at&t

Manuel A. Gurdian
General Attorney

AT&T Florida
150 South Monroe Street
Suite 400
Tallahassee, FL 32301

T: (305) 347-5561
manuel.gurdian@att.com

August 25, 2010

Ms. Ann Cole
Office of the Commission Clerk
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850

Docket No. 100176-TP: Petition for Arbitration of Interconnection Agreement between BellSouth Telecommunications, Inc. d/b/a AT&T Florida and Sprint Communications Company L.P.

Docket No. 100177-TP: Petition for Arbitration of Interconnection Agreement between BellSouth Telecommunications, Inc. d/b/a AT&T Florida and Sprint Spectrum L.P., Nextel South Corp. and NPCR, Inc. d/b/a Nextel Partners

Dear Ms. Cole:

Enclosed is an original and 25 copies of BellSouth Telecommunications, Inc. d/b/a AT&T Florida's Direct Testimony of P. L. (Scot) Ferguson, James W. Hamiter, Lance McNiel, J. Scott McPhee, and Patricia H. Pellerin, which we ask that you file in the captioned dockets.

Copies have been served to the parties shown on the attached Certificate of Service.

Sincerely,

Manuel A. Gurdian

COM 5
APA
ECR
GCL 2
RAD 7
SSC
ADM
OPC
CLK GRPR

cc: All parties of record
Gregory R. Follensbee
Jerry D. Hendrix
E. Earl Edenfield, Jr.

Certificate of Service
Docket Nos. 100176-TP and 100177-TP

I HEREBY CERTIFY that a true and correct copy was served via Electronic Mail and Federal Express Mail this 25th day of August, 2010 to the following:

Florida Public Service Commission
Charles Murphy, Staff Counsel
Larry Harris, Staff Counsel
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399-0850
cmurphy@psc.state.fl.us
lharris@psc.state.fl.us

Florida Public Service Commission
Frank Trueblood
2540 Shumard Oak Blvd.
Room 270E
Tallahassee, FL 32399-0850
Tel. No. (850) 413-7019
ftrueblood@psc.state.fl.us

Douglas C. Nelson
William R. Atkinson
Sprint Nextel
233 Peachtree Street NE, Suite 2200
Atlanta, GA 30339-3166
Tel. No.: (404) 649-8983
Fax. No.: (404) 649-8980
douglas.c.nelson@sprint.com
bill.atkinson@sprint.com

Manuel A. Gurdian

Joseph M. Chiarelli
6450 Sprint Parkway
Mailstop: KSOPHN03 14-3A621
Overland Park, KS 66251
Tel. No.: (913) 315-9223
Fax. No.: (913) 523-9623
joe.m.chiarelli@sprint.com

Marsha E. Rule
Rutledge, Ecenia & Purnell, P. A.
Post Office Box 551
Tallahassee, Florida 32302-0551
(850) 681-6788
marsha@reuphlaw.com

Florida Public Service Commission
Brenda Merritt
2540 Shumard Oak Blvd.
Room 270G
Tallahassee, FL 32399-0850
Tel. No. (850) 413-6850
bmerritt@psc.state.fl.us

AT&T FLORIDA

DIRECT TESTIMONY OF P.L. (SCOT) FERGUSON

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

DOCKET NO. 100176-TP AND DOCKET NO. 100177-TP

AUGUST 25, 2010

ISSUES

5 *[DPL I.A(5)]*, 57 *[DPL III.C]*, 73 *[DPL IV.A(1)]*, 74 *[DPL IV.A(2)]*, 75 *[DPL IV.B(1)]*, 76 *[DPL IV.B(2)]*, 77 *[DPL IV.B(3)]*, 78 *[DPL IV.B(4)]*, 79 *[DPL IV.B(5)]*, 80 *[DPL IV.C(1)]*, 81 *[DPL IV.C(2)]*, 82 *[DPL IV.D(1)]*, 83 *[DPL IV.D(2)]*, 84 *[DPL IV.D(3)]*, 85 *[DPL IV.E(1)]*, 86 *[DPL IV.E(2)]*, 90 [DPL IV.H], 92 *[DPL V.C(1)]*, 93 *[DPL V.C(2)]*

I. INTRODUCTION

Q. PLEASE STATE YOUR NAME, TITLE AND BUSINESS ADDRESS.

A. My name is Scot Ferguson. I am an Associate Director in AT&T Operations' Wholesale organization. My business address is 675 West Peachtree Street, Atlanta, Georgia 30375.

Q. PLEASE SUMMARIZE YOUR BACKGROUND AND EXPERIENCE.

A. I graduated from the University of Georgia in 1973, with a Bachelor of Journalism degree. My career spans more than 36 years with Southern Bell, BellSouth Corporation, BellSouth Telecommunications, Inc., and AT&T. In addition to my current assignment, I have held positions in sales and marketing, customer system design, product management, training, public relations, wholesale customer and regulatory support, and wholesale contract negotiations.

Q. HAVE YOU PREVIOUSLY TESTIFIED IN ANY REGULATORY PROCEEDINGS?

A. Yes. I have testified before this Commission, and I have also testified on several occasions each before the public utilities commissions of Alabama, Georgia, Kentucky, Louisiana, Mississippi, North Carolina, South Carolina and Tennessee.

Q. ON WHOSE BEHALF ARE YOU TESTIFYING?

A. I am testifying on behalf of AT&T Florida, which I will refer to as AT&T.

Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY?

A. I explain and support AT&T's positions on the following issues as designated by this Commission in its procedural order in this docket *[and from the jointly-filed Decision Point List ("DPL")]*: 5 *[I.A(5)]*, 57 *[III.C]*, 73 *[IV.A(1)]*, 74 *[IV.A(2)]*, 75 *[IV.B(1)]*, 76 *[IV.B(2)]*, 77 *[IV.B(3)]*, 78 *[IV.B(4)]*, 79 *[IV.B(5)]*, 80 *[IV.C(1)]*,

81 *[IV.C(2)]*, 82 *[IV.D(1)]*, 83 *[IV.D(2)]*, 84 *[IV.D(3)]*, 85 *[IV.E(1)]*, 86 *[IV.E(2)]*, 90 *[IV.H]*, 92 *[V.C(1)]*, 93 *[V.C(2)]*.

This consolidated arbitration proceeding pertains to the development of both a CLEC (Competitive Local Exchange Carrier, or wireline) and a CMRS (Commercial Mobile Radio Service, or wireless) successor interconnection agreement ("ICA" or "Agreement") between AT&T and Sprint. Unless otherwise stated under applicable issues, the proposed language that I discuss in this testimony pertains to both ICAs.

II. DISCUSSION OF ISSUES

ISSUE #5 *[DPL ISSUE I.A(5)]*

Should the CLEC Agreement contain Sprint's proposed language that requires AT&T to bill a Sprint Affiliate or Network Manager directly that purchases services on behalf of Sprint?

Contract Reference: General Terms and Conditions, Part A, section 1.5

Q. WHAT IS THE DISAGREEMENT THAT IS THE SUBJECT OF THIS ISSUE?

A. Sprint proposes to include language in both the CMRS ICA and the CLEC ICA that would allow Sprint to use an Affiliate or third party network manager to construct and operate its systems and that would provide for AT&T to treat the Affiliate's or network manager's traffic as Sprint's. AT&T is not opposed to Sprint's proposal in principle, but has a legitimate concern about who those Affiliates or network managers might be – and their qualifications. Indeed, AT&T agreed to Sprint's proposed language for the CMRS ICA because Sprint CMRS already uses network managers who are known to and acceptable to

AT&T, and has identified those entities as the Sprint CMRS network managers for this ICA. AT&T objects to Sprint's language for the CLEC ICA, however, because Sprint has not identified who the Affiliates or network managers for Sprint's CLEC operations might be.

AT&T is opposed to language that gives Sprint the right to later employ such Affiliates and network managers as it sees fit – without affording AT&T the opportunity to investigate the qualifications of those companies.

Q. AS YOU UNDERSTAND IT, WHAT IS THE BASIS FOR SPRINT'S POSITION?

A. Sprint relies on the proposition that FCC regulations "do not restrict how Sprint CLEC may choose to provide services using third parties."[1] Further, Sprint cites AT&T's acceptance of Sprint's language for the CMRS ICA as justification for that same language appearing in the CLEC ICA.

Q. HOW DO YOU RESPOND TO SPRINT'S POSITION?

A. I have explained why AT&T's acceptance of Sprint's language for the CMRS ICA does not warrant imposition of the same language for the CLEC ICA. If anything, it supports AT&T's position by corroborating that the stated reason for AT&T's objection to including the language in the CLEC ICA is genuine. AT&T should not be forced to accept open-ended language that would give Sprint *carte blanche* to use any and all Affiliates and/or network managers, including those that might prove unacceptable to AT&T. As a reminder, this ICA will be available for adoption by other carriers, and AT&T would have the same concerns

[1] See Sprint's position statement on Issue #5 *[DPL Issue I.A(5)]* on the DPL.

with respect to those carriers. AT&T is willing to negotiate an appropriate amendment to the ICA when and if Sprint identifies – and allows AT&T to perform due-diligence investigation of – Affiliate or network manager candidates to perform functions similar to those under which the CMRS Parties operate. That should be acceptable to Sprint, and if it is not, the Commission should find it acceptable.

As for Sprint's observation that no FCC rule prohibits what Sprint has proposed, the Commission should find that distinctly unpersuasive. There is also no FCC rule that permits what Sprint has proposed – and there are many proposed provisions that a state regulatory body might appropriately reject as unreasonable notwithstanding that the FCC has not addressed them.[2]

Q. HAS ANY OTHER COMMISSION RENDERED A DECISION THAT PROVIDES GUIDANCE ON THE RESOLUTION OF THIS ISSUE?

A. Yes. In a 2006 arbitration decision,[3] the Kentucky Public Service Commission addressed the question whether CMRS providers should be allowed to expand their networks through management contracts with affiliates and non-affiliated third parties, and ruled that the CMRS providers should *not* be allowed to do so

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[2] Recall that under the 1996 Act, terms and conditions for interconnection are to be "just, reasonable and nondiscriminatory." 47 U.S.C. § 251(c)(2)

[3] In the Matter of: *Petition of Ballard Rural Telephone Cooperative Corporation, Inc. for Arbitration of Certain Terms and Conditions of Proposed Interconnection Agreement with American Cellular f/k/a ACC Kentucky License LLC, Pursuant to the Communications Act of 1934, As Amended by the Telecommunications Act of 1996,* Case Nos. 2006-00215, *et al.* (December 22, 2006).

through non-affiliated third parties. That decision would support AT&T's position that Sprint's proposed language should be rejected altogether as it relates to non-affiliated third party network managers. Certainly, then, the more moderate position that AT&T has asserted here should be sustained.

Q. HOW SHOULD THE COMMISSION RESOLVE THIS ISSUE?

A. The Commission should reject Sprint's proposed language. AT&T will execute an appropriate amendment to the CLEC ICA (if warranted) to satisfy Sprint's desire to have Affiliate and Network Manager language in the CLEC ICA. However, that language should only be added after Sprint identifies – and AT&T can investigate – the entity(ies) that Sprint wishes to use as network manager(s), as AT&T has been able to do with respect to the CMRS ICA.

ISSUE #57 ***[DPL ISSUE III.C]***

Should Sprint be required to pay AT&T for any reconfiguration or disconnection of interconnection arrangements that are necessary to conform to the requirements of this ICA?

Contract Reference: (AT&T) Att. 3, section 3.5, and Pricing Schedule, section 1.7.4 and 1.7.5; (Sprint) Att. 3, section 3.4, and Pricing Schedule, section 1.7.5

Q. WHAT IS THE DISAGREEMENT CONCERNING PAYMENT FOR RECONFIGURATION OR DISCONNECTION OF INTERCONNECTION ARRANGEMENTS?

A. AT&T wants language in the ICA that specifies Sprint will pay for the work AT&T performs on either Party's network interconnection arrangements to conform to the terms and conditions of the Parties' new ICAs. Sprint, on the other hand, wants language stating that neither Party will charge the other Party at any time for any fees associated with such a reconfiguration.

