

			2007 (Call Seconds as a % of Total)		
UTEX Jurisdiction for Rating by CPN Content	UTEX Jurisdiction for Rating - All IGIPOP routed as Local traffic and treated as No-Compensation Due		6	7	8
Empty	Empty CPN content - IGIPOP Customer - No Compensation Due	UTEX	7.5%	6.9%	6.2%
		ATT	8.5%	8.2%	7.6%
Interstate InterLATA	CPN representation for different LATAs - IGIPOP Customer - No Compensation Due	UTEX	23.7%	21.4%	22.1%
		ATT	23.5%	21.2%	21.9%
Interstate InterLATA	CPN representation for different LATAs - IGIPOP Customer - No Compensation Due	UTEX	31.1%	31.1%	31.3%
		ATT	30.7%	30.6%	30.6%
Intra-state same LATA and treated as "Bill and Keep"	CPN representation for the same LATA - IGIPOP Customer - No Compensation Due	UTEX	19.7%	24.3%	24.0%
		ATT	19.5%	24.1%	23.5%
Unknown	CPN content representation from IGIPOP Customer, which does not conflict with known E.164 addresses (expressly follows terms of IGIPOP tariff related to CPN representation) - No Compensation Due	UTEX	18.0%	16.2%	16.5%
		ATT	17.8%	16.0%	16.4%
Total		UTEX	100.0%	100.0%	100.0%
		ATT	100.0%	100.0%	100.0%
			2007 (Call Seconds)		
UTEX Jurisdiction for Rating by CPN Content	UTEX Jurisdiction for Rating - All IGIPOP routed as Local traffic and treated as No-Compensation Due		6	7	8
Empty	Empty CPN content - IGIPOP Customer - No Compensation Due	UTEX	320,320,667	368,633,368	339,909,155
		ATT	363,621,003	422,465,352	377,972,912
		difference	(43,300,336)	(53,831,984)	(38,063,757)
		diff % of UTEX	-13.52%	-14.60%	-11.20%
Interstate InterLATA	CPN representation for different LATAs - IGIPOP Customer - No Compensation Due	UTEX	1,018,622,054	1,153,336,071	1,213,817,921
		ATT	1,007,754,243	1,093,093,495	1,089,447,718
		difference	10,867,811	60,242,576	124,370,203
		diff % of UTEX	1.07%	5.22%	10.25%
Interstate InterLATA	CPN representation for different LATAs - IGIPOP Customer - No Compensation Due	UTEX	1,335,169,562	1,675,148,026	1,717,782,364
		ATT	1,315,504,860	1,583,442,486	1,526,081,672
		difference	19,664,702	91,705,540	191,700,692
		diff % of UTEX	1.47%	5.47%	11.16%
Intra-state same LATA and treated as "Bill and Keep"	CPN representation for the same LATA - IGIPOP Customer - No Compensation Due	UTEX	845,605,938	1,307,782,992	1,317,699,246
		ATT	838,344,539	1,243,225,203	1,169,096,064
		difference	7,261,399	64,557,789	148,603,182
		diff % of UTEX	0.86%	4.94%	11.28%
Unknown	CPN content representation from IGIPOP Customer, which does not conflict with known E.164 addresses (expressly follows terms of IGIPOP tariff related to CPN representation) - No Compensation Due	UTEX	771,943,092	873,048,950	904,542,782
		ATT	765,575,654	825,775,974	819,537,157
		difference	6,367,438	47,272,976	85,005,625
		diff % of UTEX	0.82%	5.41%	9.40%
Total		UTEX	4,291,661,313	5,377,949,407	5,493,751,468
		ATT	4,290,800,299	5,168,002,510	4,982,135,523
		difference	861,014	209,946,897	511,615,945
		diff % of UTEX	0.02%	3.90%	9.31%

APPENDIX D

Pre-Filed Direct Testimony of Rich Lewis in Texas PUC Docket No. 33323 dated
October 15, 2007

1 October 15, 2007

2 DOCKET NO. 33323

3

PETITION OF UTEX	§	
COMMUNICATIONS CORPORATION	§	
FOR POST-INTERCONNECTION	§	PUBLIC UTILITY COMMISSION
DISPUTE RESOLUTION WITH AT&T	§	
TEXAS AND PETITION OF AT&T	§	
TEXAS FOR POST-	§	
INTERCONNECTION DISPUTE	§	OF TEXAS
RESOLUTION WITH UTEX	§	
COMMUNICATIONS CORPORATION	§	

4

5 **PRE-FILED DIRECT TESTIMONY OF RICHARD LEWIS ON BEHALF OF**

6 **UTEX COMMUNICATIONS CORPORATION**

7

8 **Introduction**

9 **Q: PLEASE STATE YOUR NAME, BY WHOM YOU ARE EMPLOYED AND**

10 **YOUR JOB TITLE AND RESPONSIBILITIES.**

11 A: I am employed by Worldcall, Inc., the parent of UTEX Communications Corporation

12 (“UTEX”). Worldcall provides management services to UTEX pursuant to a management

13 services agreement. I serve as the Chief Financial Officer of UTEX. I am an officer and director

14 for UTEX.

