**UNITED STATES BANKRUPTCY COURT**
**WESTERN DISTRICT OF TEXAS**
**AUSTIN DIVISION**

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| IN RE: | § | |
| | § | CHAPTER 11 |
| UTEX COMMUNICATIONS CORP., | § | |
| | § | CASE NO. 10-10599-CAG |
| Debtor-in-Possession | § | |
| EIN: 74-2954329 | § | |

# DISCLOSURE STATEMENT

# FILED BY THE DEBTOR

# ON JULY 1, 2010

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EXHIBIT
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# I. INTRODUCTION

UTEX COMMUNICATIONS CORP, hereinafter referred to as Debtor, filed a Voluntary Petition for Reorganization under Chapter 11 of the United States Bankruptcy Code, 11 U.S.C. Section 101, et seq. (the "Bankruptcy Code") in the United States Bankruptcy Court for the Western District of Texas, Austin Division (the Court) on March 3, 2010 (the Filing Date). The Chapter 11 commenced thereby has been pending since that time before the Honorable Craig A. Gargotta, United States Bankruptcy Judge, under Case Number 10-10599. The Debtor has operated its business as Debtor-in-Possession pursuant to Section 1108 of the Bankruptcy Code.

The purpose of this Disclosure Statement is to provide such information as will enable a hypothetical, reasonable creditor typical of the holders of such claims to make an informed judgment in exercising his, her, or its right either to accept or reject the Plan. A proposed Plan was filed with this Disclosure Statement. Notice of the date of the hearing on the Disclosure Statement will be sent by the Clerk of the Court.

After approval of this Disclosure Statement, a copy of the approved Disclosure Statement, the proposed Plan, and a ballot will be provided to each party on the mailing matrix. Notice of the dates of the ballot deadline and the confirmation hearing on the Plan will also be provided. Whether or not you expect to be present at the hearing, you are urged to fill in, date, sign, and properly mail the ballot to:

Martinec, Winn, Vickers & McElroy, P.C.
600 Congress Avenue, Suite 500
Austin, Texas 78701

Your acceptance of the Plan is important. In order for the Plan to be deemed "accepted" by creditors and interest holders, at least two-thirds (2/3) in amount and more than one-half (1/2) in number of the allowed claims voting in each class must accept the Plan and at least two-thirds (2/3) in the amount of allowed interests voting in each class must accept the Plan.

In the event the requisite acceptances are not obtained, the Plan may nevertheless be confirmed by the Court pursuant to the provisions of 11 U.S.C § 1129. Those provisions may permit confirmation in spite of a rejecting class (or classes) if the Court finds that the Plan provides fair and equitable treatment to the rejecting class or classes and meets other tests.

"Fair and equitable" with respect to secured claims is defined as a Plan which provides (1) that the holders of such claims retain the liens securing such claims to the extent of the allowed amount of such claims and that each holder of such claim receive deferred cash payments totaling at least the allowed amount of such claim, of a value, as of the Effective Date of the Plan, of at least the value of such holder's interest in the estate's interest in such property; (2) for the sale of any property that is subject to the liens securing such claims, free and clear of such liens, with such liens to attach to the proceeds of such sale, or (3) for the realization by such holders of the indubitable equivalent of such claim.

Unsecured claims are considered to receive fair and equitable treatment if (1) the Plan provides that each holder of a claim of such class receive or retain on account of such claim property of a value, as of the Effective Date of the Plan, equal to the allowed amount of such claim; or (2) the holder of any claim or interest that is junior to the claims of such class will not receive or retain under the Plan on account of such junior claim or interest any property.

In the event one or more classes of impaired claims rejects the Plan, the Bankruptcy Court will determine at the hearing for confirmation of the Plan whether the Plan is fair and equitable and whether the Plan discriminates unfairly against any rejecting impaired class of claims. If the Bankruptcy Court determines that the Plan is fair and equitable and does not discriminate unfairly against any rejecting impaired class of claims, the Bankruptcy Court can confirm the Plan over the objection of any impaired class.

CONFIRMATION OF THE PLAN WILL DISCHARGE THE REORGANIZED DEBTOR FROM ALL ITS PRE-FILING DATE DEBTS AND INTERESTS OF INTEREST HOLDERS BY VIRTUE OF THE ORDER OF CONFIRMATION AND § 1141(d) OF THE BANKRUPTCY CODE, EXCEPT AS PROVIDED FOR SPECIFICALLY IN THE PLAN. CONFIRMATION MAKES THE PLAN BINDING UPON THE REORGANIZED DEBTOR AND ALL CREDITORS AND OTHER PARTIES-IN-INTEREST, REGARDLESS OF WHETHER OR NOT THEY HAVE ACCEPTED THE PLAN. IN ADDITION, PURSUANT TO § 1141(d)(1)(B) OF THE BANKRUPTCY CODE, CONFIRMATION OF THE PLAN WILL RESULT IN THE TERMINATION OF ALL RIGHTS AND INTERESTS OF CREDITORS AND INTEREST HOLDERS OF DEBTOR AS PROVIDED IN THE PLAN, AND THE RESERVED INTEREST AND EXCLUDED ASSETS OF THE REORGANIZED DEBTOR WILL REMAIN THE PROPERTY OF THE REORGANIZED DEBTOR FREE AND CLEAR OF ALL CLAIMS AND INTERESTS OF CREDITORS AND OF EQUITY SECURITY HOLDERS.

## II. REPRESENTATIONS

THE INFORMATION CONTAINED IN THIS DISCLOSURE STATEMENT HAS BEEN SUBMITTED BY THE DEBTOR, UNLESS SPECIFICALLY STATED TO BE FROM OTHER SOURCES. THE INFORMATION CONTAINED HEREIN IS UNAUDITED, UNLESS SPECIFICALLY STATED OTHERWISE.

NO REPRESENTATIONS CONCERNING THE DEBTOR ARE AUTHORIZED BY THE DEBTOR OTHER THAN THOSE SET FORTH IN THIS DISCLOSURE STATEMENT. THE DEBTOR RECOMMENDS THAT ANY REPRESENTATION OR INDUCEMENT MADE TO SECURE YOUR ACCEPTANCE OF THE PLAN WHICH IS NOT CONTAINED IN THIS STATEMENT NOT BE RELIED UPON BY YOU IN REACHING YOUR DECISION ON HOW TO VOTE ON THE PLAN. ANY REPRESENTATION OR INDUCEMENT MADE TO YOU NOT CONTAINED HEREIN SHOULD BE REPORTED TO THE ATTORNEYS FOR THE DEBTOR WHO SHALL DELIVER SUCH INFORMATION TO THE BANKRUPTCY COURT FOR SUCH ACTION AS MAY BE APPROPRIATE.

DEBTOR HAS MADE EVERY EFFORT TO PROVIDE ACCURATE INFORMATION. THIS STATEMENT CONTAINS ONLY A SUMMARY OF THE PLAN. THE PLAN WHICH WAS FILED WITH THIS DISCLOSURE STATEMENT IS AN INTEGRAL PART OF THIS DISCLOSURE STATEMENT, AND EACH CREDITOR IS URGED TO REVIEW THE PLAN PRIOR TO VOTING ON IT.

DEBTOR MAKES NO REPRESENTATIONS WITH RESPECT TO THE EFFECTS OF TAXATION (STATE OR FEDERAL) ON THE INTEREST HOLDERS OR CREDITORS WITH RESPECT TO THE TREATMENT OF THEIR CLAIMS OR INTERESTS UNDER THE PLAN, AND NO SUCH REPRESENTATIONS ARE AUTHORIZED BY DEBTOR. CREDITORS AND INTEREST HOLDERS ARE ENCOURAGED TO SEEK THE ADVICE OF THEIR OWN PROFESSIONAL ADVISERS IF THEY HAVE ANY SUCH QUESTIONS.

THE PRESENT CONDITIONS OF DEBTOR ARE REFLECTED IN THIS DOCUMENT, OR IN FUTURE AMENDED FORMS, AND NECESSARILY REQUIRED CHANGES TO THE ORIGINALLY FILED SCHEDULES. DEBTOR WILL AMEND THE SCHEDULES AS REQUIRED BY THE BANKRUPTCY CODE.

THE COURT'S APPROVAL OF THE DISCLOSURE STATEMENT DOES NOT CONSTITUTE AN ENDORSEMENT OF ANY OF THE REPRESENTATIONS CONTAINED IN EITHER THE DISCLOSURE STATEMENT OR PLAN, NOR DOES IT CONSTITUTE AN ENDORSEMENT OF THE PLAN ITSELF.

Projections as to future operations are based on the best estimates in light of current market conditions, past experiences, financing which can reasonably be anticipated to be available, and other factors, all of which are subject to change and any of which may cause the actual results to differ from those projected. A successful Chapter 11 is dependent on a two step process. The Court must approve the Debtor's Disclosure Statement in the first step. After such approval, Debtor will mail all creditors a copy of the approved Disclosure Statement and a copy of the proposed Plan of Reorganization, along with a ballot, so that each creditor may accept or reject the Plan. The process of bankruptcy is not complete until the Court has confirmed the Plan.

## III. FINANCIAL PICTURE OF THE DEBTOR

### A. UTEX And Industry Issues

UTEX Communications Corp. ("UTEX") is a Competitive Local Exchange Carrier ("CLEC"). The 1996 amendments to the Federal Telecommunications Act of 1934 (the "Act"), provided for two categories of "Local Exchange Carrier" ("LEC"): (1) "incumbent LECs" ("ILEC") like AT&T Texas ("AT&T," formerly known as Southwestern Bell Telephone), who traditionally provided local service, and (2) "competitive" LECs that were allowed under the Act to enter the market and compete with the incumbents. LECs provide two distinct services. First, there is "Telephone Exchange Service." This service is primarily basic local service, but also includes other services that support intercommunication capabilities by which a subscriber can originate and terminate a call. Telephone Exchange Service is available to any customer that is not a carrier. Second, there is "Exchange Access Service" ("access"). Other carriers subscribe to an LEC's access service. Access service allows other carriers to connect to "telephone exchange services or facilities for the purpose of the origination or termination of telephone toll services." Telephone toll service is "telephone service between stations in different exchange areas for which there is made a separate charge not included in contracts with subscribers for exchange service." In other words, it is traditional long distance service provided by interexchange carriers ("IXC") like the former MCI.

Prior to the 1996 amendments to the Act, Telephone Exchange Service and Exchange Access Service were regulated monopoly services. Little or no competition was allowed. Provision of Telephone Exchange Service and Exchange Access Service in an area sharing a common community of interest was largely reserved only for a single provider, usually companies now known as incumbent LECs. This area of shared community interest is commonly referred to as "Local Exchange Area."

In 1996, Congress decided to open the telephone market and allow significant local competition. However, Congress also knew that incumbents like AT&T, which were the beneficiaries of the regulated (but protected) communications monopoly, had significant market power and no incentive to cooperate or support entry by competitors. Further, Congress recognized that new entrants could not feasibly recreate or duplicate the huge embedded plant and facilities amassed by the incumbents over the last 100 years. As a consequence, the incumbents were forced by the provisions of the Act to (among other things): (i) interconnect with new competitors and exchange traffic, (ii) to provide piece-parts of their embedded network facilities to competitors (all at cost-based prices), and (iii) to allow competitors to obtain incumbent services at wholesale and then resell them to the public.

Congress was careful to prescribe specific standards for each of these requirements. The incumbents were required to negotiate with the entrants in good faith over the terms and conditions for these matters, with a view toward execution of what are known as "interconnection agreements" (ICAs). If the parties had disagreements over the terms which are to be included in an ICA, Congress provided a means by which new entrants could obtain regulatory rulings through "arbitrations" to resolve any unresolved or disputed issues. These matters were codified in the 1996 amendments through Sections 251 and 252 of the Act, and seminal definitions were inserted in Section 153.

These statutory provisions, however, have not always proven wholly effective; the incumbents have in many ways resisted Congress' will and intent so they can maintain their dominance. The Supreme Court observed this phenomenon only a few years ago: AT&T and its large and small siblings (former Bell Companies as well as smaller Rural ILECs) are hostile to the law comprising the 1996 amendments to the Communications Act because it "did more than just subject the ILECs to competition; it obliged them to subsidize their competitors with their own equipment at wholesale rates." Intent on "keeping [their] regional dominance," they "thwart CLECs' attempt to compete" and "keep them out" through "flagrant resistance to the network sharing requirements of the 1996 Act."[1] The regulators that are charged with enforcing the law and resolving disputes are often unable to constrain these ILEC abuses, and sadly other regulators suffer from regulatory capture[2] or are more politically aligned with the incumbents than they are with smaller entrepreneurial providers seeking to enter the market and compete.

1 *Bell Atl. Corp. v. Twombly*, 127 S. Ct. 1955, 167 L. Ed. 2d 929, 2007 U.S. LEXIS 5901 **30-**44 (2007).

2 The economic literature (and today's headlines) is replete with reference to the phenomenon of regulatory capture. *See* http://www.economist.com/research/Economics/alphabetic.cfm?LETTER=R#REGULATORY%20CAPTURE ;http://econlog.econlib.org/GQE/gqe217.html; http://rru.worldbank.org/Documents/PublicPolicyJournal/060dnes.pdf. Wikipedia describes it this way:

1. **UTEX's Business**. The Act contemplates three basic methods of competition: Resale, Use of Incumbent LEC Unbundled Network Elements ("UNE"), and Interconnection. UTEX observed early on in its life that rapid advancements in technology used to support the "Internet" would create prime opportunities for new entrants, but also fundamental business, policy and legal questions related to a CLEC's rights, duties and obligations when it has its own facilities and seeks to compete by primarily using only "Interconnection" and then exchanging traffic with an incumbent. This business Plan is largely guided by the terms and conditions related to the mutual exchange of traffic involving at least one, but often multiple **Enhanced/Information Service Providers** ("ISP").[3] ISPs are not carriers, but use carriers to provide the telecommunications inputs that are necessary for their services to operate (i.e., primarily providing a means for the Internet users and PSTN users to exchange information). Although ISPs have existed since the 1960s, they have burgeoned since the Internet became available in the mid-1990s. The most familiar companies that provide access to the Internet are dial-up internet service providers, but most entities that use the TCP/IP protocol suite are ISPs as well, including Skype, Google, Vonage, IP PBX users, and voice applications involving Facebook and Twitter, as well as aggregators of ISP needs such as Transcom Enhanced Services

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Regulatory capture is a phenomenon in which a government regulatory agency which is supposed to be acting in the public interest becomes dominated by the vested interests of the existing incumbents in the industry that it oversees.

http://en.wikipedia.org/wiki/Regulatory_capture. UTEX emphasizes that it is not necessarily equating "capture" with "corruption." Capture can happen naturally and almost without being recognized as a result of the background and orientation of the regulator.

3 Under Section 153(20) of the Act "information service" means the offering of a capability for generating, acquiring, storing, transforming, processing, retrieving, utilizing, or making available information via telecommunications, and includes electronic publishing, but does not include any use of any such capability for the management, control, or operation of a telecommunications system or the management of a telecommunications service." This is essentially a statutory codification of the Federal Communications Commission's prior terminology and rules which referred to "enhanced service" and defined in 47 C.F.R. § 64.702(a) as "services, offered over common carrier transmission facilities used in interstate communications, which employ computer processing applications that act on the format, content, code, protocol or similar aspects of the subscriber's transmitted information; provide the subscriber additional, different, or restructured information; or involve subscriber interaction with stored information." Enhanced/Information services are not treated as telecommunications service and are expressly unregulated under the Act.

insofar as they also offer enhanced/information capabilities. Under federal law ISPs are not carriers and therefore subscribe to telephone exchange service rather than exchange access service. This is known as the "ESP Exemption."

UTEX's Plan of reorganization is simple: support ISPs by creating services and deploying technology that supply the telecommunications inputs the ISPs need, which for the most part involves the ability for an ISP and its users to intercommunicate with basic users on the Public Switched Telephone Network ("PSTN"). UTEX distinguished itself from all others by taking great care to develop telecommunications products and services that are friendly to and support the new technology applications of ISPs.

UTEX's experience in the industry is that any functional monopoly, like AT&T, does not have any incentive to cater to new technologies and the users that benefit from technology advancement. To the contrary, an incumbent LEC largely tries to limit the advancement of technology if doing so preserves its dominance and legacy revenue streams that were built on old technology concepts and methods. The clear goal is to inhibit new technology development, which could support additional competitive entry and ultimately lead to a loss of the incumbent's dominance in the marketplace. As a consequence, incumbents do not typically offer technology-friendly wholesale services to ISPs.

