

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
AT&T Corp.,)	
)	
Complainant,)	
)	
v.)	File No.: EB-09-MD-010
)	
All American Telephone Co., e-Pinnacle)	
Communications, Inc., ChaseCom,)	
)	
Defendants.)	

REPLY TO DEFENDANTS’ ANSWER

Pursuant to 47 C.F.R. § 1.726, AT&T Corp. (“AT&T”) submits this reply to the answering submission (the “Answer”) filed by Defendants All American Telephone Co., e-Pinnacle Communications, Inc., and ChaseCom (“Defendants”) with the Federal Communications Commission (the “Commission”) on December 1, 2014.

I. INTRODUCTION

Having failed in their efforts to get the Commission to validate their tariff and Communications Act claims against AT&T, Defendants¹ now assert that the Commission, as a result of its finding that Defendants were “sham” entities, has in effect freed them from regulatory oversight and thereby enabled them to pursue their state-law *quantum meruit* claims

¹ In an apparent effort to bolster their claim that they are no longer subject to the Commission’s jurisdiction, Defendants refer to themselves as “CAPs,” which stands for Collection Action Plaintiffs. This semantic twist does not alter the fact that Defendants admittedly held themselves out as Competitive Local Exchange Carriers, or “CLECs,” and in that capacity initiated the lawsuit that led to this proceeding. Having filed tariffs, initiated a collection action based on those tariffs, and sought referral of issues to the Commission, Defendants clearly have submitted themselves to the Commission’s jurisdiction. Indeed, the idea that an unsuccessful litigant can simply reverse course and thereby escape the consequences of an adverse decision is ridiculous.

in the federal district court litigation. *See, e.g.*, Answer ¶¶ 5-8, 17, 29, 32, 37-38, 42, 44-46, 48, 53, 56, 59, 61-63, 65-67, 70, 73, 81, 84-87, 127; *id.*, Second Affirmative Defense. Defendants' position is, in a word, preposterous.

At no point in the Commission's March 25, 2013 *Memorandum Opinion and Order* (the "Liability Order") does the Commission state that Defendants are not subject to the provisions of Title II, nor does it suggest that Defendants—or, for that matter, Beehive Telephone Company, Inc. ("Beehive")—can lawfully provide switched access services without complying with the Commission's rules regarding the provision of such services. To the contrary, the Commission expressly found that Defendants had violated the Act as a result of both (i) their failure to provide service in conformance with their tariffs and (ii) their having engaged in sham transactions. *See Liability Order* ¶¶ 1, 24, 34. The Commission could not make those determinations if it did not have jurisdiction. Further, Defendants' position makes no sense from a regulatory oversight perspective and would, if adopted, undermine the Commission's ability to administer the Act. Under Defendants' approach, the only consequence of a finding that a carrier had engaged in a sham transaction would be deregulation. In effect, the offending carrier would be rewarded for its unlawful conduct—a position that finds no support in the case law. *See* Legal Analysis § I(B).

Defendants' other arguments in opposition to the AT&T's Supplemental Complaint are similarly devoid of merit. As explained in greater detail in the accompanying Legal Analysis, AT&T did not forfeit its right to seek damages before the Commission by filing counterclaims in the federal district court litigation. *See id.* § I(A). That litigation was not initiated by AT&T, but by Defendants. In addition, AT&T did not seek referral of any of the issues in the case; Defendants did so. Further, the district court, on its own initiative, transferred the "sham entity"

counterclaim to the Commission, and the Commission in its *Liability Order* made clear that AT&T could file a supplemental complaint for damages. *Liability Order* ¶ 1 n.4.

Likewise defective is Defendants' claim that AT&T is estopped from contending that Defendants failed to provide any services to AT&T. As explained in AT&T's Legal Analysis, none of the so-called admissions identified by Defendants support their position. *See* Legal Analysis § III. To the contrary, the evidence elicited during this proceeding as well as the *Liability Order* itself make clear that Defendants did not provide any services to AT&T, nor were they in a position to do so. By their own admission, Defendants did not have any switching equipment of their own, nor did they acquire such capability from Beehive by leasing unbundled network elements. *See* Answer ¶ 32.

Defendants concede that Beehive provided the services but now claim that they were acting as Beehive's agents. *See, e.g., id.* ¶¶ 3, 17, 38, 63. There is no evidence in the record to support that conclusion. But even if it were true, the existence of an agency relationship would not support a finding that Defendants provided services to AT&T. *See* para. 3, *infra*. Equally misguided is the claim that Defendants provided AT&T a service by "generat[ing]" the traffic at issue. *See id.* ¶ 68. In access stimulation schemes, free calling providers (such as Joy) promote telephone numbers (which the Defendants obtained only because they purported to act as common carriers), and callers "generated" the traffic, not the Defendants. In any event, Defendants never explain how "generat[ing]" such traffic is a service provided to AT&T, nor does that claim make any sense. *See* Legal Analysis § III(A). Finally, the fact that the Commission found that Defendants were "sham" entities, by definition, means that they were not providing any services. Indeed, that is why Defendants were found to be shams.

There is also no merit to Defendants' claims that AT&T has failed to properly allege and support its damages claims, that AT&T would be unjustly enriched by an award of damages, or that any such award would constitute an unlawful taking under the Fifth Amendment to the United States Constitution. Each of those claims is refuted in AT&T's Legal Analysis, *see* Legal Analysis §§ IV-VI, as is Defendants' claim that the Commission's October 29, 2014 Letter Order "disallowed" AT&T's damages claims as they relate to the Beehive charges and prejudgment interest. *Id.* § VII. The Commission's Letter Order made no such finding, nor would such a finding be meritorious. In fact, AT&T contends that the Commission has the power to and should, in fact, address all of AT&T's damages claims. *Id.* Such an approach is both consistent with Commission precedent and justified by the fact that the District Court referred the entirety of AT&T's sham entity "counterclaim" to the Commission for resolution. *Id.*

In addition, AT&T wholly disagrees with Defendants' positions on the remaining Referred Issues. As an initial matter, Referred Issue 1 already has been resolved. In the *Liability Order*, the Commission clearly held that Defendants had not provided switched access services consistent with the terms of their tariffs. *See Liability Order* ¶ 34. As to Referred Issue 2, the obvious answer to that question is that Defendants did not provide any regulated services. In fact, Defendants deny that any service other than switched access service was ever provided, *see e.g.*, Answer ¶ 61, and, as previously noted, the Commission in its *Liability Order* expressly found that switched access services had not been provided. *See Liability Order* ¶ 34.

Finally, with respect to Referred Issue 3, Defendants advance the absurd position that the *Liability Order* created a "gap" in the regulatory scheme. To the contrary, there would only be a gap in the regulatory scheme if the Commission were to create one by accepting Defendants' position and thereby rewarding them for their unlawful conduct. In essence, Defendants ask the

Commission to endorse a workaround that would provide parties that violate the Act with a clear-cut strategy to avoid any and all liability for their malfeasance. Having determined that Defendants engaged in a sham enterprise, it is incumbent on the Commission to both award damages and make clear that carriers that engage in such practices cannot benefit by bringing state-law claims that would effectively undermine the regulatory process. *See* Legal Analysis § I(B) and VIII(B).

Each of the aforementioned issues is discussed in greater detail in AT&T's paragraph-by-paragraph response to Defendants' Answer (which follows below) as well as in its accompanying Legal Analysis. Any claims that are not specifically addressed are denied.

II. REPLY TO SPECIFIC ALLEGATIONS AND ARGUMENTS

1. Paragraph 1 does not contain factual allegations or legal arguments to which a response is required. If it does, however, those allegations or arguments are denied.

2. As explained in Section I of AT&T's Legal Analysis, the Commission has jurisdiction over AT&T's Supplemental Complaint and may award AT&T damages against Defendants as set forth therein. AT&T denies Defendants' generalized claim that the Supplemental Complaint does not adequately address the additional issues referred by the District Court. *See* paras. 6-8, *infra*. Otherwise, paragraph 2 does not contain factual allegations or legal arguments to which a response is required. If it does, however, those allegations or arguments are denied.

3. In responding to AT&T's summary of the *Liability Order*, Defendants contend that the *Liability Order* "speaks for itself" but then purport themselves to summarize the Commission's holdings. AT&T denies that Defendants' summary of the *Liability Order* and the events preceding it are accurate or that the conclusions Defendants reach are consistent with the

Commission's holdings. AT&T also reaffirms that its own summary in the Supplemental Complaint is fully consistent with the *Liability Order*.

Defendants' principal claim seems to be that Defendants provided *some service* to AT&T. But as the Commission found in the *Liability Order*, there is "overwhelming[]" evidence that Defendants were "sham" CLECs created solely to "capture access revenues that could not otherwise be obtained by lawful tariffs." *Liability Order* ¶ 24. That was not a "service," and—contrary to Defendants' claim—AT&T never stipulated otherwise. Rather, AT&T stipulated only that "AT&T has not disputed the *number of minutes* associated with the Joy [Enterprises, Inc. ("Joy"),] telephone numbers." *See Answer* ¶ 61 (quoting Stipulation #52 (7/10/2010) (emphasis added)). Further, Defendants could not have, as a factual matter, provided switched access services to AT&T given that they *never even operated a switch*, *see Liability Order* ¶ 17, and Defendants deny that they provided any other services. *See e.g.*, *Answer* ¶ 61. Accordingly, Defendants' claim that they provided services to AT&T is baseless.

In addition, Defendants contend—for the first time after years of litigation—that they were acting as "billing/sales agent[s]" for Beehive in charging AT&T for switched access services they did not provide. AT&T denies that claim. Defendants have not submitted any evidence that they were acting as Beehive's agents in this "scheme" to overbill AT&T by millions of dollars. But even had that been the case, the Commission has already found that Defendants operated as a "sham" designed to collect from AT&T charges which Beehive was not entitled to collect—and could never have collected—on its own for services that Defendants never provided. *See, e.g., Liability Order* ¶¶ 1, 24. The existence of some agency relationship between Defendants and Beehive (which, again, is totally unsubstantiated) would not change the fact that Defendants never provided services to AT&T.

AT&T further denies Defendants' claim that the Beehive tariffed rate is "the only rate that can apply to the service that AT&T has taken" or that the Commission was somehow remiss in not conducting a rate case against Beehive or otherwise investigating the Beehive rates. As the Commission made clear in the *Liability Order* and in its *Order on Reconsideration*, Beehive rates were not at issue. *See Liability Order* ¶¶ 31, 33; *Recon. Order* ¶ 21. Finally, the fact that Defendants can only state on "information and belief" that the traffic it billed "flowed to both Utah and Nevada" only serves to further confirm that Defendants did not provide any service to AT&T.

Otherwise, paragraph 3 does not contain factual allegations or legal arguments to which a response is required. If it does, however, those allegations or arguments are denied.

4. As explained in Section I of AT&T's Legal Analysis, the Commission has jurisdiction over AT&T's Supplemental Complaint and may award AT&T damages against Defendants as set forth therein. Accordingly, AT&T denies Defendants' claims—which Defendants do not support with any citations to record evidence or analysis—that AT&T's requested damages are "impermissible" as a matter of fact or law. AT&T also denies Defendants' claims --which also are not supported -- that AT&T's claims are somehow estopped by AT&T's prior stipulations and testimony. *See* Legal Analysis § III. AT&T admits that the Commission's October 29, 2014 Letter Order contains the language included in Defendants' Answer, but denies that the Letter Order was a final ruling on the law, that the Letter Order somehow "disallowed" any aspects of AT&T's damages claims, or that the Commission validly could have done so. *See id.* § VII. Otherwise, paragraph 4 does not contain factual allegations or legal arguments to which a response is required. If it does, however, those allegations or arguments are denied.