15 **Q: PLEASE PROVIDE YOUR EDUCATIONAL AND PROFESSIONAL**

16 **BACKGROUND.**

17 A: I hold a bachelor’s of science degree in electrical engineering from the University of

18 Texas at Austin as well as a master’s degree in business administration (“MBA”) from the

19 University of Texas at Dallas. I worked for approximately 4 years as a process controls

20 engineer. After completing my MBA, I worked for 11 years as a banker primarily making

21 leveraged buyouts and acquisition finance loans for companies in the Southwest. I then spent

1 two years doing mergers and acquisition as well as business development work for a roll-up
2 company. I have spent the last 5 years as a CFO, the last three of which have been with UTEX.

3 **Q: WHAT IS THE PURPOSE OF YOUR TESTIMONY?**

4 A: I will testify on UTEX's behalf in this part of the proceeding by providing certain
5 information I believe is pertinent to the following DPL issues in this case: DPL Issues 11, 24,
6 28, 30, 32, 34, 36, 39, 41, 46, 47, 50 through 69, 84 through 91, and 94 through 100.

7 **Q: IS IT PART OF YOUR JOB RESPONSIBILITY TO OVERSEE THE CREATION
8 AND MAINTENANCE OF UTEX'S ACCOUNTING RECORDS AND OTHER
9 FINANCIALLY RELATED TRANSACTIONS AND MATTERS?**

10 A: Yes. I oversee the accounting for UTEX. This includes the payment of invoices and all
11 other monetary obligations and processing and recording of revenues. I also oversee the creation
12 and development of UTEX's accounting reports and I am responsible for other financial
13 reporting that is made to various regulatory bodies.

14 **Q: ARE YOU INVOLVED IN THE PROCESSING OF INVOICES SENT TO UTEX
15 BY AT&T TEXAS?**

16 A: Yes. I receive and supervise the review their invoices every month and have the ultimate
17 responsibility to ensure they are reviewed for amounts that are properly billed and those that are
18 not. Those amounts that are properly billed are paid under my supervision and direction. From
19 inception of UNE billing, UTEX has paid over \$100,000 to AT&T Texas for legitimate charges
20 that we ordered. Those that I believe (after consultation with counsel and where necessary other
21 personnel) relate to a chargeable item but are miscalculated for some reason are also paid, but
22 under dispute. UTEX has in fact paid amounts billed by AT&T Texas that UTEX disputes under
23 protest. But when an invoice asserts a charge that in our opinion is completely without merit and

1 has no support in the ICA – like the so-called “no CPN” charges and the so-called “interLATA
2 access” charges – we have refused to pay. See Exhibit 299.

3 I will note that AT&T Texas has taken exactly the same position. We submitted
4 liquidated damages invoices to AT&T Texas for amounts we assert are due under Attachment 17
5 for contract breaches committed by AT&T Texas. We have also invoiced AT&T Texas for
6 Signaling Layer Translation Services that we provide to AT&T Texas. See Exhibit 790. AT&T
7 Texas summarily rejects each of these two kinds of invoices, claiming they are not allowed under
8 the ICA. AT&T Texas has not paid, disputed or escrowed any of the billed amounts. Instead,
9 AT&T Texas takes the position that it will not pay any such amounts – under protest, or in
10 escrow – pending a ruling by a higher authority as to whether those charges are proper. If AT&T
11 Texas has the right to do so, then we do as well.

12 **Q: WHAT SERVICES DOES UTEX OBTAIN FROM AT&T TEXAS?**

13 A: AT&T Texas does interconnect with us. AT&T Texas does transport and terminate traffic
14 that we hand off to them. But those are not really “services” *per se*. They are duties imposed by
15 the Communications Act and covered in our ICA. UTEX has on occasion obtained some services
16 under the resale attachment, but that is no longer the case and there are no resale related issues in
17 this case. AT&T Texas also has the duty to provide unbundled network elements, and UTEX
18 does use a few AT&T Texas-supplied UNEs, but the billing disputes in this case do not involve
19 UNEs. A UNE is also not really a service. At one point we tried to use a UNE for
20 interconnection purposes, but AT&T Texas rejected the interconnection order.

21 UTEX is not and never was a “UNE-P” CLEC. We have always had our own network
22 and our own facilities. This is an interconnection case. This is a case where AT&T Texas has
23 sent bogus interconnection related bills that have no basis. The invoices are also unintelligible,

1 impenetrable and unverifiable. Finally, based on the underlying information we have from our
2 own network resources and the small amount provided by AT&T Texas, the bills are wildly
3 inflated and are the result of serious recording and logical errors.