Q. WHAT DOES EACH OF THE PARTIES STAND TO GAIN IF SPRINT'S LANGUAGE IS ACCEPTED?

A. Sprint would gain a great advantage over AT&T because AT&T historically does the majority of any work covered by this provision. AT&T is entitled to be compensated for its work, as its language provides. Sprint's contention that each Party should bear its own costs may appear fair on the surface, but in reality is nothing more than a self-serving attempt to avoid paying AT&T for significant amounts of work that would be required in the event of a network reconfiguration. There is no benefit to AT&T under Sprint's proposed language.

Q. ARE THERE ANY OTHER CHARGES THAT SPRINT SHOULD BE REQUIRED TO PAY WITH RESPECT TO RECONFIGURATION WORK?

A. Yes. In section 1.7.4 of the ICA's Pricing Schedule, AT&T proposes that Sprint also should pay "the applicable service order processing/administration charge for each service order submitted by Sprint to AT&T-9STATE to process a request for installation, disconnection, rearrangement, change or record order." Sprint opposes that language, and, thus, maintains that it should not have to compensate AT&T for processing Sprint's orders. Sprint's position is baseless. If Sprint submits a service order to AT&T, Sprint is obliged to compensate AT&T for the costs AT&T incurs to process that order.

Q. HOW SHOULD THE COMMISSION RESOLVE THIS ISSUE?

A. The Commission should accept AT&T's proposed language and allow AT&T to be compensated for the work that it does at for Sprint.

ISSUE #73 ***[DPL ISSUE IV.A(1)]***

What general billing provisions should be in Attachment 7?

Contract Reference: Att. 7, sections 1.4 – 1.6.2

Q. WHAT IS THE SUBJECT OF THIS ISSUE?

A. This issue concerns three billing language disagreements, and all three disagreements arise out of language that AT&T proposes and Sprint opposes. I will address each of the disagreements separately.

Q. WHAT IS THE FIRST DISAGREEMENT?

A. AT&T proposes a section 1.6.5 – for the CMRS ICA only – that would provide:

> "Because AT&T-9STATE is unable to invoice reflecting an adjustment for shared Facilities and/or Trunks, Sprint will separately invoice AT&T-9STATE for AT&T-9STATE's share of the cost of such Facilities and/or Trunks as provided in this Agreement thirty (30) days following receipt by Sprint of AT&T-9STATE's invoice."

Sprint objects to that provision in its entirety.

Q. WHY DOES AT&T PROPOSE THAT LANGUAGE?

A. The "shared Facilities" to which section 1.6.5 refers are Facilities that connect Sprint CMRS offices (i.e., buildings that house switches) with AT&T offices. The Parties have disagreements about these Facilities (which other witnesses address), but they agree that each Party will pay for a share of the recurring costs of the Facilities based on that Party's proportionate use of the Facilities. Thus, for example, if AT&T is responsible for 40% of the traffic that is transmitted on a Facility and Sprint is responsible for 60%, AT&T will bear 40% of the cost and Sprint will bear the remaining 60%.

AT&T's proposed section 1.6.5 addresses the scenario in which AT&T provides the Facilities in the first instance, and Sprint must pay AT&T on a recurring (monthly) basis for its share of the Facilities usage. Assuming, for

example, that the monthly cost of a Facility is $100 and that Sprint is responsible for 60% of the usage, then Sprint would owe AT&T $60. Theoretically, the easiest way to accomplish that transaction would be for AT&T to send to Sprint a bill for $60. As it happens, however, and as section 1.6.5 recites, AT&T's billing system – which is programmed to charge $100 per month for this particular hypothetical Facility – is unable to apply a discount to that rate as it would have to do in order to produce a $60 bill to Sprint.

Consequently, in order to implement the Parties' agreement concerning shared Facility costs, AT&T will bill Sprint $100, and then Sprint needs to bill AT&T $40 for its usage of the Facility. In more general terms, AT&T will bill Sprint 100% of the recurring Facility charge each month, and Sprint must then bill AT&T for its share of the charge.

Q. WHY DOES SPRINT OPPOSE SECTION 1.6.5?

A. Sprint states in its position statement on the DPL that AT&T's proposed language "is contrary to the Parties' long-standing existing practice and would impose an undue burden on Sprint to remedy AT&T's internal billing deficiencies."

Q. HOW DO YOU RESPOND?

A. What Sprint refers to as a "long-standing existing practice" is a special accommodation that AT&T first made to Sprint – and Sprint alone – in 2001. It is true that AT&T, for Sprint's benefit, has been manually applying the Shared Facility Factor for Sprint. Therefore, in the hypothetical I used above, AT&T – as matters stand today – bills Sprint 100% of the Facility charge (because AT&T's billing system must do so) and then, at its own cost, manually determines the

credit that is due to Sprint ($40 in the hypothetical) and gives Sprint a credit in that amount. AT&T has no contractual obligation to do this, however, and no such obligation should be imposed here. AT&T should not be punished for accommodating Sprint in this regard for the last nine years.

Q. WHAT IS THE SECOND DISAGREEMENT THAT IS THE SUBJECT OF THIS ISSUE?

A. In both the CLEC and the CMRS ICAs, section 2.10.1.1 of Attachment 7 addresses back-billing and related matters. Section 2.10.1.1 includes agreed language to the effect that a Party may backbill charges that it discovers were unbilled or under-billed under certain circumstances. There is a disagreement about how far back back-billing may reach, and that disagreement is the subject of Issue #74 *[DPL Issue IV.A(2)]*, which I discuss below. Also, there are two other disagreements embedded in section 2.10.1.1. The first of these relates to language that AT&T proposes to include in section 2.10.1.1 that would allow a Party to claim credit for over-billed amounts on bills dated within the 12 months preceding the date on which the Billed Party notifies the Billing Party of the claimed credit amount. Sprint opposes inclusion of this language in the ICA.

Q, WHAT IS THE RATIONALE FOR AT&T'S PROPOSED LANGUAGE?

A. Just as the Billing Party should be permitted to reach back and bill for products or services it provided but failed to bill for – as the Parties agree – so too the Billed Party should be permitted to reach back and claim a credit for products or services for which it inadvertently overpaid. At the same time, and again by analogy to back-billing, there should be a reasonable time limit on how far back the over-billed Party should be permitted to reach.

Q. ON WHAT BASIS DOES SPRINT OPPOSE AT&T'S PROPOSED LANGUAGE THAT WOULD ALLOW THE OVER-BILLED PARTY TO CLAIM A CREDIT?

A. I do not know Sprint's reasoning and I am surprised that this appears to be controversial from Sprint's viewpoint. Sprint offered no explanation on the DPL. It may be that Sprint wants to allow no credit claims, or it may be that Sprint does not want to put any time limit on credit claims. I am interested to see what Sprint says on this issue in its direct testimony, and I will respond as appropriate in my rebuttal testimony.

Q. WHAT IS THE THIRD DISAGREEMENT THAT IS THE SUBJECT OF THIS ISSUE?

A. This concerns more language in section 2.10.1.1. AT&T proposes, and Sprint opposes, the following language:

> Nothing herein shall prohibit either Party from rendering bills or collecting for any Interconnection products and/or services more than twelve (12) months after the Interconnection products and/or services were provided when the ability or right to charge or the proper charge for the Interconnection products and/or services was the subject of an arbitration or other Commission action, including any appeal of such action. In such cases, the time period for back-billing or credits shall be the longer of (a) the period specified by the commission in the final order allowing or approving such charge, (b) twelve (12) months from the date of the final order allowing or approving such charge, or (c) twelve (12) months from the date of approval of any executed amendment to this Agreement required to implement such charge.

Q. WHAT IS THE RATIONALE FOR THAT LANGUAGE?

A. It recognizes that back-billing and credit claim limitation can be affected by regulatory commission and court actions to the extent that orders from such bodies may supersede any such limitations provided by the ICA.

Q. WHAT IS THE BASIS FOR SPRINT'S OPPOSITION?

A. Sprint provides no explanation in its position statement on the DPL, and I am surprised that Sprint does not agree with AT&T that regulatory commissions and courts can order the Parties to abide by terms of an order that supersedes terms and conditions of an ICA. I will respond to Sprint's explanation of its position in my rebuttal testimony, if Sprint provides one in its direct testimony.

Q. HOW SHOULD THE COMMISSION RESOLVE THIS ISSUE?

A. The Commission should adopt AT&T's proposed language for sections 1.6.5 and 2.10.1.1.

ISSUE #74 *[DPL ISSUE IV.A(2)]*

Should six months or twelve months be the permitted back-billing period?

Contract Reference: Att. 7, sections 2.10 – 2.10.1.2

Q. WHAT IS THE DISAGREEMENT ON THIS ISSUE?

A. As I mentioned in my discussion of the previous issue, section 2.10.1.1 of both ICAs includes agreed language that allows each Party to back-bill the other Party under certain circumstances. AT&T proposes that back-billing be limited to charges that were unbilled or under-billed during the 12 months preceding the date on which the Billing Party notifies the Billed Party in writing of the amount of the back-billing, while Sprint proposes a 6-month limit.

Q. WHAT IS THE BASIS FOR AT&T'S POSITION?

A. AT&T's proposed 12-month limitation is a reasonable time period to allow the Billing Party to discover any non-billing or under-billing for which it should have

the right to pursue billing adjustments.[4] Although this Commission has not ruled previously on this issue, AT&T's proposal is consistent with a Georgia Public Service Commission decision in Docket No. 16583-U, Issue 62, dated January 14, 2004.[5] The 12-month limitation is adequate and fair to both Parties, and is also consistent with AT&T's proposed 12-month limitation on billing disputes, which I address in Issue # 80 *[DPL Issue IV.C(1)]* below.

Q. PLEASE EXPLAIN YOUR POINT THAT AT&T'S PROPOSAL IS CONSISTENT WITH ITS POSITION ON ISSUE #80 *[DPL ISSUE IV.C(1)].*

A. The dispute presented in Issue #80 *[DPL Issue IV.C(1)]* concerns how long after the date on a bill the Billed Party should be permitted to dispute the bill. AT&T proposes 12 months, and Sprint proposes 24 months. My point here is simply that AT&T's position that 12 months is a reasonable period of time within which a Party may back-bill has the virtue of being consistent with AT&T's position on Issue #80 *[DPL Issue IV.C(1)]* that the Billed Party should be allowed 12 months to dispute its bill. Both positions are predicated on the notion that 12 months is a reasonable period for detecting and raising a billing error. Sprint's position does not share this consistency.

Q. WHAT IS THE BASIS FOR SPRINT'S POSITION?

A. Sprint justifies its proposed 6-month limitation on the ground that it would "reduce disputes that would otherwise arise from "stale" billings more than six

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[4] AT&T's proposed 12-month period would also apply to credit claims for over-billing, assuming that the AT&T's credit language that I addressed in connection with Issue #73 *[DPL Issue IV.A(1)]* is included in the ICA.

[5] The similar arbitration case (also between BellSouth and ITC^DeltaCom) in Florida was withdrawn by ITC^DeltaCom prior to this Commission rendering a decision on any of the issues.

months after service is rendered."[6] Sprint adds that "the Billing Party has complete control over when a bill is rendered," and, thus, six months is adequate to discover whatever billing problems exist.

Q. IS SPRINT'S JUSTIFICATION FOR ITS PROPOSAL PERSUASIVE?

A. I do not believe so. In the first place, Sprint's assertion that charges for services provided between six months in the past and twelve months in the past are "stale" rings hollow. I take it that what Sprint means by this is that with the passage of time, it becomes difficult to reconstruct records and to ascertain what amounts were actually unbilled or under-billed. While I certainly agree that there is some point in time beyond which it becomes difficult to sort out such matters, the proposition that six months is the breaking point seems unreasonable. That is particularly so when one considers that the data source for back-bills generally will not be human memory, but rather will be computer records. The Commission should not accept Sprint's suggestion that charges become "stale" after six months.