5. AT&T denies Defendants' transparently self-serving claim that the Commission's *Liability Order* somehow established that Defendants are not "common carriers" subject to Title II regulation. As explained in Section I(B) of AT&T's Legal Analysis, the United States Court of Appeals for the District of Columbia Circuit rejected a nearly identical argument in the *Farmers* case. Further, AT&T notes that Defendants' claim that they are not common carriers—which they *admit* is wholly inconsistent with their prior positions in this case, *see* AT&T's reply to paragraph 17, *infra*—amounts to an admission that they improperly billed AT&T for switched access services because *only common carriers are permitted to provide such services*. *See* 47 U.S.C. § 201, *et seq.* (only common carriers may provide telecommunications services); 47 C.F.R. Part 69, 47 C.F.R. § 61.26 (common carriers providing telecommunications services are subject to regulation under Title II). Finally, as explained above, AT&T denies that the Commission's October 29, 2014 Letter Order somehow "disallowed" any aspects of AT&T's damages claims. *See* para. 4, *supra*. Otherwise, paragraph 5 does not contain factual allegations or legal arguments to which a response is required. If it does, however, those allegations or arguments are denied.

6. As explained above, AT&T denies that Defendants provided any services to AT&T, *see* para. 3, *supra*, or that Defendants' estoppel theories have any merit. *See* Legal Analysis § III. Further, AT&T denies that the Commission's finding in the *Liability Order* that Defendants operated as "shams" somehow means that they—despite repeatedly claiming to the contrary in this very proceeding and in their District Court complaint (First Am. Compl., ¶ 11, *All Amer. v. AT&T*, No. 07-861 (S.D.N.Y., March 7, 2007) (Plaintiffs . . . are telecommunications common carriers")) —are not common carriers subject to Title II regulation. *See* para. 5, *supra* (citing to Legal Analysis § I(B)). Incredibly, the basis of Defendants' argument seems to be that

their existence was *such a sham*, and they so obviously did not provide services subject to Title II regulation, that the Commission lacks jurisdiction over this matter. Notably, Defendants also appear to concede that if the Commission finds that Defendants are indeed common carriers, they would not be able to recover from AT&T because they did not bill AT&T pursuant to a valid tariff or contract. *See* Legal Analysis § VIII(B). As explained in Section I(B) of AT&T’s Legal Analysis, it is simply not true that the Commission lacks jurisdiction over Defendants.

AT&T also reaffirms its statement that Defendants “defrauded” AT&T. Indeed, that statement is eminently fair given that Defendants charged AT&T for millions of dollars of switched access services they did not provide. Finally, as explained in Sections III(B), V and VIII(B) of AT&T’s Legal Analysis, AT&T denies that Defendants have valid *quantum meruit* or unjust enrichment claims against AT&T that must be pursued in the district court or that AT&T’s damages should be reduced as a result of such claims. Otherwise, paragraph 6 does not contain factual allegations or legal arguments to which a response is required. If it does, however, those allegations or arguments are denied.

7. As explained above, AT&T denies that (i) Defendants provided any services to AT&T, *see* para. 3, *supra.*, or that Defendants’ estoppel theories have any merit, *see* Legal Analysis § III, (ii) the Commission’s finding in the *Liability Order* that Defendants operated as “shams” somehow means that they—despite repeatedly claiming to the contrary in this very proceeding—are not common carriers subject to Title II regulation, *see* para. 5, *supra* (citing to Legal Analysis § I(B)), and (iii) Defendants have valid claims against AT&T that may be pursued in the district court. *See* para. 6, *supra.* Further, as explained in Part III of the Supplemental Complaint, Defendants’ claims conflict with federal law and thus are preempted under the Supremacy Clause. *See also* Legal Analysis §§ III(B), VIII(B). Otherwise, paragraph

7 does not contain factual allegations or legal arguments to which a response is required. If it does, however, those allegations or arguments are denied.

8. As explained in Part IV of the Supplemental Complaint, the additional questions raised by Issue 5 have no significant effect on the other referred issues. AT&T denies that Defendants have a valid unjust enrichment claim or that Issues 5c and 5d would be relevant to such a claim, or that Issue 5e is necessary to establish the Commission's jurisdiction over Defendants. As explained in Section I(B) of AT&T's Legal Analysis, the Commission clearly has jurisdiction over Defendants. Further, AT&T denies that Defendants provided any services to AT&T. *See* para. 3, *supra*. Indeed, even had Defendants provided services to AT&T they would be subject to Title II regulation, and Defendants effectively *concede* that they could not recover from AT&T for such services because Defendants were not acting pursuant to a valid tariff or contract with AT&T. Otherwise, paragraph 8 does not contain factual allegations or legal arguments to which a response is required. If it does, however, those allegations or arguments are denied.

9. As explained in the Supplemental Complaint and AT&T's Legal Analysis, AT&T's damages claims are fully supported by the facts of this case and the Commission's *Liability Order* and Defendants are not entitled to recover in any form—including, *inter alia*, claims for “set-offs”—for services they allegedly provided. *See* Supp. Compl. §§ I-III; Legal Analysis §§ IV, V, VIII(B). Further, as explained above, AT&T denies that the Commission's October 29, 2014 Letter Order somehow “disallowed” any aspects of AT&T's damages claims, *see* para. 4, *supra* (citing to Legal Analysis § VII), or that Defendants have a valid unjust enrichment claim against AT&T. *See* para. 6, *supra* (citing to Legal Analysis § V). Finally, AT&T denies Defendants' claim that any award against them in this proceeding would constitute

an “unconstitutional, uncompensated regulatory taking” under the Fifth Amendment to the United States Constitution. *See id.* § VI. Otherwise, paragraph 9 does not contain factual allegations or legal arguments to which a response is required. If it does, however, those allegations or arguments are denied.

10. Paragraph 10 does not contain factual allegations or legal arguments to which a response is required. If it does, however, those allegations or arguments are denied.

11. Paragraph 11 does not contain factual allegations or legal arguments to which a response is required. If it does, however, those allegations or arguments are denied.

12. Paragraph 12 does not contain factual allegations or legal arguments to which a response is required. If it does, however, those allegations or arguments are denied.

13. Paragraph 13 does not contain factual allegations or legal arguments to which a response is required. If it does, however, those allegations or arguments are denied.

14. Paragraph 14 does not contain factual allegations or legal arguments to which a response is required. If it does, however, those allegations or arguments are denied.

15. Paragraph 15 does not contain factual allegations or legal arguments to which a response is required. If it does, however, those allegations or arguments are denied.

16. Paragraph 16 does not contain factual allegations or legal arguments to which a response is required. If it does, however, those allegations or arguments are denied.

17. In this paragraph, Defendants admit that, prior to the issuance of the *Liability Order*, they “held themselves out to be providing service as common carriers.” But Defendants now claim that the *Liability Order* established that they “are not now, and never were, common carriers.” As explained above and in its Legal Analysis, AT&T denies that the Commission’s finding in the *Liability Order* that Defendants operated as “shams” somehow means that they are

not subject to Title II regulation—let alone that such a far-fetched conclusion is “inescapable.” *See* para. 5, *supra*; Legal Analysis § I(B). To the contrary, the law is abundantly clear that Defendants are “liable under the complaint process in Section 206 to 208 for damages.” *See* Legal Analysis §§ I(B), IV. AT&T also denies that Defendants acted as agents for Beehive or have the right to be compensated for the role they played in charging AT&T millions of dollars for services they did not provide. *See* para. 3, *supra*. AT&T further denies that the *Total Telecom* decision supports Defendants’ position in this connection. *See* Legal Analysis §§ I(B), VIII(B). Otherwise, paragraph 17 does not contain factual allegations or legal arguments to which a response is required. If it does, however, those allegations or arguments are denied.

18. Paragraph 18 does not contain factual allegations or legal arguments to which a response is required. If it does, however, those allegations or arguments are denied.

19. AT&T denies that Beehive must be made a party to this proceeding. As explained in the Supplemental Complaint and AT&T’s Legal Analysis, Defendants are liable for AT&T’s payments to Beehive because such payments arose as a direct result of Defendants’ sham operations. *See* Supp. Compl. § I(B); Legal Analysis § VII. AT&T further denies that all of the invoiced traffic at issue in this proceeding was “the Local Switching ‘tail circuits’ of terminating interstate access service provided by Beehive” or “that all traffic at issue terminated in Beehive facilities within Beehive exchanges in Utah and Nevada.” Defendants do not define the phrase “tail circuits,” nor do they provide any substantiation for these claims. AT&T also denies that AT&T’s damages claims “involve issues that are exclusively within the control of Beehive.” Again, Defendants provide no support for this assertion. Moreover, AT&T notes that its damage calculations are fully substantiated and are not dependent on information exclusively within Beehive’s possession. *See* Legal Analysis § IV. Otherwise, paragraph 19 does not

contain factual allegations or legal arguments to which a response is required. If it does, however, those allegations or arguments are denied.

20. AT&T admits that it has been aware of Beehive’s access stimulation activities—although not Defendants’ involvement in that scheme—for some time and that AT&T previously entered into a settlement agreement with Beehive, but denies that that settlement has any relevance to this case. *See* Legal Analysis § II. Indeed, the Commission’s *Liability Order* explicitly rejected Defendants’ arguments regarding the settlement agreement. *See Liability Order* ¶ 30 n.136 (“Nor do we find persuasive Defendants’ reliance on a settlement agreement between AT&T and Beehive”). To the extent Defendants purport to paraphrase the settlement agreement, AT&T states that the settlement agreement speaks for itself. Otherwise, paragraph 20 does not contain factual allegations or legal arguments to which a response is required. If it does, however, those allegations or arguments are denied.

21. AT&T denies that the Supplemental Complaint mischaracterized the claims asserted in Defendants’ district court complaint. Otherwise, paragraph 21 does not contain factual allegations or legal arguments to which a response is required. If it does, however, those allegations or arguments are denied.

22. Paragraph 22 does not contain factual allegations or legal arguments to which a response is required. If it does, however, those allegations or arguments are denied.

23. Paragraph 23 does not contain factual allegations or legal arguments to which a response is required. If it does, however, those allegations or arguments are denied.

24. Paragraph 24 does not contain factual allegations or legal arguments to which a response is required. If it does, however, those allegations or arguments are denied.

25. AT&T denies that it has “abused” its position as complainant in the referral proceeding, misrepresented the referral questions, or failed to present them adequately for Commission consideration, or that Defendants “demonstrated” any such things in an objection that the Commission has *dismissed* on more than one occasion. AT&T also denies that AT&T’s Amended Complaint did not address Referred Issue 1(a-e). *See* Am. Compl., Count I (addressing Referred Issue 1). AT&T further notes that each of Defendants’ allegations in this regard were fully addressed in the *Liability Order*, that Defendants have not filed an appeal of that *Order* and that the *Order* is now final and cannot be collaterally attacked. Finally, AT&T denies that Defendants provided any services to AT&T or that AT&T has ever “admit[ted]” otherwise. *See* para. 3, *supra*. AT&T also denies that in the Amended Complaint it admitted that the “traffic should be billed at a ‘fraction of a penny’” or “that the cost and value of the service that AT&T took was not zero.” *See* Legal Analysis § III(C). Otherwise, paragraph 25 does not contain factual allegations or legal arguments to which a response is required. If it does, however, those allegations or arguments are denied.

26. AT&T denies that Defendants provided any services to AT&T, *see* para. 3, *supra*., or that Count III of AT&T’s Amended Complaint is “predicate[d]” on an assumption that Defendants did provide such services. In addition, as explained above, AT&T denies that it has abused its position as complainant or that Defendants have “demonstrated” any such thing. *See* para. 25, *supra*. AT&T also denies that AT&T’s Amended Complaint did not address Referred Issues 5a, 5c, 5d, or 5e. *See* Am. Compl., Count III (addressing Referred Issue 5). AT&T further contends that it has demonstrated that the Commission should find that Referred Issues 5a, 5c, 5d, or 5e do not affect the issues in this proceeding, *see id.* ¶¶ 122, 138-42, which contention Defendants summarily deny without explanation. Otherwise, paragraph 26 does not

contain factual allegations or legal arguments to which a response is required. If it does, however, those allegations or arguments are denied.

27. Paragraph 27 does not contain factual allegations or legal arguments to which a response is required. If it does, however, those allegations or arguments are denied.