4 **Q: BUT DO YOU NOT OBTAIN MANY ESSENTIAL INPUTS FROM AT&T**
5 **TEXAS IN ORDER TO PROVIDE YOUR SERVICES?**

6 A: UTEX has purposely structured its business model in such a way as to minimize its
7 reliance on AT&T Texas for any input. UTEX's primary need from AT&T Texas relates to
8 interconnection. Interconnection is a meeting of peers who agree (under statutory compulsion
9 pursuant to the Communications Act) to establish physical connections on a cost-sharing basis.
10 Those physical connections then support the mutual exchange of traffic. AT&T Texas in theory
11 relies on us for interconnection and traffic exchange in the same way we rely on them, since
12 AT&T Texas does deliver its own users' traffic to us for transport and termination, and that
13 traffic flows in part over facilities for which we are financially responsible.

14 **Q: DOES UTEX PROVIDE ALL OF ITS OWN INTERCONNECTION-RELATED**
15 **FACILITIES?**

16 A: We have provided some. We have also procured facilities or functions from third party
17 entities, whether transport, multiplexing, or a cross-connect. When there is no economical
18 alternative other than AT&T Texas as the source for interconnection related facilities for which
19 we properly bear cost responsibility, then we obtain the facility from AT&T Texas. But that is
20 not a UNE; it is still interconnection although the same cost standard properly applies. For the
21 most part, none of those facilities or charges are in dispute in this case, although we have
22 disputed certain "trouble ticket" charges AT&T Texas has assessed for troubles we reported that
23 turned out to relate to problems on their side of the network. AT&T Texas invokes the UNE

1 terms to support their assessment, but this is not UNE, and the interconnection terms do not
2 allow them to bill us when the problem is on their side of the network interconnection point.

3 **Q: PUTTING ASIDE FOR THE MOMENT UTEX CLAIMS THAT THE "NO**
4 **COMPENSATION" PROVISION IS PRIMARY AND PROHIBIT AT&T TEXAS'**
5 **CHARGES, ARE THERE OTHER CONTRACT PROVISIONS THAT PROHIBIT**
6 **AT&T TEXAS FROM COLLECTING THESE CHARGES?**

7 **A:** I am not a lawyer, but there are at least two other reasons. First, AT&T Texas is basing
8 its right to collect (and demanding escrow) based on invoices it generated, and these invoices are
9 based on AT&T Texas' terminating records. But Attachment 12, §§ 7.1-7.4 require any bills to
10 be based on originating records. I am told that AT&T Texas has insisted in other cases where the
11 relevant ICA requires originating records as the basis for billing that CLECs could not use their
12 terminating records to send reciprocal compensation bills to AT&T Texas. I am further advised
13 that this Commission agreed.

14 Second, I think it is fair to say that UTEX and AT&T Texas are "unable to agree upon a
15 measurement and billing method." Attachment 12 § 7.1 provides that when this occurs then a
16 Percent Local Usage as provided by UTEX to AT&T Texas is to be used as the basis for
17 allocation of charges. UTEX has provided a PLU to AT&T Texas with each interconnection-
18 related ASR. Each and every time the ASR has a PLU of 100%. A true and correct example is
19 attached in UTEX's exhibit binder as Exhibit 278. AT&T Texas is therefore contractually
20 required to honor that PLU and it cannot ignore it and still assess access charges instead of
21 treating the traffic as "local." If AT&T Texas disagrees with the PLU, it is required to follow a
22 process it has never invoked and refused to use. AT&T Texas never invoked dispute resolution
23 over the PLU. Instead, it has just ignored the contract and sent UTEX bills.

1 Do the express words of the contract mean nothing? Or do they only apply when it helps
2 AT&T Texas? The bills are baseless; they are without merit.

3 **Q: ASSUME FOR PURPOSES OF ARGUMENT THAT AT&T TEXAS IS**
4 **ENTITLED TO SOME MEASURE OF PAYMENT FOR "NO CPN" AND "INTERLATA**
5 **ACCESS" TRAFFIC. DO AT&T TEXAS' INVOICES REPRESENT A REALISTIC**
6 **BASIS TO CALCULATE ANY AMOUNT OWED?**

7 A: No, for two separate reasons. First, I have been involved in processing invoices for many
8 years, so I know how they should be organized and presented. In my experience, common sense
9 requires that bills be understandable and verifiable. The FCC's "Truth in Billing" rule (47 C.F.R.
10 § 64.201) provides useful guidance:

- 11 (a) Bill organization. Telephone bills shall be clearly organized, ...
- 12 (b) Descriptions of billed charges. Charges contained on telephone bills must
- 13 be accompanied by a brief, clear, non-misleading, plain language description of
- 14 the service or services rendered. The description must be sufficiently clear in
- 15 presentation and specific enough in content so that customers can accurately
- 16 assess that the services for which they are billed correspond to those that they
- 17 have requested and received, and that the costs assessed for those services
- 18 conform to their understanding of the price charged.

