

**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 STATEMENT OF POSITION

Now comes Illinois Bell Telephone Company (“IBT”), by and through its counsel, and pursuant to the Administrative Law Judge’s Ruling dated September 24, 2009, states, for its Statement of Position, as follows:

Statute of Limitations

Limitations Issue 1: Does the limitations period in 220 ILCS 5/9-252.1 bar any BitWise billing claims that arose prior to January 22, 2007?

IBT argues that the Commission should deny BitWise’s 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. 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.

IBT points out that it began billing BitWise for the four Billing Account Numbers (“BAN”) at issue in 2003 or late 2004 (depending on the BAN). AT&T Illinois Ex. 3.1 (Ellis Rebuttal), lines 131-38 & Attachment R7, pp. 1, 4, 8, 12. It also points to testimony from BitWise’s president, Michael Shuler, that BitWise had an ongoing dispute with IBT about the billing for the BANs since the services were established, making clear that BitWise had knowledge of the supposedly incorrect charges since it first began receiving invoices from IBT. BitWise Ex. 1.0 (Shuler Direct), lines 173-75; *see also id.*, lines 66-67. Accordingly, since the Complaint was filed on January 22, 2009, IBT takes the position that any claim based on invoices issued prior to January 22, 2007, is barred by 220 ILCS 5/9-252.1.

Peoria LATA Dispute

Background

BitWise reaches the IBT central office at 320 Fulton in downtown Peoria via fiber BitWise has constructed from its central office at 331 Fulton. The fiber is routed through IBT's building into BitWise's collocation bay; from this 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. 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 that 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. 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. 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, and a \$490.00 DS3-to-DS1 Multiplexing charge (for a 60-month term plan in Zone 4). 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 Termination charge, and a \$34.10/mile DS1 Channel Mileage charge. 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, and a \$3700.00 DS3 Local Distribution Channel ("LDC") charge. 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, 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).

BitWise and IBT had a different network set-up in the Peoria LATA prior to the configuration described above. 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 203-220 & 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 222-224; 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 and Attachment R6; *see* BitWise Ex. 1.0 (Shuler Direct), lines 132-36. 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.

Peoria Issue 1: Are the facilities that IBT provides in the IBT Peoria central office to connect BitWise's collocation space to a Legacy AT&T DS3 cable appropriately billed by IBT at special access rates or at rates in the BitWise/IBT ICA?

IBT asserts that there is really 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. IBT notes that 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. 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.

IBT argues that 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; AT&T Illinois Ex. 1.0 (McPhee Direct), lines 88-98. IBT maintains that there is nothing in the record to suggest that this traffic is destined for an IBT end user or any other end user located in the Peoria LATA, or that any of the facilities at issue involve interconnection arrangements between IBT and BitWise. AT&T Illinois Ex. 2.0 (Neinast Direct), lines 111-17. IBT argues that 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 154-61.

Since the traffic at issue is on a dedicated facility between a CLEC and another carrier, IBT asserts, the services being provided by IBT over its facilities are special access services, which are provided via IBT's Access Tariff No. 21. 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. 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), according to IBT. AT&T Illinois Ex. 2.2 (Neinast Addit. Rebuttal), lines 68-70; Tr. at 474:1-3 (Neinast), 511:4-5 (Neinast).

IBT disagrees that the facilities at issue are part of a collocation-to-collocation arrangement, as BitWise has argued. 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. AT&T Illinois Ex. 2.0 (Neinast Direct), lines 177-95; AT&T Illinois Ex. 2.2 (Neinast Addit. Rebuttal), lines 103-10. IBT notes that Staff's witness concurred. Staff Ex. 3.0(R) (Zolnerek Rev. Addit.), lines 116-26. Similarly, IBT argues, the arrangement in Peoria is not a CLEC to CLEC cross-connect, as BitWise has repeatedly posited. Legacy AT&T is not acting as a CLEC when it provides internet access to BitWise; instead it is acting as an IXC. IBT points out that BitWise conceded in its pre-filed testimony and at hearing 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).