28. In this paragraph, Defendants summarize their many grievances with how the Commission decided the *Liability Order*. AT&T denies that such statements have any merit or are relevant to this case now that the *Liability Order* is final and non-appealable. See para. 25, *supra*. Moreover, AT&T stands by its description of the *Liability Order*, which Defendants summarily deny without explanation. AT&T further denies that the Commission must consider Defendants' meritless and irrelevant statements about the *Liability Order* in addressing AT&T's damages claims. As noted above, the *Order* is now final and not subject to collateral attack. *Id.* Finally, as explained above, AT&T denies that its settlement agreement with Beehive has any relevance to this case. See para. 20, *supra* (citing Legal Analysis § II). Otherwise, paragraph 28 does not contain factual allegations or legal arguments to which a response is required. If it does, however, those allegations or arguments are denied.

29. As explained above, AT&T denies that the Commission's finding in the *Liability Order* that Defendants operated as "sham CLECs" somehow means that they—despite repeatedly claiming to the contrary in this very proceeding—are not common carriers subject to Title II regulation. See para. 5, *supra* (citing to Legal Analysis § I(B)). Accordingly, AT&T denies Defendants' claim that their failure to comply with tariffs is "irrelevant" to this case. AT&T further denies Defendants' claim that the "only question" is whether Beehive's rates were compliant with the Commission's rules or that Defendants demonstrated such compliance prior to the issuance of the *Liability Order*. Indeed, the Commission explained in the *Liability Order*

that even if Beehive was the “competing” ILEC under the Commission’s rules, and Defendants benchmarked their own rates to Beehive’s tariffed rates, that fact would be “irrelevant” because “Defendants were not *competing* with Beehive in any real sense.” *Liability Order* ¶ 31 (emphasis added). Otherwise, paragraph 29 does not contain factual allegations or legal arguments to which a response is required. If it does, however, those allegations or arguments are denied.

30. As explained above, AT&T denies that the Commission’s finding in the *Liability Order* that Defendants operated as “sham CLECs” somehow means that they—despite repeatedly claiming to the contrary in this very proceeding—are not common carriers subject to Title II regulation. *See* para. 5, *supra* (citing to Legal Analysis § I(B)) AT&T also denies Defendants’ claim that the “only relevant facts” in the damages phase of this case are Beehive’s rates or that such rates are “incontestably reasonable.” *See* para. 29, *supra*. Otherwise, paragraph 30 does not contain factual allegations or legal arguments to which a response is required. If it does, however, those allegations or arguments are denied.

31. As explained above, AT&T denies that the Commission’s finding in the *Liability Order* that Defendants operated as “sham CLECs” somehow means that they—despite repeatedly claiming to the contrary in this very proceeding—are not common carriers subject to Title II regulation. *See* para. 5, *supra* (citing to Legal Analysis § I(B)). AT&T also denies Defendants’ claim that the “only relevant facts” in the damages phrase of this case are Beehive’s rates or that such rates are “incontestably reasonable.” *See* para. 29, *supra*. Otherwise, paragraph 31 does not contain factual allegations or legal arguments to which a response is required. If it does, however, those allegations or arguments are denied.

32. As explained above, AT&T denies that the Commission’s finding in the *Liability Order* that Defendants operated as “sham CLECs” somehow means that they—despite repeatedly claiming to the contrary in this very proceeding—are not common carriers subject to Title II regulation. *See* para. 5, *supra* (citing to Legal Analysis § I(B)). Accordingly, AT&T also denies Defendants’ claim that their failure to comply with tariffs is “irrelevant” to this case. Otherwise, paragraph 32 does not contain factual allegations or legal arguments to which a response is required. If it does, however, those allegations or arguments are denied.

33. AT&T denies that its description of the *Liability Order* in this paragraph is “incomplete” or “misleading” or that Defendants identify all “relevant” findings in their response. In addition, AT&T denies that Defendants’ many grievances with how the Commission decided the *Liability Order* have any merit or are relevant to this case now that the *Liability Order* is final and non-appealable. For example, while Defendants continue to complain that Beehive was not a party to this proceeding, as explained above, Beehive does not need to be a party for the Commission to be able to address AT&T’s damages claims. *See* para. 19, *supra*. Otherwise, paragraph 33 does not contain factual allegations or legal arguments to which a response is required. If it does, however, those allegations or arguments are denied.

34. AT&T denies that it did not negotiate with Defendants in good faith. As explained in the Supplemental Complaint, AT&T wrote a letter to Defendants outlining the categories of damages AT&T intended to seek, offering a reasonable resolution of AT&T’s claims, and inviting Defendants to engage with AT&T in settlement discussions. *See* Supp. Compl. ¶ 34. But Defendants never made a counterproposal, and AT&T came to the conclusion that additional steps toward settlement would be fruitless. That is the essence of good faith.

Otherwise, paragraph 34 does not contain factual allegations or legal arguments to which a response is required. If it does, however, those allegations or arguments are denied.

35. AT&T denies that it has misrepresented any of the referral issues or that AT&T's Amended Complaint did not address those issues. *See* para. 25, *supra*; *see generally* Am. Compl. (addressing referral issues). AT&T admits that the referral issues are set forth in the District Court's Orders dated March 16, 2009 and February 5, 2010. Supp. Compl. ¶¶ 23-24. Otherwise, paragraph 35 does not contain factual allegations or legal arguments to which a response is required. If it does, however, those allegations or arguments are denied.

36. AT&T denies Defendants' laundry list of arguments as to why AT&T purportedly is precluded from pursuing damages before the Commission, including the arguments that (i) Section 207 of the Act prohibits AT&T from pursuing damages, *see* Legal Analysis § I(A), (ii) the Commission's finding in the *Liability Order* that Defendants operated as "sham" entities somehow means that they—despite repeatedly claiming to the contrary in this very proceeding—are not common carriers subject to Title II regulation, *see* para. 5, *supra* (citing to Legal Analysis § I(B)), (iii) AT&T is estopped from pursuing its claims, *see* para. 4, *supra* (citing to Legal Analysis § III) (iv) AT&T's claims are precluded by Commission orders (including the October 29, 2014 Letter Order) *see* para 4 *supra*, (citing to Legal Analysis § VII), (v) the relief sought would violate the Fifth Amendment to the United States Constitution, *see* para. 9, *supra* (citing to Legal Analysis § VI), and (vi) the relief sought would unjustly enrich AT&T. *See* para. 6, *supra* (citing to Legal Analysis § V). AT&T also denies that Dr. Toof's declaration fails to support AT&T's damages claims for these or other reasons. *See* Legal Analysis § IV. Otherwise, paragraph 36 does not contain factual allegations or legal arguments to which a response is required. If it does, however, those allegations or arguments are denied.

37. As explained above, AT&T denies that the Commission’s finding in the *Liability Order* that Defendants operated as “sham” entities somehow means that they—despite repeatedly claiming to the contrary in this very proceeding—are not common carriers subject to Title II regulation. *See* para. 5, *supra* (citing to Legal Analysis § I(B)). Accordingly, AT&T reaffirms its position that the *YMax* decision is relevant to this case because that decision, in Defendants’ own words, “deals with the regulatory obligations of common carriers.” Otherwise, paragraph 37 does not contain factual allegations or legal arguments to which a response is required. If it does, however, those allegations or arguments are denied.

38. In the Supplemental Complaint, AT&T explains that Defendants’ collection action claims pending in the District Court must be dismissed because Defendants “did not provide AT&T with access services under applicable tariffs.” Defendants deny that their claims must be dismissed, and attempt to distinguish the legal authorities that AT&T cites in support of its contention. AT&T denies that Defendants have presented legitimate bases for distinguishing AT&T’s legal authorities. First, as explained above, AT&T denies that the Commission’s finding in the *Liability Order* that Defendants operated as “shams” somehow means that they—despite repeatedly claiming to the contrary in this very proceeding—are not common carriers subject to Title II regulation. *See* para. 5, *supra* (citing to Legal Analysis § I(B)). Accordingly, AT&T reaffirms its position that the *MCI* decision is relevant to this case because that decision, in Defendants’ own words, “deals with a regulated common carrier . . . that was operating under a valid tariff.” For the same reason, AT&T also reaffirms its position that 47 U.S.C. §§ 203 and 415 are relevant to this case. AT&T also reaffirms its position that the *Bryan* decision is relevant to this case because *Bryan*, like *MCI*, stands for the proposition that access charges that are

unlawful when the service at issue was provided necessarily is outside the scope of the carrier's tariff. *See* Supp. Compl. ¶ 38 n.56.

Defendants also reiterate their claim that the Commission's October 29, 2014 Letter Order "disallows" AT&T's prejudgment interest claim. As explained above, AT&T denies that the Commission's October 29, 2014 Letter Order somehow "disallowed" any aspects of AT&T's damages claims. *See* para. 4, *supra* (citing to Legal Analysis § VII) Otherwise, paragraph 38 does not contain factual allegations or legal arguments to which a response is required. If it does, however, those allegations or arguments are denied.

39. AT&T denies that Defendants' descriptions of the *New Valley* and *Farmers* cases are accurate or that those cases present a basis for reducing any direct damages award in AT&T's favor. *See* Supp. Compl. § II(C); Legal Analysis § IV. As explained above, AT&T also denies that Defendants provided any services to AT&T (*see* para. 3, *supra*.) or that AT&T is estopped from contending otherwise. *See* Legal Analysis § III. Otherwise, paragraph 39 does not contain factual allegations or legal arguments to which a response is required. If it does, however, those allegations or arguments are denied.

40. As explained above, AT&T denies that the Commission's October 29, 2014 Letter Order somehow "disallowed" any aspects of AT&T's damages claims. *See* para. 4, *supra* (citing to Legal Analysis § VII). Otherwise, paragraph 40 does not contain factual allegations or legal arguments to which a response is required. If it does, however, those allegations or arguments are denied.

41. AT&T denies that it is unable to recover damages in this case. As explained above, none of Defendants' affirmative defenses are meritorious or preclude AT&T's recovery of damages in this case. *See* para. 36, *supra*. AT&T also denies that the Commission's October

29, 2014 Letter Order somehow “disallowed” any aspects of AT&T’s damages claims. *See* para. 4, *supra* (citing to Legal Analysis § VII). Otherwise, paragraph 41 does not contain factual allegations or legal arguments to which a response is required. If it does, however, those allegations or arguments are denied.

42. As explained above, AT&T denies that the Commission’s finding in the *Liability Order* that Defendants operated as “sham” entities somehow means that they—despite repeatedly claiming to the contrary in this very proceeding—are not common carriers subject to Title II regulation. *See* para. 5, *supra* (citing to Legal Analysis § I(B)). For that reason, AT&T also denies that its citations to 47 U.S.C. § 206 and the *Farmers* decision are “inapposite” to this case. Finally, AT&T denies that the Commission’s October 29, 2014 Letter Order somehow “disallowed” any aspects of AT&T’s damages claims. *See* para. 4, *supra* (citing to Legal Analysis § VII). Otherwise, paragraph 42 does not contain factual allegations or legal arguments to which a response is required. If it does, however, those allegations or arguments are denied.

43. As explained above, AT&T denies that the Commission’s October 29, 2014 Letter Order somehow “disallowed” any aspects of AT&T’s damages claims. *See* para. 4, *supra* (citing to Legal Analysis § VII). Otherwise, paragraph 43 does not contain factual allegations or legal arguments to which a response is required. If it does, however, those allegations or arguments are denied.

44. As explained above, AT&T denies that the Commission’s finding in the *Liability Order* that Defendants operated as “sham” entities somehow means that they—despite repeatedly claiming to the contrary in this very proceeding—are not common carriers subject to Title II regulation. *See* para. 5, *supra* (citing to Legal Analysis § I(B)). AT&T also denies that the Commission’s October 29, 2014 Letter Order somehow “disallowed” any aspects of AT&T’s

damages claims. *See* para. 4, *supra* (citing to Legal Analysis § VII). Otherwise, paragraph 44 does not contain factual allegations or legal arguments to which a response is required. If it does, however, those allegations or arguments are denied.