The fact is that six months is not enough time to discover all billing anomalies. AT&T is one of a number of large telecommunications companies (and I assume that Sprint is, as well) that renders millions of bills per month. Twelve months is a fair length of time for both Parties for this issue.

Q. IN YOUR DISCUSSION OF AT&T'S POSITION, YOU NOTED THAT AT&T'S ADVOCACY OF A 12-MONTH BACK-BILLING PERIOD IS CONSISTENT WITH AT&T'S ADVOCACY OF A 12-MONTH BILL DISPUTE PERIOD ON ISSUE #80 *[DPL ISSUE IV.C(1)]*. HOW DOES SPRINT'S ADVOCACY OF A SIX-MONTH BACK-BILLING PERIOD

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[6] See Sprint's position statement on Issue #74 *[DPL Issue IV.A(2)]* on the DPL.

SQUARE WITH SPRINT'S POSITION ON ISSUE #80 *[DPL ISSUE IV.C(1)]*?

A. It does not. On Issue #80 *[DPL Issue IV.C(1)]*, Sprint maintains that the Billed Party should be allowed 24 months to dispute a bill. That position implies that a dispute is not "stale" merely because it concerns a two-year-old bill, and that it should be possible to perform the data recovery necessary to resolve the dispute. Sprint's advocacy of a six-month limitation on back-billing cannot be squared with its advocacy of a 24-month limitation on billing disputes.

Q. WHICH PARTY WOULD BENEFIT MOST IF SPRINT'S PROPOSED LANGUAGE ON BOTH ISSUES WAS ADOPTED?

A. I fully expect that AT&T will be billing Sprint much more than Sprint will be billing AT&T. That means that a longer period for the Billed Party to dispute bills would benefit Sprint, and a shorter period for the Billing Party to correct bills would also benefit Sprint. That may well explain why Sprint proposes a 24-month period for Billing Disputes and a 6-month period for bill corrections. A 12-month limitation on both actions as proposed by AT&T is a logical, workable and fair compromise for *both* Parties.

Q. HOW SHOULD THE COMMISSION RESOLVE THIS ISSUE?

A. The Commission should adopt AT&T's proposed 12-month back-billing period and reject Sprint's unreasonable 6-month limitation.

ISSUE #75 *[DPL ISSUE IV.B(1)]*

What should be the definition of "Past Due"?

Contract Reference: General Terms and Conditions, Part B – Definitions

Q. DO THE PARTIES AGREE THAT A DEFINITION OF "PAST DUE" SHOULD BE INCLUDED IN THE AGREEMENT?

A. Yes. The Parties agree that charges are "Past Due" when (a) the Billed Party fails to remit payment by the Bill Due Date, (b) a payment for any portion is received from the Billed Party after the Bill Due Date, or (c) a payment for any portion is received in funds which are not immediately available to the Billing Party as of the Bill Due Date.

Q. WHAT, THEN, IS THE DISAGREEMENT?

A. The disputed definition looks like this, with the italicized words proposed by Sprint and opposed by AT&T:

> **"Past Due"** means when a Billed Party fails to remit payment for any ***undisputed*** charges by the Bill Due Date, or if payment for any portion of the ***undisputed*** charges is received from the Billed Party after the Bill Due Date, or if payment for any portion of the ***undisputed*** charges is received in funds which are not immediately available to the Billing Party as of the Bill Due Date (individually and collectively means Past Due).

Thus, AT&T says that *all* charges that are unpaid as of the Bill Due Date are Past Due. Sprint, on the other hand, contends that only charges that are *undisputed* as of the Bill Due Date should be considered as Past Due. That is the entire disagreement.

Q. WHAT IS THE BASIS FOR EACH PARTY'S POSITION?

A. It is important to understand what hinges on the definition of "Past Due." If you look at the billing provisions in Attachment 7 of the ICA, you will see that the term "Past Due" appears just twice. The first occurrence is of no consequence here – the Past Due balance is merely included in a list of items to be shown on

the Parties' invoices. *See* Att. 7, section 1.3.4. The other occurrence is in Att. 7, section 1.9, which provides, "A Late Payment Charge will be assessed for all Past Due payments . . . ." Thus, the Parties' disagreement about the definition of "Past Due" boils down to whether Disputed Amounts should be subject to Late Payment Charges. AT&T maintains they should be, and Sprint evidently maintains they should not be.

Q. WHAT IS THE RATIONALE FOR AT&T'S POSITION?

A. As I discuss later, in connection with Issue #84 *[DPL Issue IV.D(3)]*, if one Party disputes the other Party's bill, the Disputing Party should deposit the Disputed Amount into an escrow account, to ensure funds will be available in the event the dispute is resolved in favor of the Billing Party.[7] Assuming that AT&T's escrow language is adopted, there can be no serious question but that Disputed Amounts should be subject to a Late Payment Charge. That is because under AT&T's escrow language (specifically, Att. 7, section 1.16.1), if the Disputing Party wins the dispute, not only are the escrowed funds returned to the Disputing Party, but also (under Att. 7, section 1.16.1), the Disputing Party receives a credit for the amount of the Late Payment Charge. This yields the right result: With AT&T's definition of "Past Due," the Disputed Amounts are subject to a Late Payment Charge under section 1.9, but if the dispute was valid, the Late Payment Charge is erased by means of a credit. On the other hand, if the Billing Party prevails on the dispute, the Late Payment Charge sticks. Again, that is the right result, because

[7] As I will discuss, AT&T would make an exception for reciprocal compensation bills.

the disputed amount was in fact due and owing, and, thus, should be subject to a Late Payment Charge.

Q. IF, HOWEVER, ISSUE #84 *[DPL ISSUE IV.D(3)]* IS RESOLVED IN FAVOR OF SPRINT, WHICH PARTY'S DEFINITION OF "PAST DUE" SHOULD BE INCLUDED IN THE ICA?

A. AT&T's definition yields the right result with or without AT&T's escrow provisions. If a bill is disputed, the Disputed Amount ultimately may or may not be determined to have been owing. If it was properly owing, it should carry a Late Payment Charge. If not, the Late Payment Charge, though initially applied, should be – and would be – credited to the Billed Party.

ISSUE #76 *[DPL ISSUE IV.B(2)]*

What deposit language should be included in each ICA?

Contract Reference: Att. 7, section 1.8

Q. WHAT IS THE DISAGREEMENT BETWEEN THE PARTIES OVER DEPOSIT LANGUAGE?

A. While both Parties agree in principle that deposit language is appropriate for the ICAs, there are a number of disputed deposit provisions. For the most part, the differences can be distilled down to two areas: reciprocity and detail. As for reciprocity, AT&T maintains that only Sprint (and carriers that adopt Sprint's ICAs) should be subject to the possibility of having to make a deposit before obtaining services under the ICA if Sprint (or the adopting carrier) has not demonstrated that it is creditworthy. Sprint, on the other hand, maintains that AT&T should be subject to a deposit requirement, as well. As for detail, AT&T proposes a considerable amount of deposit language that Sprint opposes and to

which it offers no counterproposal. As I will explain, the level of detail proposed by AT&T is appropriate, and AT&T's proposed language is reasonable. There are also instances in which Sprint has proposed language in opposition to AT&T's, and, in those instances, I will explain why AT&T's proposal is superior.

Q. HOW IS YOUR TESTIMONY ON THIS ISSUE ORGANIZED?

A. First, I will briefly explain what the deposit requirement is, and why – as the Parties agree – some deposit language should be included in the ICA. I will then discuss the question of reciprocity, and why AT&T should not be subject to a deposit requirement. Then, I will turn to the various topics addressed by the disputed deposit provisions – General Terms, determination of creditworthiness, the particulars of providing a deposit when one is required, and so forth.

Q. IN A NUTSHELL, WHAT IS THE DEPOSIT REQUIREMENT, AND WHY SHOULD THE ICA INCLUDE DEPOSIT LANGAUGE?

A. When the Parties are operating under the ICA, AT&T will be providing Sprint with products and services for which AT&T will be sending Sprint substantial invoices every month – and similarly for any carrier that adopts Sprint's ICA. To the extent that a carrier to which AT&T is providing service may not be demonstrably creditworthy, AT&T has legitimate reason for insecurity that its bills will be paid. Just as any other provider of services on credit (i.e., where payment for the service is made after the service is provided) may do, AT&T reasonably asks that customers that have not demonstrated that they are creditworthy be required to place funds on deposit, so that AT&T will be assured of payment.

Q. DOES AT&T DEMAND A DEPOSIT FROM EVERY CLEC AND CMRS PROVIDER WITH WHICH IT HAS AN ICA?

A. No. AT&T does not demand a deposit from every carrier, because some carriers, by virtue of their payment history and their financial wherewithal, do not present a significant risk of non-payment of undisputed bills. AT&T's proposed deposit language takes this into account, and provides for determinations of creditworthiness for that reason.

While AT&T does not look to every carrier with which it has an ICA for a deposit, AT&T does its best to ensure that its deposit language is included in every ICA so that it is in a position to demand a deposit when a deposit is warranted. I note in this regard that even if Sprint is not a credit risk, carriers that adopt Sprint's ICAs may be.

Q. TURNING TO THE DISAGREEMENT ABOUT RECIPROCITY, HOW DOES IT COME UP IN THE DISPUTED CONTRACT LANGUAGE?

A. It arises first in the very first sentence under Deposit Policy in section 1.8.1 of Attachment 7. AT&T's proposed section 1.8.1 begins, "**AT&T-9STATE** reserves the reasonable right to secure the accounts of new CLECs…and certain existing CLECs…for continuing creditworthiness with a suitable form of security pursuant to this Section." Sprint's proposed section 1.8.1, in contrast, begins, "If the Party that is billed for services under this Agreement (the "Billed Party") fails to meet the qualifications described in this Section for continuing creditworthiness, the other Party (the "Billing Party") reserves the right to reasonably secure the accounts of the Billed Party…with a suitable form of security pursuant to this Section." The reciprocity issue then persists throughout

the remainder of each Party's deposit language; AT&T's language consistently treats only the CLEC or CMRS provider as subject to the deposit requirement, while Sprint's language consistently treats both Parties as subject to the deposit requirement.

Q. WHAT IS THE BASIS FOR AT&T'S POSITION THAT IT SHOULD NOT BE SUBJECT TO THE DEPOSIT REQUIREMENT?

A. It is AT&T, as an ILEC, not Sprint that has lost tens of millions of dollars over the years due to non-payment of *undisputed* bills by carriers with impaired credit. It is to protect against such AT&T losses that the deposit language appears in the ICA. I will be very surprised if Sprint can point to even a single instance, in the 14 years that AT&T (and BellSouth before it) has been a party to interconnection agreements under the 1996 Act, in which AT&T (or BellSouth) has failed to pay an undisputed bill. Simply put, AT&T needs the protection afforded by the deposit requirement – whether vis-à-vis Sprint in particular or carriers that may adopt Sprint's ICAs in general – while Sprint has no need for any such protection vis-à-vis AT&T. I note in this regard that it is quite likely that AT&T will be forced to do business with other carriers – carriers in far more precarious financial condition than Sprint – that adopt this ICA. Sprint, on the other hand, faces no such prospect.

Q. WHAT REASONS DOES SPRINT GIVE FOR ITS POSITION THAT THE DEPOSIT REQUIREMENT SHOULD BE RECIPROCAL?

A. In its position statement on the DPL, Sprint asserts only that its language "recognizes that the existence of mutual billing requires mutuality in the deposit provisions" and "provides legitimate restraint of a Billing Party to prevent the use

of a deposit demand as a competitive weapon to needlessly encumber a Billed Party's capital."

Q. ARE THOSE VALID REASONS FOR MAKING THE DEPOSIT REQUIREMENT RECIPROCAL?

A. No. All Sprint's first assertion amounts to is an argument that just because each Party will be billing the other, each Party should enjoy the protection afforded by the right to demand a deposit. I have already explained why AT&T needs to be able to require a deposit from carriers that have not established that they are creditworthy, and why AT&T should not be subject to the deposit requirement.

