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BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF SOUTH DAKOTA

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IN THE MATTER OF THE FILING BY  
LOCAL EXCHANGE CARRIER  
ASSOCIATION, INC. FOR  
APPROVAL OF REVISIONS TO ITS  
ACCESS SERVICES TARIFF NO. 1

Docket No. TC12-040

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REBUTTAL TESTIMONY OF JO SHOTWELL  
SENIOR VICE PRESIDENT/BUSINESS COMPLIANCE OF  
CHR SOLUTIONS, INC.

January 18, 2013

**REBUTTAL TESTIMONY OF  
JO SHOTWELL**

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**Q. Please state your name and address?**

A. My name is Jo Shotwell and my business address is 5929 Balcones Drive, Suite 200, Austin, Texas.

**Q. Are you the same Jo Shotwell that filed Direct Pre-Filed Testimony in this docket?**

A. Yes I am.

**Q. What is the purpose of this Rebuttal Testimony?**

A. My Rebuttal Testimony will address positions taken by Mr. Bax of AT&T Corp. in his Responsive Testimony filed on December 19, 2012.

**Q. Please outline the positions taken by Mr. Bax that you will address.**

A. I will address Mr. Bax's argument that the City of Brookings did not comply with § 51.909(b)(2)(ii) of the FCC's rules and that the City of Brookings' interpretation of § 51.909(b)(2)(ii) of the FCC's rules is wrong. According to Mr. Bax, the City of Brookings was not required by the FCC rules "to use the fiscal year 2011 terminating intrastate switched access revenues" in its calculation of the transitional rate. Rather, according to Mr. Bax, §51.909(b)(2)(ii) "[e]xplicitly . . . requires carriers to disaggregate demand by rate element which Brookings did not do." (Bax Responsive Testimony at page 21, lines 9-11.) I also will address Mr. Bax's argument at page 20, lines 19-21, that the City of Brookings inappropriately applied "end office local switching and common line access charges to wireless traffic in violation of FCC orders, rules and regulations, and the LECA Tariff No. 1." As a result, Mr. Bax alleges at page 21, lines 1-4, that "the fiscal year 2011 terminating intrastate switched access revenue number on Line 3 of the *Brookings Worksheet*, which forms the very basis for those calculations, includes inappropriate revenues and renders the methodology and the results noncompliant."

1 Based on Mr. Bax's erroneous premise, Mr. Bax disaggregates the approved LECA rate of  
2 \$0.125 (also referred to as the unified rate)<sup>1</sup> into separate rate elements (shown on Mr. Bax's  
3 Exhibit LJB-2, Tables 3 and 4) and then applies the disaggregated rates to the demand he  
4 believes was lawfully billed, even though the demand levels used by Mr. Bax do not always  
5 match the minutes of use actually billed, resulting in a reduction to the City of Brookings' Fiscal  
6 Year 2011 Intrastate Access Revenue<sup>2</sup> used in this proceeding. Mr. Bax's reduced Intrastate  
7 Access Revenue amount (shown on Mr. Bax's Exhibit LJB-10, Line 3) was then used to reduce  
8 the transitional rate filed by the City of Brookings. Mr. Bax's basic premise is flawed and  
9 cannot be supported by FCC rules and Orders.

10  
11 **Q. Before you begin your point by point rebuttal of Mr. Bax's testimony, do you have**  
12 **any general comments about his allegations?**

13 A. Yes. When you boil down Mr. Bax's extensive comments, it appears that in the guise of  
14 disputing the calculation of a prospective rate in a tariff filing, Mr. Bax is asking the South  
15 Dakota Commission to consider a billing dispute AT&T claims to have with the City of  
16 Brookings concerning the proper application of the unified access rate in the LECA tariff that  
17 was in effect from 2006 until the current tariff filing. In essence, Mr. Bax is asking the  
18 Commission in this proceeding to declare that the unified access rate should not have been billed  
19 to wireless terminating traffic. It must be noted that this issue has never been brought before this  
20 Commission or a state or federal court until this proceeding. This proceeding is not the  
21 appropriate forum to challenge an approved rate or its application in past periods. This  
22 proceeding is a compliance tariff filing to develop the one-year transitional rate to be applied in  
23 prospective periods. I will discuss these issues in more detail below.