45. AT&T denies that it is unable to recover damages in this case. As explained above, none of Defendants’ affirmative defenses are meritorious or preclude AT&T’s recovery of damages in this case. *See* para. 36, *supra*. AT&T also denies that the Commission’s October 29, 2014 Letter Order somehow “disallowed” any aspects of AT&T’s damages claims. *See* para. 4, *supra* (citing to Legal Analysis § VII). Finally, AT&T denies that the Commission’s finding in the *Liability Order* that Defendants operated as “sham” entities somehow means that they—despite repeatedly claiming to the contrary in this very proceeding—are not common carriers subject to Title II regulation. *See* para. 5, *supra* (citing to Legal Analysis § I(B)). Otherwise, paragraph 45 does not contain factual allegations or legal arguments to which a response is required. If it does, however, those allegations or arguments are denied.

46. As explained above, AT&T denies that the Commission’s October 29, 2014 Letter Order somehow “disallowed” any aspects of AT&T’s damages claims. *See* para. 4, *supra* (citing to Legal Analysis § VII). AT&T also denies that the Commission’s finding in the *Liability Order* that Defendants operated as “shams” somehow means that they—despite repeatedly claiming to the contrary in this very proceeding—are not common carriers subject to Title II regulation. *See* para. 5, *supra* (citing to Legal Analysis § I(B)).

47. As explained above, AT&T denies that the Commission’s October 29, 2014 Letter Order somehow “disallowed” any aspects of AT&T’s damages claims. *See* para. 4, *supra* (citing to Legal Analysis § VII). AT&T also denies that it is estopped from pursuing its claims. *See* Legal Analysis § III. Otherwise, paragraph 47 does not contain factual allegations or legal

arguments to which a response is required. If it does, however, those allegations or arguments are denied.

48. As explained above, AT&T denies that the Commission's October 29, 2014 Letter Order somehow "disallowed" any aspects of AT&T's damages claims. *See* para. 4, *supra* (citing to Legal Analysis § VII). AT&T also denies that the Commission's finding in the *Liability Order* that Defendants operated as "sham" entities somehow means that they—despite repeatedly claiming to the contrary in this very proceeding—are not common carriers subject to Title II regulation. *See* para. 5, *supra* (citing to Legal Analysis § I(B)). Finally, AT&T denies that it is estopped from pursuing its claims. *See* Legal Analysis § III. Otherwise, paragraph 48 does not contain factual allegations or legal arguments to which a response is required. If it does, however, those allegations or arguments are denied.

49. AT&T denies Defendants' assertion that "every minute of traffic they billed to AT&T represented the Local Switching 'tail circuit' of Beehive's terminating switched access service." As explained above, Defendants do not define the phrase "tail circuit," nor do they provide any substantiation for the claim that the minutes they billed were part of Beehive's terminating switched access service. *See* para. 19 *supra*. Otherwise, paragraph 49 does not contain factual allegations or legal arguments to which a response is required. If it does, however, those allegations or arguments are denied.

50. As explained in AT&T's Supplemental Complaint and in Section VII of its Legal Analysis, AT&T may seek prejudgment interest in this case. In addition, as explained above, AT&T denies that the Commission's October 29, 2014 Letter Order somehow "disallowed" any aspects of AT&T's damages claims. *See* para. 4, *supra* (citing to Legal Analysis § VII).

Otherwise, paragraph 50 does not contain factual allegations or legal arguments to which a response is required. If it does, however, those allegations or arguments are denied.

51. As explained in AT&T's Supplemental Complaint and in Section VII of its Legal Analysis, AT&T may seek interest on its damages in this case. In addition, as explained above, AT&T denies that the Commission's October 29, 2014 Letter Order somehow "disallowed" any aspects of AT&T's damages claims. *See* para. 4, *supra* (citing to Legal Analysis § VII). Otherwise, paragraph 51 does not contain factual allegations or legal arguments to which a response is required. If it does, however, those allegations or arguments are denied.

52. As explained in AT&T's Supplemental Complaint and in Section VII of its Legal Analysis, AT&T may seek consequential damages and interest in this case. In addition, as explained above, AT&T denies that the Commission's October 29, 2014 Letter Order somehow "disallowed" any aspects of AT&T's damages claims. *See* para. 4, *supra* (citing to Legal Analysis § VII). Otherwise, paragraph 52 does not contain factual allegations or legal arguments to which a response is required. If it does, however, those allegations or arguments are denied.

53. As explained in Part I.C. of AT&T's Supplemental Complaint, AT&T may seek attorneys' fees in this case, at the District Court. Because Defendants (i) are common carriers and (ii) have violated the Act, AT&T denies there is any basis to conclude—as Defendants suggest the Commission should—that a claim for attorneys' fees is "irrelevant." Further, as explained above, AT&T denies that the Commission's October 29, 2014 Letter Order somehow "disallowed" any aspects of AT&T's damages claims. *See* para. 4, *supra* (citing to Legal Analysis § VII). Otherwise, paragraph 53 does not contain factual allegations or legal arguments to which a response is required. If it does, however, those allegations or arguments are denied.

54. Paragraph 54 does not contain factual allegations or legal arguments to which a response is required. If it does, however, those allegations or arguments are denied.

55. As explained above, AT&T denies that Defendants provided any services to AT&T or that AT&T previously stipulated or admitted otherwise. *See* para. 3, *supra*; *see also* ¶¶ 55-63 of AT&T’s Supplemental Complaint. AT&T further denies that Defendants’ estoppel theories have any merit. *See* Legal Analysis § III. AT&T also denies that Defendants—having operated as “sham” entities—are entitled to collect any amounts from AT&T. *See* para. 9, *supra*.

Further, AT&T denies any suggestion that the Commission has “no authority” to determine whether Defendants are entitled to compensation. First, the District Court specifically posed this question to the Commission in Referred Issue 2, which asks whether, “[i]f [Defendants] failed to provide switched access services consistent with the terms of their tariffs, did [Defendants] provide some other regulated service to AT&T for which are they entitled to compensation?” Second, AT&T denies that Defendants have provided “unregulated” services outside the scope of Referred Issue 2. As explained above, the Commission’s finding in the *Liability Order* that Defendants operated as “shams” does not somehow mean that they—despite repeatedly claiming to the contrary in this very proceeding—are not common carriers subject to Title II regulation. *See* para. 5, *supra* (citing to Legal Analysis § I(B)).

AT&T further denies that Defendants “are entitled to an award of *quantum meruit* damages. *See* Supp. Compl, ¶¶ 77-89; Legal Analysis §§ III(B), VIII(B). Otherwise, paragraph 55 does not contain factual allegations or legal arguments to which a response is required. If it does, however, those allegations or arguments are denied.

56. As explained above, AT&T denies the Commission’s finding in the *Liability Order* that Defendants operated as “shams” somehow means that they—despite repeatedly

claiming to the contrary in this very proceeding—are not common carriers subject to Title II regulation. *See* para. 5, *supra* (citing to Legal Analysis § I(B)). AT&T further denies that Defendants provided any services to AT&T, *see* para. 3, *supra*, or that the *Liability Order* concluded otherwise. AT&T also denies that Defendants—having operated as “sham” entities—are entitled to collect any amounts from AT&T. *See* para. 9, *supra*. Specifically, AT&T denies that (i) Defendants provided any services for which they are entitled to compensation, *see* para. 3, *supra*, (ii) Defendants have a valid unjust enrichment claim against AT&T or that AT&T would be “unjustly enriched,” *see* para. 6, *supra* (citing Legal Analysis § V), and (iii) have the ability to pursue a *quantum meruit* claim, *see* ¶¶ 77-89 of AT&T’s Supplemental Complaint; Legal Analysis §§ III(B), VIII(B), or (iv) an award of damages against Defendants would violate the Fifth Amendment to the United States Constitution. *See* para. 9, *supra* (citing Legal Analysis § VI). Otherwise, paragraph 56 does not contain factual allegations or legal arguments to which a response is required. If it does, however, those allegations or arguments are denied.

57. As explained above, AT&T denies that Defendants provided any services to AT&T. *See* paras. 3, 55 *supra*. Because this paragraph—the substance of which Defendants admit—provides further evidence of that Defendants did not provide any service to AT&T, AT&T denies Defendants’ claim that the paragraph is irrelevant to this case. AT&T further denies that Defendants’ estoppel theories have any merit. *See* Legal Analysis § III. AT&T also denies Defendants’ assertion that the “rates that apply to the Local Switching tail circuits that the CAPS caused to be provided to AT&T reflect Beehive’s tariffed rates.” As noted above, AT&T disputes that Defendants provided any service to AT&T. Further, the reference to “tail circuits” is vague, *see* para. 19, *supra*, and the significance of Beehive’s tariffed rates to the matters in issue in this case is disputed. *See* para. 29, *supra*. Otherwise, paragraph 57 does not contain

factual allegations or legal arguments to which a response is required. If it does, however, those allegations or arguments are denied.

58. AT&T denies Defendants' characterization of Dr. Toof's declaration and states that the declaration speaks for itself. AT&T also denies that it is raising arguments that conflict with Dr. Toof's declaration and is thus estopped from raising those arguments. Further, as explained above, AT&T denies that (i) the Commission's finding in the *Liability Order* that Defendants operated as "sham" entities somehow means that they—despite repeatedly claiming to the contrary in this very proceeding—are not common carriers subject to Title II regulation, *see* para. 5, *supra*, (citing to Legal Analysis § I(B)), (ii) Defendants provided any services to AT&T, *see* paras. 3, 55 *supra* or (iii) Defendants' estoppel theories have any merit. *See* Legal Analysis § III. Otherwise, paragraph 58 does not contain factual allegations or legal arguments to which a response is required. If it does, however, those allegations or arguments are denied.

59. As explained above, AT&T denies that the Commission's finding in the *Liability Order* that Defendants operated as "shams" somehow means that they—despite repeatedly claiming to the contrary in this very proceeding—are not common carriers subject to Title II regulation. *See* para. 5, *supra* (citing to Legal Analysis § I(B)). AT&T also denies that Defendants provided any services to AT&T or that AT&T previously stipulated or admitted otherwise. *See* paras. 3, 55 *supra*. Otherwise, paragraph 59 does not contain factual allegations or legal arguments to which a response is required. If it does, however, those allegations or arguments are denied.

60. Paragraph 60 does not contain factual allegations or legal arguments to which a response is required. If it does, however, those allegations or arguments are denied.

61. As explained above, AT&T denies that Defendants provided any services to AT&T, *see* para. 3, *supra* or that Defendants' estoppel theories have any merit. *See* Legal Analysis § III. Further, AT&T denies Defendants' claim the findings of the Utah Public Service Commission in the *Utah PSC Revocation Order* (which are set forth in not 72) are irrelevant. Those factual (as opposed to legal) findings are fully consistent with the Utah District Court's findings that (i) All American did not own, lease, or operate the end office switches used in the calls to Utah and Nevada for which Sprint was being billed access charges and (ii) all of the Spring long-distance calls directed to Joy telephone numbers were terminated in Utah, not Nevada. *See* Supp. Compl. ¶¶ 60-61 & nn.71-72. Notably, Defendants do not deny either of those factual propositions, which are, in turn, consistent with the Commission's findings in the *Liability Order*. Finally, AT&T is puzzled by Defendant All American's denial that it did not provide service to either Joy or Beehive, especially in light of Defendants' claim elsewhere in their Answer (*see e.g.* para. 62), that they were operating as Beehive's agent – a claim that AT&T agrees is unsubstantiated. Otherwise, paragraph 61 does not contain factual allegations or legal arguments to which a response is required. If it does, however, those allegations or arguments are denied.

62. As explained above, AT&T denies that the Commission's *Liability Order* somehow supports a finding that Defendants—despite their repeated statements to the contrary in this very proceeding—are not common carriers subject to Title II. *See* para. 5, *supra* (citing to Legal Analysis § I(B)). Otherwise, paragraph 62 does not contain factual allegations or legal arguments to which a response is required. If it does, however, those allegations or arguments are denied.