Sprint's second assertion – that a reciprocal requirement would act as a restraint against the use of a deposit demand as a competitive weapon – is empty rhetoric. I can assure the Commission that AT&T's deposit language, and AT&T's demands for deposits when appropriate pursuant to that language, are driven by AT&T's well-founded concern, based on painful experience, that it needs these assurances of payment in order to avoid substantial losses due to non-payment of undisputed bills – not by a desire to encumber a competitor's capital. I will be very surprised if Sprint can produce any evidence to the contrary. Furthermore, Sprint's assertion does not even make sense. If a company in AT&T's position had some warped desire to use a deposit demand as a competitive weapon – which AT&T does not – such a practice would be transparent to – and would not be tolerated by – this Commission.

Q. WHAT IS YOUR CONCLUSION ABOUT RECIPROCITY?

A. Sprint – and, therefore, any carriers that adopt Sprint's ICAs – should be subject to the deposit requirement. AT&T should not. Although this Commission has

not ruled previously on this issue, AT&T's position is consistent with the Georgia Commission's decision in Docket No. 16583-U, Issue 60(a), dated January 14, 2004, in which that Commission agreed that BellSouth and ITC^DeltaCom were not similarly situated and that deposit requirements should not be reciprocal. *See footnote 5.*

Q. DO YOU HAVE ANY PRELIMINARY COMMENTS BEFORE DISCUSSING THE VARIOUS OTHER DISAGREEMENTS EMBEDDED IN THE COMPETING DEPOSIT LANGUAGE PROPOSALS?

A. Yes. I would like to make one overarching point: Separate and apart from the particulars, AT&T's language is more robust and detailed than Sprint's, and that greater robustness and detail is, in this instance, a virtue. The relationship between two telecommunications companies that are parties to an interconnection agreement is complex, with significant financial considerations. Such financial considerations need to be addressed with strong, detailed contract language that mitigates the risks to the parties (as appropriate) and is clear. AT&T's proposed deposit language provides detail that is appropriate to the circumstances. Sprint's proposed language, on the other hand, is devoid of the detail required for a modern carrier-to-carrier relationship. I need only point out my testimony below on the definitions of Cash Deposit, Letter of Credit and Surety Bond to illustrate this shortcoming. While AT&T's proposed language is appropriately exacting in its detailed treatment of those instruments, Sprint would be satisfied if those words and their definitions did not even appear in the deposit language.

Q. MOVING BEYOND RECIPROCITY, WHAT IS THE NEXT SUBTOPIC OF DISAGREEMENT UNDER THE DEPOSIT POLICY?

A. The deposit provisions begin with "General Terms," which are covered in section 1.8.1, including, for AT&T, subparts of 1.8.1. AT&T's proposed language in section 1.8.1 "reserves the reasonable right to secure the accounts of new CLECs...and certain existing CLECs...with a suitable form of security pursuant to this Section." Further, AT&T's proposed language includes reservation of rights as to the treatment of new carriers, certain carriers having less than one year of continuous relationship with AT&T, and existing carriers that have filed for bankruptcy within the 12 months prior to the Effective Date for this ICA.

Sprint's proposed reciprocal language says little more than that the Parties "reserve the right to reasonably secure the accounts of the Billed Party."

Q. WHAT IS WRONG WITH SPRINT'S PROPOSED LANGUAGE?

A. While Sprint's language conveys an important point (excluding the objectionable reciprocity aspect), it fails to address the special circumstances of new CLECs, carriers without a substantial relationship with AT&T and carriers that have filed for bankruptcy not long before the Effective Date of the ICA. None of these circumstances apply to Sprint, but it is nonetheless appropriate to address them, because they may well apply to a carrier that adopts Sprint's ICA. If anything, the fact that the circumstances do not apply to Sprint should make the language unobjectionable to Sprint.

Q. THE NEXT SUBTOPIC IS CREDITWORTHINESS. WHAT ARE PARTIES' COMPETING PROPOSALS?

A. I will address them section by section. First, though, I note that there are many instances in which Sprint's language is objectionable because it reflects Sprint's view that the deposit requirement should be reciprocal. AT&T strongly disagrees,

for reasons I have discussed. Having made that point, I will not repeat it every time it applies to the Sprint language I am discussing.

Section 1.8.2 addresses Initial Determination of Creditworthiness. AT&T's proposed language reasonably provides that AT&T may require a carrier to complete AT&T's Credit Profile to determine whether a security deposit is required, and, if so, in what amount. Significantly, AT&T's language acknowledges that no additional security deposit will be required from Sprint upon execution of this ICA.

Section 1.8.3 deals with Subsequent Determination of Creditworthiness. AT&T's proposed language provides AT&T with the important right to review a carrier's creditworthiness in the event of a material change in the carrier's financial circumstances and/or if gross monthly billing has increased for services beyond the level most recently used to determine the level of security deposit. AT&T further proposes to provide 15 days notice of its intent to review the carrier's creditworthiness, and that the Parties agree to work together on the review. Upon completion of the review, including analysis of AT&T's Credit Profile regarding the carrier's financial condition, AT&T reserves the right to require the carrier to provide a suitable form of security deposit. These provisions are all reasonable, fair and clear.

Sprint's proposed language for section 1.8.3 requires that the amount of gross billing must increase by at least 25% over the most recent six months to warrant a subsequent credit review. Inexplicably, it appears to exempt carriers from further review if they have $5 billion or more in assets.

Q. IN ADDITION TO THE RECIPROCITY ISSUE, WHY DOES AT&T OBJECT TO SPRINT'S PROPOSED LANGUAGE?

A. Sprint's proposed language in section 1.8.2 inappropriately limits the security deposit amount to "one month's total net billing between the Parties in a given state." AT&T is opposed to basing deposit determinations on net billing, as it does not properly reflect AT&T's risk. AT&T pays its bills when they are due, so the proper measure of its risk is the amount of its bills to the other carrier – not the net difference. Moreover, a maximum security deposit of one month's billing, net or otherwise, is not enough. AT&T's proposal that deposit amounts be no more than two months of billings is more appropriate.

Sprint's section 1.8.3 requires that gross billing must increase by 25% over a six-month period before a subsequent credit determination can be made. This provision is too limiting. AT&T should be permitted to make the determination whether to undertake a subsequent credit determination on a case-by-case basis, so long as doing so is commercially reasonable. Section 1.8.3 also ties the ability to undertake a subsequent credit determination to the carrier's total amount of assets.

This makes no sense. Assets are only one side of the balance sheet equation; Sprint's proposal ignores liabilities. A carrier could have $6 billion in assets and $8 billion in liabilities and, despite being $2 billion in the hole, Sprint would exempt such a carrier from a subsequent credit determination. In addition, Sprint would count the assets of a carrier's holding company, even though AT&T's recourse in the event of default could be limited to the carrier only.

Finally, this provision would likely invite disputes about financial disclosures by, and asset valuations of, the carrier.

Q. THE NEXT SUBTOPIC PROPOSED BY AT&T (SECTION 1.8.4) PROVIDES DETAILS AS TO HOW A CARRIER MUST RESPOND TO AT&T'S REQUEST FOR A SECURITY DEPOSIT AND THE ASSOCIATED TIMEFRAMES. PLEASE DESCRIBE AT&T'S PROPOSAL.

A. AT&T's proposed language requires that: a) a new carrier shall provide the requested security deposit prior to service inauguration; b) a request for additional deposit (or a deposit if none was requested previously) should be provided within 15 days of AT&T's request if less than $5 million, or within 30 days if more than $5 million; c) if the request amount is less than $5 million, the request from AT&T may be rendered by certified mail or overnight delivery, or, if over $5 million, by overnight delivery; and, 4) if the request amount is less than $5 million, a carrier may request a written explanation of the factors used by AT&T to determine the amount of the security deposit, or, if the request amount is over $5 million, such an explanation will be provided without the need for a separate request.

Assuming no dispute or agreed-to extension, if the carrier does not provide the requested deposit within the timeframes defined above, AT&T may discontinue service to the carrier in accordance with the provisions of the discontinuance process covered elsewhere in this ICA.

The carrier can fulfill the request for deposit by form of Cash Deposit, Surety Bond, Letter of Credit or any other for of security proposed by the carrier and acceptable to AT&T. If cash is selected by the carrier as the form of security

deposit, interest shall accrue on the Cash Deposit in accordance with AT&T's tariffs or at 12% annum, whichever is less.

Finally, AT&T proposes that the amount of the security deposit will not exceed two (2) month's estimated billing for a new carrier, or two (2) month's actual billing under this ICA for an existing carrier.

AT&T's proposals on these critical requirements are reasonable and fair, and will help ensure that the Parties have a clear understanding of the process for responding to AT&T's requests for security deposits.

Q. DID SPRINT PROPOSE ANY ALTERNATIVE LANGUAGE ON THESE TOPICS?

A. No. Other than the 15-day notice of review, Sprint does not propose any specific language on these topics. Instead, Sprint merely proposes that the Parties will "work together to determine the need for or amount of a … deposit." This is too vague and does not provide sufficient clarity.

Q. DOES SPRINT PROPOSE ANY OTHER LANGUAGE YOU WISH TO ADDRESS REGARDING SECTION 1.8.4?

A. Yes. Sprint proposes language regarding a dispute process with respect to security deposits in section 1.8.4. It is not necessary to include a discussion of dispute resolution in this section because the ICA already has dispute resolution provisions elsewhere that are available for any dispute that may arise under this ICA. Sprint's proposed language also provides that any decision by a commission regarding a dispute brought under section 1.8.4 will be binding on all states covered by this ICA. AT&T does not agree to that for reasons that our attorneys will address in the briefs.

Q. WHAT IS THE DISPUTE WITH RESPECT TO SECTION 1.8.5?

A. This section relates to the obligation to make complete and timely payments of bills, regardless of existence of a security deposit. Sprint inserted "agreed to or Commission-ordered" to describe the security deposit at issue in this section. That is unnecessary. If a security deposit is in place, it is in place because the Parties agreed or a commission ordered it. I am not certain about Sprint's motivation for this language, but absent a legitimate purpose, AT&T does not agree to the language.

Q. THE NEXT SUB-TOPIC PROVIDES THE CIRCUMSTANCES UNDER WHICH AT&T WILL NOT REQUIRE A SECURITY DEPOSIT FROM AN EXISTING CARRIER. WHY ARE THOSE DETAILS IMPORTANT?

A. Just as it is important to provide the circumstances under which AT&T may require a security deposit, it is important to provide in section 1.8.6 the circumstances under which AT&T will not require a security deposit.

Q. PLEASE PROVIDE AN OVERVIEW OF THE LANGUAGE AT&T PROPOSES FOR SECTION 1.8.6.

A. AT&T proposes that it will not require a security deposit from existing carriers that meet the following criteria: a) the carrier must have a good payment history based on the preceding 12-month period, with consideration for good-faith disputes as a percentage of receivable balance; b) the carrier's liquidity status is positive[8] for the prior four quarters of financials (at least one of which must be an audited financial report); c) the carrier's current bond rating (if applicable) is BBB or above; d) the carrier is free-cash-flow positive; e) the carrier has positive

[8] Based upon a review of Earnings Before Interest, Taxes, Depreciation and Amortization (EBITDA).

tangible net worth; f) the carrier has a debt-to-tangible net worth ratio between 0 and 2.5; and, g) the carrier is compliant with all financial maintenance covenants. This proposal is fair and reasonable.

Q. DOES SPRINT PROPOSE ANY ALTERNATIVE LANGUAGE TO ANY OF THE LANGUAGE PROPOSED BY AT&T IN SECTION 1.8.6?

A. No.

Q. THE NEXT SUBTOPIC IS SECTION 1.8.7 REGARDING THE RETURN OF A SECURITY DEPOSIT. WHAT IS THE DISAGREEMENT IN THIS SECTION?

A. The only difference in language is based on reciprocity, which I have discussed.

Q. WHAT IS THE DISPUTE WITH RESPECT TO SECTION 1.8.8?

A. AT&T proposes that the return of a deposit to a carrier does not mean that a carrier can avoid a future request if it later demonstrates a poor payment history or fails to satisfy the conditions of AT&T's deposit policy. The language is straightforward and clear, and leaves no doubt that a security deposit is always an option that is dependent upon the carrier's payment and financial performance.