24  
25 **Q. Mr. Bax alleges that § 51.909(b)(2)(ii) "[e]xplicitly . . . . requires carriers to**  
26 **disaggregate demand by rate element which Brookings did not do." (Bax Responsive**

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<sup>1</sup> The 2006 Stipulation filed in TC04-119 states that the LECA rate (i.e. a single unified access rate) was to be charged for both originating and terminating minutes of use. The 2006 Stipulation and the Order Approving Settlement Stipulation and Order Approving Tariff Revisions are attached to this Rebuttal Testimony as LECA Rebuttal Testimony Exhibit A.

<sup>2</sup> Fiscal Year 2011 revenue is defined by §51.903 as billed revenue from October 2010 through September 2011.

1 **Testimony at page 21, lines 9-11.) Do you agree that the City of Brookings was required to**  
2 **disaggregate demand by rate element?**

3 A. No. § 51.909(b)(2)(ii) requires ILECs to "Calculate total revenue from Transitional  
4 Intrastate Access Service at the carrier's intrastate access rates in effect on December 29, 2011,  
5 using Fiscal Year 2011 intrastate switched access demand for each rate element." The City of  
6 Brookings' intrastate access rate in effect on December 29, 2011 was the unified access rate in  
7 the LECA tariff of \$0.125. In other words, the City of Brookings, and all other members of the  
8 LECA tariff, only had one rate element in Fiscal Year 2011- the unified access rate of \$0.125.<sup>3</sup>  
9 The City of Brookings applied this rate and only this rate to all intrastate switched access  
10 demand in Fiscal Year 2011. There were no other separate rates or rate elements in the LECA  
11 tariff in Fiscal Year 2011 for intrastate switched access service. This being the case, there is also  
12 no requirement under the applicable federal rules to disaggregate demand (by rate element) in the  
13 process of determining the total 2011 terminating intrastate switched access revenues.

14 Even though the LECA intrastate access tariff only contained one rate and one rate element, Mr.  
15 Bax believes it is necessary and that the FCC requires the City of Brookings to disaggregate its  
16 intrastate unified access rate based on §51.909(b)(2)(ii) of the FCC's transition rules. In other  
17 words, he is taking the position that the City of Brookings should disaggregate the previously  
18 approved unified access rate and apply different rates and a different rate structure than what was  
19 actually billed during Fiscal Year 2011. FCC rule §51.909(b) does not require disaggregation of  
20 a state approved unified access rate nor has the FCC issued any clarification or reconsideration  
21 Order<sup>4</sup> that requires this result.

22 FCC rule §51.909(b)(2)(ii) uses the words "... for *each rate element*" to mean any and all rate  
23 elements that were approved intrastate access rates. The unified access rate of \$0.125 was the  
24 only approved switched access rate element in the LECA access tariff for Fiscal Year 2011.  
25 Since 2006 the LECA Intrastate Access Tariff has reflected a unified access rate that applies to

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<sup>3</sup> The LECA rate was a unified access rate, developed based on the composite revenue requirements and demand of all ILEC members of LECA. The demand used in the calculation of the LECA rate (the unified rate) was the composite demand for all ILEC members of LECA, which included terminating wireless traffic from interexchange carriers, like AT&T.

<sup>4</sup> See *Connect America Fund et al.*, WC Docket No. 10-90 et al., Report and Order and Further Notice of Proposed Rulemaking, adopted October 27, 2011 and released November 18, 2011.

1 all terminating access traffic, including wireless traffic. LECA Rebuttal Exhibit A of this  
2 Rebuttal Testimony is a copy of the 2006 South Dakota Commission's intrastate access tariff  
3 approval order with an attached copy of the Settlement Agreement. Contrary to Mr. Bax's  
4 position, FCC §51.909(b)(2)(ii) does not instruct the ILECs to disaggregate the unified access  
5 rate into rate elements that did not exist in the approved state tariff, when determining Fiscal  
6 Year 2011 revenues.

7  
8 **Q. Mr. Bax also alleges that the demand used by the City of Brookings in the**  
9 **calculation of the total revenue from Transitional Intrastate Access Service was not**  
10 **appropriate. Do you agree?**

11 A. No. The City of Brookings used actual billed demand and billed revenues in its  
12 calculation of Fiscal Year 2011 revenue. Mr. Bax argues that this was not appropriate pursuant  
13 to § 51.909(b)(2)(ii), which requires carriers to use Fiscal Year 2011 intrastate switched access  
14 demand for each rate element in the calculation of total revenue from Transitional Intrastate  
15 Access Service, because, according to Mr. Bax, "[c]ertainly, the FCC anticipated that any  
16 reported revenues, and the underlying rates and demand, would be appropriate and lawful under  
17 its orders, rules and regulations." (Bax Responsive Testimony at page 21, footnote 46.) In short,  
18 Mr. Bax argues that the City of Brookings could not use billed demand and billed revenues  
19 because, according to Mr. Bax, the City of Brookings' billed demand for Fiscal Year 2011 was  
20 not "lawful" under the FCC's orders, rules and regulations to the extent that the City of  
21 Brookings applied the entire unified LECA rate to minutes of use terminating to wireless  
22 carriers.