63. AT&T denies the host of baseless, yet oft-repeated, arguments contained in this paragraph. Specifically, AT&T denies that (i) Defendants provided any services to AT&T, *see* paras. 3, 55 *supra*, or that Defendants’ estoppel theories have any merit, *see* Legal Analysis § III, (ii) the Commission’s *Liability Order* somehow supports a finding that Defendants—despite their repeated statements to the contrary in this very proceeding—are not common carriers subject to Title II, *see* para. 5, *supra*, (citing to legal Analysis § I(B)), (iii) Defendants—having operated as “shams” to improperly bill AT&T for millions of dollars for services they did not provide—are entitled to collect any amounts from AT&T, *see* para. 9, *supra*, (iv) Defendants acted as agents for Beehive or that such a relationship would imply a right to compensation, *see* para. 3, *supra*, (v) Defendants have valid *quantum meruit* or unjust enrichment claims against AT&T that must be pursued in the district court or that AT&T’s damages should be reduced as a result of such claims, *see* para. 6, *supra*, Legal Analysis §§ III(B), V, VIII(B), and (vi) an award of damages against Defendants would violate the Fifth Amendment to the United States Constitution. *See* para. 9, *supra* (citing Legal Analysis § VI). Otherwise, paragraph 63 does not contain factual allegations or legal arguments to which a response is required. If it does, however, those allegations or arguments are denied.

64. As an initial matter, AT&T denies that Defendants provided any services to AT&T, *see* paras. 3, 55 *supra*. As for the access charges billed to AT&T, Defendants again concede, as they must, that the services charged were not provided pursuant to a valid tariff or an express contract with AT&T. As a result, Defendants may not lawfully recover compensation for those services. *See* Supp. Compl. Part II.B. AT&T denies that this result is “ludicrous” or leaves a gap in “regulatory relief,” and further denies that Defendants are entitled to any equitable relief. *See* Supp. Compl. Part III; Legal Analysis §§ III(B), V, VIII(B). As explained

in Part III of AT&T's Supplemental Complaint, Defendants' state-law claims conflict with federal law and thus are preempted under the Supremacy Clause. Otherwise, paragraph 64 does not contain factual allegations or legal arguments to which a response is required. If it does, however, those allegations are denied.

65. As explained above, AT&T denies that the Commission's *Liability Order* somehow supports a finding that Defendants—despite their repeated statements to the contrary in this very proceeding—are not common carriers subject to Title II. *See* para. 5, *supra* (citing to Legal Analysis § I(B)). AT&T further denies that Section 203 of the Communications Act is irrelevant to this case. AT&T also denies Defendants' characterization of the cases cited in footnote 73 of the Supplemental Complaint as supporting their *quantum meruit* claim. As Defendants effectively concede, those cases support AT&T's claims for damages for the payments AT&T made to Defendants, because they provide that tariffed charges cannot be collected when carriers do not have valid tariffs or do not provide services pursuant to such tariffs, and here, Defendants improperly billed AT&T switched access charges (holding themselves out as common carriers) pursuant to invalid and inapplicable tariffs (*Liability Order* ¶¶ 34-41). Further, the cases cited by AT&T do not support Defendants' equitable claims, which, as AT&T explains elsewhere, conflict with federal law and thus are preempted under the Supremacy Clause. *See* Supp. Compl. Part III; Legal Analysis §§ III.B, VIII(B). For example, in *Paetec*, the court of appeals upheld the district court's determination "that the filed rate doctrine precluded equitable counterclaims." 204 Fed. Appx. 271. Further, while the Defendants say the 10th Circuit in *Union* heard Union's "claims based in . . . *quantum meruit*," this is simply not accurate. Rather, the 10th Circuit plainly applied the principle cited by AT&T and held "equitable relief is *not* appropriate under the circumstances." 495 F.3d at 1197. The 10th Circuit

explained that, “[b]ecause federal law requires parties such as Qwest and Union to set rates through interconnection agreements, 47 U.S.C. § 252, allowing Union to recover damages under a theory of unjust enrichment or *quantum meruit* would frustrate the federal regulatory mechanism.” *Id.* Otherwise, paragraph 65 does not contain factual allegations or legal arguments to which a response is required. If it does, however, those allegations are denied.

66. As explained above, AT&T denies that the Commission’s *Liability Order* somehow supports a finding that Defendants—despite their repeated statements to the contrary in this very proceeding—are not common carriers subject to Title II. *See* para. 5, *supra* (citing to Legal Analysis § I(B)). AT&T further denies that the CLEC tariffing rules adopted in the *Eighth Report and Order* are irrelevant to this case. Otherwise, paragraph 66 does not contain factual allegations or legal arguments to which a response is required. If it does, however, those allegations or arguments are denied.

67. As explained above, AT&T denies that the Commission’s *Liability Order* somehow supports a finding that Defendants—despite their repeated statements to the contrary in this very proceeding—are not common carriers subject to Title II. *See* para. 5, *supra* (citing to Legal Analysis § I(B)). AT&T further denies that the CLEC tariffing rules are irrelevant to this case. AT&T also denies that Defendants provided any services to AT&T, *see* paras. 3, 55, *supra*, or that Defendants’ estoppel theories have any merit. *See* Legal Analysis § III. Otherwise, paragraph 67 does not contain factual allegations or legal arguments to which a response is required. If it does, however, those allegations or arguments are denied.

68. As explained above, AT&T denies that Defendants provided any services to AT&T, *see* paras. 3, 55, *supra*, or that Defendants’ estoppel theories have any merit. *See* Legal Analysis § III. Specifically, AT&T denies that Defendants’ claim that “the traffic at issue in this

case, is and always was, terminating switched access provided by Beehive and generated by the CAPs.” That position finds no support in the record nor is it consistent with Defendants’ having filed tariffs, billed AT&T for services and then commenced the lawsuit that led to this proceeding. *See* Supp. Compl. Part II.A; Legal Analysis § III.A. As explained in Part II.B of the Supplemental Complaint, even if Defendants had provided regulated service, they did not do so under either a valid tariff or an express contract with AT&T and so are not entitled to compensation. AT&T denies that the remedy portion of the *Total Telecom* decision has any applicability to this case. *See* para. 17, *supra*, Legal Analysis §§ I(B), VIII(B). Otherwise, paragraph 68 does not contain factual allegations or legal arguments to which a response is required. If it does, however, those allegations or arguments are denied.

69. As explained above, AT&T denies that Defendants provided any services to AT&T. *See* paras. 3, 55 *supra*. AT&T further denies Defendants’ assertion that “the record in this case demonstrates that the CAPs caused switched access services to be provided to AT&T via Beehive.” Defendants do not provide any record support for this claim, nor does such support exist. *See also* Legal Analysis § III.A. AT&T also denies that Defendants have valid *quantum meruit* claims to pursue before the SDNY Court. *See* Supp. Compl. ¶¶ 77-89; Legal Analysis §§ III(B); V; VIII(B). Otherwise, paragraph 69 does not contain factual allegations or legal arguments to which a response is required. If it does, however, those allegations or arguments are denied.

70. As explained above, AT&T denies that the Commission’s *Liability Order* somehow supports a finding that Defendants—despite their repeated statements to the contrary in this very proceeding—are not common carriers subject to Title II. *See* para. 5, *supra* (citing to Legal Analysis § I(B)). AT&T further denies that Defendants provided any services to AT&T ,

see para. 3, *supra*, or that Defendants' estoppel theories have any merit. *See* Legal Analysis § III. AT&T also denies Defendants' characterization of the *Farmers III* decision and the cases cited therein. AT&T admits that the Commission has indicated in dicta that there may be some cases where based on the totality of the circumstances a carrier may be entitled to some compensation for providing a non-tariffed service. *See* Supp. Compl. ¶ 72. However, AT&T denies that given the circumstances at issue here, Defendants are entitled to any compensation. *See* Supp. Compl. § II.C. Otherwise, paragraph 70 does not contain factual allegations or legal arguments to which a response is required. If it does, however, those allegations or arguments are denied.

71. In paragraph 71, Defendants attack the *Farmers III* decision, on which they separately rely, for having invalidated a tariff retroactively. Defendants provide no support for their criticism of the Commission's decision in *Farmers*, and more fundamentally, that criticism is completely irrelevant to AT&T's damages claim. The Defendants also fail to account for the fact that this supposedly unprecedented decision was unanimously affirmed by the court of appeals. Otherwise, paragraph 71 does not contain factual allegations or legal arguments to which a response is req. If it does, however, those allegations or arguments are denied.

72. As explained above, AT&T denies that Defendants provided any services to AT&T, *see* paras. 3, 55 *supra*, or that Defendants' estoppel theories have any merit. *See* Legal Analysis § III. AT&T also denies that footnote 96 of the *Farmers III* order supports Defendants' claim for damages, as explained in detail in Part II.C of the Supplemental Complaint. AT&T further denies that the "foundation" of its damages claim is "the assertion that, as a matter of law, absent a valid tariff or contract compensation can never be enforced against a carrier that took service." AT&T has not taken that position. Instead, it has asserted that in the circumstances of

this case, Defendants are not entitled to compensation. *See* Supp. Compl. Parts II-III; Legal Analysis § VIII.B. Further, although AT&T agrees that the Commission should not award damages to the Defendants (since the Defendants are not entitled to any damages), the Commission should address Referred Issues 2 and 3, which relate to the Defendants' claims for compensation under alternative theories, apart from their tariff claims. Otherwise, paragraph 72 does not contain factual allegations or legal arguments to which a response is required. If it does, however, those allegations or arguments are denied.

73. As explained above, AT&T denies that Defendants provided any services to AT&T, *see* paras. 3, 55 *supra*, or that Defendants' estoppel theories have any merit. *See* Legal Analysis § III. As described in Part II.C of the Supplemental Complaint, the totality of circumstances in this case—that Defendants provided no service to AT&T and instead operated as “sham” CLECs in violation of Section 201(b) of the Act—makes clear that Defendants are not entitled to compensation for the admittedly un-tariffed but regulated services they allegedly provided. As explained above, AT&T denies that the Commission's *Liability Order* somehow supports a finding that Defendants—despite their repeated statements to the contrary in this very proceeding—are not common carriers subject to Title II. *See* para. 5, *supra* (citing to legal Analysis § I(B)). AT&T further denies that the Commission's determination that the access service charges billed to AT&T by Defendants were “improper” is at all ambiguous. AT&T further denies that the level of Beehive's rates is relevant to that determination or to AT&T's damages claims given that (i) Defendants “were not competing with Beehive in any real sense,” *see* para. 29, *supra* (citing *Liability Order* ¶ 31), and (ii) Defendants' “sham” operations were designed “precisely so that [Defendants] could exploit the . . . benchmark[ing rule].” *See* para. 92, *infra* (citing *Liability Order* ¶ 31). Otherwise, paragraph 73 does not contain factual

allegations or legal arguments to which a response is required. If it does, however, those allegations or arguments are denied.

74. AT&T denies that footnote 96 in the *Farmers III* order, which Defendants admit is dictum, “completely undercuts” AT&T’s assertion that Defendants have no recourse for compensation outside of a tariff or contract. The *New Valley* decision, cited in footnote 96 and discussed in paragraph 74 of the Supplemental Complaint, presents no basis for Defendants’ claim that they are entitled to compensation for the services they allegedly provided AT&T. *See* Supp. Compl. Part II.C. Otherwise, paragraph 74 does not contain factual allegations or legal arguments to which a response is required. If it does, however, those allegations or arguments are denied.

75. As explained above, AT&T denies that Defendants provided any services to AT&T, *see* paras. 3, 55 *supra*, or that Defendants’ estoppel theories have any merit. *See* Legal Analysis § III. AT&T also denies that Defendants provided AT&T a service functionally equivalent to switched access service. AT&T admits that the Commission found in its *Total Telecom* order that Total Telecom was a “sham” and otherwise admits that Defendants accurately quote from that decision. AT&T, however, denies that the remedy portion of the *Total Telecom* decision has any applicability to this case. *See* para. 17, *supra*, Legal Analysis §§ I(B), VIII(B).