Q. DID SPRINT PROVIDE AN ALTERNATIVE LANGUAGE TO ANY OF THE LANGUAGE PROPOSED BY AT&T IN SECTIONS 1.8.7 AND 1.8.8?

A. No.

Q. THE FINAL SUBTOPIC UNDER THE DEPOSIT POLICY SECTION RELATES TO THE USE OF LETTERS OF CREDIT AND SURETY BONDS AS SECURITY DEPOSIT INSTRUMENTS. WHAT IS AT&T'S POSITION ON SECTION 1.8.9?

A. If the carrier chooses a Letter of Credit to satisfy AT&T's request for a security deposit or an additional security deposit, AT&T proposes that the carrier maintain the Letter of Credit until AT&T no longer requires it. The language also describes how AT&T may draw down on the Letter of Credit if the carrier

defaults on payment obligations and the carrier fails to renew a Letter of Credit or provide a suitable replacement for the Letter of Credit.

Similarly, if a carrier selects a Surety Bond to satisfy AT&T's request for a security deposit or an additional security deposit, AT&T's proposed language says that the carrier will provide a replacement for the Surety Bond if the bonding company's credit rating falls below "B". Further, if the carrier fails to provide a suitable replacement for the bond within 30 days, AT&T may take action on the Surety Bond and apply the proceeds to the carrier's account. This additional detailed language, as is all of AT&T's proposed deposit-related language, is important to ensure that AT&T is able to mitigate its risks, and to provide clarity of expectations to the carrier.

Q. DID SPRINT PROVIDE ANY ALTERNATIVE LANGUAGE TO ANY OF THE LANGUAGE PROPOSED BY AT&T IN SECTION 1.8.9?

A. No.

Q. HOW SHOULD THE COMMISSION RESOLVE THIS ISSUE?

A. The Commission should adopt AT&T's proposed deposit policy language. It is the same language, or nearly the same language, contained in at least 11 other ICAs approved by this Commission since mid-2009.[9] AT&T's proposed language provides appropriate protection to AT&T while treating fairly carriers wishing to purchase services from AT&T under this ICA. Security deposits should not be mutual just because the Parties to this ICA buy from each other.

[9] ICAs between AT&T and the following CLECs: Alternative Phone, Inc., BCN Telecom, Inc., Cincinnati Bell Any Distance, Inc., Entelegent Solutions, Inc., Excelacom Light, L.L.C., General Computer Services, Inc., Lightspeed CLEC, Inc., NetTalk.Com, Inc., Peerless Network of Florida, L.L.C., Tele Circuit Network Corp., and Trans National Communications International, Inc.

AT&T is not now, nor has it been, a non-payment risk. Further, the Commission should remain mindful that whatever terms are ordered for this ICA may be adopted by other carriers who may represent a greater risk of non-payment to AT&T than Sprint.

ISSUE #77 *[DPL ISSUE IV.B(3)]*

What should be the definition of "Cash Deposit"?

Contract Reference: General Terms and Conditions, Part B – Definitions

Q. WHAT IS THE PARTIES' DISAGREEMENT CONCERNING THE DEFINITION OF "CASH DEPOSIT"?

A. The AT&T deposit language that is the subject of the preceding issue (Issue #76 *[DPL Issue IV.B(2)]*) identifies several ways in which a security deposit can be made, one of which is a Cash Deposit. *See* Att. 7, section 1.8.4. Accordingly, AT&T proposes to include a definition of "Cash Deposit" in the definitional portion of the General Terms and Conditions, namely: "Cash Deposit" means a cash security deposit in U.S. dollars held by **AT&T-9STATE**. Sprint, consistent with its opposition to the AT&T language that uses the term "Cash Deposit" proposes to include no definition of that term in the ICA. In the alternative, Sprint contends that if the term is used, it should be defined in way that reflects that a deposit may be held not only by AT&T, but also by Sprint, which is consistent with Sprint's position on reciprocity of deposits that I discussed above.

Q. HOW SHOULD THE COMMISSION RESOLVE THIS ISSUE?

A. This issue presents no separate decision for the Commission to make. Assuming the Commission decides the ICA should include AT&T's proposed deposit language, which it should for the reasons I discussed in connection with Issue #76

[DPL Issue IV.B(2)], then the ICA will have to include a definition of "Cash Deposit" because AT&T's language uses that term. Also, if the Commission decides that AT&T should not be subject to a deposit requirement, which it should for the reasons I also discussed above, then it necessarily follows that AT&T's proposed definition of "Cash Deposit" should be adopted as-is.

ISSUE #78 *[DPL ISSUE IV.B(4)]*

What should be the definition of "Letter of Credit"?

Contract Reference: General Terms and Conditions, Part B – Definitions

Q. WHAT IS THE DISAGREEMENT ABOUT THE DEFINITION OF "LETTER OF CREDIT," AND HOW SHOULD IT BE RESOLVED?

A. The disagreement is the same as the disagreement concerning "Cash Deposit" (Issue #77 *[DPL Issue IV.B(3)]*) that I just discussed. AT&T's proposed deposit language uses the term "Letter of Credit" (*see* Att. 7, section 1.8.4), so AT&T proposes a definition of the term. Sprint opposes AT&T's deposit language, would not use the term "Letter of Credit" in the ICA, and so maintains that no definition of the term is necessary. Sprint proposes, in the alternative, that if AT&T's deposit language is adopted, the deposit requirement should apply to both Parties and the definition of "Letter of Credit" should be modified to reflect that. Again, the resolution of this issue will be driven by the Commission's resolution of Issue #76 *[DPL Issue IV.B(2)]*, and AT&T's proposed definition of "Letter of Credit" should be adopted for the reasons I discussed in connection with that issue.

ISSUE #79 *[DPL ISSUE IV.B(5)]*

What should be the definition of "Surety Bond"?

Contract Reference: General Terms and Conditions, Part B – Definitions

Q. WHAT IS THE DISAGREEMENT CONCERNING THE DEFINITION OF "SURETY BOND"?

A. As with the disagreements about "Cash Deposit" and "Letter of Credit," this issue is a function of AT&T's proposed deposit language, which includes the term "Surety Bond" (*see, e.g.*, Att. 7, section 1.8.4). AT&T therefore proposes a definition of "Surety Bond." Sprint does not dispute AT&T's definition. However, because it opposes AT&T's proposed deposit language that includes the term, Sprint maintains that the ICA does not need a definition of "Surety Bond." Unlike the "Cash Deposit" and "Letter of Credit" issues, there is no dispute about reciprocity on this issue, because AT&T's proposed definition would not need to be modified if the Commission were to decide (which it should not) that the deposit requirement should be reciprocal.

ISSUE #80 ***[DPL ISSUE IV.C(1)]***

Should the ICA require that billing disputes be asserted within one year of the date of the disputed bill?

Contract Reference: Att. 7, section 3.1.1

Q. WHAT IS THE DISAGREEMENT ON THIS ISSUE?

A. The Parties' disagree about the number of months after a bill that a Party may dispute the charges. AT&T proposes a 12-month limit, and Sprint proposes an overly liberal 24-month limit.

Q. WHAT IS THE BASIS FOR AT&T'S POSITION?

A. AT&T's proposed 12-month time period is a practical and appropriate limitation. Through experience, AT&T knows that it is more difficult to corroborate dispute

claims beyond 12 months. Moreover, a 12-month limitation is consistent with AT&T's proposed 12-month limitation on back-billing that I discussed in Issue #74 *[DPL Issue IV.A(2)]* above. The 24-month period Sprint proposes here is inconsistent with the 6-month limitation on back-billing Sprint proposes in Issue #74 *[DPL Issue IV.A(2)]* above.

Q. HOW DO YOU RESPOND TO SPRINT'S STATEMENT THAT "THE PARTIES AGREE IN GTC PART A TO A 24-MONTH LIMIT AS TO ANY ICA DISPUTE"AND THAT "THERE IS NO LEGAL BASIS TO MANDATE A FURTHER TIME RESTRICTION FOR BILLING DISPUTES"?[10]

A. It is true that the Parties have agreed to language in the General Terms and Conditions Part A, section 17.3 setting a 24-month limit. However, Section 3.4.1 of GTC Part A under the 'Conflict in Provisions' provides: "If any definitions, terms or conditions in any given Attachment, Exhibit, Schedule of Addenda differ from those contained in the main body of this Agreement, those definitions, terms or conditions will supersede those contained in the main body of this Agreement, but only in regard to the services or activities listed in that particular Attachment, Exhibit, Schedule or Addenda." For the same reason that there are dispute resolution provisions specific to billing in Attachment 7 (separate and different from dispute resolution provisions in GTC Part A), there can also be dispute time period limitations specific to billing and found in Attachment 7. Thus, if the Commission agrees that a 12-month limitation for billing disputes is appropriate (and it should), it can order a time period limitation different from that in the General Terms and Conditions.

[10] See Sprint's position statement on Issue #80 *[DPL Issue IV.C(1)]* on the DPL.

As far as there being no legal basis for a separate time limitation for Billing Disputes, I am not a lawyer and will offer no legal opinion. However, from a layman's perspective, I believe the question for this Commission is what a reasonable time period is, and a 12-month limitation is practical and workable for both Parties.

Q. YOU MENTIONED THAT SPRINT'S PROPOSED 24-MONTH BILLING DISPUTE LIMITATION IS INCONSISTENT WITH ITS POSITION ON ISSUE #74 *[DPL ISSUE IV.A(2)]* ABOVE. PLEASE EXPLAIN.

A. In Issue #74 *[DPL Issue IV.A(2)]* above, Sprint proposes to limit to just six months the period that a Billing Party could reach back to bill amounts that it inadvertently failed to include on earlier bills. Yet, for this issue, Sprint would allow the Billed Party 24 months to dispute a bill. Sprint observes in connection with Issue #74 *[DPL Issue IV.A(2)]* that the Billing Party has control of the bill while the Billed Party does not, but that does not justify this disparity in treatment. Sprint cannot have it both ways. The period of time allotted to the Billing Party to correct a bill should be equal to the period of time allotted to the Billed Party to dispute the bill – and AT&T proposes 12 months on both issues.

Q. WHICH PARTY WOULD BENEFIT MOST IF SPRINT'S PROPOSED LANGUAGE ON BOTH ISSUES WAS ADOPTED?

A. As I stated in my discussion of Issue #74 *[DPL Issue IV.A(2)]*, Sprint would. AT&T will be billing Sprint considerably more than Sprint will be billing AT&T. Consequently a longer period for the Billed Party to dispute bills would benefit Sprint, as would a shorter period for the Billing Party to correct bills. The Commission should reject Sprint's unreasonable self-serving approach and adopt

the reasonable and internally consistent 12-month limitation on both actions proposed by AT&T.

Q. HAS THIS COMMISSION APPROVED ANY INTERCONNECTION AGREEMENTS THAT INCLUDE THE TWO 12-MONTH PERIODS PROPOSED BY AT&T?

A. Yes. Since the middle of 2009, this Commission has approved at least 11 such ICAs.[11]

Q. HOW SHOULD THE COMMISSION RESOLVE THIS ISSUE?

A. This Commission should adopt AT&T's proposed language because it makes practical sense, is a workable solution for *both* Parties, and is consistent with the 12-month back-billing limitation proposed by AT&T. Further, it is consistent with language in ICAs approved previously by this Commission.

ISSUE #81 ***[DPL ISSUE IV.C(2)]***

Which Party's proposed language concerning the form to be used for billing disputes should be included in the ICA?

Contract Reference: Att. 7, section 3.3.1

Q. WHAT IS THE DISAGREEMENT ABOUT BILLING DISPUTE FORMS?

A. AT&T proposes language that would require the Billed Party to submit Billing Disputes on the Billing Party's dispute form. Sprint proposes language that provides for the Billed Party to submit Billing Disputes on its own dispute form, or, in the alternative, to recover from the Billing Party any costs it incurs to modify its processes to use the Billing Party's form.