Further, AT&T's ISP offerings (such as their TIPToP Tariff product) force ISPs to be backwards-compatible with legacy[4] technologies. These offerings also create and impose purposefully high pricing and other unnecessary conditions as barriers-to-entry to keep the inherent capability of new IP-based technology out of the market. This is particularly the case

[4] Generally, the term legacy refers to technologies and entities that pre-date the 1996 amendments to the Act. In the case of legacy technologies, many have remained in use because the ILECs have chosen to adhere to older and even obsolete technologies rather than invest in newer technologies and because it forces CLECs and/or other potential competitors into the ILEC web.

with new IP-based technology that can be used to provide "voice" services which can directly compete with the incumbent's traditional offerings, but have much more functionality and promise much lower costs to users than is available from traditional telephony. The incumbent LECs have also attempted to convince regulators that new entrants like UTEX should be functionally prohibited from implementing new services and products or offering lower prices than the incumbents. As explained below, this is typically accomplished by securing orders from ILEC-sympathetic state regulators that directly or indirectly force the CLEC to pay non-cost based prices for interconnection and traffic exchange, notwithstanding the specific provisions in Section 252(d) of the Act that require cost-based charges. In other words the ILECs want to eliminate the "ESP Exemption" and recover access charges for ESP traffic notwithstanding years of precedent and the provisions in the Act that functionally codify it. While several ILEC-friendly state regulators have accepted the ILECs' pleas, the federal courts have almost uniformly held that VoIP traffic is not subject to access charges, either directly from the ISP or indirectly from the ISP's CLEC vendor.[5]

**2. Notice of Termination.**

Since 2001, after AT&T (SBC at the time) gave notice of termination of the existing Interconnection Agreement between SBC and UTEX, UTEX began seeking a new Interconnection Agreement, as is its legal right. The new Interconnection Agreement would replace the existing agreement, and the existing agreement would be terminated. UTEX's

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5 *See, e.g., PAETEC Communs. v. CommPartners, LLC*, Civil Action No. 08-0397 (JR), Memorandum Order, 2010 U.S. Dist. LEXIS 51926 (D.D.C. Feb. 18, 2010)[request for interlocutory appeal pending before D.C. Circuit; presently under bankruptcy stay with motion to lift stay pending); *Sw. Bell Tel., L.P. v. Mo. Pub. Serv. Comm.*, 461 F. Supp. 2d 1055, 1080-83 (E.D. Mo. 2006); *In re Transcom Enhanced Services, LLC*, Case No. 05-31929-HDH-11 Memorandum Opinion (Bankr. N.D. Texas, April 28, 2005) *rev'd other grounds, AT&T Corp. v. Transcom Enhanced Services, LLC* 2006 U.S. Dist. LEXIS 97000 (2006); *Transcom Enhanced Services, Inc. v. Global Crossing Bandwidth, et al*, Case No. 05-31929-HDH-11, Adversary Proceeding No. 06-03477-HDH, Order Granting Motion for Partial Summary Judgment Based on the Affirmative Defense that Transcom Qualifies as an Enhanced Service Provider (Bankr. N.D. Texas September 20, 2007).

primary goal in seeking a new agreement was to create certainty as well as very specific, lawful ICA terms, conditions and pricing with respect to the fundamental business, policy and legal questions related to Interconnection and traffic exchange when at least one, but often multiple, ISPs were involved. Through a new ICA UTEX would obtain "regulatory certainty" for providing services to ISPs. UTEX would then devise a business Plan and compete focusing on providing both Telephone Exchange Service, which is subject to what is known as Reciprocal Compensation under the Act, and Exchange Access, which is a jointly provided service by multiple LECs to an Interexchange Carrier.

Since 2002, the industry has coined much, but not all, of the ISP traffic that makes up the potential market as **Voice over Internet Traffic** or "VoIP."[6] Advancements in cellular data technology and continued advancement in IP technology will soon enable several hundred million mobile data devices to also participate in VoIP and other IP based voice applications, dramatically increasing the total size of the targeted wholesale market by UTEX.

### 3. Incumbent LECs' Resistance.

The legacy **PSTN**[7] industry, led by AT&T and other incumbent LECs, has opposed actual implementation of the cost-based provisions in the Act. This is particularly the case when it comes to the inter-carrier relationship between two LECs that are collaborating to complete a call involving at least one, but often multiple ISPs or an ISP customer at one end. Notwithstanding the federal courts' holdings that access charges do not apply, AT&T and other LECs have successfully lobbied various regulatory bodies, such as the Texas PUC and the FCC, by taking the position that true competition in this area should be **delayed** and the ILECs could,

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6 Voice over Internet Protocol.

7 Public Switched Telephone Network. The PSTN is still much dominated by legacy technology and decades-old business and pricing plans that in many ways are inconsistent with evolving "Internet" technology and business plans.

during the delay, be able to assess high "access" charges rather than lower "reciprocal compensation" charges based only on the "additional cost" of terminating a call. The resultant delay has created a legal and regulatory vacuum on important issues related to the interworking between new and old technology.

Meanwhile, UTEX has sought to implement its express rights under the Act which allow UTEX to arbitrate the lawful intended results of the Act with respect to Interconnection, and specifically to have Sections 201, 251 and 252 of the Act control the inter-carrier compensation LECs are responsible for when ISP traffic is involved. UTEX has also sought to end the delay in many other ways as well.[8]

**4. The Benefits Of Regulatory Certainty Consistent With The Act.**

UTEX's founder and CEO, Lowell Feldman, took a similar business approach years earlier with a predecessor CLEC known as Waller Creek Communications. At that time, Mr. Feldman sought to create certainty for the fundamental business, policy and legal questions related to a competitive local exchange carriers rights, duties and obligations when it seeks to compete utilizing only Unbundled Network Elements ("UNEs"), and specifically unused fiber optic cable UNEs as contemplated under the Act. While many agreements existed at the time of the Feldman-led Waller Creek arbitration, none dealt with the specific issues related to fiber-based UNEs. After the certainty was created through arbitration of a new Interconnection Agreement, Mr. Feldman built a successful company based on using fiber technology to offer services that at the time AT&T opposed and tried to limit. Feldman's company ultimately sold for an amount in excess of 100 million dollars and continues to profitably operate to this day as Alpheus Communications. It is worth noting that Mr. Feldman is an expert in

[8] *See, e.g.*, Memorandum Opinion and Order, *FeatureGroup IP Petition for Forbearance from Section 251(g) and Sections 51.701(b)(1) and 69.5(b) of the Commission's Rules*, WC Docket 07-256, 24 FCC Rcd 1571 (rel. Jan. 21, 2009), *recon denied* Order on Reconsideration, FCC 10-120, -- FCC Rcd ---- (rel. June 30, 2010).

telecommunications law and policy, is an Adjunct Professor at the University of Texas School of Law, teaching Communication and Technology law, and is regularly invited to speak in various forums as an expert. Recently, Mr. Feldman offered policy testimony before the U.S. Senate on Broadband.

### 5. Abated/Unabated Texas PUC Actions.

For legally questionable reasons, some of which relate to a current and active federal fraud law suit against AT&T (the suit is described further below in the legal section), AT&T persuaded the Texas PUC to deny and/or significantly delay UTEX's right to timely arbitrate a successor agreement to the existing ICA and also attempted to preclude a ruling on disputes concerning the current agreement. In particular, in 2004, the Texas PUC indicated that it would not arbitrate any issues related to the current agreement on behalf of a company that had not actually entered the market. After UTEX entered the market and began providing services under the current agreement in 2004 and early 2005, the Texas Commission first dismissed the request of UTEX for a new arbitrated Interconnection Agreement, and then abated indefinitely the ability for UTEX to arbitrate a new agreement. After years of procedural delay, UTEX was able to petition the FCC for an order requiring the arbitration to proceed. Finally, in late 2009, the Texas PUC informed the FCC that it would "un-abate" the arbitration, if the FCC would return the case to Texas. The FCC then ordered the Texas PUC to finish a resolution of the core issues by July 9, 2010.[9] A hearing was held, briefs have been filed, and the parties are now awaiting the result of the Texas PUC arbitration that was started in 2002. As part of the case, UTEX has

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[9] Memorandum Opinion and Order, *In the Matter of Petition of UTEX Communications Corporation, Pursuant to Section 252(e)(4) of the Communications Act, for Preemption of the Jurisdiction of the Public Utility Commission of Texas Regarding Interconnection Disputes with AT&T Texas*, DA 09-2205, 24 FCC Rcd 12573 (re. Oct. 9, 2009).

stated its clear intent that all decisions related to Interconnection must be consistent with the standards in the Act and applicable FCC rules.[10]

### 6. AT&T Rewrites The Act.

Beginning in late 2005, AT&T unilaterally promulgated and deployed various industry "standards" to fill the regulatory vacuum they helped create by promoting delay in crucial proceedings at the FCC. These AT&T "standards" conflict with express provisions in the Act and seek to impose legacy concepts, such as "geographic relevance,"[11] on new technology services and applications. In none of the proceedings has AT&T been required to justify its "standards" by reference to the provisions of the Act. In fact the Texas PUC, presumptively as a result of AT&T's political clout, has been prone to accept, or at least not question, AT&T's self-serving definitions even when dissonant with the Act.

In 2004, in the midst of the multi-year delay in the replacement agreement arbitration proceeding, UTEX entered the market and began providing services. UTEX filed its own tariff for new technology customers (the IGI POP Tariff) to compete directly with the AT&T's

10 Under Section 252(a) of the Act the two LECs can voluntarily waive applicable standards and reach agreement on ICA terms that diverge from the Act's fundamental provisions. UTEX has made clear that it is not willing to enter or suffer any waiver and is insisting that the Texas PUC rigidly honor and apply all of the requirements and standards in the Act, including all those that prescribe cost-based charges.

11 Traditional legacy telephone services and business models were built around a concept of geographic relevance. Telephone numbers were associated with a specific location and that location served as a proxy for the user's physical location. Calls between that assumed location and other assumed locations within the ILEC's "local calling area" were treated as "local" and were largely free or very low in price. Calls between that assumed location and an assumed location that was outside the local calling are were treated as "toll" and were very expensive. The high prices exacted from toll customers resulted in a "subsidy" that was used to keep local rates low, *e.g.*, below cost. The 1996 Amendments expressly prohibited cross-subsidies of this nature, but did allow for a transition period. AT&T has effectively argued for and has functionally obtained an open-ended transition period, and is now attempting to actually expand the kinds of services that must subsidize basic local service beyond just legacy telephone toll. AT&T's strategy is to require the Internet and ISPs (and/or any competing LEC that supports intercommunication between ISPs and the legacy network) to also subsidize AT&T's legacy local operations. To do this AT&T has created alleged "standards" that rely on information AT&T claims can be routed only through traditional telephone numbers which have geographic connotations or which have been specifically approved by AT&T. AT&T then uses the telephone number information to "rate" the call in the traditional way, even though the ISPs' use is anything but traditional. AT&T's "standard" has no express or implied basis in the Act. AT&T largely relies on friendly regulators to impose it in various ways and then hopes the federal courts will not enforce the cost-based requirements in the Act or preferably will not even substantively review the regulator's decision.

TIPToP Tariff. UTEX's service is designed to provide "wholesale" services to ISPs. UTEX's tariff complies with what the Act requires for an ISP to buy service from a competitive LEC while allowing the CLEC to maintain its rights to reciprocal compensation treatment when it interconnects with AT&T to mutually exchange traffic.

After UTEX successfully captured a large share of the growing new technology market in 2004 and 2005, and after the Texas PUC announced it would indefinitely abate the replacement agreement arbitration, AT&T then launched an attack on UTEX by filing complaints at the Texas PUC asserting that UTEX was merely a conduit for illicit "Access Avoidance Schemes" for PSTN originated traffic. UTEX insisted during the complaint, and continues to insist today, that its business plans and practices do not involve any illicit scheme but instead represent precisely the kind of competition envisioned by Congress in 1996. Interestingly, as discussed below, AT&T has since changed its position on this topic in the new arbitration. AT&T also asserted that UTEX violated AT&T's unilaterally created standards related to the use of a Calling Party Number, which is not a defined term in the existing agreement. Basically, AT&T insists <u>their</u> self-created standard for "valid" CPN prohibits operation of the terms UTEX included in its IGI-POP tariff and controls the parties' relationship under the existing 10-year old ICA. The complaint, and the Texas PUC's resolution of it, is further described below in the lawsuit section, but was the proximate cause of this bankruptcy as AT&T had threatened disconnection of services until and unless UTEX made millions of dollars of payment to AT&T that the Texas PUC held were owed, although there was no specific resolution as to what exactly the payment was being made for or how UTEX could avoid future charges by changing its operations.

During the Arbitration proceedings for a new ICA, UTEX was the only party to offer any solutions as to what the two LECs should do if a customer of either party was engaged in a "PSTN misrouting scheme," or how the parties should handle potential "illicit" abuses. More importantly, during the arbitration for a new ICA, AT&T changed its testimony and theory from the one it asserted in the 33323 complaint case which had just been just completed. AT&T no longer accused UTEX of any illicit behavior in UTEX's business practices. Instead, AT&T merely asserted that the Texas PUC should not implement the cost-based requirements in the Act, basically by treating UTEX as if it is an interexchange carrier rather than the LEC that it is.

**7. The Threshold Issues in Arbitration Relating to Future Business.**

As noted, the Act allowed for the first time "competition" in the local exchange markets and entrants could use any or a combination of three different entry methods (resale, UNEs and interconnection). **Interconnection** is a unique method of competition in that, in contrast to resale or UNEs, an Interconnecting CLEC need not purchase or subscribe to any ILEC service or unbundled network element (and thereby become the ILEC's "customer") to compete against the incumbent. If the Interconnecting CLEC provides its own Network Elements on its side of the Interconnection point (where the two LECs meet to exchange traffic), then the two parties are to mutually exchange traffic under a reciprocal compensation scheme. Reciprocal compensation is governed by Section 251(b)(5) of the Act, and under Section 252(d) all charges must be based on cost. There is one exception to this mandatory reciprocal compensation scheme: the so-called "251(g) carve-out," which references the section in the Act that allowed the FCC to phase out the subsidies built into access charges rather than flash cut to the entirely cost-based scheme for all traffic, with any subsidy being recovered through separate but explicit "universal service" regulatory assessments. The 251(g) carve out was designed to apply when a single or two or more LECs are involved in an "access call" involving a provider of telephone toll service (*e.g.*, an "IXC"). In this circumstance, the LECs are co-carriers and peers engaged in the joint provision of "legacy" exchange access to the IXC. Neither LEC is providing a service to the other LEC; but rather each is providing a service to the IXC and each individually bills the IXC, rather than the other LEC. Finally, there is the situation where one carrier's facilities are used to interconnect two other non-"IXC" carriers who are not directly connected to each other. This is known as "transit." UTEX asserts that regardless of the Texas PUC Arbitration outcome, UTEX will be able to classify its Competitive Services offerings into one of the following five categories and traffic types, with the resulting intercarrier compensation rights, duties and responsibilities:

§251(b)(5) Originating;

§251(b)(5) Terminating;

§§201/251 Transit Originating;

§§201/251 Transit Terminating; and

§251(g) Jointly provided Access.

Once a new ICA is fully and finally arbitrated, it must yield a legal result which will allow UTEX to classify all traffic prior to accepting it from its customer base.

The first set of threshold issues relates to what are basically classification issues. UTEX believes the Act allows ISPs who are not also IXCs to be treated as end users rather than carriers when two LECs compete to provide the telecommunications inputs needed by the ISP. In other words, UTEX asserts that ISPs purchase "telephone exchange service" rather than "exchange access service" and therefore the intercarrier compensation is governed by Section 251(b)(5) rather than Section 251(g). This would result in this type of traffic being classified as either originating or terminating 251(b)(5) traffic, which should be subject to reciprocal compensation at $.0007 per minute. (See Billing Diagrams below.)

AT&T believes some ISPs, like Skype, Google and Vonage, should be classified as carriers, although UTEX is still unsure how or why these parties would now become carriers. From UTEX's perspective, the classification issue is really a non-issue in that, if ISPs such as Google, Skype and Vonage are re-classified as a carrier, the functional service UTEX provides would be the same, but the traffic would become either 251(g) or 201/251 Transit, depending upon what kind of carriers Google, Skype and others must become. As a result, AT&T might be entitled to recover access charges from the ISP, but it could not lawfully recover access charges (or even reciprocal compensation) from UTEX. UTEX and AT&T would be engaged in jointly-provided access and each would send a separate bill to the ISP. UTEX believes it can successfully compete with AT&T under either regime.