23  
24 **Q. How do you respond to Mr. Bax's allegation?**

25 A. It is important to note that Mr. Bax does not challenge the City of Brookings' calculation  
26 of the billed minutes of use (or demand) for Fiscal Year 2011. He does not challenge that the  
27 LECA rate in effect was \$0.125. And, at page 14, lines 3-5 and page 19, lines 18-21, he agrees  
28 that the City of Brookings could assess access charges to wireless traffic. He alleges, however,  
29 that the City of Brookings could not apply the entire LECA rate of \$0.125 to wireless traffic in  
30 determining the transitional rate because the application of the full rate to wireless traffic was not  
31 lawful. Mr. Bax argues that it was not lawful because the LECA rate includes end office local

1 switching and common line access charges. (Bax Testimony at page 20, lines 19-21 and page  
2 22, lines 6-14).

3 As an initial matter, I must repeat that, like Mr. Bax, I am not an attorney and I am not providing  
4 legal testimony. However, I believe a few comments are in order on Mr. Bax's legal  
5 conclusions. First, although Mr. Bax believes that the City of Brookings has applied the LECA  
6 tariff in an unlawful manner with respect to assessing the unified access rate to traffic  
7 terminating to wireless carriers, there has been no opinion or order released by any regulatory  
8 commission or court that agrees with Mr. Bax's interpretation. As I indicated earlier, the proper  
9 interpretation and application of the LECA tariff unified access rate has not been raised by any  
10 party before any regulatory commission or court, other than AT&T's back door attempt to raise  
11 the issue here. Accordingly, it cannot be said that this issue is settled law.

12 Second, Mr. Bax refers to certain FCC orders as proof that the City of Brookings could not  
13 lawfully apply the unified intrastate access rate to traffic terminating to wireless carriers. At  
14 page 11, footnote 23, Mr. Bax cites to a Sprint Declaratory Ruling as support for this conclusion.  
15 However, this case is not relevant here. The Sprint Declaratory Ruling dealt with the application  
16 of interstate access charges by Sprint, a wireless carrier, to interexchange carriers, in light of the  
17 fact that wireless carrier access services were subject to mandatory detariffing. In this case the  
18 City of Brookings is an ILEC that provided certain switched access services and based thereon  
19 assessed an intrastate unified access rate pursuant to an approved state tariff. The FCC's order  
20 simply does not apply.

21 Mr. Bax also cites to an order concerning a Bell Atlantic interstate tariff concerning carrier  
22 common line charges (Bax Responsive Testimony at page 13, lines 4-18) and a 2004 order on  
23 access charge reform, which, according to Mr. Bax, allows ILECs to apply access charge  
24 elements to wireless minutes of use (MOU) for functions performed by the ILEC (Bax  
25 Responsive Testimony at page 14, lines 3 - 31). Mr. Bax's reliance on this case is misplaced  
26 because the LECA tariff unified access rate does not break out a separate rate element for CCL  
27 or other access charge rate elements. There is only one unified access rate for any and all access  
28 service functions, and AT&T agreed to that unified access rate. And, there is no decision by a  
29 regulatory agency or court that has interpreted the LECA tariff or the application of the unified  
30 access rate in light of the FCC cases cited by Mr. Bax.

1 **Q. Mr. Bax also alleges that the assessment of the unified access rate to wireless MOU**  
2 **does not comply with the LECA tariff. Mr. Bax refers to the definitions of local transport,**  
3 **end office, and common line in the tariff, and diagrams of nonlocal wireline traffic and**  
4 **nonlocal wireless traffic to support his contention that the City of Brookings would only be**  
5 **justified in charging for transport. (Bax Responsive Testimony at page 15, line 7 through**  
6 **page 19, line 16). Do you agree?**

7 A. No. I do not agree with Mr. Bax's contentions. First of all, the City of Brookings is  
8 providing access services to AT&T, regardless of whether the traffic is wireless or wireline. Mr.  
9 Bax does not refute that. Secondly, Mr. Bax improperly depicts and in fact ignores the City of  
10 Brookings' switching functions of the connection from the interexchange carriers. The City of  
11 Brookings performs access services under the LECA tariff. The LECA tariff has one unified rate  
12 for access services, and because the City of Brookings provided access services for all types of  
13 traffic, it is entitled to charge the approved intrastate unified access rate in the LECA tariff of  
14 \$0.125.