Q. WHAT IS THE BASIS FOR AT&T'S POSITION ON THIS ISSUE?

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[11] See footnote 9 above.

A. Bills for services provided under an ICA are voluminous and complex, and Billing Disputes are frequent. AT&T receives many Billing Disputes from many carriers. In order for AT&T to efficiently process these disputes, it is essential that all carriers use the same form, namely AT&T's standard dispute form, which is compatible with AT&T's billing/collections systems. AT&T has worked successfully with other carriers in the past to ensure they are using AT&T's Billing Dispute form and providing the necessary data. AT&T has been unable to resolve this with Sprint, and AT&T should not be forced to treat Sprint differently from other carriers.

Moreover, AT&T's position recognizes that, as a general proposition, Billing Disputes should be submitted on the Billing Party's form. Thus, AT&T's language requires AT&T to submit disputes on Sprint's form, which presumably benefits Sprint.

Q. HAS THIS COMMISSION APPROVED ICAS THAT INCLUDE THE BILLING DISPUTE FORM PROVISION PROPOSED HERE BY AT&T?

A. Yes. The Commission recently has approved at least 11 ICAs between AT&T and the CLECs.[12] Again, it is my understanding that AT&T has worked successfully with other carriers in the past to ensure they are using AT&T's Billing Dispute form.

Q. WHAT IS THE BASIS FOR SPRINT'S POSITION?

A. Sprint claims it should be permitted to maintain its current use of its own internal form to submit Billing Disputes to AT&T because, Sprint claims, it would be

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[12] See footnote 9 above.

costly for Sprint to modify its internal processes to meet AT&T's needs. Sprint's practice, however, unfairly imposes costs on AT&T. AT&T must correct Sprint's billing information, populate the missing and incomplete data, look up accounts, and reformat the dispute forms. This delays the ultimate resolution of the Billing Dispute. Sprint's practice also unfairly benefits Sprint as compared to other wholesale customers. And, if Sprint is allowed to continue using its internal forms, other carriers may seek to follow along. The result would be to exponentially increase AT&T's burden of managing Billing Disputes. It also bears repeating that , if AT&T purchases services from Sprint and has a Billing Dispute relating to the services Sprint provides, AT&T is willing to use Sprint's billing forms. As the Party providing the service, AT&T should have the discretion to manage the Billing Dispute process in the most efficient way for all carriers.

Q. HOW SHOULD THE COMMISSION RESOLVE THIS ISSUE?

A. The Commission should accept AT&T's proposed language because to do otherwise would inappropriately require AT&T to provide Sprint preferential treatment. This Commission should not accept Sprint's alternative proposal that AT&T pay the costs for Sprint to modify Sprint's process to be compatible with AT&T's systems. AT&T is willing to absorb any costs it might incur to submit Billing Disputes to Sprint on Sprint's form, and Sprint should do the same.

ISSUE #82 *[DPL ISSUE IV.D(1)]*

What should be the definition of "Non-Paying Party"?

Contract Reference: General Terms and Conditions, Part B – Definitions

Q. DO THE PARTIES AGREE THAT A DEFINITION OF "NON-PAYING PARTY" SHOULD BE INCLUDED IN THE ICA?

A. Yes.

Q. WHAT, THEN, IS THE DISAGREEMENT?

A. AT&T contends that a Non-Paying Party is one that has not paid the total of *any* charges (undisputed and/or disputed) by the Bill Due Date. Sprint, on the other hand, contends that a Non-Paying Party is one that has not paid *only* the undisputed charges by the Bill Due Date.

Q. WHICH PARTY'S DEFINITION SHOULD BE INCLUDED IN THE ICA?

A. AT&T's language is reasonable and, most importantly, it works in the context of the language that will be included in the ICA – including language on which the Parties have agreed. Sprint's approach, in contrast, would render meaningless contract language on which the Parties have agreed.

Q. CAN YOU PROVIDE AN EXAMPLE OF HOW AT&T'S DEFINITION OF "NON-PAYING PARTY" WORKS WITH AGREED LANGUAGE IN THE ICA?

A. Yes. Agreed language in Attachment 7, section 1.12 states: "If any unpaid portion of an amount due to the Billing Party under this Agreement is subject to a Billing Dispute between the Parties, the Non-Paying Party must, prior to the Bill Due Date, give written notice to the Billing Party of the Disputed Amounts and include in such written notice the specific details and reasons for disputing each item listed in Section 3.3 below." Non-Paying Party, as used in agreed section 1.12, obviously means a Party that has not paid Disputed Amounts.

Q, IF SPRINT'S PROPOSED DEFINITION OF "NON-PAYING PARTY" WERE INCLUDED IN THE ICA, WHAT EFFECT WOULD THAT HAVE ON SECTION 1.12?

A. It would effectively eliminate it from the ICA. The point of section 1.12 is that if a Party disputes a bill, that Party – which the ICA denominates the "Non-Paying Party" – must do certain things. Sprint wants "Non-Paying Party" to mean a Party that does not pay *only* undisputed charges. If Sprint's view were adopted, then a Party disputing its bill would not be a Non-Paying Party and, therefore, would not have to do the things set forth in section 1.12. That, in turn, would mean that section 1.12 would never apply.

Q. CAN YOU PROVIDE ANOTHER EXAMPLE?

A. Yes. Agreed language in section 2.4 of Attachment 7 provides:

> If the Non-Paying Party desires to dispute any portion of the Unpaid Charges, the Non-Paying Party must complete all of the following actions not later than [disputed number] calendar days following receipt of the Billing Party's notice of Unpaid Charges:
>
> 2.4.1 notify the Billing Party in writing which portion(s) of the Unpaid Charges it disputes, including the total Disputed Amounts and the specific details listed in the Dispute Resolution Section of this Attachment 7, together with the reasons for its dispute; and
>
> 2.4.2 pay all undisputed Unpaid Charges to the Billing Party; [disputed language follows].

The term "Non-Paying Party," as used in that agreed language, means a Party that has not paid all billed amounts – including amounts that the Non-Paying Party disputes.

Q. IS THERE ALSO DISPUTED LANGUAGE IN WHICH THE TERM "NON-PAYING PARTY" IS USED?

A. Yes. AT&T's proposes escrow language, which Sprint opposes in its entirety and which I discuss below under Issue #84 *[DPL Issue IV.D(3)]*, uses the term "Non-Paying Party" several times, because under AT&T's proposed language, the Non-Paying Party that disputes a bill is required to put the Disputed Amount in escrow. If AT&T's proposed escrow language is included in the ICA, as it should be, the term "Non-Paying Party" will be used many times in the ICA, in addition to the two instances I discussed above, in a context where the term must encompass the Billed Party that disputes a bill. However, AT&T's proposed definition of "Non-Paying Party" should be adopted for reasons separate and apart from the escrow provisions. As I have demonstrated, even agreed language in the ICA simply does not work if this issue is not resolved in favor of AT&T.

ISSUE #83 *[DPL ISSUE IV.D(2)]*

What should be the definition of "Unpaid Charges"?

Contract Reference: General Terms and Conditions, Part B – Definitions

Q. DO THE PARTIES AGREE THAT A DEFINITION OF "UNPAID CHARGES" SHOULD BE INCLUDED IN THE ICA?

A. Yes.

Q. WHAT IS THE DISAGREEMENT?

A. It is the same fundamental disagreement that I discussed in the previous issue regarding the definition of Non-Paying Party. AT&T contends that Unpaid Charges means *any* charges (undisputed and/or disputed) billed to the Non-Paying Party that are not paid by the Bill Due Date. Sprint, on the other hand, contends that *only* undisputed charges not paid by the Bill Due Date should be considered as Unpaid Charges. AT&T's position is reasonable and, most importantly, it –

like AT&T's definition of "Non-Paying Party" – works in the context of both agreed language and disputed language.

Q. HOW DOES AT&T'S DEFINITION OF "UNPAID CHARGES" FIT INTO AGREED CONTRACT LANGUAGE?

A. In my discussion of the previous issue, I quoted section 2.4 of Attachment 7. That provision includes the term "Unpaid Charges," and, to make the provision work, "Unpaid Charges" must – contrary to Sprint's position – include charges that are disputed, as well as charges that are undisputed.

Q. HOW IS THE TERM "UNPAID CHARGES" USED IN DISPUTED LANGUAGE?

A. The term is used throughout AT&T's proposed escrow language, which requires Unpaid Charges that the Billed Party disputes to be deposited in escrow. Assuming the Commission adopts AT&T's escrow language, as it should for reasons I discuss in connection with Issue #84 *[DPL Issue IV.D(3)]*, the term "Unpaid Charges" clearly must include disputed charges, since those are the charges to which the escrow requirement will apply. As with "Non-Paying Party," however, this issue should be resolved in favor of AT&T regardless of the escrow language, in order for the agreed language in which the term is used to work.

ISSUE #84 *[DPL ISSUE IV.D(3)]*

Should the ICA include AT&T's proposed language requiring escrow of disputed amounts?

Contract Reference: Att. 7, sections 1.12 – 1.18, 3.3.2

Q. WHAT IS THE PARTIES' DISAGREEMENT CONCERNING ESCROW LANGUAGE?

A. AT&T proposes escrow language for the ICA, and Sprint objects to having any escrow language in the ICA.

Q. WHAT IS THE THRUST OF AT&T'S ESCROW LANGUAGE?

A. It provides that if either Party disputes the other Party's bill, the Billed Party must deposit the disputed amount into an interest-bearing escrow account. When the dispute is resolved, the escrowed funds, along with accumulated interest, are disbursed to the Billing Party or to the Billed Party, depending upon who prevails in the dispute.

Q. WHY DOES AT&T WANT ESCROW LANGUAGE IN THE ICA?

A. AT&T has lost tens of millions of dollars to carriers that disputed bills without a proper basis. When those disputes were resolved in AT&T's favor, the carriers did not have the funds to pay the amounts owed. AT&T's proposed language is a reasonable method to assure that funds will be available if the dispute is resolved in AT&T's favor.

Q. WHAT ARE THE KEY PROVISIONS OF AT&T'S PROPOSED ESCROW LANGUAGE?

A. Under this ICA, either Party could be the Billing Party, either Party could be the Disputing Party, and either Party could be required to place funds in escrow. In addition to paying to the Billing Party any non-disputed amounts by the Bill Due Date, the Disputing Party would be required to deposit an amount equal to any Disputed Amount (other than Disputed Amounts for reciprocal compensation) into an interest-bearing escrow account to be held by a qualifying financial institution designated as a Third-Party escrow agent.

Disbursement from an escrow account would occur upon resolution of the disputed issues in accordance with the ICA's Dispute Resolution provisions. In the event the Disputing Party loses the dispute, the Disputed Amounts held in escrow will be subject to Late Payment Charges. If the Disputing Party wins the dispute, it gets its money back, with interest. If there is a split decision on the dispute, the Billing Party and the Disputing Party will be reimbursed from the escrow account proportionately according to the resolution of the dispute.

Q. OTHER THAN ENSURING THAT THERE ARE FUNDS AVAILABLE TO PAY THE BILL IF THE DISPUTE IS RESOLVED IN FAVOR OF THE BILLING PARTY, DO THE ESCROW PROVISIONS PROVIDE ANY OTHER BENEFITS?

A. Yes. The escrow requirements should serve to discourage the assertion of frivolous billing disputes that needlessly delay the Billing Party from receiving payments it is rightfully due. With no escrow requirement, the Billed Party can, in effect, make the Billing Party its banker by submitting a dispute rather than paying its bill. If the Billed Party is required to place the Disputed Amounts in escrow, that behavior should be discouraged. I do not mean to suggest that Sprint would engage in such machinations. Again, though, AT&T must concern itself with the likelihood that other carriers will adopt this ICA – as should this Commission.

Q. IS AT&T'S ESCROW PROPOSAL UNUSUAL?

A. Absolutely not. Many ICAs include these escrow provisions, including the 11 ICAs that this Commission recently approved and that I previously identified.[13]

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[13] See footnote 9 above.