19 I know we are not discussing residential or business phone bills, but the rule (which I am
20 informed at least arguably applies) still sets out some basic criteria: organization, plain language,
21 clear description of the function being assessed, sufficient for the billed party to assess whether
22 the function has been requested and received, and conform to the proper price under the contract.

23 AT&T Texas' invoices meet none of these criteria. They are incomprehensible and
24 unauditible. A typical monthly interconnection invoice consists of approximately 1,000 pages of
25 meaningless information by end office and tandem that have no relevance to how we run our
26 business because the information UTEX really needs – the specific calls that are alleged to be
27 billable and why – is not conveyed. The terminology used in the bills is different than how

1 AT&T Texas has characterized the charges and the basis for them in the case. "No CPN" and
2 "interLATA access" do not appear anywhere on the bills. I heretofore assumed that all of the
3 intrastate charges are for "no CPN" and that all of the interstate charges are for "interLATA
4 access, but now I doubt whether that assumption is valid."¹ There is limited line detail, fairly
5 broad categories and no call detail records or other supporting documentation to help reconcile to
6 our records. The only pages that are noteworthy from the invoices are the 2-4 pages of summary
7 information. The rest is fairly useless.

8 Notwithstanding, I examined the more recent invoices from September 5, 2006 through
9 June 5, 2007 from a macro perspective. Taking them at face value, and using the general billing
10 categories that AT&T Texas uses (which, again, do not match to "CPN" or "interLATA
11 access"), I was curious to see what AT&T Texas' information was telling me. Without worrying
12 about why the minutes they show might be billable, I simply added up all of the minutes that
13 AT&T Texas billed for each month. Since AT&T Texas will quite often have "trailing minutes"
14 for a month's usage that shows up as a back-bill entry several months later, I went through all the
15 invoices and located all the minutes claimed to be chargeable for each individual month
16 regardless of the month in which it was actually billed. I then compared these amounts to the
17 minutes for the measurement month from our switch records that I received from our CTO.

18 **Q: YOUR ANALYSIS INVOLVED USE OF DATA SUPPLIED TO YOU BY OTHER**
19 **COMPANY PERSONNEL?**

¹ AT&T Texas' pleadings before the Commission and in the federal court only claim an entitlement to intrastate access charges for what they call "no CPN" traffic. So far they have not expressly said they are attempting to assess "intrastate interLATA charges" and the pleadings imply that the only "interLATA" charges claimed by AT&T Texas are "interstate." This assumption therefore seems reasonable. We now have some information from discovery indicating that there may be in fact be intrastate interLATA charges even though AT&T Texas has not pled for them. But the need to sort all this out is necessary only because their bills are virtually incomprehensible and do not properly describe the basis for the charge.

1 A: Yes, for this exercise I obtained, used and relied on information supplied by Mr. Telfer.
2 Part of his job is to maintain and, when needed, analyze our network metrics, including minutes.
3 This information is generated, stored, maintained and used in the ordinary course of business and
4 is made at or near the time of the event, or reasonably soon thereafter. The raw data is
5 automatically stored. UTEX has tools that it uses to analyze this data. But keep in mind that
6 UTEX does not bill any one for minutes. So we do not have extravagant (and therefore error-
7 prone) billing systems. What I used was a summary of UTEX's minutes by each month provided
8 to me by Mr. Telfer, which – at least for us – is a simple and accurate arithmetic operation.

9 **Q: WHAT DID YOUR COMPARISON REVEAL?**

10 A: My conclusions fall into two parts. First, for historical periods prior to the March 5, 2007
11 invoice, I looked at the intrastate minutes billed to carrier common line (“CCL”)², which I
12 assume are associated with the “CPN” issue.

13 Keep in mind that Attachment 12 § 7.5 provides in pertinent part that “if the percentage
14 of calls passed with CPN is less than 90%, all calls passed without CPN will be billed as
15 IntraLATA Toll Traffic.” I take that to mean that if Attachment 12 § 7.5 applies for ESP
16 termination then before AT&T Texas can assess any no CPN charges, more than 10% of the
17 traffic must be “no CPN.” Therefore, one would expect to see CCL minutes in the billing for any
18 period that exceed 10% of total minutes because otherwise the condition is not met and no
19 intraLATA toll billing can be applied. The result, however, was just the opposite. According to
20 AT&T Texas' minutes, the percentage for each pre-March 5, 2007 invoice was well below 10%
21 and therefore no “CPN related charges” should have been billed at all because the 90% threshold
22 was not met. See Exhibits 36 and 37.

² The CCL rate element should be a good single determinant for the total number of intrastate minutes that are charged. AT&T Texas can only assess minutes for calls that were answered, and for someone to answer it needs to go over a common line.