15 Even more importantly, this is not the appropriate forum to engage in these discussions. AT&T  
16 has failed to challenge LECA's approved intrastate unified access rate, so there is no decision by  
17 a regulatory agency or court that has interpreted the LECA tariff or the application of the unified  
18 access rate as argued by Mr. Bax.

19

20 **Q. Should the Commission address the application of the LECA tariff and the proper**  
21 **interpretation of the FCC's orders as argued by Mr. Bax?**

22 A. No. There is no need for the Commission to examine these questions in this proceeding.  
23 Mr. Bax only gets to these questions because he erroneously answers the true question before the  
24 Commission in this proceeding, namely, whether LECA developed the transitional rate for the  
25 City of Brookings in compliance with § 51.909 of the FCC's rules. LECA and the City of  
26 Brookings have argued that the use of billed revenues and billed demand was the appropriate  
27 starting point for the calculation of the transitional rate. Mr. Bax has agreed that the revenues  
28 and demand used for developing the City of Brookings rate are in fact the billed revenues and  
29 billed demand. However, Mr. Bax argues that § 51.909(b)(2)(ii) requires an adjustment to billed  
30 revenues and billed demand.

31

1 **Q. Has the South Dakota Commission already addressed whether billed revenues and**  
2 **billed demand comply with §51.909 of the FCC's rules?**

3 A. Yes. The South Dakota Commission approved the LECA tariff for all other LECA  
4 members in May 2012. The transitional tariff rate for all LECA member companies is based on  
5 billed revenues and billed demand for Fiscal Year 2011. The South Dakota Commission  
6 approved the intrastate access tariff filings made by all other LECA members which are based on  
7 the same methodology the City of Brookings used to calculate its Fiscal Year 2011 revenues and  
8 demand.

9 To do as AT&T asks would mean that the South Dakota Commission would interpret the FCC's  
10 rules and apply those rules differently for one LECA member company.

11

12 **Q. Do you have any other statement on this point?**

13 A. Yes. I would argue that the City of Brookings would, in fact, be in violation of the FCC's  
14 rules by accepting the adjustments advocated by Mr. Bax. The FCC's overall intercarrier  
15 compensation reform policy outlined in its November 18, 2011 intercarrier compensation Order  
16 is intrastate and interstate access rate parity, after a transition period. FCC rule §51.909(b) was  
17 designed as a mechanism to start the process toward implementing parity in interstate and  
18 intrastate access rates and rate structures. The FCC's objective was to outline a consistent  
19 methodology that would apply uniformly to all States across the nation. The FCC understood  
20 that Fiscal Year 2011 access revenues and billed demand were easy to identify from accounting  
21 records and should not be a disputed issue in any State. The plain language of the rule is clear in  
22 that the starting point is simply Fiscal Year 2011 revenues based on billed rates and billed  
23 demand.

24 Contrary to Mr. Bax's position, the FCC did not directly state or imply that the new rules allowed  
25 a State Commission or ILEC to make adjustments, and retroactively change, billed rates or  
26 demand. Mr. Bax argues that the rule requires adjustments to billed revenues and billed demand  
27 that is "unlawful." However, the plain language of the rule clearly does not say this. In fact,  
28 adjustments as suggested by Mr. Bax would make the rule unworkable and defeat the FCC's goal  
29 of a quick transition to rate parity. The FCC's Order was released in November 2011 and the  
30 state tariffs to implement the transition rate were required to be filed and approved in all States  
31 by July 1, 2012. This aggressive filing deadline could not be met if adjustments to billed



1 revenues and billed demand for Fiscal Year 2011 were required or allowed. Indeed, this explains  
2 why the FCC did not require such adjustments for uncollectibles, let alone potential allegations  
3 of unlawfulness. If the FCC's rule required or allowed adjustments for allegations of  
4 unlawfulness, a consistent methodology that would apply uniformly to all States and a quick  
5 transition to rate parity would not be possible.

6 Further, in reviewing the policy Order issued in November 2011 and all subsequent clarification  
7 and reconsideration Orders issued since November 2011, I do not find a rule or Order that allows  
8 for retroactive adjustments to Fiscal Year 2011 billed revenues or demand as proposed by Mr.  
9 Bax.