IBT notes that BitWise too concedes in its initial brief that Legacy AT&T may not be a collocator "in the legal sense." BitWise Init. Br. at 9. Instead, it suggests that "Legacy AT&T was a collocator in almost every practical sense." *Id.* IBT does not understand what BitWise is trying to argue here. BitWise seems to be suggesting that Legacy AT&T's alleged "unique status" (BitWise's words) as a result of divestiture somehow supports its treatment as a collocator when it legally is not one. However, IBT observes, BitWise provides no legal support for this proposition.

Moreover, IBT argues, BitWise's discussion of collocation suggests that BitWise fundamentally misconstrues what collocation actually is. BitWise suggests that, so long as Legacy AT&T has a "point of attachment" in the IBT central office, it is collocated there. BitWise Init. Br. at 9. As a threshold matter, IBT does not know what is meant by a "point of attachment," as that is not a term used in the telecommunications field. In any event, carriers can have a presence in a central office in many scenarios, such as meet-point arrangements, that are not collocation.

IBT next asserts that, even if Legacy AT&T were collocated in the IBT central office, it would not matter. Under the plain terms of BitWise's ICA, collocation is available to BitWise only for the purposes of transmitting and routing telephone exchange and exchange access pursuant to 47 U.S.C. § 251(c)(2) of the Telecommunications Act of 1996 ("1996 Act") or for obtaining access to IBT's unbundled network elements pursuant to 47 U.S.C. § 251(c)(3) of the 1996 Act. *See* Staff Cross Ex. No. 10 McPhee (ICA Appendix Physical Collocation, Section 6.1). Again, AT&T notes, Staff agrees. Staff Ex. 3.0(R) (Zolnerek Rev. Addit.), lines 133-55.

IBT observes that BitWise cites various FCC orders and rules and argues that they "do not directly address the Legacy AT&T case" or "these shared buildings." BitWise Init. Br. at 9-11. But, according to IBT, this argument does not support BitWise's position in any manner; the fact that BitWise points to no order or rule that imposes different standards for collocations

involving Legacy AT&T undermines BitWise's argument that this Commission's analysis of the issues should somehow hinge on the fact that Legacy AT&T is involved.

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. IBT disagrees; it argues that the purported evidence to which BitWise points does not support its position. As IBT notes, this is not a collocation-to-collocation scenario and the code 04QB cited by BitWise 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.

IBT notes that BitWise alleges that IBT's ordering process is unfair and that IBT is engaging in "deceptive practices." IBT denies those allegations. IBT notes that BitWise's order clearly sought special access services and that there is no support for BitWise' allegation of "deceptive practices." IBT argues that the ordering process employed by IBT is the product of industry-wide collaboration (in which BitWise was more than welcome to participate)(Tr. at 88-90 (Shuler)), and BitWise does not present any of evidence that IBT did anything inconsistent with those industry developed ordering processes. *See also* AT&T Illinois Ex. 2.0 (Neinast Direct), lines 197-204.

IBT points out that BitWise repeatedly references what it expected or assumed it would get when it placed its service order and how much it expected or assumed it would pay. *See* BitWise Init. Br. at 4, 5, 8. IBT asserts that BitWise fundamentally misunderstands the facts. IBT argues that there is nothing in the record to suggest that IBT ever told BitWise, either before or after BitWise placed its order, that (1) Legacy AT&T was collocated in the IBT central office, (2) Legacy AT&T was operating as a CLEC in connection with the internet traffic BitWise was delivering to AT&T, (3) BitWise would only be charged a cross-connect and not the local distribution channel ("LDC") charge, or (4) BitWise could obtain the services it ordered out of the parties' ICA.

IBT notes that BitWise argues that there was no "meeting of the minds" between IBT and BitWise about what BitWise ordered. *See* BitWise Init. Br. at 8. BitWise is correct that IBT interpreted the order that BitWise submitted as one for special access, and provisioned and billed for the service provided accordingly. IBT argues that IBT was correct in so interpreting the order. But, IBT posits, putting that aside, if BitWise indeed thought that it was ordering something out of its ICA, only to learn that IBT did not agree, BitWise should have cancelled its order when it realized that IBT was intending to bill BitWise for special access pursuant to its tariff. IBT notes that BitWise testified that it had options available to it other than ordering special access through IBT's Access Tariff. *See, e.g.,* BitWise Init. Br. at 12. If this was the case, it is not clear to IBT why BitWise did not take advantage of those options once it learned IBT was charging it for special access under IBT's tariff. IBT argues that by not cancelling its order, BitWise has acquiesced in IBT's interpretation of the order as special access, and waived any right it had to contest the charges.