The next threshold issue relates to the natural technical differences between new and old technologies. AT&T admitted in the 26381 Arbitration that its LEC arm has refused to invest in new technologies and has no current ability to actually interact or interconnect utilizing new technology. (This intentional strategic decision by AT&T not to invest in new technology is how AT&T intends to deny direct interconnection with UTEX via efficient Softswitch Interconnection. UTEX proposed to interconnect using new IP-based technology; and AT&T opposed the proposal by arguing it does not have the technical capability due to non-investment.)

Meanwhile, technology related to computer interaction and capabilities with voice has proven that old methods of deploying networks and services are no longer cost effective. A common theme of many VoIP applications and many VoIP based networks is that they are non-geographic in nature, in the same way the Internet itself is a "cloud" that has no necessary or inherent true geographic characteristics. Another common theme is that many VoIP applications are built on top of advancements in Instant Messaging ("IM") platforms and capabilities. IM platforms are rooted in Internet based call session control, with addresses known as Uniform Resource Identifiers or (URIs). These communications do not need to use phone numbers; indeed the semantics, syntax and length constraints of phone numbers are far too antiquated and limiting.

Phone numbers are voluntarily used by some new technology applications that mimic how an ordinary phone operates. This type of service is called "Interconnected VoIP." When a phone number is not needed or the service does not mimic a phone service, the service is called "non-interconnected VOIP."

UTEX realized many years ago that the vast majority of non-interconnected voice does not currently interact in a two way, fully interoperable fashion with the Public Switched Telephone Network. Many calls currently cannot go in both directions or allow all the end-points (including those on the PSTN) to experience the advanced, enhanced/information features made possible by new technology. In 2006-2007, UTEX researched the use of non-geographic numbers and began the process of developing a new way for our IGI POP customers to obtain a non-geographic number that suited their needs and promoted two-way intercommunication between the PSTN and the Internet. Our LEC service creation allows PSTN end points (*e.g.*, PSTN connected landlines) to call non-interconnected VoIP applications which do not want or need a geographic designation; and we do this in a manner that is friendly to the "new technology customer." As designed by UTEX, a single "500 number" can represent thousands if not hundreds of thousands of IM accounts, web pages, and other Internet-based applications and groups. UTEX also immediately realized that this innovation would also have positive market applications related to disaster recovery services.

AT&T, however, insists that CPN, as defined by AT&T must be exchanged, and used as the intercarrier rating tool. Further, AT&T says it must be a geographic based working Local Exchange Number and CPN must be present on at least 90% of all calls. Any calls without CPN would incur an access charge to UTEX. The convenient result for AT&T is that UTEX is functionally prevented from deploying its innovative new-technology based features, capabilities and services since doing so would merely subsidize AT&T's own offerings and render many of UTEX's services uneconomic from a price perspective.

UTEX disputes that any such standards are required or even contemplated by the Act. These standards, which UTEX believes are illegal and were formed well after the existing ICA was entered into, is the cause of much of, if not all of, the alleged amounts the Texas PUC has allowed AT&T to claim against UTEX. UTEX also asserts that these standards are wholly inappropriate and cannot be carried over to the replacement agreement.

However, if such a requirement is adopted in the new ICA, UTEX has invented and deployed "invalid CPN" blocking technology into its infrastructure. UTEX has requested AT&T to work with UTEX to confirm our deployed technology is working properly, but to date AT&T has refused to work with UTEX.

Both AT&T and UTEX testified in the arbitration that with respect to 251(g) traffic, the parties should establish Meet Point Billing business and follow MECAB[12] guidelines which require joint planning. UTEX requested that such trunks be established between the parties, but to date AT&T has refused.

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12 Multiple Exchange Carrier Access Billing.

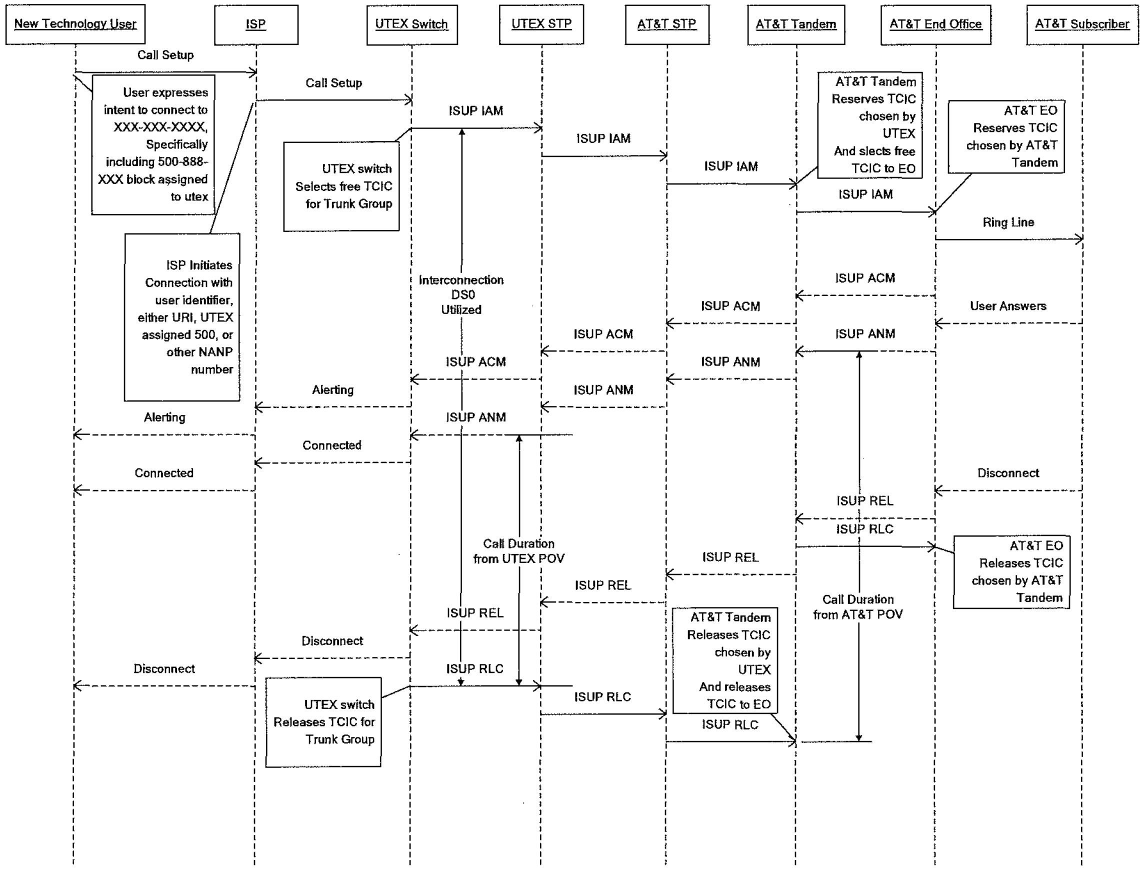
Only a pictorial and textual, call-by-call diagram can adequately depict routing and rating of the above call types. AT&T has had in its possession similar call flow diagrams for several months and has yet to detail out any material difference with these proposed call flows. The call flow diagrams are as follows and a Glossary of terms has been included as Exhibit A:

**251(b)(5) Originated**

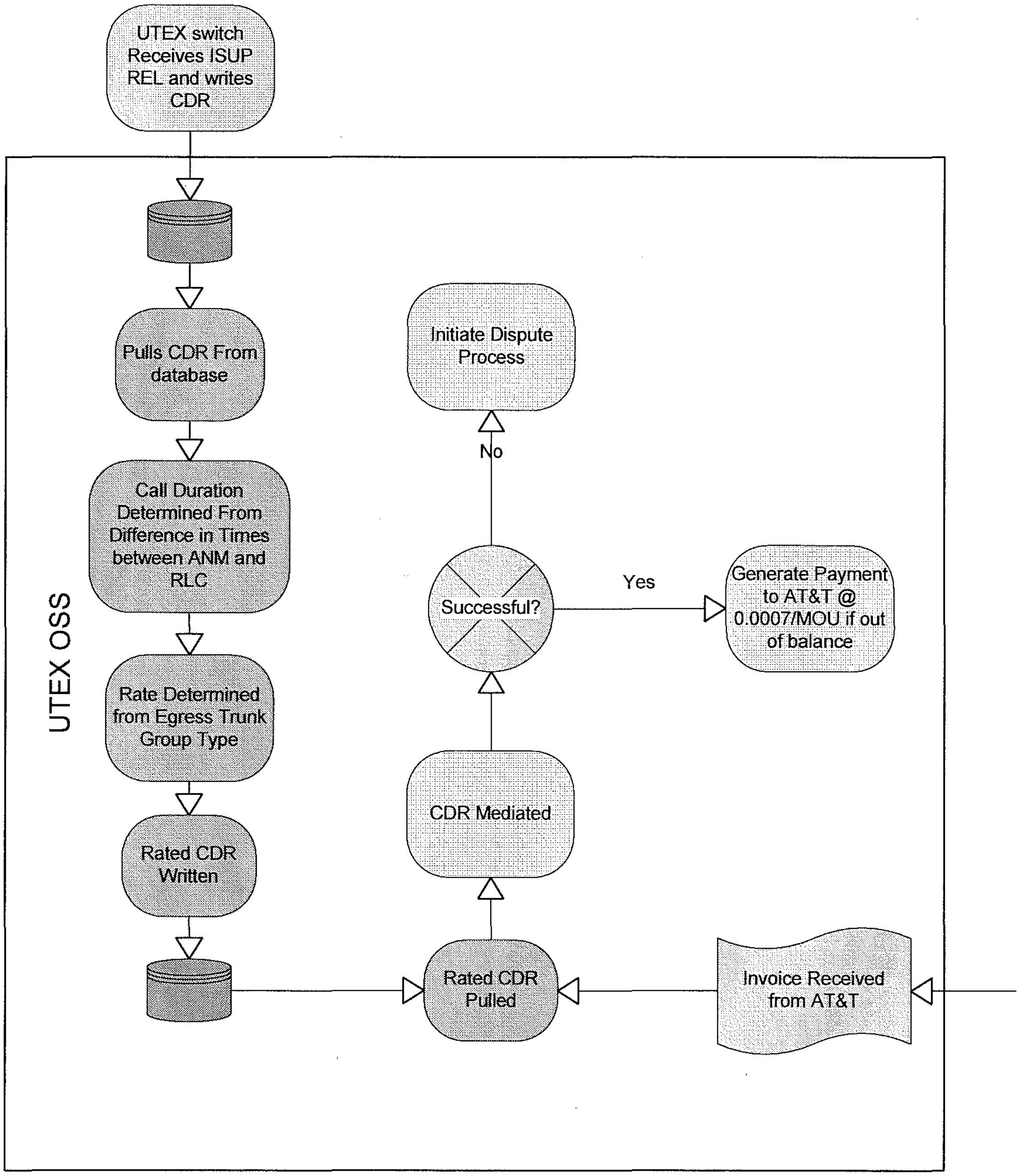
The following diagram depicts a call from a new technology customer of an Information Service Provider (ISP) to an AT&T customer. The ISP passes the call to UTEX at the situs established by the ISP in the local calling area to which the call is destined.

The diagram shows the Signaling System Seven (SS7) messages and information content passed between the parties. It is important to note that this is only one of many possible messaging sequences that can occur in the context of this kind of call. However, this diagram captures all of the relevant information required to understand the trunking and billing arrangements for this kind of call.

UTEX projects that (assuming the Texas PUC complies with existing law) under the new ICA flowing from Docket 26381, there will be no CPN requirement for this call flow, since the call originates from a new technology user using an ISP. However, if there is a CPN requirement under the new ICA arbitrated in 26381, UTEX will use the call blocking technology it has developed to conform to whatever CPN passing requirement will be established.



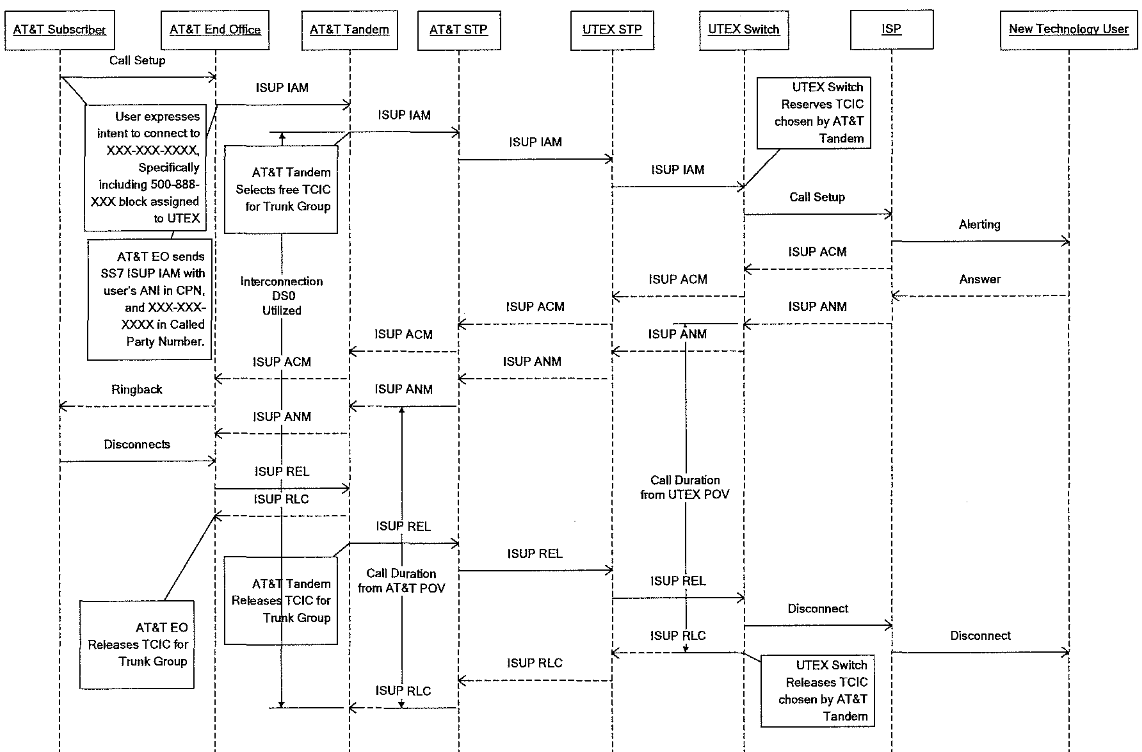

The following diagram shows the operation of the UTEX OSS for billing arrangements between AT&T and UTEX for this kind of call.