As to the *New Valley* decision (the Defendants mistakenly refer to *Northern Valley*), AT&T maintains that the significant factual differences between that case and this one – among others, the carrier in *New Valley* provided a “functionally similar” service to the tariffed services, whereas the Defendants lacked switching or other facilities to provide any service that was similar to switched access – mean that *New Valley* is not applicable here. Further, although *New*

Valley is not applicable here, any reading of that decision that would allow Defendants to receive compensation on the facts here would be inconsistent with Sections 203 and 211 of the Act (including decisions applying Section 203, such as *Maislin Indus. v. Primary Steel*, 497 U.S. 161 (1990)), as well as the Commission’s rules providing that CLECs’ exclusive means to obtain compensation for their access services are via either validly filed tariffs or express, negotiated contracts.

As to footnote 85 in the Supplemental Complaint, the description of services in Defendants’ tariffs, regardless of whether those tariffs were subsequently invalidated by the Commission, is clearly relevant to an analysis under the *New Valley* holding of whether Defendants were providing “functionally similar” service. As discussed above, Defendants clearly were not. Regarding footnote 86 of the Supplemental Complaint, AT&T denies that it impermissibly cited the Commission’s *Connect America Order*. AT&T also denies that Defendants’ role in the “access stimulation” arrangement with Beehive qualified as providing AT&T switched access services, or any service for that matter. *See* Supp. Compl. Part II.A.

As for paragraph 37 of the *Total Order*, which the Defendants quote, AT&T does not believe that it is an authoritative statement of the law, because the remedy portion of the *Order* was remanded and not reinstated. But, in any event, that portion of *Total* clearly does not support the Defendants’ requests for compensation on the facts of this case. In *Total*, the Commission found that “Complainants did provide a service to AT&T, *i.e.*, completing calls from AT&T’s customers to [a chat provider].” Here, by contrast, the record unambiguously establishes that, unlike in *Total*, the Defendants did not play any role in “completing calls from AT&T’s customers” because they owned no switch or other facilities that could have provided functions that allowed calls to be completed. *See Liability Order* ¶ 17. Further, in *Total*, the

Commission relied on the fact that Total/Atlas had incurred “legitimate costs” that the Commission determined they were “entitled to recover,” whereas the record here is bereft of any evidence of the Defendants’ costs (let alone that such costs are “legitimate”).² Finally, the Commission’s unsupported statement in paragraph 37 of *Total* that “AT&T recovered revenue through ordinary long-distance rates” is also no longer applicable, especially in light of the Commission’s *Connect America Order*, which held that “[w]hether the IXC’s revenues for a call are more or less than its cost of terminating the call is not at issue.” *Connect America Order* n.1090. Otherwise, paragraph 75 does not contain factual allegations or legal arguments to which a response is required. If it does, however, those allegations or arguments are denied.

76. AT&T admits that Defendants accurately quote dictum from the *America’s Choice* order. AT&T denies that the *America’s Choice* order provides any support for Defendants’ claim that they are entitled to compensation for services they allegedly provided AT&T. *See* Supp. Compl. Parts II-III; Legal Analysis § V. Otherwise, paragraph 76 does not contain factual allegations or legal arguments to which a response is required. If it does, however, those allegations or arguments are denied.

77. In this paragraph Defendants summarize their position regarding Referred Issue 3 and, in that connection assert that (i) the Commission does not have the authority to tell the SDNY Court that it cannot hear Defendants’ *quantum meruit* claims, and (ii) that those claims are not preempted by federal law. AT&T takes issue with both of those propositions. As explained in Section VIII(B)(1) of AT&T’s Legal Analysis, the Commission certainly has the authority to respond to Referred Issue 3 and provide its views as to whether Defendants’ state

² Further, under the Commission’s CLEC access rules, promulgated in 2001 (after *Total*), the Commission flatly rejected the notion that competitive LECs are “entitled” to recover all of their legitimate costs via access charges assessed on long distance companies, *Seventh Report and Order* ¶ 3, and thus the Commission’s statement in paragraph 37 of *Total* is no longer applicable.

law *quantum meruit* claims are preempted. AT&T also disagrees with Defendants' view as to whether Defendants' state law *quantum meruit* claims are in fact preempted. AT&T's position in this regard is set forth in greater detail below in Part III of its Supplemental Complaint and in Sections III(B), V, VIII(B) of its Legal Analysis. Otherwise, paragraph 77 does not contain factual allegations or legal arguments to which a response is required. If it does, however, those allegations or arguments are denied.

78. AT&T denies Defendants unsupported assertion that their *quantum meruit* claim has merit. As explained above, AT&T denies that Defendants provided any services to AT&T. *See paras. 3,55 supra.* AT&T also denies that footnote 96 of the *Farmers III* order provides any support for Defendants' claims to compensation in this case, as explained in Part II.C of the Supplemental Complaint. Otherwise, paragraph 78 does not contain factual allegations or legal arguments to which a response is required. If it does, however, those allegations or arguments are denied.

79. AT&T denies that the Court's "observations" in *AT&T v. FCC* quoted by Defendants provide a basis for Defendants' *quantum meruit* claims. To the contrary, as explained in Part III of the Supplemental Complaint and Sections III(B), V, and VIII(B) of AT&T's Legal Analysis, Defendants' state law *quantum meruit* claims are preempted by federal law. AT&T further notes that its specific response to Defendants' observations regarding the significance of *AT&T v. FCC* is set forth in Section III(B) of its Legal Analysis. Otherwise, paragraph 79 does not contain factual allegations or legal arguments to which a response is required. If it does, however, those allegations or arguments are denied.

80. AT&T denies that it is estopped from asserting that Defendants' quasi-contract claims are preempted in this case. As explained in Section III(B) of the Legal Analysis, the

positions taken by AT&T in the cases cited by Defendants are not contrary to its current position on preemption. Otherwise, paragraph 80 does not contain factual allegations or legal arguments to which a response is required. If it does, however, those allegations or arguments are denied.

81. Defendants do not seem to contest the basic proposition that “equitable relief is unavailable where there is a regulatory scheme in place” that “provides a compensation mechanism to the plaintiff.” Instead, they claim that the *Liability Order* effectively removes Defendants from the Commission’s “regulatory scheme” and creates a “regulatory gap that must be filled by court using equitable principles. As explained in Sections I(B) and VIII(B) of AT&T’s Legal Analysis, the *Liability Order* does no such thing. AT&T further denies that the *Connect Insured* and *XChange Telecom* cases, which hold that equitable claims are preempted by the Commission’s regulatory regime for access charges, were wrongly decided. As for the other decisions discussed by Defendants in this paragraph, AT&T adheres to its position that the *INS*, *Northern Valley* and *Union Tel* cases support its position that Defendants’ state law *quantum meruit* claims are preempted. As for the *MetTel* case, AT&T denies that that case has any application to the facts of this case. *See* Legal Analysis § VIII(B). Otherwise, paragraph 81 does not contain factual allegations or legal arguments to which a response is required. If it does, however, those allegations or arguments are denied.

82. Defendants admit that there is a comprehensive regulatory scheme governing the provision of switched access services by CLECs as described in AT&T’s Supplemental Complaint but deny that the scheme preempts equitable state-law claims. As AT&T explains in Part III of the Supplemental Complaint and in Sections Section III(B) and VIII(B) of its Legal Analysis that regulatory scheme is comprehensive, applies to Defendants and preempts Defendants’ state law *quantum meruit* claims. Otherwise, paragraph 82 does not contain factual

allegations or legal arguments to which a response is required. If it does, however, those allegations or arguments are denied.

83. In this paragraph, Defendants attempt to distinguish the cases cited by AT&T on the grounds that those cases do not involve the same “regulatory gap” that Defendants claim is involved here. As explained in Section VIII(B) of AT&T’s Legal Analysis, no “regulatory gap exists in this case” and, as a consequence, equitable relief is not appropriate. Accordingly, Defendants’ efforts to distinguish the cases AT&T has cited are unavailing. Otherwise, paragraph 83 does not contain factual allegations or legal arguments to which a response is required. If it does, however, those allegations or arguments are denied.

84. AT&T cited the *Jefferson* decision in this paragraph in further support of the point that the Commission has put in place a comprehensive regulatory scheme governing the provision of switched access services by CLECs—a point that Defendants do not appear to contest. AT&T denies that *Jefferson* stands for the proposition that “access stimulation is switched access traffic, properly tariffed and charged at switched access rates.” Indeed, Defendants admit later in this paragraph that that positions has been rejected by the Commission. The Commission has also rejected Defendants’ position as to the significance of the *Connect America* Order. See *Reconsideration Order* ¶¶ 16-17. Finally, AT&T denies that the *Liability Order* somehow supports a finding that Defendants—despite their repeated statements to the contrary in this very proceeding—are not common carriers subject to Title II. See para. 5, *supra* (citing Legal Analysis § I(B)). Otherwise, paragraph 84 does not contain factual allegations or legal arguments to which a response is required. If it does, however, those allegations or arguments are denied.

85. As explained above, AT&T denies that the *Liability Order* somehow supports a finding that Defendants—despite their repeated statements to the contrary in this very proceeding—are not common carriers subject to Title II. *See* para. 5, *supra* (citing Legal Analysis § I(B)). AT&T further denies that the *Liability Order* effectively removed Defendants from the Commission’s “regulatory scheme” that “provides a compensation mechanism.” *See id.* § VIII(B). AT&T also denies that the *Liability Order* created a “regulatory gap that must be filled by court using equitable principles.” *Id.* AT&T also denies that the AT&T/Beehive settlement has any application to this case, *see* Legal Analysis § II, or that any of Defendants’ estoppel theories have merit. *See id.* § III. Finally, AT&T denies Defendants’ characterization of the cases cited by AT&T in footnote 90 and denies that any of those cases support Defendants’ claims for equitable relief in this case. *See* Supp. Compl. Part III; Legal Analysis § III.B. Otherwise, paragraph 85 does not contain factual allegations or legal arguments to which a response is required. If it does, however, those allegations or arguments are denied.

86. As explained above, AT&T denies that the Commission’s *Liability Order* somehow supports a finding that Defendants—despite their repeated statements to the contrary in this very proceeding—are not common carriers subject to Title II. *See* para. 5, *supra* (citing to Legal Analysis § I(B)). AT&T denies that it is estopped from arguing that Defendants caused AT&T to be provided switched access service. *See* Legal Analysis § III(A). In addition, AT&T denies Defendants’ assertion that it has somehow admitted in this paragraph that “the service that the CAPS caused to be provided to AT&T is switched service.” As AT&T has previously stated on multiple occasions, it denies that Defendants have provided it with any services. *See* paras. 3, 55, *supra*. AT&T also denies that it ever admitted that the service Defendants caused to be provided to AT&T is switched access service or that Defendants must be compensated at the

applicable tariffed switched access rates. *See id.*; Legal Analysis § III. AT&T further denies that Beehive's rates are uncontested or that AT&T is obligated pursuant to the AT&T/Beehive settlement agreement to pay those rates for the services at issue in this case. *See* Legal Analysis § II. As explained in the Legal Analysis, AT&T denies that the *Liability Order* created a regulatory gap, *see id.* § VIII(B)(2), or that the Commission lacks authority to opine as to whether Defendants can recover compensation on state law grounds. *See id.* § VIII(B). Otherwise, paragraph 86 does not contain factual allegations or legal arguments to which a response is required. If it does, however, those allegations or arguments are denied.