IBT also disagrees with BitWise's claim that the IBT Peoria central office at 320 Fulton and the Legacy AT&T central office at 120 SW Jefferson are located in the same building. IBT points to what it believes is extensive evidence demonstrating that the IBT central office and the Legacy AT&T central office were part of one central office prior to the divestiture of the Bell

System in 1984, when that central office was partitioned between IBT and the Legacy AT&T IXC. AT&T Illinois Ex. 2.2 (Neinast Addit.), lines 126-34. IBT also explained that the Legacy AT&T switch in the 120 SW Jefferson building was installed and assigned a CLLI code prior to divestiture and that the CLLI code was not changed at or after divestiture. AT&T Illinois Ex. 2.2 (Neinast Addit.), lines 165-71. IBT avers that BitWise did not rebut any of this evidence.

Finally, IBT argues that BitWise is attempting to mount a collateral attack on the rates contained in IBT's Tariff No. 21. At the hearing, the ALJ ruled that this proceeding was not the appropriate forum to address IBT's costs and declined to admit evidence on the topic. Tr. at 546-47. IBT asserts that the ALJ was correct.

Peoria Issue 2: Under IBT's special access tariff, can IBT bill BitWise both a cross-connection charge and a local distribution channel charge for the facilities in the IBT Peoria central office that connect BitWise's collocation space to a Legacy AT&T DS3 cable?

IBT asserts that it has billed BitWise, on a monthly basis, an LDC charge and a cross-connect charge. IBT maintains that both of these charges are appropriate under IBT's Access Tariff.

IBT points to Tariff 21 Original Page 234, which states that there are four basic rate categories applicable to special access services. AT&T Illinois Late Filed Ex. 4.0, p. 136. IBT notes that it 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, AT&T Illinois Late Filed Ex. 4.0, p. 137 ("The Channel Mileage Termination charge does not apply to circuits which have no Channel Mileage."). Thus, the only two charges applicable here are (1) the Local Distribution Channel and (2) "Optional Feature and Functions," if any.

IBT also points to the description of the LDC at Tariff 21, 2nd Rev. Page 235. AT&T Illinois Late Filed Ex. 4.0, p. 137. IBT argues that it 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.

Regarding the cross-connect charge that IBT imposes, IBT notes that the Access Tariff provides that cross-connects are one of the optional feature and functions available in connection with special access services. IBT Tariff 21 Original Page 235.1, AT&T Illinois Late Filed Ex. 4.0, p. 138.

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

IBT argues that the Tariff 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. IBT argues that that is 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).

IBT notes that 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). IBT argues that such a hypothesis is inconsistent with the plain language of Section 16.4 of the tariff. IBT maintains that 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. IBT also points out that Tariff 21 Original Page 235.1 states 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). IBT believes that a reading of the tariff that treats a cross-connect as the special access service itself renders the language on Page 235.1 incoherent.

In support of its position, IBT points to the testimony of IBT witness Neinast, who explained during both the original hearing and the additional hearing in this matter that IBT provides more than just a cross-connect to BitWise. Tr. at 472:3-10 (Neinast); *see also id.* at 473:22-474:4 (cross-connection is between BitWise POI and IBT cable going to dedicated Legacy AT&T POP), 476:15-21, 477:3-5 IBT notes that Mr. Neinast further explained that the cross-connect "gives an interconnected carrier access to an Illinois Bell Special Access service. . . *It's not the Special Access service itself.*" Tr. at 475:15-20 (Neinast) (emphasis added). *See also id.* 317-18 , 477:18-21.

IBT observes that 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. IBT also argues that Dr. Zolnierek, on behalf of Staff, did not present any specific evidence that IBT was merely providing a cross-connect; Dr. Zolnierek just states his belief that what is depicted on the Joint Response to ALJ Data Request 1(d) is simply a cross-connect. Moreover, in IBT's view, Dr. Zolnierek's hypothesis ignores the presence of the IBT-owned DSX3 panel that is dedicated to Legacy AT&T. Tr. at 318 (Neinast).