UTEX switch Receives ISUP REL and writes CDR
UTEX OSS
Pulls CDR From database
Call Duration Determined From Difference in Times between ANM and RLC
Rate Determined from Egress Trunk Group Type
Rated CDR Written
Rated CDR Pulled
Invoice Received from AT&T
CDR Mediated
Successful?
No
Initiate Dispute Process
Yes
Generate Payment to AT&T @ 0.0007/MOU if out of balance

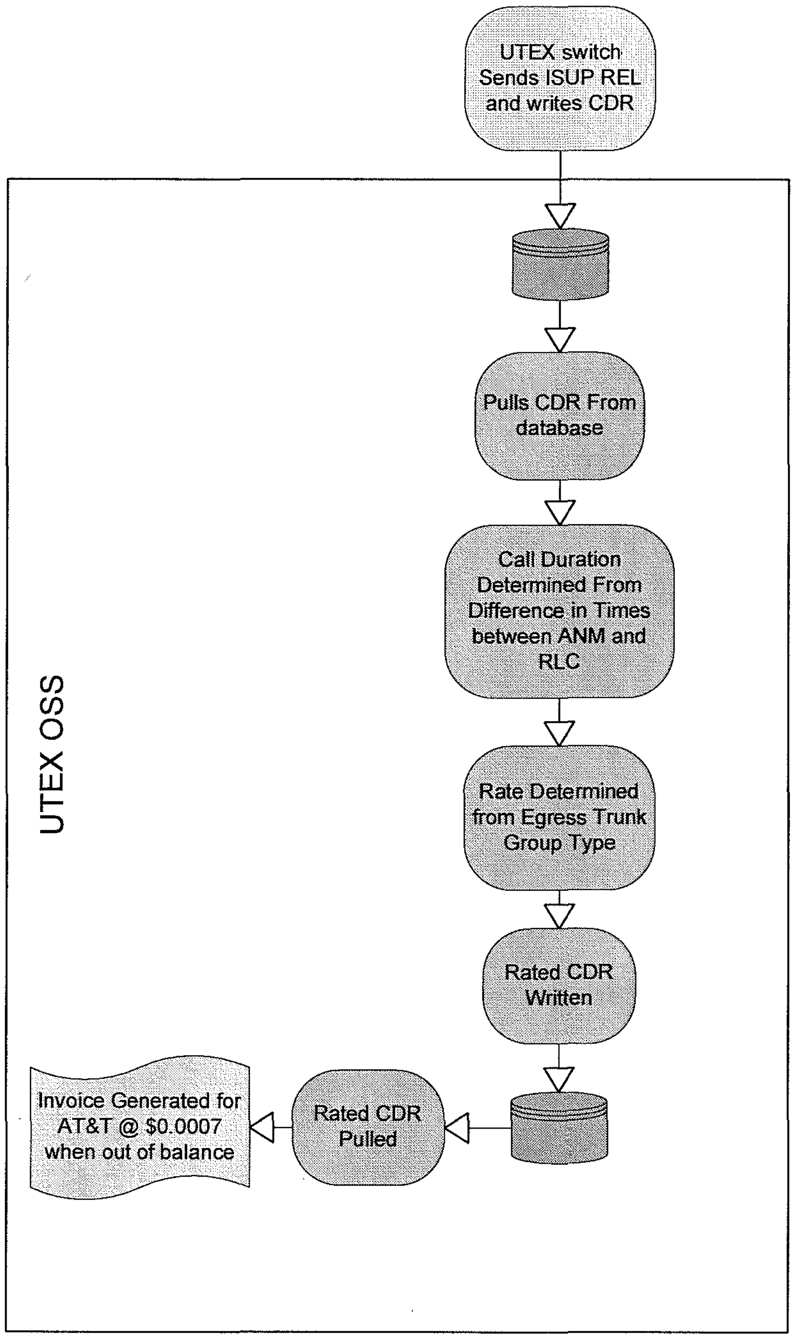
## 251(b)(5) Terminated

The following diagram depicts a call from an AT&T Customer to a new technology customer of an Information Service Provider (ISP). UTEX passes the call to the ISP at the situs established by the ISP in the local calling area to which the call is destined.

Note that AT&T should be specifically required to route 500-based numbers to UTEX over its interconnection trunks.

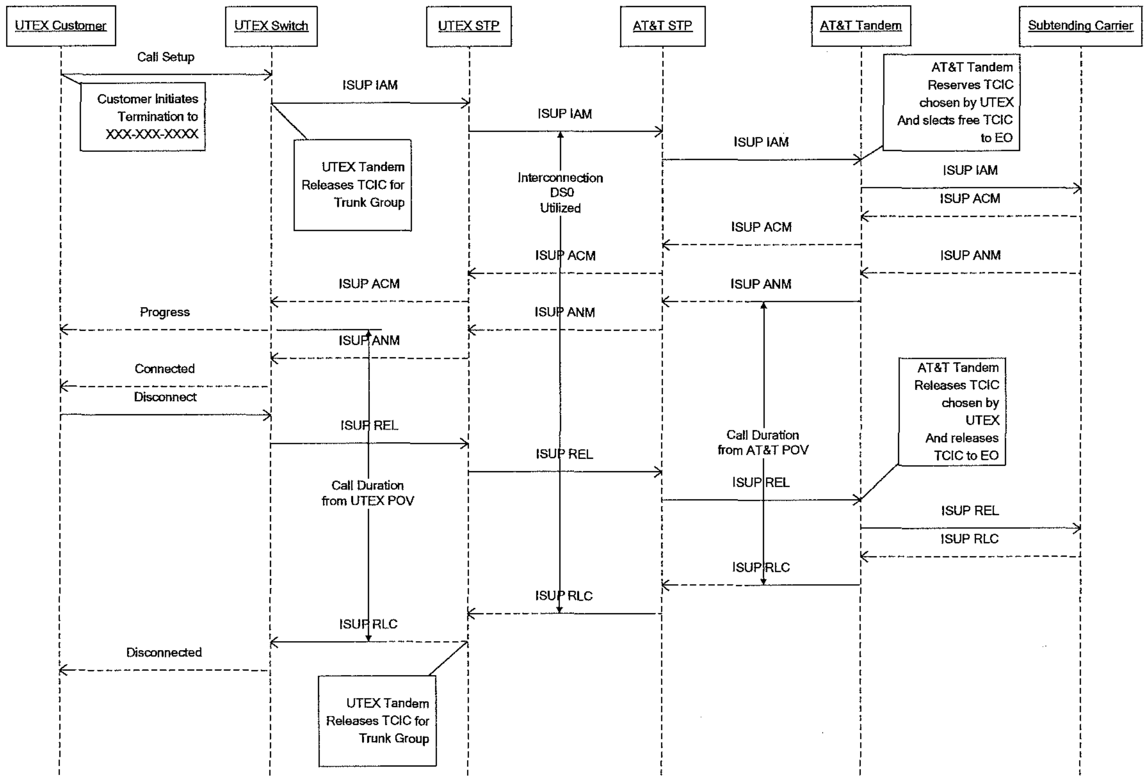



The following diagram shows the operation of the UTEX OSS for billing arrangements between AT&T and UTEX for this kind of call.

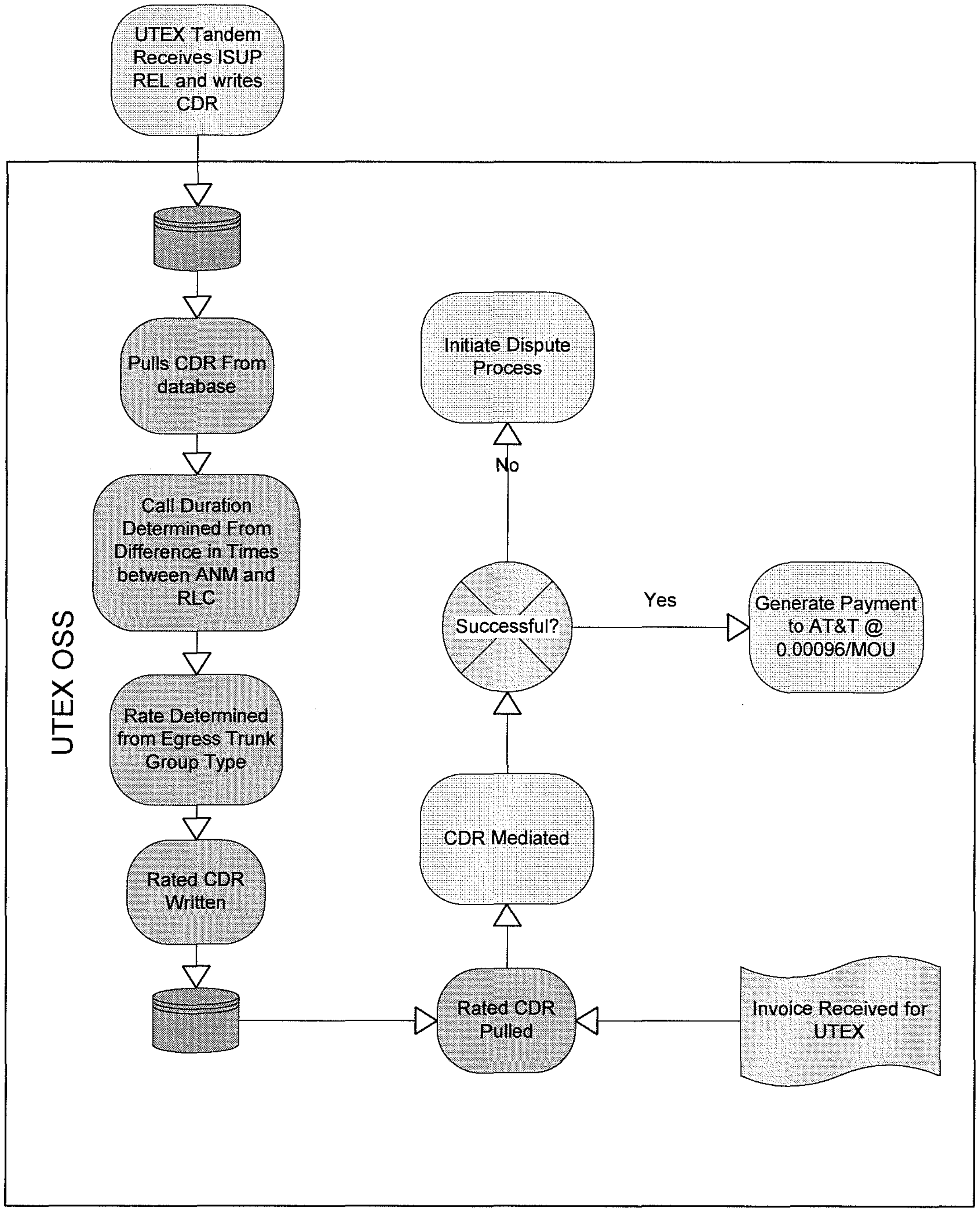



**AT&T Provided Transit (201 / 251 Transit Originating)**

The following diagram depicts calls which originate on the UTEX network and for which AT&T routes the calls to carriers other that AT&T, who subtend the AT&T tandem.

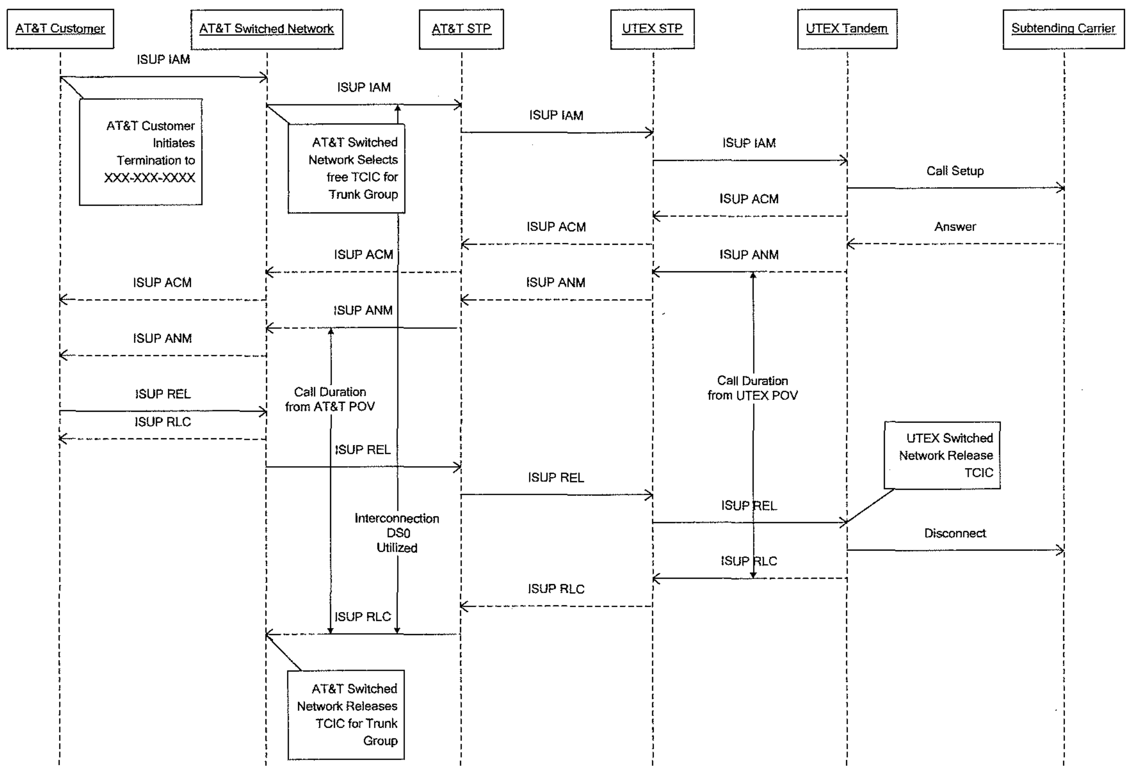



The following diagram shows the operation of the UTEX OSS for billing arrangements between AT&T and UTEX for this kind of call.

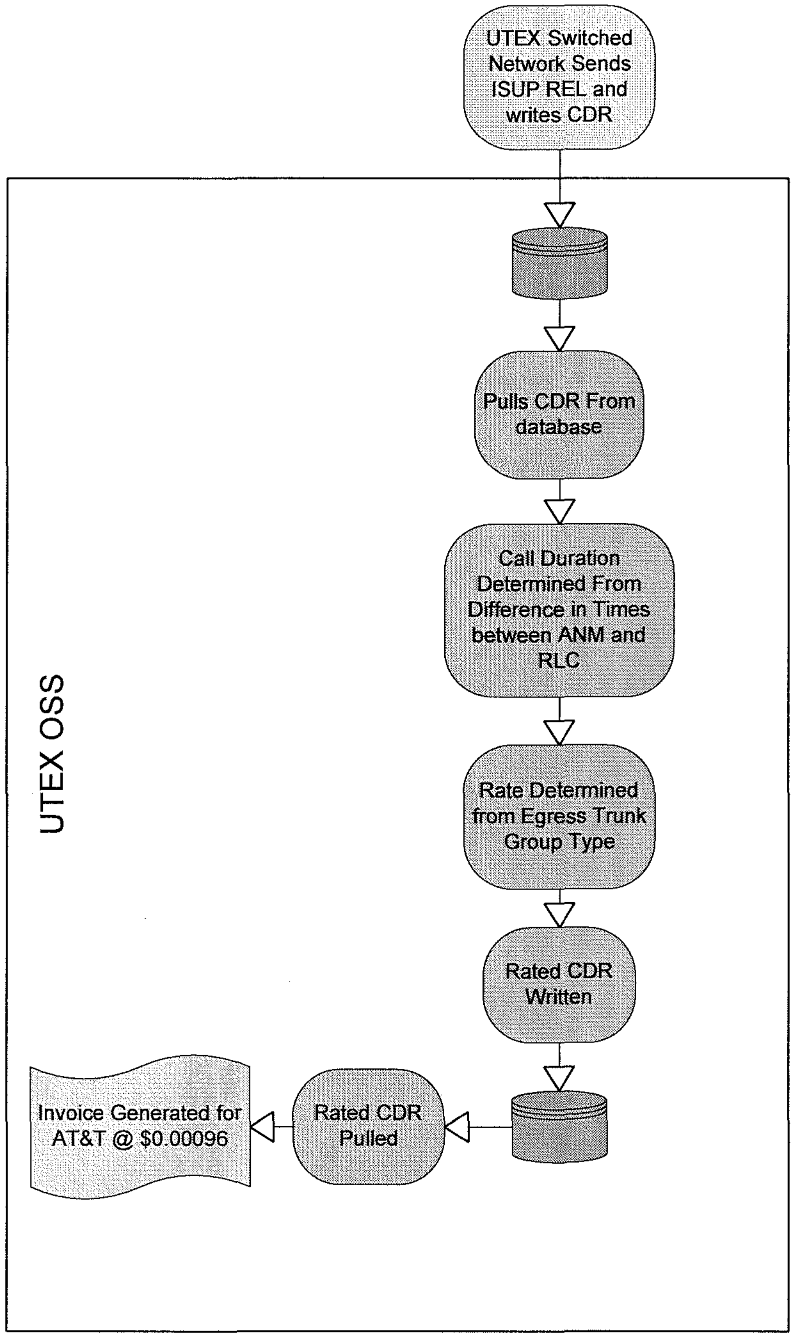

UTEX Tandem Receives ISUP REL and writes CDR
UTEX OSS
Pulls CDR From database
Call Duration Determined From Difference in Times between ANM and RLC
Rate Determined from Egress Trunk Group Type
Rated CDR Written
Initiate Dispute Process
No
Successful?
Yes
Generate Payment to AT&T @ 0.00096/MOU
CDR Mediated
Rated CDR Pulled
Invoice Received for UTEX

## UTEX Provided Transit (201 / 251 Transit Terminating)

The following diagram depicts calls which originate on the AT&T network from a carrier other than AT&T that subtends the AT&T tandem, and which UTEX routes to customers who choose to subtend the UTEX Tandem.