87. As explained above, AT&T denies that the Commission's *Liability Order* somehow supports a finding that Defendants—despite their repeated statements to the contrary in this very proceeding—are not common carriers subject to Title II. *See* para. 5, *supra* (citing to Legal Analysis § I(B)). Accordingly, AT&T denies that the Commission's regulatory regime is inapplicable to Defendants. Paragraph 87 does not respond to the point raised by AT&T that allowing *quantum meruit* claims would degrade the uniform federal standard in the Act because rates for service would vary depending on the law of each state. Instead, Defendants raise the following arguments that are irrelevant, self-serving, and unsupported: (i) the best way to guarantee uniformity in service rates would have been to uphold Defendants' tariffs; and (ii) the only rate that can apply to the traffic, no matter what legal theory is employed, is Beehive's tariffed rates for Local Switching in effect of the time the service was provided. The first argument is clearly no longer relevant given that the *Liability Order's* holding to the contrary is now final and non-appealable. Defendants base their second argument on the decision in *Total Telecom* and on the settlement agreement between AT&T and Beehive, but AT&T has shown that neither has any relevance to this case. *See* paras. 17, 20, 75 *supra*; Legal Analysis §§ I(B),

VIII(B). Further, as explained in Section V of the Legal Analysis, AT&T denies that it drove Defendants out of business. Finally, AT&T denies that the AT&T/Beehive settlement agreement has any application to the matters at issue in this case. *See* Legal Analysis § II. Otherwise, paragraph 87 does not contain factual allegations or legal arguments to which a response is required. If it does, however, those allegations or arguments are denied.

88. As explained in Section VIII(B) of AT&T's Legal Analysis, the Commission has the authority to opine as to whether Defendants' state law *quantum meruit* claims are preempted by federal law. Therefore, the assertions in this paragraph to the contrary are denied. Otherwise, paragraph 88 does *not* contain factual *allegations* or legal arguments to which a response is required. If it does, however, those allegations or arguments are denied.

89. As explained above, AT&T denies that Defendants provided any services to AT&T or that AT&T previously stipulated otherwise. *See* paras. 3, 55, *supra*. AT&T further denies that Defendants' estoppel theories have any merit. *See* Legal Analysis § III. Otherwise, paragraph 89 does not contain factual allegations or legal arguments to which a response is required. If it does, however, those allegations or arguments are denied.

90. Paragraph 90 does not contain factual allegations or legal arguments to which a response is required. If it does, however, those allegations or arguments are denied.

91. Paragraph 91 does not contain factual allegations or legal arguments to which a response is required. If it does, however, those allegations or arguments are denied.

92. In responding to this paragraph, Defendants do not deny that the Commission in its *Liability Order* concluded that it was "irrelevant" that Defendants had "benchmarked their rates in compliance with Section 61.26" (*see Liability Order* ¶ 31), nor do they expressly deny AT&T's assertion that "the Commission need not place any weight on its statement that a

CLEC's access rate that meets the requirements of the Commission's CLEC Access Orders and implementing regulations is 'presumed to be just and reasonable.'" Instead, Defendants in a rather convoluted fashion assert that AT&T is estopped from contesting the reasonableness of either the Beehive's rates or Defendants' rates. For the reasons explained in its Legal Analysis AT&T denies that Defendants' estoppel arguments have any merit. *See* Legal Analysis § III. AT&T also denies that Defendants' rates are reasonable. As explained above, the Commission found in the *Liability Order* that Defendants' "sham" operations were designed "precisely so that [Defendants] could exploit the . . . benchmark[ing rule]." *Liability Order* ¶ 31. As a consequence, Defendants' rates which were the product of the "sham" can hardly be found to be reasonable. Accordingly, the only reasonable response to Referred Issue 5a is for the Commission to find that no weight should be accorded to that fact that Defendants' rates match Beehive's rates. Otherwise, paragraph 92 does not contain factual allegations or legal arguments to which a response is required. If it does, however, those allegations or arguments are denied.

93. Paragraph 93 does not contain factual allegations or legal arguments to which a response is required. If it does, however, those allegations or arguments are denied.

94. While Defendants deny AT&T's assertion in this paragraph that "there is no record in the proceeding of different LECs charging different rates for the same service, or the same LEC charging different customers different rates for the same service," they do not provide any evidentiary support for that denial. Instead, they make a number of arguments that have little to do with the specific matters asserted by AT&T in this paragraph. For example, they assert erroneously that AT&T's position regarding the significance of rate uniformity as it relates to the preemption of Defendants' state law *quantum meruit* claims is at odds with its position regarding the significance of Referred Issues 5c and 5d. That simply is not the case. Indeed, it is

Defendants who are taking contrary positions – asserting, on the one hand, that they are not subject to Title II regulation, and, on the other, embracing the non-discrimination provisions of Title II. Having engaged in sham transactions and having failed to offer service consistent with the terms of its tariff, it is difficult to see what, if any, relevance Issues 5c and 5d have to the issues in this proceeding. *See* para. 26, *supra*. (citing Am. Compl. ¶¶ 122, 138-42). AT&T further denies that the remedy portion of the *Total Telecom* decision has any applicability to this case. *See* paras. 17, 75, *supra* (citing Legal Analysis §§ I(B), VIII(B)). AT&T also denies that Beehive’s tariffed rates have any relevance to this case given that (i) Defendants “were not competing with Beehive in any real sense,” *see* para. 29, *supra* (citing *Liability Order* ¶ 31), and (ii) Defendants’ “sham” operations were designed “precisely so that [Defendants] could exploit the . . . benchmark[ing rule].” *See* para. 92, *supra*. (citing *Liability Order* ¶ 31). Otherwise, paragraph 94 does not contain factual allegations or legal arguments to which a response is required. If it does, however, those allegations or arguments are denied.

95. AT&T denies that a finding that Defendants are not entitled to collect any amounts from AT&T—which AT&T contends should be the case, *see* para. 9, *supra*—would result in a rate that would “unreasonably discriminate in favor of AT&T.” Rather, *any providers* in AT&T’s position should be entitled to refunds based on Defendants’ violations of the Act, *see* Supp. Compl. ¶¶ 95-96, which Defendants *admit* would “avoid unreasonable discrimination in AT&T’s favor.” *See* para. 96, *supra*. AT&T also denies that such a finding would (i) unjustly enrich AT&T, *see* para. 6, *supra* (citing Legal Analysis § V), or (ii) violate the Fifth Amendment to the United States Constitution. *See* para. 9, *supra* (citing Legal Analysis § VI). Otherwise, paragraph 95 does not contain factual allegations or legal arguments to which a response is required. If it does, however, those allegations or arguments are denied.

96. As explained above, AT&T denies that a finding that Defendants are not entitled to collect any amounts from AT&T—which AT&T contends should be the case, *see* para. 9, *supra*—would result in a rate that would “unreasonably discriminate in favor of AT&T.” *See* para. 95, *supra*. AT&T also denies that such a finding would violate the Fifth Amendment to the United States Constitution. *See* para. 9, *supra* (citing Legal Analysis § VI). AT&T further denies that Defendants are entitled to recover damages based on *quantum meruit* (*see* Legal Analysis § VIII(B)) or that the Beehive rate would be an appropriate measure of *quantum meruit* damages given that it was the product of the sham arrangements. *See* para. 92, *supra* (citing to *Liability Order* ¶ 31). Otherwise, paragraph 96 does not contain factual allegations or legal arguments to which a response is required. If it does, however, those allegations or arguments are denied.

97. Paragraph 97 does not contain factual allegations or legal arguments to which a response is required. If it does, however, those allegations or arguments are denied.

98. AT&T denies the host of baseless arguments repeated in this paragraph. Specifically, AT&T denies that (i) Defendants provided any services to AT&T, *see* paras. 3, 55, *supra*, or that Defendants’ estoppel arguments have any merits, *see* Legal Analysis § III, (ii) Defendants—having operated as “shams” to improperly bill AT&T for millions of dollars for services they did not provide—are entitled to collect any amounts from AT&T, *see* para. 9, *supra*, (iii) the remedy portion of the *Total Telecom* decision has any applicability to this case, *see* paras. 17, 75, *supra*, Legal Analysis §§ I(B), VIII (B), (iv) Defendants have valid equitable claims against AT&T, *see* para. 6, *supra*, Legal Analysis § VIII(B), (v) AT&T is estopped from contesting the applicability of Beehive’s tariffed rates, *see id.* § III, and (vi) AT&T the Commission does not have the “authority to set damages” in this case. *See id.* §§ I(B),VII).

AT&T also denies Defendants' assertion that it is an "indisputable fact" that the service that AT&T took in this case was terminating Switched Access Service. That claim is directly at odds with the *Liability Order* finding regarding Referred Issue 1. *See Liability Order* ¶¶ 1, 24. Further, AT&T denies that it is necessary for the Commission to classify any services Defendants allegedly provided given that Defendants are not be entitled to compensation in any event. Otherwise, paragraph 98 does not contain factual allegations or legal arguments to which a response is required. If it does, however, those allegations or arguments are denied.

99. Paragraph 99 does not contain factual allegations or legal arguments to which a response is required. If it does, however, those allegations or arguments are denied.

100. Paragraph 100 does not contain factual allegations or legal arguments to which a response is required. If it does, however, those allegations or arguments are denied.

101. Paragraph 101 does not contain factual allegations or legal arguments to which a response is required. If it does, however, those allegations or arguments are denied.

102. AT&T denies that it is not entitled to damages. As explained in Section IV of AT&T's Legal Analysis, AT&T's damages claims are fully supported by the facts of this case and the Commission's *Liability Order*. AT&T also denies that (i) it would be unjustly enriched if damages were to be awarded by the Commission, *see* Legal Analysis § V, or (ii) the Commission's October 29, 2014 Letter Order somehow "disallowed" any aspect of AT&T's damages claims or that the Commission validly could have done so. *See* para. 4, *supra* (citing to Legal Analysis § VII). Otherwise, paragraph 102 does not contain factual allegations or legal arguments to which a response is required. If it does, however, those allegations or arguments are denied.

103. Paragraph 103 does not contain factual allegations or legal arguments to which a response is required. If it does, however, those allegations or arguments are denied.

104. AT&T denies that it is not entitled to damages. As explained in Section IV of AT&T's Legal Analysis, AT&T's damages claims are fully supported by the facts of this case and the Commission's *Liability Order*. AT&T also denies that (i) it would be unjustly enriched if damages were to be awarded by the Commission, *see* Legal Analysis § V, or (ii) the Commission's October 29, 2014 Letter Order somehow "disallowed" any aspect of AT&T's damages claims or that the Commission validly could have done so. *See* para. 4, *supra* (citing to Legal Analysis § VII). Otherwise, paragraph 104 does not contain factual allegations or legal arguments to which a response is required. If it does, however, those allegations or arguments are denied.

105. Paragraph 105 does not contain factual allegations or legal arguments to which a response is required. If it does, however, those allegations or arguments are denied.

106. AT&T denies that it is not entitled to damages. As explained in Section IV of AT&T's Legal Analysis, AT&T's damages claims are fully supported by the facts of this case and the Commission's *Liability Order*. AT&T also denies that (i) it would be unjustly enriched if damages were to be awarded by the Commission, *see* Legal Analysis § V, or (ii) the Commission's October 29, 2014 Letter Order somehow "disallowed" any aspect of AT&T's damages claims or that the Commission validly could have done so. *See* para. 4, *supra* (citing to Legal Analysis § VII). Otherwise, paragraph 106 does not contain factual allegations or legal arguments to which a response is required. If it does, however, those allegations or arguments are denied.

107. As explained above, AT&T denies that the Commission’s October 29, 2014 Letter Order somehow “disallowed” any of AT&T’s damages claims or that the Commission validly could have done so. *See* para. 4, *supra* (citing to Legal Analysis § VII). Otherwise, paragraph 107 does not contain factual allegations or legal arguments to which a response is required. If it does, however, those allegations or arguments are denied.

108. In responding to this paragraph, Defendants do not deny that their “willful conduct ... means that there is no basis to reduce AT&T’s damages in order to allow, the Defendants to retain some compensation.” As a consequence, that allegation should be deemed admitted. AT&T further notes that Defendants’ observations regarding the Commission’s rules pertaining to set off are not inconsistent with AT&T’s position. Otherwise, paragraph 108 does not contain factual allegations or legal arguments to which a response is required. If it does, however, those allegations or arguments are denied.