IBT disagrees with Staff's suggestion that the cross-connect might be being used to connect to special access service ordered by some other party. IBT contends that 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. Tr. at 574:14-21 (Zolnierek). IBT asserts that no one presented any evidence that Legacy AT&T had ordered special access from IBT. Moreover, IBT points out, Mr. Neinast testified that Legacy AT&T orders neither switched nor special access in Peoria. Tr. at 480:12-22 (Neinast). Thus, 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.

IBT further argues that the evidence in the record points to only one 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. IBT points to Attachment R6 to the Ellis Rebuttal Testimony, 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 116-27. IBT maintains that, 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.

IBT observes that Staff originally believed that IBT was also providing the DS3 cable that ran from IBT's DSX3 Panel in IBT's central office at 320 Fulton to the Legacy AT&T DSX3 Panel in the Legacy AT&T central office at 120 SW Jefferson, but that it later learned IBT was not. IBT argues that what appears to be underlying Staff's position (indeed what must be) is Staff's belief that the DS3 cable that runs from the IBT central office to the Legacy AT&T central office is the LDC. Yet, IBT asserts, Staff does not point to any evidence in the record to establish that proposition. IBT notes that contrary to Staff's unsupported hypothesis, the LDC is not the DS3 cable between the IBT and Legacy AT&T central offices; LDC is provided through the IBT-owned DSX panel in the IBT central office at 320 Fulton. *See* discussion above.

IBT argues that BitWise similarly misconstrues what the LDC is. IBT notes that BitWise says that since Legacy AT&T brought the DS3 cable from its central office to IBT's central office, that somehow means the "channel termination belonged to Legacy AT&T." IBT asserts that there is no evidence that Legacy AT&T owns the channel termination in dispute here, or that the channel termination exists within the Legacy AT&T DS3 cable. IBT asserts that what the evidence does show is that the DSX3 panel in IBT's central office to which the Legacy AT&T cable is connected is owned by IBT, which has dedicated it exclusively to carrying internet traffic to Legacy AT&T, such as the very traffic that BitWise is delivering. And, IBT continues, the evidence further shows that the LDC charge being imposed by IBT covers the equipment and functionality provided in that IBT-owned DSX3 panel. This is what special access service is, as described by IBT witness McPhee, and what IBT has provided to BitWise. 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.

Finally, IBT points out, the evidence shows that BitWise reconfigured its network in Peoria no later than in February of 2006. BitWise Ex. 2.0 (Shuler Rebuttal), lines 71-73; AT&T Illinois Ex. 2.1 (Neinast Rebuttal), lines 203-224 & Diagram 6R; Tr. at 93-94 (Shuler). Although this change in configuration undoubtedly affected the billing for the Peoria BAN, BitWise submitted no specific evidence explaining any alleged problems with the billing under the earlier configuration, and thus, IBT posits, 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, IBT argues, there is no basis for the Commission to disallow the charges imposed by IBT for the period prior to February of 2006.

Peoria Issue 3: Are the multiplexing and cross-connection charges for 911-related services appropriately billed by IBT at special access rates or at rates in the BitWise/IBT ICA?

Peoria Issue 4: Are the DS1 transport charges for the circuits connecting BitWise to the E911 selective router appropriately billed by IBT at special access rates or at rates in the BitWise/IBT ICA?

To send traffic from its customers to the E911 selective router in Peoria Bluff, BitWise obtains from IBT a DS3 cross-connection and DS3-to-DS1 multiplexing service, as well as DS1 transport services such as channel mileage and channel mileage termination. *See* AT&T Illinois Ex. 3.1 (Ellis 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. The cross-connection and multiplexing 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.

IBT argues that, under the parties' ICA, 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. These provisions justify IBT's billing of the 911-related facilities at special access rates. *Id.*, lines 274-75.

IBT also points out that the Commission Staff concurred 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. 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.