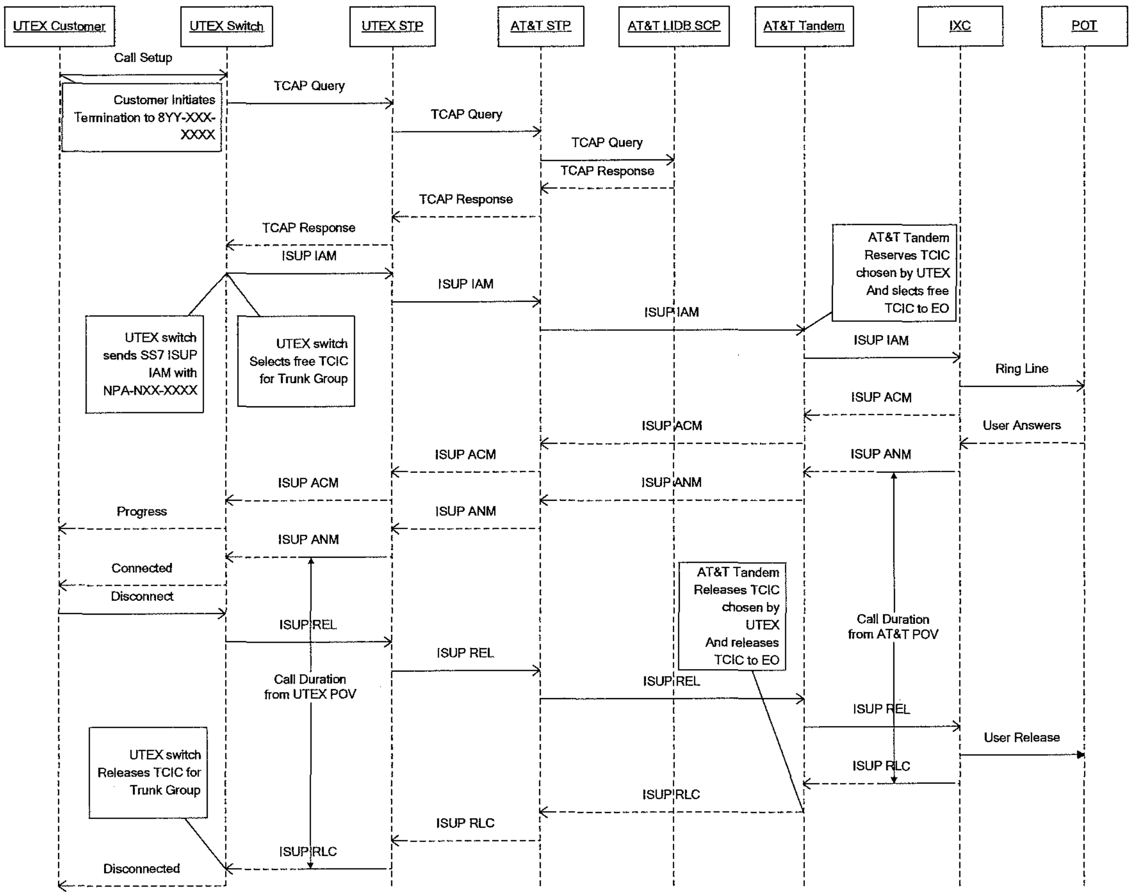

The following diagram shows the operation of the UTEX OSS for billing arrangements between AT&T and UTEX for this kind of call.



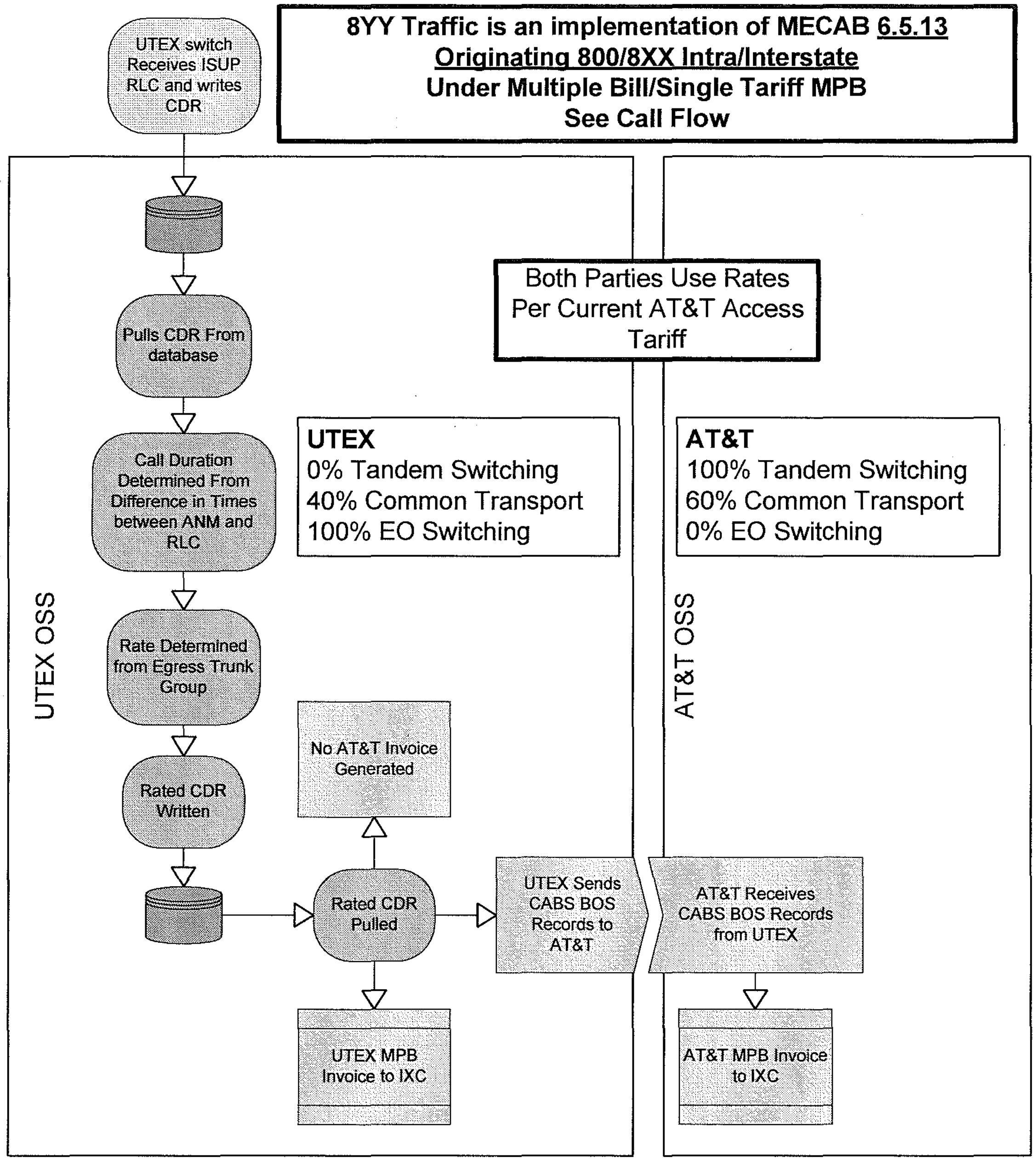

**251(g) Jointly Provided Access**

Below are two of the most common types of jointly provided access calls. The first is a UTEX customer originating an 8YY call to an IXC through both UTEX and AT&T. The second type presented is an IXC terminating a call to a UTEX ISP customer through both UTEX and

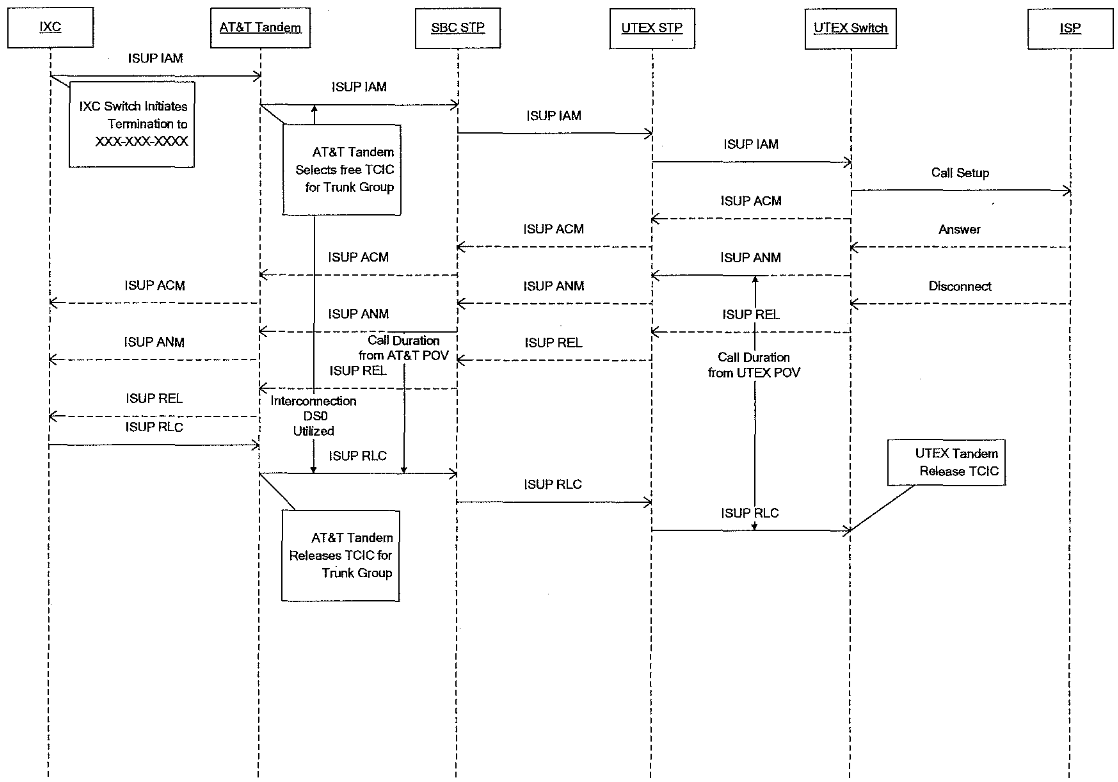
AT&T. The following diagram depicts an originating 251(g) call from a UTEX customer originating an 8YY call:




The following diagram shows the billing arrangements for this kind of call.

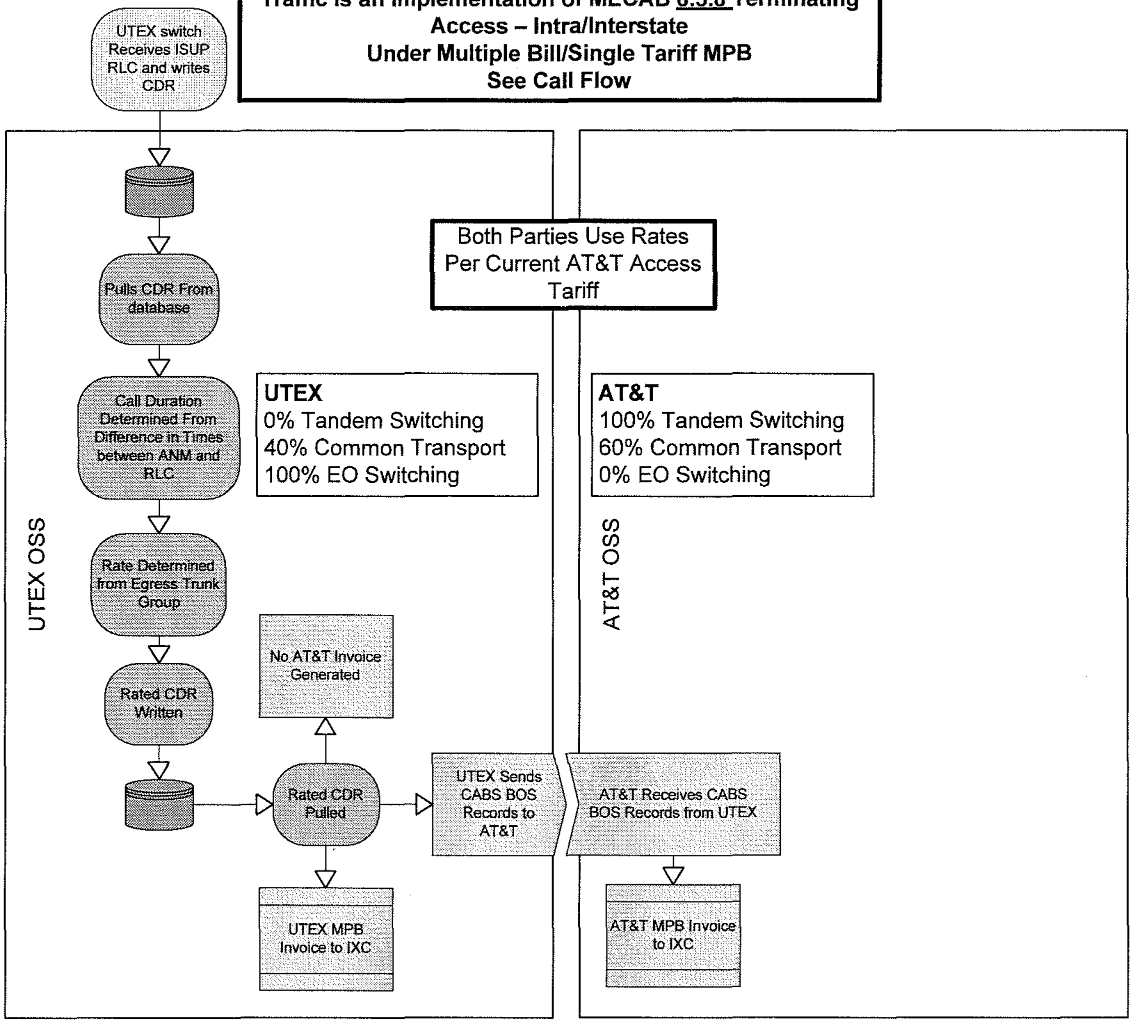



The following call diagram depicts a 251(g) originating call originating from an IXC:

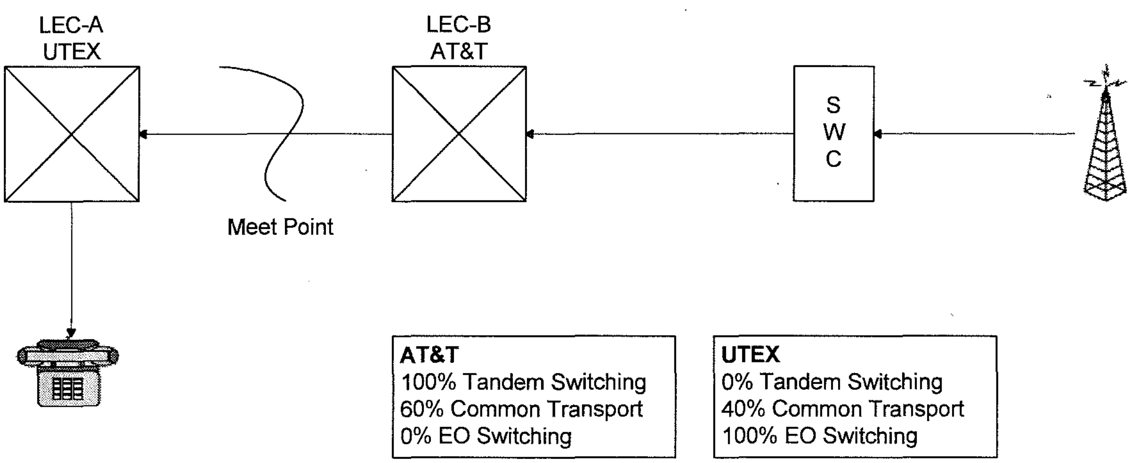



The two following diagrams show the billing arrangements per MECAB.

**Traffic is an implementation of MECAB 6.5.8 Terminating Access – Intra/Interstate**
**Under Multiple Bill/Single Tariff MPB**
**See Call Flow**




**Traffic is an implementation of MECAB 6.5.8 Terminating Access – Intra/Interstate**
**Under Multiple Bill/Single Tariff MPB**



## B. Operations in Chapter 11

### 1. TPUC Docket 33323 Complaint Case.

In the Docket 33323 complaint case involving the existing agreement, the Texas PUC effectively ruled that when the existing agreement was formed that UTEX (1) voluntarily agreed to use the CPN standard AT&T defined after the agreement was formulated and (2) agreed to pay access to AT&T for ESP traffic based on CPN-based call rating results, using legacy geographic concepts. This is so despite an express provision in the agreement saying there is "no compensation due or payable" for ESP traffic. The Texas PUC held that UTEX owes AT&T $3,777,388.61 in access and "CPN" related charges. Many of the findings by the PUC in support of the decision were not supported by the actual facts and history, are anomalous and are suggestive of regulatory capture.