10 The transitional rule at §51.909(b)(2)(ii) states “calculate total revenue” for the Fiscal Year 2011  
11 and does not require any adjustments to billed demand or to an existing intrastate rate structure.  
12 In its June 5, 2012 Order, the FCC states at paragraph 4, that “. . . the Commission did not focus  
13 on specific rates, but compared certain intrastate revenues resulting from switched demand for  
14 Fiscal Year 2011 to the *same* demand priced at corresponding interstate rates for the *same*  
15 period.”<sup>5</sup> (Emphasis added.)

16 The FCC further recognizes in this same Order of June 5, 2012 at paragraph 6 that a *carrier's*  
17 *overall intrastate switched access rate structure may be dissimilar* to its interstate switched  
18 access rate structure which may require a carrier to *move* to the interstate rate structure in 2012  
19 and establish new rate elements.<sup>6</sup> It is clear the FCC's transitional rules in §51.909 and  
20 subsequent Orders envisioned the ILECs would apply previously approved rates and rate  
21 structure to calculate Fiscal Year 2011 billed revenues as the beginning step in a nine year  
22 transition from intrastate access rates and rate structure to interstate rates and rate structure. This  
23 is exactly what the City of Brookings and the other members of LECA did.

24

25 **Q. Do you believe the City of Brookings complied with the FCC's rules and Orders?**

26 A. Yes I do. As stated in Direct Pre-Filed testimony, the City of Brookings calculated its  
27 Fiscal Year 2011 revenues using the same methodology as other LECA members in accordance  
28 with FCC rule §51.909.

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<sup>5</sup> See *Connect America Fund et al.*, WC Docket No. 10-90 et al., Order Adopted June 5, 2012, Released June 5, 2012.

<sup>6</sup> i.d.

1 **Q. Do you believe the City of Brookings is required to use its approved intrastate access**  
2 **tariff in this proceeding?**

3 A. Yes. The FCC rule at §51.909(b)(2)(ii) states the ILECs shall use their intrastate access  
4 rates in effect 30 days after date of publication of the rule in the federal register. The publication  
5 date was December 29, 2011. The \$0.125 unified access rate was the approved rate as of  
6 December 29, 2011. Asking the City of Brookings to use different rates and apply those rates  
7 differently than when billed would be asking the Company to disregard an FCC Order. I do not  
8 believe the City of Brookings has an option. Furthermore, I do not believe the South Dakota  
9 Commission should apply the rule differently to the City of Brookings than it has to other LECA  
10 members.

11  
12 **Q. Does Mr. Bax have any other dispute with the calculation of the City of Brookings**  
13 **transitional rate?**

14 A. No. Mr. Bax agrees with the calculations made by the City of Brookings to apply the  
15 interstate rates and rate structure to intrastate Fiscal Year 2011 demand once his proposed  
16 adjustment to revenues has been made. Mr. Bax's only dispute with the overall calculation is his  
17 allegation that the City of Brookings used higher Fiscal Year 2011 intrastate revenues than was  
18 allowed by the rules. In order for Mr. Bax to reduce the Fiscal Year 2011 revenues, he made  
19 adjustments to the Fiscal Year 2011 demand by making an arbitrary adjustment for wireless  
20 traffic. Mr. Bax is taking the position that for the past six years the City of Brookings should not  
21 have billed the entire LECA rate to access traffic which it switched as an ILEC but which was  
22 ultimately delivered to wireless end users. Rather, the City of Brookings should have adjusted  
23 its switched access rates specifically for AT&T to remove some arbitrary amount for local  
24 switching and common line charges.

25  
26 **Q. Do you believe the unified access rate was applied "inappropriately" as suggested by**  
27 **Mr. Bax?**

28 A. No, I believe the unified access rate was applied correctly. It is well settled that carriers  
29 must charge the rate in their approved intrastate access tariff.

30

1 **Q. Do you agree with the adjustments made to the unified rate to remove local**  
2 **switching and carrier common line charges?**

3 A. No. The LECA rate was a negotiated rate agreed to by the parties, including AT&T, and  
4 approved by the Commission. The parties specifically did not break out the negotiated LECA  
5 rate into rate elements. Therefore, the values assigned by Mr. Bax in his testimony to local  
6 switching and carrier common line have no basis in the existing LECA tariff.