1 Also noteworthy is that AT&T Texas constantly reaches back in time to bill additional
2 minutes for a specific month. UTEX has not received a single bill associated with
3 interconnection that does not contain trailing data. For example, to obtain all of the intrastate
4 CCL minutes for the Houston access bill (BAN 610-401-0214-218) exchanged during the month
5 of September 5, 2006 to October 4, 2006 period, one would have to obtain these minutes from
6 the October 5, 2006, November 5, 2006, February 5, 2007 and April 5, 2007 invoices. More and
7 different minutes for a given month's traffic necessarily change the percent "no CPN" for that
8 month. It looks to us that AT&T Texas is not recalculating the percentages for a given month to
9 ensure that the condition is still met (if it was ever met) after they reach back in time several
10 months later and adjust the minute count for that month. The numbers just don't work.

11 **Q: HAS AT&T TEXAS INFORMED UTEX THAT ITS CALCULATIONS WERE**
12 **AUTOMATED?**

13 UTEX has been under the impression that this process was automated. As such, UTEX
14 could not fathom how AT&T Texas could know what percentage they had at the time of a billing
15 cycle when significant trailing minutes always exist. The reason we believed that this was
16 automated was because AT&T Texas told us it was so: "During July 2005, AT&T Texas revised
17 its billing system to automatically determine when the 90% CPN threshold had not been met and
18 to calculate and include amounts for traffic without valid CPN in UTEX's monthly CABS
19 billings" See AT&T Texas Complaint in Docket 33323 filed October 6, 2006 pg. 7 ¶ 11 and
20 AT&T Texas' 1st Supplemental Response to RFI 1-2 (see Exhibit 760). However, we just
21 recently learned from AT&T Texas that this is not at all true. Mary Keeney, AT&T Texas'
22 outside counsel states "With regard to the 90% threshold discussion, there are no documents for
23 an automated process for calculating the 90%. That calculation is actually made by individuals,

1 who access a website and run a query against the interconnection usage. A report is generated
2 that gives minutes and messages that came in for the month over UTEX's trunks. A copy of
3 such a report is attached. Your suggestion that there should be additional documents to address
4 "lagging" data in calculating the 90% threshold is in error. There is no lagging data for purposes
5 of calculating the 90% threshold: it is calculated monthly from the 1st of the month to the last
6 day of the month. See Mary Keeney email dated October 3, 2007 sent to Scott McCollough titled
7 RE: Native Files 2.

8 **Q: IN YOUR VIEW, WHY IS THE ISSUE OF WHETHER THE PROCESS IS**
9 **AUTOMATED IMPORTANT?**

10 Accuracy, would require recalculation because, as a simple matter of fact, there is lagging
11 data. Based upon our review and AT&T Texas' discovery responses, we do not think that there
12 is a check for the 90% threshold within the billing system at all, either manual or automatic.
13 They have a switch in the billing system, which either says bill for a "no CPN" call or do not bill
14 for a "no CPN call." See Exhibit 452. Accordingly, UTEX now understands that there is in fact
15 "no" automated process and that AT&T Texas' billing system is quite simply always configured
16 to bill for all "invalid" CPN as created and defined exclusively by AT&T Texas for UTEX.

17 The calls that apply to the 90% CPN threshold rule (to the extent it applies at all) must be
18 calculated on a statewide basis, not a per-BAN basis. From the discovery information, it appears
19 that AT&T Texas conducts some sort of periodic cross check of the percentage, completely
20 outside of the billing system. This is probably what Ms. Keeney was describing in her email.

21 **Q: HAS AT&T TEXAS IMPLICITLY RECOGNIZED THAT CPN VALIDITY**
22 **TESTING DOES NOT WORK AT ALL FOR INTERNET CALLS?**

1 AT&T Texas' Bill Cole told UTEX that AT&T Texas needs CPN to determine if a call is
2 an internet call. See Exhibit 505. We know however that AT&T Texas' billing system cannot
3 distinguish a Vonage call from a call from a legacy call. We also know that many Internet calls
4 are what AT&T Texas deems as no-CPN or invalid CPN calls. The entire billing system is
5 designed to recover access charges (either in the form of no CPN or interLATA access charges)
6 for every Internet call.

7 **Q: YOU TESTIFIED ABOVE ABOUT THE PRE-MARCH 2007 INVOICES, WHAT**
8 **ABOUT THE INVOICES FROM AND AFTER MARCH 5, 2007?**

9 A: Equally completely confusing, but different. AT&T Texas unilaterally changed how it
10 rates the traffic, without notice. UTEX has now learned from discovery that AT&T Texas claims
11 they had a billing system glitch. It is amazing how many billing system issues seem to exist
12 within AT&T Texas (e.g. recall the two sensors not recording CPN and the fact that AMA and
13 billing minutes do not match).

14 AT&T Texas claims that its exposure is "ballooning." The increase in billings cannot be
15 correlated to our traffic volume or patterns. The ballooning exposure is coming from AT&T
16 Texas' new rating method, not higher or different traffic. Somehow they failed to mention that.