UTEX strongly disagrees with the decision and retains the right to appeal to the federal courts. UTEX has a binding agreement with AT&T that any such appeal can be delayed until at least the fall of 2010. The Texas PUC was not a signatory to that agreement, but is fully on notice of it, and therefore has no basis to assert laches or other waiver. The Texas PUC is well aware of UTEX's intent to appeal should it be necessary. UTEX intends to see what the Texas PUC does in Docket 26381 because that case could and should render the Docket 33323 holdings moot and of little consequence since the Act now must control and there has been no voluntary waiver by UTEX. Should the Texas PUC decide that the Docket 33323 holdings somehow provide precedent or in any way guide the proper determinations to be made in Docket 26381, which would be further evidence of regulatory capture at that agency, UTEX will respond accordingly. An appeal of both Dockets will then be necessary and will occur. If, on the other hand, the Texas PUC does not meet the deadline established by the FCC, then UTEX will immediately file a renewal of its request for preemption.

### 2. Post Docket 33323 Adjustments.

Pending any reversal on appeal and the termination of the existing agreement as a result of approval of the replacement agreement as part of Docket 26381, the Docket 33323 rulings and interpretations of the existing agreement are in effect. UTEX has made a number of adjustments to its operations and practices to reduce its prospective payment obligations to AT&T.

UTEX has now invented and deployed "invalid CPN" blocking technology into its infrastructure. UTEX has requested AT&T to work with UTEX to confirm that its deployed technology is working properly, but to date AT&T has refused to work with UTEX. UTEX currently believes it's solution is working.

UTEX has requested that AT&T allow the establishment of MPB trunks with AT&T and to route all illicit and/or PSTN originated traffic over such trunks. However, AT&T has recently testified in the replacement agreement arbitration that UTEX does not – contrary to what it claimed in the complaint case – actually support such traffic. Notwithstanding this testimony, AT&T has refused to establish MPB trunks.

### 3. Monthly Operating Report.

Debtor's most current monthly operating report (MOR) is attached as Exhibit B.

## C. Future Income and Expenses Under the Plan

### 1. Projected Revenues and Expenses.

UTEX achieved approximately 95 million minutes per month of new technology traffic in 2005 when it thought it had regulatory certainty. Today, UTEX has approximately 25 to 35 million minutes per month. The decline is entirely due to the regulatory uncertainty engendered by AT&T's efforts against both UTEX and its customers to impose an access charge regime on traffic that UTEX and its customers assert is access-exempt.

UTEX projects that with the advent of IP-based calling on smart phones, the wholesale market will significantly exceed the current levels in future years. UTEX also believes that with certainty as to the intercarrier relationship with AT&T, it will be able to significantly grow its existing business, if the regulators honor their regulatory obligations and agree with the majority of federal courts regarding the application of access charges to ESP traffic.

A projection of revenues and expenses is attached hereto as Exhibit C. It does not include "OCN" revenues which are the receivables due to UTEX from numerous originating carriers, including AT&T, to the extent that AT&T's charges are upheld. In its Order in Docket No. 33323 (the complaint case), the Texas PUC acknowledged that UTEX has the right to bill the responsible party for charges under UTEX's own tariff and the law, however UTEX does not rely on receiving monies from these bills as part of our plan.

Since all traffic exchanged by LECs under federal law must be classified as either 251(b)(5), 201/251 Transit or 251(g), UTEX believes that if UTEX is incorrect as to its classification position related to its customer's traffic, the following changes will occur:

251(b)(5) Originating (Reduced)

251(b)(5) Terminating (Increased)

201 / 251 Transit Originating (Similar)

201 / 251 Transit Terminating (Increased)

251(g) Jointly provided Access (Increased)

UTEX notes that if it is wrong on its classification issues from 26381, then it should not diminish the total amount of traffic, but rather it would simply result in a reclassification of such traffic. A new projection would need to be created.

**2. AT&T Claims Against UTEX.**

AT&T has not filed a proof of claim but has sent UTEX post-petition billings which appear to comply with neither the Bankruptcy Code nor the Act. UTEX has reached out to AT&T to seek clarification or explanation of the bills but AT&T has not responded. The proof of claim deadline is not until July 5, 2010, so Debtor may not be able to obtain clarity except by objecting to the AT&T proof of claim and post-petition billing. UTEX and AT&T are operating under an agreement (ICA) that went into effect in 2000. The primary term expired on January 22, 2001, and AT&T provided a timely Non-Renewal Notice, indicating that AT&T intended to terminate the agreement. Since that time the agreement has operated under "evergreen" status pending development of a new agreement. Upon approval of the new agreement the existing agreement will terminate under its own terms, and the parties will operate exclusively under the terms of the new agreement. The relevant provisions in the existing agreement are as follows:

> <u>4.0 Term of Agreement</u>
> 4.1 This Agreement will become effective as of the Effective Date stated above, and will expire on January 22, 2001. This agreement will continue on an annual basis, unless written Notice of Non Renewal and Request for Negotiation (Non Renewal Notice) is provided by either Party in accordance with the provisions of this Section. Any such Non Renewal Notice must be provided not later than 180 days before the day the noticing Party intends to terminate this Agreement. The noticing Party will delineate the items desired to be negotiated. Not later than 30 days from receipt of said notice, the receiving Party will notify the sending Party of additional items desired to be negotiated, if any. Not later than 135 days from the receipt of the Non Renewal Notice, both parties will commence negotiations.
>
> 4.2 The same terms, conditions, and prices will continue in effect, on a month-to-month basis as were in effect at the end of the latest term, or renewal, so long as negotiations are continuing without impasse and then until resolution pursuant

> to this Section. The Parties agree to resolve any impasse by submission of the disputed matters to the Texas PUC for arbitration. Should the PUC decline jurisdiction, the Parties will resort to a commercial provider of arbitration services.
>
> 4.3 **Upon termination of this Agreement, CLEC's liability will be limited to payment of the amounts due for Network Elements, Combinations, Ancillary Functions and Resale Services provided up to and including the date of termination and thereafter as reasonably requested by CLEC to prevent service interruption, but not to exceed one (1) year.** The Network Elements, Combinations, Ancillary Functions and Resale services provided hereunder are vital to CLEC and must be continued without interruption. When CLEC provides or retains another vendor to provide such comparable Network Elements, Combinations, Ancillary Functions or Resale services, SWBT and CLEC agree to co-operate in an orderly and efficient transition to CLEC or another vendor. SWBT and CLEC further agree to coordinate the orderly transition to CLEC or another vendor such that the level and quality of the Network Elements, Combinations, Ancillary Functions and Resale Services is not degraded and each Party will exercise its best efforts to effect an orderly and efficient transition.

UTEX is fully supportive of termination of the existing agreement, and looks forward to operation under the replacement agreement that is expected to flow from Docket 26381, the ongoing arbitration proceeding. Indeed, UTEX intends to terminate the current agreement through the creation of a new ICA as soon as it is possible to do so and remain in operation and maintain interconnection and traffic exchange with AT&T, under the replacement agreement or – if necessary – other arrangements as provided by law.

Regardless of the timing or basis for termination of the existing agreement, it is clear from the express terms of Section 4.3 in the existing agreement that upon termination UTEX's "liability will be limited to payment of the amounts due for Network Elements, Combinations, Ancillary Functions and Resale Services provided up to and including the date of termination." The limitation of liability to "payment of the amounts due for Network Elements, Combinations, Ancillary Functions and Resale Services provided up to and including the date of termination" on its face excludes any liability there may be for (1) interconnection and (2) intercarrier compensation, whether in the form of reciprocal compensation, billing from "no" or "Invalid" CPN or access charges. Interconnection and intercarrier compensation do not appear in the list and occupy a different regulatory classification than the items that are on the list. Therefore, when the agreement terminates the great preponderance of AT&T's claims – both pre-petition and post-petition – will be extinguished.

At the same time, however, the limitation extends only to amounts said to be owed by UTEX to AT&T, and does not limit any amounts that may be owed by AT&T to UTEX. Nor does the limitation limit any amounts that may be owed to UTEX by any of AT&T's affiliates. Hence, when the current agreement terminates virtually all amounts claimed to be owed by UTEX to AT&T will be eliminated, but AT&T and its affiliates will still be liable for all amounts due to the estate.

**3. USAC Dispute.**

UTEX is required to file quarterly forms with the Universal Service Administrative Company, a quasi-governmental entity which collects fees which are intended to support the provision of universal service to all segments of the country. UTEX contends that the determinations made by the Texas PUC in Docket 33323 created confusion regarding UTEX's billing obligations, which in turn resulted in an over-estimation of certain categories of revenues and a substantial overpayment of fees to USAC in the range of between $80,000 and $ 429,000, for which UTEX is entitled to a refund. UTEX is in the process of documenting the over-payment.

## D. Future Management of the Debtor

Debtor operates under a management/consulting services agreement with Worldcall, Inc., a related entity. Debtor intends to assume the management/consulting services agreement, a copy of which is attached as Exhibit D. Lowell Feldman currently operates as the chief executive operator of the company. Rich Lewis operates as chief financial officer. No significant change in management is expected after Plan confirmation.

## E. Accounting Method Used and Source of Financial Information

Debtor uses generally accepted accounting principles on an accrual basis. The information contained in this disclosure statement has been provided by the Debtor and is unaudited.

# IV. ANALYSIS AND VALUATION OF PROPERTY

DIFFERENCES BETWEEN THIS DISCLOSURE STATEMENT AND DEBTOR'S ORIGINALLY FILED SCHEDULES SHOULD BE REFLECTED IN AMENDMENTS TO THE SCHEDULES AND THE DISCLOSURE STATEMENT REFLECTS THE CURRENT STATUS OF DEBTOR.

## A. Real Property

UTEX owns no real property.

## B. Personal Property

The personal property owned by UTEX is scheduled on the Amended Schedule B filed on April 22, 2010 (Doc. #71). The nature of litigation claims which are listed therein are further described below.

UTEX asserts the right to certain revenues referred to as "OCN" revenues which are the receivables due to UTEX from numerous originating carriers, including AT&T, to the extent that AT&T's charges are upheld. In its Order in Docket No. 33323 (the complaint case), the Texas PUC acknowledged that UTEX has the right to bill the responsible party for charges billed under UTEX's own tariff and the law. In the event there is somehow interconnection liability to

AT&T notwithstanding the express terns of the contract, UTEX will use OCN charges offset the disputed AT&T claims. A list of such OCN Receivables is attached as Exhibit E.

**C. Intangible Property**

UTEX owns no intangible personal properties except for causes of action described below.

**D. Liquidation Value of Assets**

Without consideration of litigation claims, Debtor has assets with a market value of approximately $1,750,000. However, if these assets were sold on a liquidation basis, the probable net proceeds of such a sale would be $0 because all of the UTEX's assets are subject to the liens of Main Street Mezzanine Fund and Worldcall, Inc. The probable purchaser of Debtor's assets would likely view UTEX's principal value to be equal to the cost of starting a similar business from scratch and establishing interconnection in seven LATAs in Texas, including certification as a CLEC, securing an ICA and effectuating the flow of traffic. These valuations do not take into consideration the costs of administration or litigation on the contested claims.

## V. SUMMARY OF PLAN OF REORGANIZATION

The following summary of claims is derived from the Debtor's schedules and a review of the claims filed in this proceeding. THE EXACT AMOUNT OF EACH CLAIM FOR PURPOSES OF THIS DISCLOSURE STATEMENT, THE PLAN, AND THE SUBSEQUENT DISCHARGE WILL BE AS STATED IN THE DISCLOSURE STATEMENT AND PLAN EXCEPT THAT A PROOF OF CLAIM FILED BY A CREDITOR IS PRIMA FACIE EVIDENCE OF THE AMOUNT OF THE CLAIM, UNLESS AN OBJECTION TO THE PROOF OF CLAIM IS FILED. THOSE CLAIMS WHICH ARE LISTED AS DISPUTED IN

THIS DISCLOSURE STATEMENT WILL BE SETTLED BY AGREEMENT OF THE PARTIES OR BY THE COURT BEFORE DISTRIBUTION UNDER THE PLAN OCCURS.

EACH CREDITOR WILL BE PAID IN THE MANNER SET FORTH BELOW WHICH APPLIES TO THAT PARTICULAR CREDITOR. IN THE EVENT DEBTOR DISCOVERS A POTENTIAL VOIDABLE PREFERENCE, FRAUDULENT CONVEYANCE, OR EQUITABLE SUBORDINATION CLAIM, DEBTOR SPECIFICALLY RETAINS THE RIGHT TO PURSUE SUCH CAUSE OF ACTION. DEBTOR HAS NOT COMPLETED AN EXAMINATION OF DEBTOR'S RECORDS FOR THE YEAR PRIOR TO FILING, BUT ANY VOIDABLE PREFERENCE, FRAUDULENT CONVEYANCE, OR EQUITABLE SUBORDINATION CLAIM DISCOVERED SHALL BE IDENTIFIED NOT LESS THAN 10 (TEN) DAYS PRIOR TO VOTING ON THE PLAN OF REORGANIZATION.

## A. Classification and Treatment of Classes under Plan

Under the proposed Plan, Debtor anticipates that all classes of claims will be paid in full. However, the resolution of the AT&T claim may not have occurred at the time of Plan confirmation. The outcome of the AT&T dispute will not affect the treatment of allowed claims in Classes 1 through 4. If resolution of the AT&T dispute results in allowance of all, or substantially all, of the AT&T claim, Debtor's projected cash flows will be inadequate to pay the allowed Class 5 Claims in full within the term of the Plan. For that reason, the Debtor's Plan of Reorganization provides for Alternate Treatment of allowed Class 5 claims and Class 6 Equity Interests in the event the resolution of the AT&T dispute results in less than full payment to General Unsecured Creditors. Upon the entry of a final and non-appealable order allowing the AT&T claim ("Alternate Treatment Event"), Debtor will recalculate all allowed Class 5 claims as of the Effective Date as though each such allowed claim had been allowed on the Effective

Date. Debtor will then notify each holder of an allowed Class 5 Claim of the amount of such claim, the ratio of that claim to all allowed Class 5 Claims and the amount of the payment on account of each such claim under the Alternate Treatment set forth below.

**Class 1** **<u>Administrative Claims</u>**

Class 1 administrative claims for fees which occurred prior to confirmation, and for which application is made, shall be paid in full or as the same are allowed, approved, and ordered paid by the Court. Debtor's attorney's fees incurred post-confirmation may be paid by the Debtor in the ordinary course of business without prior approval by the Court. In addition, fees incurred by Debtor unrelated to the Plan and in the ordinary course of business may be paid without prior approval by the Court. Post-confirmation attorney fees in connection with this bankruptcy will probably not exceed $5,000 over the two years following confirmation. This class of claimants also includes claims which have arisen between the Petition Date and the Confirmation Date. Post-confirmation fees will be paid as an operating expense of the reorganized Debtor.

This class also includes the post-petition claims of USAC to the extent such claims are allowed as administrative claims, which Debtor disputes. Debtor believes that, at a minimum, the claims of USAC will be reduced to $0.

The estimated amount of attorney's fees, through confirmation of the Plan, is $45,000.00. Debtor has provided a $30,000.00 retainer to its attorneys, so that the estimated amount remaining to be paid under the Plan is $15,000.00. The allowed amount shall be paid by the bankruptcy estate.

The Debtor shall pay to the United States Trustee the appropriate sum required pursuant to 28 U.S.C. § 1930(a)(6) on the Effective Date of the Plan of Reorganization and simultaneously provide to the United States Trustee an appropriate affidavit indicating cash disbursements for the relevant period. Quarterly payments will be paid through the quarter the Plan is dismissed, converted, or the case closed, or sooner as provided by law.

Class 1 is not a true class and is neither impaired nor unimpaired.

**Class 2** **Claim of Ad Valorem Tax Entities**

Debtor will pay the allowed 2010 claim of any allowed ad valorem tax claimant with earned interest of 12%, if any, prior to the last day upon which the 2010 assessment can be paid without penalty. The holders of an allowed Class 2 claim will retain its lien until paid in full.

Class 2 is impaired.

**Class 3** **Secured Claim of Main Street Mezzanine Fund ("MSMF")**

MSMF will retain its first lien on substantially all of the Debtor's assets and will be paid the allowed amount of its secured claim in 120 monthly payments at 13% interest beginning on the first day of the month following the Effective Date of the Plan.