Q. WHAT IS SPRINT'S OBJECTION TO AT&T'S ESCROW PROPOSAL?

A. Sprint asserts that AT&T issues erroneous bills "that cause good-faith disputes" and that the status quo should not be changed by "conditioning disputes" on an escrow requirement.[14]

Q. HOW DO YOU RESPOND?

A. AT&T does sometimes make billing errors that result in good-faith disputes, but it is also true that there are many instances in which CLECs and CMRS providers dispute bills and turn out to be wrong. The prospect that Sprint might have to put a disputed amount in escrow as a result of an AT&T billing error, while certainly not desirable, also is not dreadful, because if Sprint prevails in the dispute, it gets its money back along with interest. The prospect of AT&T being deprived of payment altogether as a result of a dispute being resolved in AT&T's favor only after the CLEC or CMRS provider has become unable to pay is, I respectfully suggest, more undesirable.

As for Sprint's reference to the status quo, the emerging status quo is for carriers in this state to have Commission-approved language in their ICAs that require the Disputing Party to place Disputed Amounts in escrow. Sprint should be in the same position. And, more importantly, the general escrow practice should not be jeopardized by creating an exception in this ICA that other carriers may adopt.

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[14] See Sprint's position statement on Issue #84 *[DPL Issue IV.D(3)]* on the DPL.

ISSUE #85 *[DPL ISSUE IV.E(1)]*

Should the period of time in which the Billed Party must remit payment in response to a Discontinuance Notice be 15 or 45 days?

Contract Reference: General Terms and Conditions, Part B – Definitions (under definition of Discontinuance Notice); Att. 7, section 2.2

Q. WHAT IS THE DISAGREEMENT BETWEEN THE PARTIES ON THIS ISSUE?

A. AT&T proposes that if the Billed Party receives a Discontinuance Notice for failure to pay its bills, the Billed Party must remit payment within 15 days to avoid disconnection of its services. Sprint proposes an overly liberal 45-day limit.

Q. WHY IS AT&T'S POSITION MORE REASONABLE THAN SPRINT'S?

A. AT&T's proposed 15-day period is sufficient time after receiving a Discontinuance Notice for a Non-Paying Party to pay unpaid billed charges – particularly since these charges are not disputed. Since the Discontinuance Notice cannot be sent to the Non-Paying Party until after the charges are already Past Due (meaning the carrier has already had 31 days to pay), the carrier actually has 46 days from the invoice date to avoid service disconnection. That is certainly a reasonable amount of time for a carrier to pay its undisputed charges.

Sprint, on the other hand, proposes a 45-day period, which would give the Non-Paying Party 76 days after the invoice date (at a minimum) to pay its undisputed bills and avoid service disconnection. Sprint maintains that such a long period is justified because "discontinuance of service is a drastic remedy."[15] AT&T certainly does not disagree that discontinuance is drastic, but

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15 See Sprint's position statement on Issue #85 *[DPL Issue IV.E(1)]* on the DPL.

discontinuance is an appropriate and proportionate response to a carrier that fails to pay its undisputed bills in a timely fashion.

ISSUE #86 ***[DPL ISSUE IV.E(2)]***

Under what circumstances may a Party disconnect the other Party for nonpayment, and what terms should govern such disconnection?

Contract Reference: Att. 7, sections 2.0 – 2.9

Q. WHAT IS THE PARTIES' DISAGREEMENT CONCERNING DISCONNECTION FOR NON-PAYMENT?

A. There are four disagreements: 1) the time period for disconnection after a Discontinuance Notice (I already discussed that in the previous issue, and the decision on that issue would apply for sections 2.2 and 2.4); 2) Commission involvement in disconnections; 3) the handling of disputed billed amounts (as tied into escrow accounts discussed in Issue #84 *[DPL Issue IV.D(3)]*); and, 4) specific details regarding the actions the Billed Party can take to avoid disconnection. Having already addressed the first topic in Issue #85 *[DPL Issue IV.E(1)]*, I will now address each of the others.

Q. IN SECTIONS 2.3 AND 2.7, HOW DO THE PARTIES VIEW COMMISSION INVOLVEMENT IN THE DISCONNECTION OF A NON-PAYING CARRIER?

A. AT&T proposes that the Billing Party will notify the Commission of any written notice of disconnection as required by any state order or rule. Sprint proposes that disconnections can only occur as provided by applicable law, and upon such notice as ordered by the Commission.

Q. PRACTICALLY, WHAT DOES THAT MEAN FOR THE PARTIES?

A. AT&T's proposed language means that once the specified circumstances that justify discontinuance are met, the Billing Party is permitted to proceed with discontinuance of the Billed Party's service, after providing notice to the Commission as may be required, but without first obtaining Commission approval to do so. By the time those contractual circumstances permitting discontinuance are met, the Billed Party has had ample time to cure the non-payment, and adding time for Commission approval (thus delaying further the Billing Party's receipt of payment due) simply is not appropriate. Sprint's proposed language would create just such a further delay.

Q. BUT ISN'T IT APPROPRIATE FOR THE COMMISSION TO PLAY A ROLE IN THE DETERMINATION WHETHER DISCONNECTION IS WARRANTED.

A. AT&T is not saying the Commission should not play a role. At the end of the day, the disagreement really is about whether AT&T should have to first ask for the Commission's permission. If Sprint (or a carrier that adopts Sprint's ICA) is threatened with disconnection, it is free to take the initiative to petition the Commission to restrain AT&T from discontinuing service for a time and to investigate whether disconnection is warranted. And the Commission can be sure that any bona fide carrier that believes that discontinuance is not warranted will take that initiative. The point is that once the non-payment of bills has reached the point that warrants discontinuance of service, AT&T should not be required to initiate a Commission proceeding to obtain permission to act. That has been the status quo for a number of years.

Q. DOESN'T AT&T'S POSITION GIVE AT&T UNILATERAL AUTHORITY TO DECIDE WHETHER THE CONTRACTUAL CIRCUMSTANCES WARRANTING DISCONNECTION HAVE BEEN MET?

A. No, it only gives AT&T authority to determine in the first instance that it believes those circumstances have been met. Again, if AT&T is wrong, the non-paying carrier will bring the matter to the Commission, and the Commission will ultimately make the judgment. Furthermore, AT&T is acutely aware of the liabilities to which it would be subject if it breached an ICA by improperly disconnecting a carrier. That quite simply is not going to happen.

Q. ISSUE #85 *[DPL ISSUE IV.E(1)]* ABOVE ADDRESSED A BILLED PARTY'S PAYMENTS OF *UNDISPUTED* CHARGES BY A CERTAIN TIME TO AVOID DISCONTINUANCE. WHAT ARE THE REQUIREMENTS FOR PAYMENT OF *DISPUTED* CHARGES TO AVOID DISCONTINUANCE?

A. AT&T proposes language that is consistent with the language it proposes for escrow in Issue #84 *[DPL Issue IV.D(3)]*. In addition to payment of all undisputed charges, AT&T proposes in sections 2.4.3 and 2.4.4 that the Non-Paying Party also pay all Disputed Amounts[16] into an interest-bearing escrow account. No amounts are deemed Disputed Amounts unless and until the Billed Party provides that written evidence to the Billing Party.

Sprint, on the other hand, offers no language for the handling of Disputed Amounts, contending that only nonpayment of undisputed amounts is grounds for discontinuance of service and that escrow requirements are unacceptable.

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[16] This is all Disputed Amounts other than Disputed Amounts arising from terminating 251(b)(5) Traffic or ISP-Bound Traffic.

Q. UNDER SECTIONS 2.6.1 – 2.6.4 AS PROPOSED BY AT&T, WHAT ARE THE ACTIONS THAT A BILLED PARTY CAN TAKE TO AVOID DISCONTINUANCE OF SERVICE?

A. To avoid discontinuance of service under AT&T's proposed language, the Billed Party must do the following: a) pay all undisputed Unpaid Charges to the Billing Party, including, but not limited to, Late Payment Charges; b) deposit the disputed portion of any Unpaid Charges into an interest-bearing escrow account; c) timely furnish any assurance of payment requested in accordance with the Assurance of Payment requirements[17]; and, d) make a payment in accordance with any mutually agreed payment arrangements the Parties might develop.

Q. ARE THERE ANY OTHER ACTIONS THAT THE BILLING PARTY MIGHT TAKE IN THE EVENT THAT THOSE STEPS ARE NOT TAKEN BY THE BILLED PARTY?

A. Yes. AT&T proposes in sections 2.6.4.1 and 2.6.4.2 that the Billing Party may also exercise either or both of two other options. First, the Billing Party may refuse to accept any applications for new or additional services, and, second, the Billing Party may suspend completion of any pending requests for new or additional services.

Q. IS AT&T'S PROPOSED LANGUAGE INCLUDED IN ANY ICAS THAT THE COMMISSION HAS APPROVED?

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[17] AT&T's proposed language in Attachment 7, section 2.6.3 is supported by this Commission's previous finding that BellSouth may disconnect for non-payment of requested deposit. See *Joint Petition by New South Communications Corp., NuVox Communications, Inc., and Xspedius Communications, LLC, on behalf of its operations subsidiaries Xspedius Management Co. Switched Services, LLC and Xspedius Management Co. of Jacksonville, LLC, for arbitration of certain issues arising in negotiation of interconnection agreement with BellSouth Telecommunications, Inc.*, Order No. PSC-05-0975-FOF-TP in Docket No. 040130-TP, dated October 11, 2005; Decision on Issue No. XXII, pages 71-73.

A. Yes, AT&T's proposed language for the CLEC ICA appears in the 11 Commission-approved ICAs I have identified in my discussion of other issues.

Q. HOW SHOULD THE COMMISSION RESOLVE THIS ISSUE?

A. The Commission should accept all of AT&T's proposed language for the discontinuance process. This is reciprocal language and appropriately protects the Billing Party against increased losses resulting from the Non-Paying Party – including carriers that might adopt Sprint's ICA – continuing to run up bills it does not pay.

ISSUE #90 ***[DPL ISSUE IV.H]***

Should the ICA include AT&T's proposed language governing settlement of alternately billed calls via the Non-Intercompany Settlement System (NICS)?

Contract Reference: Att. 7, section 5

Q. WHAT IS AN ALTERNATELY-BILLED CALL?

A. Alternately-billed calls are calls that are billed as collect calls, billed to a third number, or billed to a credit card.

Q. WHAT IS THE NON-INTERCOMPANY SETTLEMENT SYSTEM ("NICS")?

A. NICS is the BellCore system that calculates non-intercompany settlement amounts due from one company to another within the same region. The calculations include amounts due from collect, third-number and credit card messages.

Q. WHAT IS THE DISAGREEMENT ABOUT SETTLEMENT OF ALTERNATELY-BILLED CALLS?

A. AT&T proposes language to appropriately define the process that allows a full accounting for the billing of local and toll LEC-carried alternately-billed calls

between the Parties and with all other participating LECs. Sprint, on the other hand, proposes that the ICA include no language for such a process, and states as its reason that the "Parties have a separate RAO hosting Agreement that addresses the subject...." Sprint contends it would "create an unnecessary ambiguity" by having the same process in two different agreements.[18]

Q. HOW DO YOU RESPOND TO SPRINT'S CONTENTION?

A. In order to meet Sprint's objection, AT&T is willing to insert the following as a new first sentence for section 5.1.2: "This section 5.1.2 applies only if AT&T and Sprint do not have an RAO Hosting Agreement." That sentence should dispose of Sprint's concerns because it means that if there is an RAO Hosting Agreement between the Parties, then section 5.1.2 will not apply, and there can be no possible ambiguity.

Q. IF THERE IS AN RAO HOSTING AGREEMENT, AS SPRINT ASSERTS, WHY NOT JUST DELETE THE PROVISION?

Q. There are two reasons. First, the inclusion of the language – the substance of which Sprint evidently does not find objectionable – ensures that the Parties will be covered in the event that for some reason their RAO Hosting Agreement terminates or becomes ineffective. Second, carriers without RAO Hosting Agreements may adopt this ICA, and AT&T's language needs to be included in those ICAs.