17 **Q: WHAT OTHER ISSUES GIVE YOU CONCERN WITH REGARD TO AT&T**
18 **TEXAS' INVOICING?**

19 A: I will provide several examples.

20 (A) "no-CPN" BAN 610-401-0037-969"- In July 2005, we received an invoice in
21 the amount for \$636,398.40. The invoice identified the charges as being for
22 "Charge for Magnetic Tape Created MMM DD XXXXXXXXXXXX at \$X.XXX per
23 record from Jul 01 04 Thru June 30 05 Intrastate - TX." Needless to say we were

1 a bit surprised since we had not ordered any redundantly gold and titanium plated
2 mag tapes. We do not even have a machine that reads tapes. The BAN was
3 entirely new. AT&T Texas was kind enough to eventually advise us that their
4 nomenclature was a bit off. The bill was for "no CPN" or so they say. We
5 disputed and refused to pay. AT&T Texas demanded payment. I guess it is a good
6 thing we did not go borrow the money or secure additional capital from investors
7 to put the money in escrow, because the amount was off too. Fourteen months
8 later AT&T Texas issued a totally unexplained credit to that BAN that entirely
9 eliminated all the charges, plus \$300,817.94.

10 From the discovery documents, UTEX learned from Bill Cole's 12.01.05
11 spreadsheet that the back billed amount was actually for the period from Dec
12 2004 thru June 2005 based on Traffic Type 74 (Unknown Usage – Bill & Keep)
13 minutes of use. See Exhibits Bates # D33323 PM RFP 1-1-7984, Bates # D33323
14 PM RFP 1-9-258 and D33323 PM RFP 1-9-258. Interestingly, Bill Cole's
15 calculation of the back bill on 1.18.06 actually reflects an amount of only \$501,
16 603.38. See Bates # D33323 PM RFP 1-1-6304. Several points should be made
17 here after reviewing discovery information:

18 1) the billing period being used for calculations, invoicing and internal and
19 external communication seem to vary quite a bit;

20 2) the amounts calculated and back billed vary as well as noted above;

21 3) the sensors, if they could even consistently be called that, in dispute
22 vary as well from Houston and San Antonio (see RFI 1-15 in the Exhibit binder as
23 Exhibit 762) vs. Austin and San Antonio (see Bates # 1-10-24458);

1 4) the eventual credit of the CPN BAN is flawed in that it is based solely
2 on the two sensors not recording. Why was the credit not for the entire state since
3 these two sensors did not record CPN to determine if the 90% threshold level was
4 met or not; and

5 5) even the late charge fee credit is calculated using an incorrect interest
6 rate

7 Nothing ever seems to make sense.

8 UTEX requested an explanation of the credit once it was issued to no
9 avail. Now with discovery information we learned that it did not cover the full
10 state. This credit could have been applied against other BANs had we understood
11 its purpose. Thus, late payment charges on other disputed CABS BANS could
12 have been reduced by applying this credit. So, part of AT&T Texas' exposure
13 increase is simply due to late payment charges on its inappropriate invoices.

14 (B) **Mysterious Line Items** - We have had numerous line item charges which appear
15 on invoices, are invoiced for a period of time and then mysteriously and suddenly
16 disappear (e.g., Originating CCL, 1-800 Queries, etc.). There is no credit for prior
17 periods. We do not know what the element is or why it is charged and we do not
18 know why it disappears. It is there, and then it is gone, but the claim for the
19 periods it is included remains. But no one at AT&T Texas will answer our
20 questions. UTEX has expressly requested an audit of AT&T Texas' invoices, but
21 AT&T Texas has refused, citing that the pending litigation freed them from any
22 obligation to comply with these requests despite our contract right to audits under
23 the ICA. See Exhibit 45.

1 (C) **Interconnection Trouble Tickets** - We sometimes issue or receive trouble ticket
2 charges for interconnection related circuits. We know the trouble is not on our
3 side, because we check before we call. AT&T Texas never admits to any problem,
4 but somehow miraculously the problem goes away. Then, AT&T Texas proceeds
5 to charge us for trouble tickets claiming they somehow have a right under the
6 ICA. They do not.

7 (D) **AMA to Invoice Reconciliation** - Despite numerous requests, UTEX still does
8 not understand how AT&T Texas generates its invoices for each call type and
9 billing category from its AMA to its invoices. Mr. Telfer's testimony shows that
10 he has processed all of AT&T Texas' AMA and SS7 data provided to UTEX. His
11 finding are:

- 12 i. The AMA minutes and call completions differ for all virtually all periods
13 examined; and
14
15 ii. AT&T Texas' AMA and SS7 data examined do not match up at all.

16
17 When I compare the AMA minutes by jurisdictionalized rating categories
18 determined by CPN content against the categories on the invoices, there does not
19 seem to be any correlation.