Class 3 is impaired.

**Class 4** **Secured Claim of Worldcall, Inc.**

Worldcall, Inc. will retain its second lien on substantially all of the Debtor's assets and will be paid the allowed amount of its secured claim in 120 monthly payments at 8% interest beginning on the first day of the month following the Effective Date of the Plan.

Class 4 is impaired.

**Class 5** **Unsecured Claims**

Unless an Alternate Treatment Event occurs, all allowed unsecured claims will be paid in full with 6% interest in 60 monthly payments beginning on the first day of the month following the Effective Date of the Plan. See Exhibit F, Unsecured Creditors.

**Alternate Treatment**: If the Alternate Treatment Event set forth herein occurs, a recalculation of allowed Class 5 claims shall be completed by the Debtor within 30 days of the Alternate Treatment Event. Each allowed Class 5 Claim shall be paid its pro rata share of 60 equal monthly payments of $2,742.00 each (the Combined Class 5 Payment) and all funds (after offsets) recovered from the OCN Receivables in full satisfaction of each such allowed claim. Any payment to a holder of an allowed Class 5 claim which may have occurred prior to the Alternate Treatment Event shall be credited to any payments which would have been made under the Alternate Treatment provision after the Effective Date.

Class 5 is impaired.

**Class 6** **Equity Claims**

Unless an Alternate Treatment Event occurs, holders of equity in the Debtor will retain such interests but will receive no distribution of dividends until allowed claims of Classes 1 through 5 are paid in full.

**Alternate Treatment**: If an Alternate Treatment Event occurs, all equity in the Debtor will be cancelled. Equity in the Reorganized Debtor will be acquired by the entity which provides sufficient and necessary cash or cash equivalent to the Debtor to constitute "new value" as determined by the court at confirmation. Debtor believes the amount of cash or cash equivalent necessary to constitute "new value' is not less than $100,000.00.

Class 6 is impaired.

**B. Mechanics/Implementation of Plan**

Under existing law, a new Interconnection Agreement will be the result of the pending arbitration by the Texas PUC. The FCC has required that a determination on the open issues be issued by July 9, 2010. If the Texas PUC does not meet that deadline, UTEX will immediately seek further preemption and the arbitration will be a proceeding at the FCC.

Whether or not an Alternate Treatment Event has occurred, and in addition to any "new value" which may be contributed under the Alternate Treatment of allowed Class 5 Claims, Worldcall, Inc. will contribute additional capital of $60,000 on the first day of the fourth calendar month after the Effective Date and $40,000 on the first day of the ninth calendar month after the Effective Date.

## C. Feasibility of Plan

No one can predict with certainty the outcome of the proceedings, litigation and arbitrations that are routine in the Debtor's business. However, the claim of AT&T on which it based its threat to terminate services to UTEX will be resolved in a manner which will allow UTEX to continue to operate. AT&T's claim will be effectively reduced to zero by the terms of the existing Interconnection Agreement upon the termination of that agreement by the creation of the new agreement under the pending arbitration. Even if UTEX decides to accept the current AT&T claim, UTEX will have the right to bill those entities currently identified as OCNs in the Debtor's Schedule B. (see Exhibit E). The AT&T billings that make up the majority of its pre-petition claim are essentially "pass-through" billing under existing tariffs, a conclusion stated in the 33323 Order from the Texas PUC. Additionally, the pending fraud litigation against AT&T is likely to result in a damages award which far exceeds all other claims in the case.

## D. Claims Allowance Procedure

If a creditor or interest is scheduled in the Schedule of Liabilities filed by the Debtor, that schedule constitutes prima facie evidence of the validity and amount of the claims of creditors and interests. It is not necessary for a creditor or interest to file a proof of claim if there is not a disagreement as to the amount owed. If you disagree with the amount scheduled or you are a creditor whose claim or interest is not scheduled or scheduled as unknown, disputed, contingent, or unliquidated, you **MUST** file a proof of claim or interest by the bar date. Any creditor who fails to do so shall not be treated as a creditor with respect to such claim for purposes of voting and distribution.

**THE BAR DATE FOR FILING PROOFS OF CLAIM IN THIS CASE IS JULY 5, 2010. Any late filed claims will be deemed disallowed without further order of the Court upon confirmation of the Plan pursuant to Bankruptcy Rule 3003. Pursuant to Bankruptcy Rule 3003, any creditor who was scheduled as contingent, unliquidated, or disputed who did not file a claim will be treated as not having a claim for voting or Plan distribution.**

Pursuant to Section 502 of the Bankruptcy Code, your claim will be allowed against a Chapter 11 estate in either (1) the scheduled amount or (2) the amount shown on your proof of claim unless the Debtor or a party in interest objects to your claim. The controversy will be set for a hearing and the allowed amount of your claim will be determined by the Bankruptcy Judge. Generally, unsecured claims will not be allowed to accrue interest after the Filing Date, while secured claims may be allowed post-petition interest and other charges under Section 506 of the Bankruptcy Code. In order to be fully apprised of your claim rights, you should consult an attorney knowledgeable in bankruptcy matters.

You, the Claimant, have the responsibility for determining how your claim has been scheduled in the case. To avoid any possibility of error, you should check the Court records to determine how your claim has been scheduled. Proof of claim forms may be obtained from the U.S. District Clerk, Bankruptcy Division, 903 San Jacinto Blvd., Austin, Texas 78701, your attorney, online, or some office supply stores. Please do not request the Debtor's attorney to help you file your claim. In order to protect your interests, consult YOUR ATTORNEY on any questions you may have concerning the filing or allowance of your claim.

**E. Retention of Jurisdiction**

Once a Plan of Reorganization is confirmed by the Court, the Court's role changes. Until the case is closed, the Court shall have jurisdiction over the following matters. This list is meant to be descriptive and is not intended to be an exhaustive recitation of the Court's authority. The Court shall retain jurisdiction:

1) To insure that the purpose and intent of this Plan are carried out;

2) To consider any modification of this Plan under Section 1127 of the Code;

3) To hear and determine all claims, controversies, suits and disputes against the Debtor;

4) To hear and determine all controversies, suits and disputes that may arise in connection with the interpretation or enforcement of this Plan;

5) To hear and determine all requests for compensation and/or reimbursement of expenses which may be made after the effective date of the Plan which relate to services rendered prior to confirmation of the Plan;

6) To hear and determine all objections to claims, controversies, suits and disputes that may be pending at or initiated after the effective date of the Plan, except as provided in the confirmation order;

7) To consider and act on the compromise and settlement of any claim against or cause of action on behalf of the Debtor or the estate;

8) To enforce and interpret by injunction or otherwise the terms and conditions of the Plan;

9) To enter an order concluding and terminating this case;

10) To correct any defect, cure any omission, or reconcile any inconsistency in the Plan or confirmation order which may be necessary or helpful to carry out the purposes and intent of the Plan;

11) To determine all questions and disputes regarding titles to the assets of the Debtor or the estate;

12) To classify the claims of any creditor and to re-examine claims which have been allowed for purposes of voting, and to determine objections which may be filed to creditors' claims (the failure by the Debtor to object to, or examine any claim for the purposes of voting shall not be deemed a waiver of the Debtor's right to object to, or re-examine the claim in whole or part);

13) To consider and act on such other matters consistent with this Plan as may be provided in the confirmation order;

14) To consider the rejection of executory contracts that are not discovered prior to confirmation and allow claims for damages with respect to the rejection of any such executory contracts within such further time as this Court may direct.

Consummation of the Plan will occur within 180 days from the Effective Date of the Plan unless there is a matter pending at that time, in which case no Application for Final Decree will be made until that matter is resolved.

## F. What Debtor is Retaining

Upon confirmation of the Plan all property will be revested in the reorganized Debtor pursuant to 11 U.S.C. § 1141.

# VI. ALTERNATIVES TO DEBTOR'S PLAN

The alternative to Debtor's Plan is a Chapter 7 liquidation. Excluding litigation matters and OCN collections, and in the event that this case is converted to a Chapter 7, Debtor's property will be sold at the direction of a Chapter 7 Trustee. Unless the Trustee attempts to operate the Debtor's business, assets which will be subject to sale will be little more than the customer list, the value of which Debtor estimates to be of little value in a liquidation. These sales are usually operated on a "quick sale" or "fire sale" basis and the amount recovered is only a percentage of the fair market value of the Property. Debtor believes that the most which would be gained from a Chapter 7 would be $50,000-60,000 from the sale of the tangible nonexempt assets. This amount would go to pay administrative expenses, the Trustee's commission, and the secured creditors. Debtor does not believe that any amount would be available to pay deficiency claims or unsecured creditors under a Chapter 7 liquidation. The Trustee would be able to pursue causes of action owned by the Debtor. However, valuing litigation in the hands of someone other than the debtor is speculative at best.

# VII. RISKS TO CREDITORS UNDER THE DEBTOR'S PLAN

The financial forecast set forth in this statement reflects the Debtor's judgment based on present circumstances and the most likely set of conditions and courses of action. The assumptions disclosed herein, particularly with respect to the claims by and against AT&T, are those that Debtor believes are significant to the financial forecast and are key factors upon which the operating results of Debtor depend. Some assumptions inevitably will not materialize and unanticipated events and circumstances may occur subsequent to the date of this statement. Therefore, actual results may vary from the financial forecast. The forecasts based on Debtor's revenues are subject to the risks generally incident to sales, including: adverse changes in national economic conditions; adverse changes in local market conditions due to changes in general or local economic conditions; and other factors which are beyond the control of Debtor.

Non-performance under the Plan by Debtor will likely result in cessation or sale of the business. This may also result in negative tax ramifications for the Debtor's estate.

## VIII. CREDITORS' REMEDIES UPON DEFAULT

In the event that a creditor does not receive a payment required under the Plan, a creditor can send notice of said default to Debtor, requesting a response from Debtor within 20 business days of receipt. If Debtor fails to respond satisfactorily within 20 days, that creditor may pursue any or all remedies available under state or federal law. Failure to commence an action in a Court of competent jurisdiction by an affected creditor within the applicable statute of limitations after the reorganized Debtor's failure to make payment required by the terms of this Plan, without regard to whether there has been given notice of failure to pay and without regard to whether default has occurred, shall cause the claim to be barred by limitations and waiver.

## IX. TAX CONSEQUENCES TO THE DEBTOR

An analysis of federal income tax consequences of the Plan to Creditors and the Debtor requires a review of the Internal Revenue Code, the Treasury Regulations promulgated thereunder, judicial authority, and current administrative rulings and practice. The Plan and its related tax consequences are complex. The Debtor has not requested a ruling from the Internal Revenue Service, nor has he obtained an opinion of counsel. **This summary is provided for informational purposes only, and we assume no responsibility for the effect consummation**

**of the Plan will have on any given creditor. Therefore, all creditors should consult with their own tax advisors concerning the particular effect to them of the federal, state, local and foreign tax consequences of the Plan.**

A. Tax Consequences to Debtor

Generally speaking, under the Internal Revenue Code of 1986 (the "Tax Code"), the filing of the Chapter 11 bankruptcy petition by Debtor results in the treatment of the estate as a separate taxable entity. The estate must file tax returns and pay taxes on its taxable income generated during the period of administration. Any tax liability payable by the estate would be an administrative claim. Accordingly, if the estate were to have a significant income tax liability, the funds available for distribution to unsecured creditors would be reduced.

The estate succeeds to the Debtor's tax attributes existing as of the first day of the taxable year in which the bankruptcy petition is filed. Accordingly, under the general rule, the estate would succeed to the Debtor's tax attributes existing as of January 1, 2010. These tax attributes could include any of the following: Debtor's net operating loss carryovers, investment tax credit carryovers, and tax bases in assets.

Under Tax Code Section 1398(d)(2), a debtor can make an election to terminate his taxable year as of the day prior to the date of the filing. The deadline for so electing has passed and Debtor did not elect to terminate his tax year.

Until Debtor's tax returns for the pre-bankruptcy period are filed, the magnitude of the tax attributes available to the estate cannot be determined with certainty as of the time of this Disclosure Statement.

As of the date of this Disclosure Statement, no significant taxable events are believed to have occurred since the filing of this case in terms of disposition of estate property. The Tax

Code [Section 1398(h)(8)] allows an estate to deduct administrative expenses during a bankruptcy case. Under Section 1398(f)(2) of the Tax Code, transfers from a bankruptcy estate to a debtor upon the termination of the estate will not be treated as a disposition giving rise to recognition of gain or loss. In such event, a debtor succeeds to the tax attributes of the estate.

At least two courts have found that debtors continue to have liability for any taxes resulting from dispositions of assets under plans, although there can be no assurance that such rulings will necessarily be followed by the Court under the facts of this case. The Plan requires Debtor's share of the taxes to be paid prior to any distribution to creditors upon the sale of a property. Taxes are potentially payable from dispositions of property by foreclosure, just as in the event of a voluntary sale. The amount of tax payable for sales of property encumbered by recourse debt would be measured by the fair market value of the property at the time of the sale, less the taxpayer's basis in the property. Further, disposition of property giving rise to losses and disposition of property giving rise to gains could occur in different tax years. Therefore, the Plan may create some risk of a tax liability to the bankruptcy estate (Debtor).

THE PRECEDING INFORMATION IS BASED ON THE 1986 TAX CODE AND THE DISCUSSION HEREIN MAY CHANGE BASED ON AMENDMENTS TO THAT TAX CODE. INDIVIDUAL CREDITORS SHOULD CONSULT THEIR OWN TAX ADVISERS REGARDING THE EFFECT OF THE PLAN. TO PROTECT BOTH THE DEBTOR AND THE ESTATE FROM TAX CONSEQUENCES, THE DEBTOR OR ANY PARTY IN INTEREST MAY, WITH COURT APPROVAL, RETAIN ACCOUNTANTS TO EVALUATE TAX ISSUES.

B. Federal Income Tax Consequences to Creditors

The federal income tax consequences of the implementation of the Plan to a creditor will depend in part on whether, for federal income tax purposes, the obligation from which a creditor's claim arose constitutes a "security". The determination as to whether an obligation from which a creditor's claim arose constitutes a "security" for federal income tax purposes is complex. It depends on the facts and circumstances surrounding the origin and nature of the obligation. Generally, corporate debt obligations evidenced by written instruments with maturities, when issued, of five years or less, or arising out of the extension of trade credit, do not constitute "securities", whereas corporate debt obligations evidenced by written instruments with original maturities of ten years of more constitute "securities", the Debtor expresses no views with respect to whether the obligation from which a particular creditor's claim arose constitutes a "security" for federal income tax purposes. Creditors are urged to consult their own tax advisors in this regard.

Exchanges by creditors whose claims arise from obligations that do not constitute "securities", or whose claims are for wages or services, will be fully taxable exchanges for Federal income tax purposes. Such creditors who receive solely cash in discharge of their claims will recognize gain or loss, as the case may be, equal to the difference between (i) the amount realized by the creditor in respect of its claim (other than any claim for accrued interest) and (ii) the creditor's tax basis in its claim (other than any claim for accrued interest). For federal income tax purposes, the "amount realized" by a creditor who receives solely cash in discharge of its claim will be the amount of cash received by such creditor.

Where gain or loss is recognized by a creditor, the character of such gain or loss as a long-term or short-term capital gain or loss or as ordinary income or loss will be determined by a number of factors, including the tax status of the creditor, whether the obligation from which a claim arose has been held for more than six months, and whether and to what extent the creditor has previously claimed a bad debt deduction.

To the extent any amount received (whether cash or other property) by a creditor is received in discharge of interest accrued on its claim during its holding period, such amount will be taxable to the creditor as interest income (if not previously included in the creditor's gross income). Conversely, a creditor will recognize a deductible loss (or, possibly, a write-off against a reserve for bad debts) to the extent any interest accrued on its claim was previously included in the creditor's gross income and is not paid in full.

## X. LITIGATION

**A. TPUC ORDER ON DOCKET NO. 33323.** A description of the decision and the issues in the case is provided above. The Debtor has not yet decided whether or not to pursue an appeal of the Texas PUC Order in 33323, largely because the Debtor is awaiting the Texas PUC's determinations in Docket 26381. Should an appeal be deemed necessary, UTEX will bring forward its claims of error already detailed in its various motions for rehearing and motion for clarification, and potential other errors as well. A partial description of those claims follows:

> 1. Full Record Not Read or Understood. A revolving door of arbitrators made the arbitration less than an ideal for consistency or clarity. The Award, and the Order on Award, were considered and written by adjudicators who were not present for the presentation of testimony. Coupled with a voluminous record, the potential for faulty factual findings is obvious. For example, UTEX's undisputed testimony that every call from an ISP is originated in the same LATA as the called party and calls cannot go outside the LATA received little if any real consideration.
>
> 2. Commission and its staff lack sufficient technical expertise. Courts normally defer to a regulatory agency's presumed expertise over the subject matter. In this instance the normal deference is unwarranted because the Arbitrators demonstrated clear ignorance of the technology and the underlying issues.