109. As explained above and in AT&T’s Legal Analysis, AT&T denies that Defendants provided any services to AT&T *see* paras. 3, 55 *supra*, or that Defendants’ estoppel claims have any merit. *See* Legal Analysis § III. AT&T further denies that Defendants—having operated as “sham” entities—are entitled to collect any amounts from AT&T, *see* para. 9, *supra*; Legal Analysis §§ I(B); VIII(B). AT&T also denies Defendants’ claims that AT&T is not entitled to damages. *See* Legal Analysis §§ IV, V, VI, VII. Otherwise, paragraph 109 does not contain factual allegations or legal arguments to which a response is required. If it does, however, those allegations or arguments are denied.

110. As explained above and in AT&T’s Legal Analysis, AT&T denies that Defendants provided any services to AT&T *see* paras. 3, 55 *supra*, or that Defendants’ estoppel claims have any merit. *See* Legal Analysis § III. AT&T further denies that (i) Defendants—

having operated as “sham” entities—are entitled to collect any amounts from AT&T, *see* para. 9, *supra*; (ii) Defendants can pursue equitable claims against AT&T in the District Court litigation, *see* Legal Analysis § VIII(B), or (iii) the *MetTel* decision has any relevance to this case. *See* para. 81, *supra*. Otherwise, paragraph 110 does not contain factual allegations or legal arguments to which a response is required. If it does, however, those allegations or arguments are denied.

111. As explained in Section IV of AT&T’s Legal Analysis, AT&T’s damages claims are fully supported by the facts of this case and the Commission’s *Liability Order*. In addition, AT&T denies that (i) Defendants have a valid unjust enrichment claim against AT&T, *see* para. 6, *supra*, or (ii) an award of damages against Defendants would violate the Fifth Amendment to the United States Constitution. *See* para. 9, *supra* (citing Legal Analysis § VI). Otherwise, paragraph 111 does not contain factual allegations or legal arguments to which a response is required. If it does, however, those allegations or arguments are denied.

112. As explained above, AT&T denies that the Commission’s October 29, 2014 Letter Order somehow “disallowed” any aspects of AT&T’s damages claims or that the Commission validly could have done so. *See* para. 4, *supra* (citing to Legal Analysis § VII). Otherwise, paragraph 112 does not contain factual allegations or legal arguments to which a response is required. If it does, however, those allegations or arguments are denied.

113. As explained above, AT&T denies that the Commission’s October 29, 2014 Letter Order somehow “disallowed” any aspects of AT&T’s damages claims or that the Commission validly could have done so. *See* para. 4, *supra* (citing to Legal Analysis § VII). Otherwise, paragraph 113 does not contain factual allegations or legal arguments to which a response is required. If it does, however, those allegations or arguments are denied.

114. As explained above, AT&T denies that the Commission's October 29, 2014 Letter Order somehow "disallowed" any aspects of AT&T's damages claims or that the Commission validly could have done so. *See* para. 4, *supra* (citing to Legal Analysis § VII). Otherwise, paragraph 114 does not contain factual allegations or legal arguments to which a response is required. If it does, however, those allegations or arguments are denied.

115. As explained above, AT&T denies that the Commission's October 29, 2014 Letter Order somehow "disallowed" any aspects of AT&T's damages claims or that the Commission validly could have done so. *See* para. 4, *supra* (citing to Legal Analysis § VII). Otherwise, paragraph 115 does not contain factual allegations or legal arguments to which a response is required. If it does, however, those allegations or arguments are denied.

116. As explained above, AT&T denies that the Commission's October 29, 2014 Letter Order somehow "disallowed" any aspects of AT&T's damages claims or that the Commission validly could have done so. *See* para. 4, *supra* (citing to Legal Analysis § VII). Otherwise, paragraph 116 does not contain factual allegations or legal arguments to which a response is required. If it does, however, those allegations or arguments are denied.

117. As explained above, AT&T denies that the Commission's October 29, 2014 Letter Order somehow "disallowed" any aspects of AT&T's damages claims or that the Commission validly could have done so. *See* para. 4, *supra* (citing to Legal Analysis § VII). Otherwise, paragraph 117 does not contain factual allegations or legal arguments to which a response is required. If it does, however, those allegations or arguments are denied.

118. As explained above, AT&T denies that the Commission's October 29, 2014 Letter Order somehow "disallowed" any aspects of AT&T's damages claims or that the Commission validly could have done so. *See* para. 4, *supra* (citing to Legal Analysis § VII).

Otherwise, paragraph 118 does not contain factual allegations or legal arguments to which a response is required. If it does, however, those allegations or arguments are denied.

119. As explained above, AT&T denies that the Commission’s October 29, 2014 Letter Order somehow “disallowed” any aspects of AT&T’s damages claims or that the Commission validly could have done so. *See* para. 4, *supra* (citing to Legal Analysis § VII). Otherwise, paragraph 119 does not contain factual allegations or legal arguments to which a response is required. If it does, however, those allegations or arguments are denied.

120. Paragraph 120 does not contain factual allegations or legal arguments to which a response is required. If it does, however, those allegations or arguments are denied.

121. As explained above and in AT&T’s Legal Analysis, AT&T denies that Defendants provided any services to AT&T *see* paras. 3,55, *supra*, or that Defendants’ estoppel claims have any merit. *See* Legal Analysis § III. AT&T further denies that Defendants—having operated as “sham” entities—are entitled to collect any amounts from AT&T, *see* para. 9, *supra*; Legal Analysis §§ I(B); VIII(B). Otherwise, paragraph 121 does not contain factual allegations or legal arguments to which a response is required. If it does, however, those allegations or arguments are denied.

122. As explained above, AT&T denies that Defendants—having operated as “sham” entities—are entitled to collect any amounts from AT&T. *See* para. 9, *supra*; As explained in its Legal Analysis, Defendants are subject to Title II of the Act and are thus precluded from seeking damages in equity. *See* Legal Analysis §§ I(B); VIII(B). Otherwise, paragraph 122 does not contain factual allegations or legal arguments to which a response is required. If it does, however, those allegations or arguments are denied.

123. Paragraph 123 does not contain factual allegations or legal arguments to which a response is required. If it does, however, those allegations or arguments are denied.

124. As explained above and in AT&T's Legal Analysis, AT&T denies that Defendants provided any services to AT&T *see* paras. 3, 5, *supra*, or that Defendants' estoppel claims have any merit. *See* Legal Analysis § III. AT&T further denies that (i) Defendants—having operated as “sham” entities—are entitled to collect any amounts from AT&T, *see* para. 9, *supra*; Legal Analysis §§ I(B), (ii) Defendants can pursue equitable claims against AT&T in the District Court litigation, *see* Legal Analysis § VIII(B), or (iii) the *MetTel* decision has any relevance to this case. *See* para. 81, *supra*; Legal Analysis § VIII(B). Otherwise, paragraph 124 does not contain factual allegations or legal arguments to which a response is required. If it does, however, those allegations or arguments are denied.

125. AT&T denies that the Commission should give weight in this case to the fact that Defendants benchmarked their rates to Beehive's tariffed rates. As explained above,, Defendants were not engaged in *bona fide* competition with Beehive in any way. *See* para. 29, *supra*. The evidence also shows that Defendants' “sham” operations worked to inflate Beehive's rates. *See* para. 57, *supra*. Finally, the Commission has previously rejected Defendants claims regarding the potential significance of the Beehive rates, *see Liability Order* ¶¶ 31, 33, and those findings are final and cannot be collaterally attacked. Otherwise, paragraph 125 does not contain factual allegations or legal arguments to which a response is required. If it does, however, those allegations or arguments are denied.

126. As explained above, AT&T denies that the Commission should give weight in this case to any claims regarding discrimination in the provision of services. *See* paras. 95-96,

supra. Otherwise, paragraph 126 does not contain factual allegations or legal arguments to which a response is required. If it does, however, those allegations or arguments are denied.

127. As explained above, AT&T denies that (i) the Commission’s *Liability Order* somehow supports a finding that Defendants—despite their repeated statements to the contrary in this very proceeding—are not common carriers subject to Title II, *see* para. 5, *supra* (citing to Legal Analysis § I(B)), (ii) Defendants provided any services to AT&T or that AT&T previously stipulated or admitted otherwise, *see* para. 3, *supra*, (iii) the remedy portion of the *Total Telecom* decision has any applicability to this case, *see* paras. 17, 75, *supra* (citing to Legal Analysis §§ I(B)), and (iv) it is necessary for the Commission to classify any services Defendants allegedly provided. *See* para. 98, *supra*. Otherwise, paragraph 127 does not contain factual allegations or legal arguments to which a response is required. If it does, however, those allegations or arguments are denied.

128. AT&T denies that it is not entitled to damages. As explained in Section IV of AT&T’s Legal Analysis, AT&T’s damages claims are fully supported by the facts of this case and the Commission’s *Liability Order*. Otherwise, paragraph 128 does not contain factual allegations or legal arguments to which a response is required. If it does, however, those allegations or arguments are denied.

III. RESPONSE TO DEFENDANTS’ AFFIRMATIVE DEFENSES

A. Defendants’ First Affirmative Defense

As its First Affirmative Defense, Defendants assert, *inter alia*, that AT&T’s damages claims are barred by 47 U.S.C. § 207. AT&T denies that Defendants’ First Affirmative Defense has any merit for the reasons set forth in Section I(A) of its Legal Analysis.

B. Defendants' Second Affirmative Defense

As its Second Affirmative Defense, Defendants assert, *inter alia*, that the *Liability Order* establishes that Defendants are not common carriers and, as a consequence, the Commission lacks jurisdiction to adjudicate claims against them. AT&T denies that Defendants' Second Affirmative Defense has any merit for the reasons set forth in Section I(B) of its Legal Analysis.

C. Defendants' Third Affirmative Defense

As its Third Affirmative Defense, Defendants assert, *inter alia*, that as a result of a 2007 settlement agreement between AT&T and Beehive, AT&T is estopped from claiming that any rates other than the Beehive rates are applicable to the traffic at issue in this proceeding. AT&T denies that Defendants' Third Affirmative Defense has any merit for the reasons set forth in Section II of its Legal Analysis.

D. Defendants' Fourth Affirmative Defense

As its Fourth Affirmative Defense, Defendants assert, *inter alia*, that as a result of past statements in this and other proceedings AT&T is estopped from contending that it did not receive terminations service from Defendants or that any rate other than the Beehive rate is applicable to the traffic at issue. AT&T denies that Defendants' Fourth Affirmative Defense has any merit for the reasons set forth in Section III of its Legal Analysis.

E. Defendants' Fifth Affirmative Defense

As its Fifth Affirmative Defense, Defendants assert, *inter alia*, that if the Commission were to award damages to AT&T in this proceeding, that award would constitute a taking in violation of the Fifth Amendment of the U.S. Constitution. AT&T denies that Defendants' Fifth Affirmative Defense has any merit for the reasons set forth in Section VI of its Legal Analysis.

F. Defendants' Sixth Affirmative Defense

As its Sixth Affirmative Defense, Defendants assert, *inter alia*, that AT&T's damages claims are barred by the doctrine of unjust enrichment. AT&T denies that Defendants' Fifth Affirmative Defense has any merit for the reasons set forth in Section V of its Legal Analysis.

G. Defendants' Seventh Affirmative Defense

As its Seventh Affirmative Defense, Defendants assert, *inter alia*, that AT&T has failed to adequately support its damages claims. AT&T denies that Defendants' Seventh Affirmative has any merit for the reasons set forth in Section IV of its Legal Analysis.

IV. AT&T's Information Designation

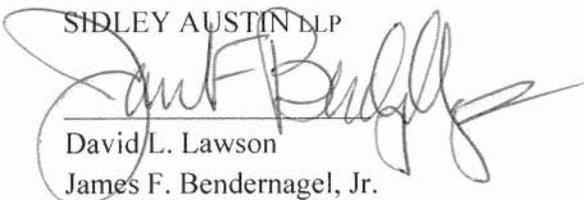
With respect to Section 1.726(d) of the Commission's rules, 47 C.F.R. § 1.726(d), AT&T states that it does not have anything to add to the information designation it provided with its Supplemental Complaint.

Dated: December 22, 2014

Respectfully submitted,

AT&T CORP.

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