20 Another AMA to invoice reconciliation mystery relates to the fact that
21 Tandem Switching Minutes greatly exceed End Office Minutes. Why would the
22 same minute traveling from the Tandem to the End Office for ultimate
23 termination by AT&T Texas to the end user result in different minutes count for
24 the Tandem and End Offices? This fact has yet to be explained by AT&T Texas.

25 Even AT&T Texas' Bill Cole has problems with their internal reports
26 matching up. One of his analyses of calls makes notes showing that (i) data is

1 missing from certain months, (ii) comparisons of his AMA data to PCRCS show
2 that PCRCS numbers “are way lower than AMA” and (iii) “I can’t get to the
3 CABS MOUs to compare.” See Bates# D33323 PM 1-11-415. The “bottom line”
4 is that without understanding the intermediary steps that take AMA to invoice, it
5 is safe to say that even if AMA were accurate that this does not in anyway, shape
6 or form insure or correlate to the bills being accurate.

7 (E) **AMA Good, Billing Good, Not** - Mr. Cole’s testimony would have one believe
8 that “If the AMA records are accurate, the invoices will be accurate.” See
9 Paragraph 12, Affidavit of William Cole submitted in support of AT&T Texas’
10 Response to Order No. 38 (Sept. 13, 2007). This simply does not hold any water.

11 Two other scenarios that shed light on this are as follows:

- 12 i. Example 1 – A Vonage customer makes a call from out from of state into
13 Texas. Under this scenario, UTEX is billed for this call because AT&T
14 Texas’ billing system is setup to rate this call based on CPN, despite this
15 being a call from the internet. In this situation, AT&T Texas’ AMA data
16 would correctly record the call and its associated minutes, but the invoice
17 would incorrectly bill this call as interstate access.
18
- 19 ii. Example 2 – A Skype customer makes a Skype Out call. Under this
20 scenario, UTEX is billed for this call because AT&T Texas’ billing system
21 is setup to rate this call based as not “valid” CPN (as determined solely by
22 themselves), despite this being a call from the internet. In this situation,
23 AT&T Texas’ AMA data would correctly record the call and its associated
24 minutes, but the invoice would incorrectly bill this call as intraLATA Toll.
25

26 (F) **AT&T Texas’ Invoices are Clear as a Bell** – According to Robert Dignan
27 “AT&T Texas bills are clear, straightforward, and are in accordance with, and
28 follow industry defined format. The charges are specifically listed by individual
29 jurisdiction to permit UTEX to undertake cross reference or identification as it
30 deems necessary.” See Texas PUC Docket No. 33323 UTEX Communications

1 Corporation Written Discovery Request No. 1 RFI 1-3 AT&T's Original
2 Response Page 1 of 1 Date Served 09/04/2007. Yet nothing could be more from
3 the truth. First off, AT&T Texas' invoices do not include a separate category for
4 no-CPN billings. In fact, the words "CPN" or "no-CPN" do not show up
5 anywhere in AT&T Texas' CABS invoices. We cannot discern if "intrastate" is
6 no CPN or interLATA. Combining the above issues with the aforementioned
7 inconsistency of Tandem Switched minutes to End Office minutes and the
8 mystery line items and one can readily see that as the fiduciary officer of the
9 company, there is no way on earth for me to understand or audit AT&T Texas'
10 invoices.

11 It is extremely hard to imagine how an average size CABS invoice billed by
12 LATA of over 600 pages that is broken out by end office messages and minutes
13 and lumped into broad categories of use could be honestly deemed to be easily
14 understood and reconcilable.

15 **Q: DO OTHER MACRO INCONSISTENCIES EXIST WITH AT&T'S INVOICES?**

16 A. One other major inconsistency in AT&T's invoices is that the total number of Tandem
17 Switching minutes is grossly out of line. AT&T Texas can only charge for completed calls,
18 expressed in conversation minutes. UTEX has no end office trunks, so all calls go through a
19 tandem. To complete, the call must be transported to an end office, where it will be switched to
20 the called party. To the extent minutes are lawfully chargeable, charges can only begin when the
21 called party answers. Therefore, the number of "local switching," "tandem transport" and
22 "tandem switching" minutes should fairly closely correspond. They do not come even close in
23 AT&T Texas' invoices. I'll give an example.