7  
8 **Q. Mr. Bax argues that the Commission must make the adjustments for which he**  
9 **advocates to prevent the City of Brookings from receiving a “windfall.” (Bax Testimony at**  
10 **page 25, line 14) Do you agree?**

11 A. No. As clearly shown in the tariff filing for the City of Brookings, the transitional rate  
12 filed by the City of Brookings will result in a loss of revenues. In other words, even if the  
13 Commission approves the City of Brookings’ filed rate, the City of Brookings’ intrastate access  
14 revenues for 2012 will be less than its revenues for 2011. Therefore, Mr. Bax’s allegation that  
15 the City of Brookings could receive a “windfall” is false.

16  
17 **Q. Mr. Bax references on page 8 line 5 of his Responsive Testimony that the City of**  
18 **Brookings does not bill its interstate end office local switching and common line access**  
19 **rates to interstate wireless traffic. In addition, at page 22, lines 6-14 and footnote 47, Mr.**  
20 **Bax alleges that the City of Brookings agrees with his conclusions that end office local**  
21 **switching and common line access charges cannot be applied to wireless traffic based on**  
22 **Line 5 through line 37 of its worksheet. Do you agree?**

23 A. No. The state and federal access tariffs of ILECs can be and frequently are different,  
24 with different terms and conditions and different rates. State and federal tariffs also are governed  
25 by different regulatory agencies and their rules. A case in point is the fact that the intrastate  
26 access tariff for the LECA member companies contained a single rate for access traffic and the  
27 federal tariff for these same ILECs contained different rates for separate rate elements.  
28 With respect to the City of Brookings’ federal tariff referenced by Mr. Bax, in 2009 the City of  
29 Brookings eliminated charges for end office local switching to wireless terminating traffic

1 because interexchange carriers such as AT&T refused to pay the charges.<sup>7</sup> The City of  
2 Brookings made the change in order to eliminate the issue. Further, by calculating its federal  
3 access rates based on a demand amount that excluded wireless minutes for certain rate elements,  
4 the City of Brookings was able to increase its interstate access rate for those rate elements.  
5 Therefore, the change did not reduce the City of Brookings' interstate revenues. In 2011, AT&T  
6 challenged the City of Brookings' federal tariff in part, because of what it considered a  
7 discrepancy in demand. The FCC, however, accepted the City of Brookings' explanation of the  
8 tariff change and allowed it to go into effect. Contrary to Mr. Bax's testimony, the City of  
9 Brookings in no way acknowledged that it was required to make the change because of FCC law  
10 and, importantly, the FCC made no such finding.

11 With that said, given the fact that the City of Brookings does not apply the end office local  
12 switching rate element to wireless traffic pursuant to its federal tariff, the City of Brookings is  
13 required by FCC rule §51.909(b)(2)(v) to follow this same rate structure for purposes of  
14 calculating the transitional rate in the intrastate tariff. This is reflected in Line 7 through Line 37  
15 of its worksheet.<sup>8</sup> The removal of wireless minutes from Lines 7 is in no way an  
16 acknowledgement that the City of Brookings' or LECA agrees with Mr. Bax's conclusions with  
17 respect to the legitimacy of past services and billings.

18

19 **Q. At page 23, footnote 50, Mr. Bax also notes that the City of Brookings has not**  
20 **presented any arguments previously in this case “indicating that it is entitled to assess end**  
21 **office local switching or common line changes on wireless traffic.” How do you respond?**

22 A. As I stated at the beginning, this case is about the proper application of the FCC's rules to  
23 determine a prospective rate. The testimony and argument submitted by LECA and the City of  
24 Brookings addressed this issue. Despite LECA's repeated requests that AT&T disclose the basis  
25 of its challenge to the City of Brookings' filed rate, AT&T refused to do so prior to filing its

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<sup>7</sup> The common line rate element was eliminated from the interstate access rules in 2003, therefore, the City of Brookings has not billed an interstate carrier common line rate since 2003.

<sup>8</sup> FCC §51.909(b)(2)(i) requires the ILECs to reprice intrastate demand at interstate rates using the interstate rate structure. Lines 7 through 37 of the City of Brookings' Worksheet filed in this proceeding reflects revenues produced by the application of the interstate rates and rate structure using intrastate demand which is in compliance with this provision of the FCC rules.

1 testimony. Thus, the first time AT&T presented its theory that the FCC's rules require an  
2 adjustment to revenues to correct what AT&T alleges was a misapplied tariff rate, was in its  
3 testimony. It is disingenuous, at best, for Mr. Bax to now suggest that it is of some importance  
4 that the City of Brookings did not address this issue previously.

5

6 **Q. Does this conclude your Rebuttal Testimony?**

7 A. Yes it does.