3. The Texas PUC is biased against UTEX and in favor of AT&T. AT&T dropped all claims that UTEX in any way has engaged in fraudulent behavior or in any misleading business practice. But the Award plainly insinuates that UTEX engages in such activity despite the total lack of evidence in the record. Whatever the Texas PUC claims about "misrouting of traffic from the PSTN," the case was never truly about any fraud; it was instead about foundational rules and clear business practices on how new technology services may interact with old technology services when a competitive LEC provides a competing service. The fraud and misrouting memes that permeate the Award result from an unfounded staff belief that UTEX "must" be wrong because AT&T is always right.

4. The Texas PUC suffers from regulatory capture, and has abandoned its duty to be neutral and render a decision based on the facts and the law.

5. The Texas PUC's rulings on CPN and its adoption of AT&T's post hoc definition of CPN violates rules of contract construction and are arbitrary, capricious and an abuse of discretion. The rulings are also not supported by substantial evidence.

6. The record is tainted by discovery abuses from AT&T. Recently, UTEX was provided additional discovery related to its Federal case with AT&T that clearly goes to the heart of AT&T Texas' CPN testimony in Docket 33323 case. This missing discovery not provided previously confirms that AT&T Texas statements by one or more of its witnesses were not whole truths and that AT&T Texas was attempting to create a "so-called" industry CPN policy as late as 2006. This alleged CPN policy did not in fact exist at the time the contract was formed nor did any formal CPN policy exist as UTEX has consistently argued.

7. Act and FCC Rules Violated. The results are inconsistent with, and violate the Act and FCC rules. Among other things, the Texas PUC's holding that UTEX – a CLEC – can be required to pay exchange access charges to AT&T violates the cost-based requirements in the Act as well as the FCC's rule on access charges and the FCC's various decisions on intercarrier compensation.

8. The Texas PUC's interpretation and application of the contract terms violate basic rules of contract construction in many ways.

9. The Texas PUC's interpretation is inconsistent with the evidence addressing the intent of the framers of the relevant terms. This includes the intent behind the "no compensation" language in Section 1.4.1 and the meaning and intent behind Section 1.2. With regard to the latter, the Texas PUC's holding that the operative language was intended to match the result in Docket 18082 (the Time Warner dispute resolution) is flatly contradicted by the orders in both Docket 18082 and Docket 17922 (the Waller Creek arbitration that gave rise to Section 1.2).

10. Contract Treatment Not Equal. The Award also treats AT&T and UTEX differently even when the ICA equally applies to both parties on a mutual basis, particularly when it comes to the concept of waiver. Further, the Award

erroneously refuses to apply several provisions in the agreement for arbitrary, capricious and unexplained reasons.

11. DPL Issues Remain Unaddressed. The Commission did not resolve all of the DPL issues and the decision was not based on the record, in violation of PUC Proc. R. 21.125(k)(3) ("The Arbitration Award shall be based upon the record of the dispute resolution hearing, and shall include a specific ruling on each of the disputed issues presented for resolution by the parties").

12. The Quantification of Amounts Deemed Owed Suffer from Several Legal Errors. The Texas PUC erroneously adopted AT&T's quantification of the amounts owed despite multiple demonstrated problems and unresolved questions relating to how it was calculated, what the amount was for, and that AT&T's billing system had admitted multiple errors and miscalculations.

13. The Texas PUC erroneously allowed late charges that are different than the interest amount specified in the agreement, and did not follow its own precedent on this issue.

14. Other rulings are arbitrary, capricious, an abuse of discretion, an unwarranted exercise of discretion, violate applicable legal standards, are not based on substantial evidence and are outside of the Texas PUC's authority.

**B. AT&T Litigation.** Debtor's lawsuit against AT&T is pending in the U. S. District Court for the Western District of Texas, Austin Division, Cause No. A-07-CA-435-RP (Consolidated with A-07-CA-445-LY). AT&T has filed a motion for summary judgment to which UTEX has responded. UTEX has filed a motion for summary judgment to which AT&T has responded. A summary of UTEX's position on AT&T's affirmative claims is as follows[13]:

> AT&T's Motion relies heavily on its erroneous contention that Tariff No. 73 requires compensation when the "N-1" carrier fails to "set" the FCI to "1." Apparently, AT&T uses the FCI content as an implied indicator as to whether a call is "queried." (Motion at 11). However, Tariff No. 73, on its face, only allows a charge for an N-1 carrier's *failure to query* – the actual act which correctly routes the call – not some ministerial post-query act of setting the FCI value to "1." Importantly, AT&T admits that a carrier could not query and still set the FCI to 1, and that a carrier could query and not set the FCI to 1. Therefore, the two acts are not inseparable or always done in tandem. The tariff says nothing of the FCI; instead, the tariff test is whether a query has been performed. AT&T cannot retroactively re-write the clear and unambiguous language it chose to use in the Tariff. Nor can AT&T set aside the actual criterion expressed in the Tariff in favor of a practice or criterion that is no where to be found in the actual language of the Tariff.

[13] UTEX describes its affirmative claims against AT&T elsewhere in this Disclosure Statement.

First, with respect to the Fraudulent AT&T email counterclaim, AT&T committed fraud by sending the AT&T resolution email which clearly told UTEX that – despite all the previous arguments, controversy and disputes described below – AT&T had decided to accept and finally agreed with UTEX's interpretation of the "bill and keep" and "no compensation" provisions in the agreement, given UTEX's tariffed service and the ESP customers it served. The AT&T resolution email, particularly after it was subsequently explained in more detail by Mr. Jackson, communicated to UTEX that the only material billings UTEX would receive would be for "transit" to other carriers, and that any such transit charges would be "local" transit, not "access" transit. UTEX relied on this representation and on account of it decided to materially expand its services and call volume based on the belief that there was no longer a dispute over the compensation terms in the existing ICA.

Second, AT&T made fraudulent factual statements regarding their TIPToP tariff and what that tariff was designed to do in terms of "making the market." UTEX justifiably relied on these factual representations – that were roughly contemporaneous with the AT&T resolution email and entirely consistent in terms of the substance and meaning – to its ultimate detriment and damage.

Third, AT&T committed fraud by representing to UTEX that, so long as the CPN field was populated with 10 digits, it would be deemed by AT&T to contain adequate CPN.

**C. Signaling Layer Translation Service.** In addition to the ESP-specific IGI-POP tariff terms, UTEX has an "access tariff" that – consistent with the statutory definition for exchange access service – applies to carriers rather than end users. A part of the access terms offers to directly interconnect with any other carrier on a direct or indirect basis for the exchange of Internet-based traffic using the Session Initiation Protocol ("SIP").[14] If a carrier chooses to not interconnect using SIP, UTEX must translate signaling layer information from SIP or other IP-based protocols to SS7, ISDN or some other traditional or legacy telephony based signaling method.[15] UTEX's tariff imposes a charge for the "Signaling Layer Translation Service" that

[14] SIP is an application layer protocol for establishing, terminating and modifying multimedia sessions. It is typically carried over Internet Protocol. Voice based sessions are considered a type of multimedia sessions where only audio is exchanged. Non-Legacy technology, including but not limited to SIP-based communication applications do not operate using, and do not typically have information that can be directly and automatically recognized and populated in SS7 format absent translation from SIP signaling to SS7 signaling.

[15] Many in the industry refer to legacy signaling and operation as "TDM" or "time division multiplexing." The current predominant carrier to carrier signaling protocols and standards for "TDM" revolve around "Signaling System 7" or "SS7."

UTEX must perform to translate IP-based information so that specific data is populated into appropriate SS7 ISUP parameters, including the CPN IAM parameter. Signaling Layer Translation Service provides signaling layer information in SS7 format to Legacy Carriers, including LECs, IXCs, and CMRS carriers, that they may in turn use for those purposes for which the SS7 information fields were created to fulfill, *e.g.*, call set-up, tear-down and for operation of CLASS features. Signaling Layer Translation Service populates the information and call control parameters used in SS7 to enable completion of voice calls and CLASS service functionality between traditional PSTN users and users of different technology platforms, including but not limited to SIP.

UTEX has offered on several occasions to interconnect with AT&T using SIP, and AT&T has refused. The most recent refusal occurred in the Docket 26381 replacement agreement arbitration. As noted previously AT&T's contention was that since it had chosen to refuse to invest in new technology, all interconnecting carriers must signal with AT&T using legacy SS7. AT&T then opportunistically uses the legacy information to rate all traffic as if it is legacy traffic, and has in the past even asserted that any traffic signaled using legacy methods was in fact not ever originated using new technology methods and that therefore the traffic is not and never was associated with an enhanced or information service.

As a consequence of AT&T's refusal to interconnect via SIP, UTEX has been required to convert all of the IP-based traffic that traverses UTEX's network either to or from "SS7" and incur all the associated costs. This invokes the mandatory tariffed rates, terms and conditions in UTEX's tariff, since it is providing Signaling Layer Translation Service on AT&T's behalf, and for AT&T's benefit, so that AT&T will be able to recognize the information and use it for those purposes for which the SS7 information fields were created to fulfill, *e.g.*, call set-up, tear-down and for operation of CLASS features. UTEX sent invoices to AT&T for the Signaling Layer Translation Service UTEX has provided to AT&T, and AT&T failed and refused to pay those invoices. UTEX contends that AT&T owes UTEX full payment for Signaling Layer Translation Service. The amount billed is in excess of all bills AT&T has sent to UTEX. UTEX has also continued to provide the service and has not yet billed an additional significant sum.

As part of its counterclaims in the AT&T litigation UTEX sought payment for the past and all future Signaling Layer Translation billings. AT&T challenged the counterclaim, and asserted that UTEX's tariff was unjust and unreasonable. UTEX replied that the Federal Communications Commission has exclusive jurisdiction over any claim that a carrier's tariff is unjust and unreasonable. The parties ultimately agreed to seek, and the court ultimately entered, an order referring the matter to the Federal Communications Commission for determination.

UTEX believes that – as an LEC – its tariffs stand in equal stead with those of AT&T, and that if and to the extent AT&T can impose its tariffs or use those tariffs to define the parties' relationship rather than or as a supplement to any interconnection agreement the UTEX has the same right. AT&T apparently believes its tariffs are supreme, and can trump not only an interconnection agreement but also the FCC's rules and even the Communications Act. Further, AT&T believes that it is always entitled to recover access charges from any party but it is only rarely obliged to pay access charges or even reciprocal compensation to any interconnecting carrier. The litigation and the ultimate result of Dockets 33323 and 26381 will determine the extent to which the regulators and courts agree with AT&T's asymmetric and inconsistent views of the Act, FCC rules and basic principles of fundamental fairness.

**D. NON-AT&T ILEC Billings**. UTEX is indirectly interconnected with dozens of LECs and UTEX routinely mutually exchanges traffic between and among our respective customers' traffic with these LECs. Out of the dozens of LECs, the Non-AT&T ILEC billings results only from traffic principally involving approximately ten incumbent LECs who have historically been active in regulatory proceedings and appear to have four common owners (known as Consolidated, Century-Tel, Windstream and Wes-Tex).These entities have sent "IXC Access Bills" to UTEX both on a pre-petition and post petition basis. Unlike UTEX's relationship with AT&T, which is subject to PUC jurisdiction via our current and prospective interconnection agreement with AT&T, UTEX and these LECs have no contractual relationship. Thus, UTEX's relationship is governed directly by federal law.

Under federal law, because UTEX is an LEC and is not an IXC, UTEX is not subject to any tariff that is intended to apply to an IXC. This includes all supposed "access charges" that have been billed to UTEX by the ILEC entities. Thus, UTEX disputes all of the ILEC billings. When the federal courts have faced similar situations, they have consistently rejected access billings, but the federal district court holdings generally confirm UTEX's legal understanding of this issue.[16]

UTEX has offered to directly interconnect with the "ILEC" companies and to directly work with the "ILECs" to identify and route as Jointly Provided Access any traffic that has been misrouted by an IXC so that both UTEX and the ILECs may prospectively increase our Jointly Provided Access billings. Finally, UTEX notes that since the disputed traffic actually is being passed to each of them by AT&T, then AT&T would be the party incorrectly "routing" the traffic.[17]

The entities whose billings we dispute are: CenturyTel of Lake Dallas Inc., CenturyTel of San Marcos Inc., Consolidated Communications, Texas Windstream, Valor Telecomm TX, LP-

16 *See PAETEC Communs. v. CommPartners, LLC, supra.*

17 Some state commissions have also held that the incumbent providing transit service is responsible for access billings for calls terminated to a rural incumbent, under at least some circumstances.

TX #1, Valor Telecomm TX, LP-TX #2, Wes-Tex Telephone Cooperative, Wes-Tex Telecommunications Inc., Windstream Communications Kerrville; and Windstream Sugar Land Inc.

**E. Preferences And Other Avoidable Transfers.** Although the Debtor has not completed its analysis of payments made by or on behalf of Debtor in the one year period prior to the filing of the petition, Debtor believes that preferences actions brought under §547 would be subject to statutory defenses, or would not benefit the Debtor's post-confirmation business.

## XI. ASSOCIATION OF DEBTOR WITH AFFILIATES

Debtor is associated with the following affiliates, as that term is defined in 11 U.S.C. § 101:

Redwing Equipment Partners Ltd., Worldcall, Inc., Worldcall Internet, Inc. and Worldcall Interconnect, Inc. Worldcall Interconnect, Inc., Worldcall Internet, Inc. and UTEX are wholly owned by Worldcall, Inc. Worldcall, Inc. is owned by numerous shareholders, including several of Lowell Feldman's family members, Main Street Mezzanine Fund, employees, and other outside holders. Redwing Equipment Partners Ltd is a partnership that is owned 33.5% by Worldcall, Inc., approx. 23% by Feldman family and 44% by unaffiliated third-party investors. UTEX, Worldcall, Inc., Worldcall Interconnect, Inc., and Worldcall Internet, Inc. are all makers or guarantors of the Main Street Mezzanine Fund, LP indebtedness which was incurred in 2004 to provide the initial capitalization of the Debtor.

## XII. SUMMARY OF SIGNIFICANT ORDERS ENTERED DURING THIS CASE

As of the date this Disclosure Statement was filed, the only significant orders entered in this case are:

1. Final Order Authorizing Use of Cash Collateral and Providing Adequate Protection (Doc. #109) Entered 05/07/2010.

2. Order Granting AT&T Texas' Motion to Determine Automatic Stay Inapplicable or, Alternatively, for Relief from Stay (Doc. #78) Entered 04/23/2010.

3. Order on Debtor's Motion for Relief from and Clarifying the Automatic Stay (Doc. #79) Entered 04/23/2010.

4. Order Extending Order for Use of Cash Collateral (Doc. #132) Entered 06/28/2010.

## XIII. EXECUTORY CONTRACTS AND LEASES

Debtor scheduled several executory contracts and leases as Schedule G. On or before the $10^{th}$ day before the deadline for voting on the Plan, Debtor will give notice of those executory contracts which will be assumed upon confirmation of the Plan pursuant to 11 U.S.C. § 365(d)(2). Any executory contracts not assumed are deemed rejected. **THE BAR DATE FOR FILING CLAIMS ON REJECTED EXECUTORY CONTRACTS SHALL BE THIRTY (30) DAYS AFTER THE EFFECTIVE DATE.**

## XIV. CONCLUSIONS

Debtor believes that this Disclosure Statement provides adequate information to its creditors and that the Court should so find.

Respectfully submitted,

UTEX COMMUNICATIONS CORP.

By: ______________________
Lowell Feldman, CEO
Debtor-in-Possession

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By: ______________________
Joseph D. Martinec
State Bar No. 13137500
Attorneys for Debtor-in-Possession

## CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of the foregoing *Disclosure Statement* has been served upon the following persons by e-mail or by First Class Mail on this 1st day of July, 2010.

UTEX Communications Corp.
1250 S. Capital of Texas Hwy.
Bldg. 2, Suite 235
Austin, TX 78746

U. S. Trustee
903 San Jacinto Blvd., Ste. 230
Austin, TX 78701

______________________
Joseph D. Martinec