1 AT&T Texas' June 5, 2007 invoice covers the usage period between May 5, 2007 and
 2 June 4, 2007. As I indicated earlier, AT&T Texas always has trailing data in subsequent
 3 invoices. AT&T Texas' July 5, 2007 invoice back billed additional minutes for the May 5-June 4
 4 measurement period that represented 15.8% of total minutes from the combined invoices for that
 5 period. Here are the numbers for three "access" rate elements from those two invoices:

AT&T Texas Invoice	Local Switching	Tandem Transport	Tandem Switching
June 5, 2007 invoice	3,479,074	4,239,761	6,312,631
July 5, 2007 invoice	651,650	776,447	1,137,009
Total Minutes June and July invoices	4,130,724	5,016,208	7,449,640
July 5 invoice minutes as percent of June 5 minutes	15.8%	15.5%	15.3%

6 What is striking about this is the extreme difference between billed local switching
 7 minutes and tandem switching minutes. AT&T Texas has billed almost double (1.8 times) the
 8 number of tandem switching minutes. The difference (1.2 times) between local switching and
 9 tandem transport is also material. As I said, the minutes for all three should roughly correspond.
 10 AT&T Texas appears to be significantly overcharging for tandem-related minutes. Of course, all
 11 this analysis is based on the premise that these are chargeable items to begin with, which they are
 12 not.

13 **Q: HAVE YOU SOUGHT ANY EXPLANATIONS OR TRIED TO INITIATE ANY**
 14 **DISCUSSION WITH AT&T TEXAS TO TRY TO UNDERSTAND THEIR INVOICES?**

15 A: I have tried to initiate discussions with AT&T Texas on an accounting level to see if the
 16 parties could at least come to a common understanding of how AT&T Texas' billing system
 17 works in terms of the input data, the rating of calls, the aggregation levels and the logic behind
 18 their systems. The purpose is not to argue our legal position on whether any particular amounts

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1 are owed or not owed, but merely to get a better idea of what each side is doing, how they do it
2 and to get a common set of accounting-based numbers. Each time I have made the effort I have
3 received absolutely no response. In April of 2007, we requested an audit of AT&T Texas'
4 invoices to try to get to our hands around why these charges are being generated. AT&T Texas
5 has refused to allow for an audit despite the fact the ICA permits us to do so. I can only conclude
6 that AT&T Texas is not at all interested in providing any real explanation of what it is doing,
7 why or how, or even coming to agreement on what the numbers "are" and what they "mean" so
8 the Commission can later apply its rulings on each party's legal obligation to the precise amounts
9 in issue to come up with the amount owed or not owed.

10 **Q: DOES UTEX HAVE ANY IXC CUSTOMERS?**

11 A: No. When we sign up a customer we always require a representation of status. I maintain
12 those representations. Each and every customer of our IGI-POP service has made a
13 representation to us that the customer is not a carrier, is an enhanced/information service
14 provider and is qualified for and does meet the FCC's "ESP Exemption." None of our customers
15 are IXCs; each is an ESP.

16 **Q: WHEN DID UTEX RECEIVE ITS FIRST DISPUTED INVOICE FROM AT&T**
17 **TEXAS?**

18 A: October, 5, 2004.

19 **Q: WHAT STEPS DID UTEX TAKE WITH RESPECT TO THAT INVOICE?**

20 A: On October 29, 2004, in response to an AT&T Texas invoice dated October 5, 2004, I
21 sent a letter notice to AT&T Texas identifying and disputing charges. A true and correct copy of
22 my letter is included as Exhibit 19 in UTEX's Exhibit Binder. Included in the UTEX Notice
23 Letter was a dispute and disclaimer of any charges relating to any form of ESP traffic. The

1 UTEX Notice Letter expressly constituted a request for informal dispute resolution under the
2 parties' ICA.

3 **Q: WHAT WAS AT&T TEXAS' REACTION TO YOUR LETTER?**

4 A: On November 11, 2004, AT&T Texas, through Tony L. Jackson, agreed that the charges
5 were due to an oversight and agreed that the charges were not proper under the ICA. A true and
6 correct copy of Tony Jackson's email is included as Exhibit 20 in UTEX's Exhibit Binder. In his
7 email, Tony Jackson stated that as a result of resolving the oversight, adjustments for billing
8 already rendered to UTEX were made. Further, Tony Jackson assured UTEX that it would be
9 reviewing future bills to make certain that any inappropriate charges would be adjusted
10 immediately.

11 **Q: DID AT&T TEXAS LIVE UP TO TONY JACKSON'S WORD?**

12 A: For the approximately the next nine months from November 11, 2004 through July 5,
13 2005, AT&T Texas followed the contract and its word on such charges. During this time period,
14 while it appeared that AT&T Texas would live up to its word on invoicing, UTEX worked on
15 implementing its business plan, expanding its network through acquisition of technical
16 equipment, and other physical resources, developing proprietary software, and attracting
17 customers. Beginning, however, with the July 5, 2005 invoice, AT&T Texas once again began
18 charging meaningful amounts for intrastate elements. UTEX promptly disputed such charges
19 and has continued to dispute all such charges. UTEX exchanged several correspondences with
20 AT&T Texas prior to ever sending any traffic to AT&T Texas regarding the internet/ESP nature
21 of the traffic. Given the nine months of appropriate billing up through June of 2005, UTEX
22 started to believe that AT&T Texas might be starting to truly act in good faith with regard to the
23 ICA terms on compensation and that UTEX could look to really expanding its business.