BitWise provides no explanation for its refusal to pay the charges for 911-related DS1 transport services. IBT accordingly takes the position that BitWise has failed to prove that those charges are invalid.

BitWise's arguments about why it disputes the 911-related charges relate *only* to the multiplexing charge. In particular, BitWise contends that it should not be billed the entire multiplexing charge at special access rates since only two of the DS1 channels coming out of the multiplexer are used for 911 service. The Commission Staff, however, specifically rejected BitWise's suggestion that the multiplexing charge should be prorated based on the number of channels used for 911 service, as compared to local service. *See* Tr. at 521-23. In addition, BitWise pointed to nothing in the IBT Access Tariff or the ICA supporting its position. Therefore, IBT asserts that there is no basis in the record to disagree with the positions of IBT and Staff.

Springfield LATA Dispute

Background

BitWise reaches the IBT Springfield central office from the BitWise central office in 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. The parties' Joint Response to ALJ Data Request 2 identifies that DSX3 panel is "the location of the BitWise and Illinois Bell POI for calls that are exchanged between the two carriers."

IBT's facilities begin at this point. The IBT DSX3 panel is connected by a DS3 cable to an IBT M13 multiplexer that 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 Verizon exchanges in the LATA, but also allows 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.

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. 505 (Neinast)), 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 run between the IBT DSX3 panel and the fiber meet point with Verizon, but do not include any DS1s running to the IBT tandem or local switches. Jt. Resp. to ALJ Data Request 2, p. 1.

IBT began billing BitWise for access services in the 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, and a \$780.00 DS3-to-DS1 Multiplexing charge (for Zone 2). 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 DS1s going to Verizon: a \$15.60 Channel Mileage Termination charge, and a \$4.50 Channel Mileage charge. AT&T Illinois Ex. 3.1 (Ellis Rebuttal), Attachment R3 at 1-4. (IBT's special access rates for DS1 transport services are substantially higher than its switched access rates for those services.) 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. *See* AT&T Illinois Ex. 3.1 (Ellis Rebuttal), Attachment R3 at 1; Attachment R5 at 2.

Springfield Issue 1: Are the multiplexing and cross-connection charges appropriately billed by IBT at special access rates or at rates in the BitWise/IBT ICA?

Springfield Issue 2: Are the DS1 transport charges for the circuits connecting BitWise to Verizon exchanges in the LATA appropriately billed by IBT at special access rates or at rates in the BitWise/IBT ICA?

BitWise's primary position is that, because the facilities and DS1 transport services at issue are on the IBT side of the POI, they are not the financial responsibility of BitWise under the ICA. BitWise Ex. 2.0 (Shuler Rebuttal), lines 168-71. IBT agrees that, under the ICA, each party is responsible for providing the facilities on its side of the parties' POI, and that the multiplexing and DS1 facilities are on IBT's side of the POI. *See* AT&T Illinois Cross Ex. 2 (Shuler); Jt. Resp. to ALJ Data Request 1(a).

However, IBT argues that the allocation of financial 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) (Zolnierek 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. 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) (Zolnierek Rev. Addit.), lines 254-58. This distinction is confirmed by the parties' Joint Response to ALJ Data Request 2, which states 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 (emphasis added). IBT points out that accepting BitWise's position would validate its assertion that the IBT central office in Springfield is the location of not only BitWise's POI with IBT, but also its POI with Verizon. IBT contends that such an 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).

BitWise's secondary argument to avoid liability for IBT's charges is that BitWise should be allowed to exchange traffic with Verizon through IBT's tandems in the LATA, and thus there is no need for the direct trunks for which IBT is billing it. In response, IBT argues that BitWise's position directly contradicts the Third Amendment to the parties' 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 (Third Amendment to ICA). IBT also argues that BitWise voluntarily entered into the Third Amendment, 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. Tr. at 132-33 (Shuler).

Overall, IBT points out that both its witnesses and the Staff witness agree that the cross-connection and multiplexing facilities should be billed at special access rates because BitWise is not using them exclusively to exchange local or exchange access traffic with IBT. 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) (Zolnierek Rev. Addit.), lines 260-66.

