruling at 2. Because the billing in question is governed by IBT’s Access Tariff (*see* Sections III.A.1, III.B and III.C), any provision in the ICA limiting the time for submission of disputes is irrelevant. Nevertheless, assuming for the sake of argument that the ICA governed this issue, the General Terms & Conditions appendix of the ICA requires that a party can only dispute charges for which the bill due date is within 12 months of the date that the party submitted its dispute. *See* AT&T Illinois Late Filed Ex. 4.0, p. 57 (General Terms & Conditions, § 10.1.2). This provision, if applicable, would limit BitWise from challenging the validity of any charges billed prior to January 22, 2008.

IV. CONCLUSION

BitWise has failed to pay its bills to IBT for years, based on its assertion that the charges being billed by IBT should have been billed pursuant to the parties’ interconnection agreement. As demonstrated above, BitWise is incorrect. Those charges have been, and continue to be, properly billed pursuant to IBT’s Access Tariff. It is well past the time for BitWise to pay for the services it has been using, but not paying for. IBT therefore requests that the Commission affirm that all of the charges in dispute between the parties (including accrued late payment charges) are properly due and owing from BitWise. IBT further requests that the Commission

permit IBT to disconnect BitWise's service if BitWise does not pay the amounts determined by the Commission to be owed within 30 days of the Commission's Order.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, James A. Huttenhower, an attorney, hereby certify that I caused a copy of the foregoing Illinois Bell Telephone Company's Initial Post-Hearing Brief to be served on the parties on the attached service list by U.S. Mail and/or electronic transmission on the 9th day of September, 2009.

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