With regard to the DS1 transport services going to Verizon exchanges, Staff asserts that IBT should have billed those services at special access rates, rather than switched access rates. Staff Ex. 3.0(R) (Zolnierek Rev. Addit.), lines 295-303. IBT's position is that, if the Commission rules that the DS1 transport charges should be billed at special access rates, the Company will take steps to modify the billing for those services to the higher special access rates. IBT Init. Br. at 33.

Springfield Issue 3: Should BitWise pay switched or special access rates for the DS1 circuits connecting BitWise to the Verizon exchanges from the time those circuits were established through the present?

IBT contends that BitWise should be required to pay at least the switched access rates it was billed for the DS1 transport services connecting it to the Verizon exchanges. 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 regarding these charges, those disputes did not assert that IBT made a mistake by charging switched access rates. *See* AT&T Illinois Ex. 3.0 (Ellis Direct), lines 126-39, 164-80 (discussing disputes received from BitWise). And BitWise has paid IBT *nothing* for these services 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.

Quincy LATA Dispute

Background

BitWise reaches the IBT Quincy central office from the BitWise central office in 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.* The parties' Joint Response to ALJ Data Request 2 identifies that DSX3 panel is "the location of the BitWise and Illinois Bell POI for calls that are exchanged between the two carriers."

IBT's facilities begin at this point. The IBT DSX3 panel is connected by a DS3 cable to an IBT M13 multiplexer that breaks down the DS3 into 28 individual DS1s. *Jt. Resp. to ALJ Data Request 1(e).* 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 Verizon exchanges in the LATA, 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.*

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. 505 (Neinast)*, calculated as a percentage of the length of the circuit. This percentage is known as the billing interconnection percentage or "BIP." The facilities at issue run between the IBT DSX3 panel and the fiber meet point with Verizon, but do not include any DS1s running to the IBT Quincy local switch. *Jt. Resp. to ALJ Data Request 2, p. 2.*

IBT began billing BitWise for access services in the 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, and an \$825.00 DS3-to-DS1 Multiplexing charge (for Zone 4). 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, and a \$4.50 Channel Mileage charge. (IBT's special access rates for DS1 transport services are

substantially higher than its switched access rates for those services.) AT&T Illinois Ex. 3.1 (Ellis Rebuttal), Attachment R1 at 1-2. 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.

Quincy Issue 1: Are the multiplexing and cross-connection charges appropriately billed by IBT at special access rates or at rates in the BitWise/IBT ICA?

Quincy Issue 2: Are the DS1 transport charges for the circuits connecting BitWise to Verizon exchanges in the LATA appropriately billed by IBT at special access rates or at rates in the BitWise/IBT ICA?

BitWise's primary position is that, because the facilities and DS1 transport services at issue are on the IBT side of the POI, they are not the financial responsibility of BitWise under the ICA. BitWise Ex. 2.0 (Shuler Rebuttal), lines 168-71. IBT agrees that, under the ICA, each party is responsible for providing the facilities on its side of the parties' POI, and that the multiplexing and DS1 facilities are on IBT's side of the POI. See AT&T Illinois Cross Ex. 2 (Shuler); Jt. Resp. to ALJ Data Request 1(e).

However, IBT argues that the allocation of financial 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) (Zolnierek 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. 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) (Zolnierek Rev. Addit.), lines 254-58. This distinction is confirmed by the parties' Joint Response to ALJ Data Request 2, which states 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. 2 (emphasis added). IBT points out that accepting BitWise's position would validate its assertion that the IBT central office in Quincy is the location of not only BitWise's POI with IBT, but also its POI with Verizon. IBT contends that such an 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).

BitWise's secondary argument to avoid liability for IBT's charges is that BitWise should be allowed to exchange traffic with Verizon by piggy-backing on IBT's network to reach Verizon's tandem in the LATA, and thus there is no need for the direct trunks for which IBT is billing it. In response, IBT argues that BitWise's position directly contradicts the Third Amendment to the parties' 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 (Third Amendment to ICA). IBT also argues that BitWise voluntarily entered into the Third Amendment, 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. Tr. at 132-33 (Shuler).

Overall, IBT points out that both its witnesses and the Staff witness agree that the cross-connection and multiplexing facilities should be billed at special access rates because BitWise is not using them exclusively to exchange local or exchange access traffic with IBT. 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) (Zolnierek Rev. Addit.), lines 260-66.

With regard to the DS1 transport services going to Verizon exchanges, Staff asserts that IBT should have billed those services at special access rates, rather than switched access rates. Staff Ex. 3.0(R) (Zolnierek Rev. Addit.), lines 295-303. IBT's position is that, if the Commission rules that the DS1 transport charges should be billed at special access rates, the Company will take steps to modify the billing for those services to the higher special access rates. IBT Init. Br. at 33.

Quincy Issue 3: Should BitWise pay switched or special access rates for the DS1 circuits connecting BitWise to the Verizon exchanges from the time those circuits were established through the present?

IBT contends that BitWise should be required to pay at least the switched access rates it was billed for the DS1 transport services connecting it to the Verizon exchanges. 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) (Zolnierek Rev. Addit.), lines 303-05 (discussing rate differential). To the extent that BitWise submitted disputes regarding these charges, those disputes did not assert that IBT made a mistake by charging switched access rates. *See* AT&T Illinois Ex. 3.0 (Ellis Direct), lines 126-39, 164-80 (discussing disputes received from BitWise). And BitWise has paid IBT *nothing* for these services 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.

Champaign LATA Dispute

Background

BitWise reaches the IBT Champaign central office from the BitWise central office in 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. The parties' Joint Response to ALJ Data Request 2 identifies that DSX3 panel is "the location of the BitWise and Illinois Bell POI for calls that are exchanged between the two carriers."

IBT's facilities begin at this point. The IBT DSX3 panel is connected by a DS3 cable to two IBT M13 multiplexers that break down the two DS3s into 28 individual DS1s for each DS3. Jt. Resp. to ALJ Data Request 1(b). As of early April 2009, 25 of the DS1s coming from the multiplexers connected to Verizon switches, 2 DS1s connected to the 911 selective router in the

Champaign central office, and other DS1s connected to IBT switches. Jt. Resp. to ALJ Data Request 1(b); Jt. Resp. to ALJ Data Request 2, p. 1. The multiplexers thus allow BitWise to reach Verizon exchanges in the LATA 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.

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. 505 (Neinast)), calculated as a percentage of the length of the circuit. This percentage is known as the billing interconnection percentage or "BIP." The facilities at issue run between the IBT DSX3 panel and the fiber meet point with Verizon, but do not include any DS1s running to the IBT tandem or local switch. Jt. Resp. to ALJ Data Request 2, p. 1.

IBT began billing BitWise for access services in the 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 circuit for the multiplexer: a \$1.01 Cross-Connection charge, and a \$795.00 DS3-to-DS1 Multiplexing charge (for Zone 3). AT&T Illinois Ex. 3.1 (Ellis Rebuttal), p. 4 & Attachment R2 at 5, 10. IBT also was billing 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, and a \$4.50 Channel Mileage charge. (IBT's special access rates for DS1 transport services are substantially higher than its switched access rates for those services.) AT&T Illinois Ex. 3.1 (Ellis Rebuttal), Attachment R2 at 1-9. 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. 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).

Champaign Issue 1: Are the multiplexing and cross-connection charges appropriately billed by IBT at special access rates or at rates in the BitWise/IBT ICA?

Champaign Issue 2: Are the DS1 transport charges for the circuits connecting BitWise to Verizon exchanges in the LATA appropriately billed by IBT at special access rates or at rates in the BitWise/IBT ICA?

BitWise's primary position is that, because the facilities and DS1 transport services at issue are on the IBT side of the POI, they are not the financial responsibility of BitWise under the ICA. BitWise Ex. 2.0 (Shuler Rebuttal), lines 168-71. IBT agrees that, under the ICA, each party is responsible for providing the facilities on its side of the parties' POI, and that the multiplexing and DS1 facilities are on IBT's side of the POI. See AT&T Illinois Cross Ex. 2 (Shuler); Jt. Resp. to ALJ Data Request 1(b).

However, IBT argues that the allocation of financial 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) (Zolnierek 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. 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) (Zolnierek Rev. Addit.), lines 254-58. This distinction is confirmed by the parties' Joint Response to ALJ Data Request 2, which states 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 (emphasis added). IBT points out that accepting BitWise's position would validate its assertion that the IBT central office in Champaign is the location of not only BitWise's POI with IBT, but also its POI with Verizon. IBT contends that such an 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).

BitWise's secondary argument to avoid liability for IBT's charges is that BitWise should be allowed to exchange traffic with Verizon through IBT's tandems in the LATA, and thus there is no need for the direct trunks for which IBT is billing it. In response, IBT argues that BitWise's position directly contradicts the Third Amendment to the parties' 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 (Third Amendment to ICA). IBT also argues that BitWise voluntarily entered into the Third Amendment, 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. Tr. at 132-33 (Shuler).

Overall, IBT points out that both its witnesses and the Staff witness agree that the cross-connection and multiplexing facilities should be billed at special access rates because BitWise is not using them exclusively to exchange local or exchange access traffic with IBT. 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) (Zolnierek Rev. Addit.), lines 260-66.

With regard to the DS1 transport services going to Verizon exchanges, Staff asserts that IBT should have billed those services at special access rates, rather than switched access rates. Staff Ex. 3.0(R) (Zolnierek Rev. Addit.), lines 295-303. IBT's position is that, if the Commission rules that the DS1 transport charges should be billed at special access rates, the Company will take steps to modify the billing for those services to the higher special access rates. IBT Init. Br. at 33.

Champaign Issue 3: Should BitWise pay switched or special access rates for the DS1 circuits connecting BitWise to the Verizon exchanges from the time those circuits were established through the present?

IBT contends that BitWise should be required to pay at least the switched access rates it was billed for the DS1 transport services connecting it to the Verizon exchanges. 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 regarding these charges, those disputes did not assert that IBT made a mistake by charging switched access rates. *See* AT&T Illinois Ex. 3.0 (Ellis Direct), lines 126-39, 164-80 (discussing disputes received from BitWise). And BitWise has paid IBT *nothing* for these services 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.

Champaign Issue 4: Are the multiplexing and cross-connection charges for 911-related services appropriately billed by IBT at special access rates or at rates in the BitWise/IBT ICA?

The DS3 cross-connections and multiplexing that BitWise obtains from IBT in this LATA not only allow BitWise to exchange local traffic with IBT and to exchange traffic with Verizon, but also allow BitWise to send traffic from its customers to the E911 selective router. *Jt. Resp. to ALJ Data Request 2, p. 1, 2; Staff Ex. 3.0(R) (Zolnierrek Rev. Addit.), lines 27-31.*

IBT argues that, under the parties' ICA, 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. These provisions justify IBT's billing of the 911-related facilities at special access rates. *Id.*, lines 274-75.

IBT also points out that the Commission Staff concurred 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; Tr. at 554. 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.

BitWise offered no specific testimony, and only minimal argument, about the basis for its refusal to pay the 911-related charges in Champaign. It contends that it should not be billed the entire multiplexing charge at special access rates since only two of the DS1 channels coming out of the multiplexer are used for 911 service. IBT responds that BitWise's proposal to treat the multiplexer as local interconnection because its use for 911 purposes is minimal makes no sense. In fact, more than half of the 28 channels on the multiplexer carrying BitWise's two 911 circuits are used either for 911 service or for service to Verizon, and thus are used for special access purposes. In addition, the Commission Staff specifically rejected BitWise's suggestion that the special access multiplexing charge should be prorated based on the number of channels used for 911 service, as compared to local service. *See* Tr. at 521-23.

WHEREFORE, Illinois Bell Telephone Company respectfully requests that its position, as set forth herein and in its Initial and Reply Briefs, be adopted in its entirety.

Respectfully submitted,

ILLINOIS BELL TELEPHONE COMPANY

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CERTIFICATE OF SERVICE

I, Michael T. Sullivan, an attorney, hereby certify that I caused a copy of the foregoing Illinois Bell Telephone Company's Statement of Position to be served on the parties on the attached service list by U.S. Mail and/or electronic transmission on the 2nd day of October, 2009.

/s/ Michael T. Sullivan
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