Q. HAS THIS COMMISSION PREVIOUSLY APPROVED AT&T'S PROPOSED LANGUAGE?

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[18] See Sprint's position statement on Issue #90 *[DPL Issue IV.H]* on the DPL.

A. Yes. The 11 ICAs to which I have previously referred include AT&T's proposed language, but without the sentence AT&T has recently added in order to address Sprint's objection.

Q. HOW SHOULD THE COMMISSION RESOLVE THIS ISSUE?

A. The Commission should accept AT&T's proposed language for the reasons I have stated.

ISSUE #92 *[DPL ISSUE V.C(1)]*

Should the ICA include language governing changes to corporate name and/or d/b/a?

Contract Reference: General Terms and Conditions, Part A, sections 16.3 – 16.3.2

Q. WHAT IS THE PARTIES' DISAGREEMENT ON THIS ISSUE?

A. AT&T proposes language defining and governing billing account record changes due to corporate name changes (not related to any company code changes), and "Sprint does not believe AT&T's corporate name change language is necessary or appropriate."[19]

Q. WHAT BASIS DOES EACH PARTY HAVE FOR ITS POSITION?

A. AT&T is very experienced at corporate name changes by CLECs with which it has ICAs who have gone through mergers, acquisitions and/or transfers of assets. Even under the best of circumstances, changes to corporate names in carrier account records can be complex and time-consuming. AT&T incurs costs to make those account billing record changes – changes that AT&T otherwise would not make. AT&T is willing to make such changes, but Sprint should be

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[19] See Sprint's position statement on Issue #92 *[DPL Issue V.C(1)]* on the Language Exhibit.

accountable for any costs incurred by AT&T as a result of Sprint's action. The record order change charge that would apply to each account change service request is already contained in the ICA's Pricing Schedule, so there is no need or reason to negotiate any such charge as Sprint suggests.[20] All of the relevant information specific to name change requests (what constitutes a change, when charges apply, what the charge is, and where the charge is found) is included in the AT&T's proposed language for section 16.3.1.

Sprint, on the other hand, does not want to pay for any such changes, and states that "it is inappropriate to impose unilateral charges to update AT&T's internal records."[21] Apparently Sprint envisions AT&T absorbing all of the costs to make those Sprint-caused record changes.

Q. PLEASE DESCRIBE WHAT AT&T MUST DO WHEN A CARRIER CHANGES ITS CORPORATE NAME.

A. At a minimum, AT&T must change the corporate name on all of the carrier's Carrier Access Billing System ("CABS") Billing Account Numbers ("BANs"). A separate record change is required for each affected BAN, and AT&T is entitled to bill a record order charge for each BAN change. If a carrier changes its corporate name on resale accounts or other products not billed in CABS, i.e., billed in Customer Record Information System ("CRIS"), AT&T would require a record change for each of the carrier's End User accounts, and would be entitled to bill a record order charge for each of those End User accounts. All of these circumstances are addressed by AT&T's proposed language.

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20 See Sprint's position statement on Issue #92 *[DPL Issue V.C(1)]* on the DPL.

21 See Sprint's position statement on Issue #92 *[DPL Issue V.C(1)]* on the DPL.

Q. PLEASE ADDRESS AT&T'S PROPOSED LANGUAGE IN SECTION 16.3.2.

A. AT&T's proposed language simply suggests that the "Parties agree to amend this Agreement to appropriately reflect any name change..." Since the ICAs bear the names of the Parties and identify those named Parties with the rights and obligations set forth in the ICAs, it makes perfect sense to amend the ICA to reflect changes to a Party's name. Sprint, however, contends that such an amendment is "unnecessary and inappropriate" – but does not say why. AT&T will be interested to see the explanation for Sprint's position in Sprint's direct testimony.

Q. HOW SHOULD THE COMMISSION RESOLVE THIS ISSUE?

A. The Commission should accept AT&T's proposed language because it is clear in its governance of corporate name changes, and appropriately requires Sprint to bear the cost of necessary changes to AT&T's records to reflect a change in Sprint's name – a cost that Sprint causes.

ISSUE #93 ***[DPL ISSUE V.C(2)]***

Should the ICA include language governing company code changes?

Contract Reference: General Terms and Conditions, Part A, sections 16.4 – 16.4.2

Q. WHAT IS THE PARTIES' DISAGREEMENT ON THIS ISSUE?

A. It is the same disagreement I just discussed in connection with corporate name changes: AT&T proposes language defining and governing billing account record

changes due to company code changes, and "Sprint does not believe AT&T's company code change language is necessary or appropriate."[22]

Q. WHAT ARE THE COMPANY CODES AT ISSUE IN THIS SECTION, AND HOW ARE THEY USED?

A. Operating Company Number ("OCN") and Access Carrier Name Abbreviation ("ACNA") are the company codes at issue in this section. OCNs and ACNAs are assigned by industry agencies such as Telcordia or the National Exchange Carriers Association (NECA), and appear on each carrier's End User accounts or circuits. These codes are used throughout the industry to ensure accurate identification, provisioning, maintenance, billing, call routing and inventorying. In that regard, AT&T uses OCNs and ACNAs in its directory databases, billing systems and network databases (LMOS, TIRKS, RCMAC, etc.).

Q. PLEASE DESCRIBE WHAT AT&T MUST DO WHEN A CARRIER CHANGES COMPANY CODES.

A. When a carrier changes OCNs/ACNAs, AT&T must change the OCN/ACNA in every AT&T system for every End User account or circuit that is affected by the code change. As specified in AT&T's proposed language for section 16.4.2, the carrier "must submit a service order…for each End User record (or equivalent) or each circuit ID number as applicable." The service order is distributed to AT&T's downstream systems and OCN/ACNA changes are made. Further, code change information is passed throughout the industry to update other databases,

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[22] See Sprint's position statement on Issue #93 *[DPL Issue V.C(2)]* on the Language Exhibit.

such as the Local Exchange Routing Guidelines (LERG) database that assists carriers in properly routing and billing originating and terminating calls.

Q. WHAT BASIS DOES EACH PARTY HAVE FOR ITS POSITION?

A. When AT&T changes company codes in all of a carrier's account records and AT&T and industry systems, the costs to AT&T are substantial. But for Sprint's (or an adopting carrier's) decision to merge, acquire or transition accounts, these are changes that AT&T otherwise would not have to make. AT&T is willing to make such changes, but the carrier should be accountable for any costs incurred by AT&T for the carrier's unilateral decision. The record order change charge that would apply to each account change service request is already contained in the ICA's Pricing Schedule, so there is no need or reason to negotiate any such charge as Sprint suggests.[23] All of the relevant information specific to company code change requests (what constitutes a change, when charges apply, what the charge is, and where the charge is found) is appropriately included in AT&T's proposed language for sections 16.4.1 and 16.4.2.

Sprint does not want to pay for any such changes, and states that "it is inappropriate to impose unilateral charges to update AT&T's internal needs associated with a company code change."[24] As with the corporate name changes that are the subject of the previous issue, Sprint apparently envisions AT&T making all of the Sprint-caused company code record changes with AT&T absorbing all of the costs to make those changes.

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[23] See Sprint's position statement on Issue #93 *[DPL Issue V.C(2)]* on the DPL.

[24] See Sprint's position statement on Issue #93 *[DPL Issue V.C(2)]* on the DPL.

Q. DOES AT&T'S PROPOSED LANGUAGE FOR SECTION 16.4.1 INCLUDE ANY OTHER REQUIREMENTS FOR COMPANY CODE CHANGES?

A. Yes. AT&T's proposed language in section 16.4.1 requires a carrier to provide a 90-day advance written notification of its intent to make any company code changes and to obtain AT&T's consent. Under AT&T's proposed language, AT&T "shall not unreasonably withhold consent," but that consent "is contingent upon payment of any outstanding charges…" billed against any of the assets associated with the company whose code is changing, or any other charges billed to the carrier. This simply means that before any company code changes are made that might affect the billing responsibility of carrier accounts going forward, all current billing between AT&T and the affected Parties must be in good standing.

Q. ARE THERE ANY OTHER CHARGES FOR WHICH A CARRIER COULD BE LIABLE WITH RESPECT TO COMPANY CODE CHANGES?

A. Yes. Under certain circumstances related to collocation, a carrier could be responsible for paying charges to AT&T for re-stenciling, re-engineering, changing locks and/or any other necessary work. These circumstances are appropriately addressed in section 16.4.2 of AT&T's proposed language.

Q. AT&T'S PROPOSED LANGUAGE FOR SECTION 16.4.1 OF THE CLEC ICA IS SLIGHTLY DIFFERENT FROM AT&T'S PROPOSED LANGUAGE FOR SECTION 16.4.1 OF THE CMRS ICA. WHY IS THERE A DIFFERENCE?

A. The only difference between the two proposed sets of language is the elimination from the wireless ICA of the phrase "251(c)(3) UNEs." CMRS providers are not

entitled to obtain UNEs under an ICA, so the UNE reference has no place in the CMRS ICA.

Q. WHAT ABOUT THE DIFFERENCES IN AT&T'S PROPOSED WIRELINE AND WIRELESS LANGUAGE IN SECTION 16.4.2?

A. The only substantive difference describes charges for CMRS Provider Company Code Changes as being "contained in the applicable AT&T-9STATE tariffs." Applicable charges for CMRS company code changes are found in state tariffs, while applicable charges for CLEC company code changes are found in the Pricing Schedule.

Q. HOW SHOULD THE COMMISSION RESOLVE THIS ISSUE?

A. The Commission should accept AT&T's proposed language because it provides clear terms for carrier-requested company code changes, and provides for payment by the carrier of charges that pay for AT&T's costs and to which AT&T is entitled.

Q. DOES THIS CONCLUDE YOUR DIRECT TESTIMONY?

A. Yes.

AT&T FLORIDA

DIRECT TESTIMONY OF JAMES W. HAMITER

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

DOCKET NO. 100176-TP AND DOCKET NO. 100177-TP

AUGUST 25, 2010

ISSUES

25 *[DPL II.C(2)]*, 26 *[DPL II.C(3)]*,
27 *[DPL II.D(1)]*,28 *[DPL II.D(2)]*
29 *[DPL II.F(1)]*, 30 *[DPL II.F(2)]*,
31 *[DPL II.F(3)]*, 32 *[DPL II.F(4)]*,
33 *[DPL II.G]*, 34 *[DPL II.H(1)]*,
35 *[DPL II.H(2)]*, 36 *[DPL II.H(3)]*,
51 *[DPL III.A.4(3)]*, 91 *[DPL V.B]*

I. INTRODUCTION

Q. PLEASE STATE YOUR NAME, TITLE AND BUSINESS ADDRESS.

A. My name is James W. Hamiter. I am an Associate Director – Network Regulatory in AT&T's Network Planning and Engineering Department. My business address is 308 S. Akard St., Dallas, Texas 75202.

Q. WHAT ARE YOUR JOB RESPONSIBILITIES?

A. My primary responsibility is to represent the AT&T-owned Incumbent Local Exchange Carriers ("ILECs") in the development of network policies, procedures, and plans from a regulatory perspective. I present, explain, and justify AT&T's network interconnection positions before regulatory and legislative authorities. I represent those companies' network interests in negotiations with Competitive Local Exchange Carriers ("CLECs"), Wireless Service Providers ("WSPs" or "CMRS providers"), and Paging Service Providers. I also provide information to the various network organizations regarding any regulatory issues or changes and direct these organizations to make the changes to methods, procedures and policies that are necessary for AT&T to comply with any regulatory changes.

Q. PLEASE SUMMARIZE YOUR BACKGROUND AND EXPERIENCE.

A. I graduated from the University of Houston in Houston, Texas, in 1977 with a Bachelor of Science Degree in Technology with a concentration in Electricity and Electronics, and a minor in Math and Physics. As an AT&T employee, I have received training on switch operations and translations, transmission and facility equipment operations, and special service and message trunk forecasting and

provisioning. I have developed and held training seminars for my subordinates and other employees on various network, trunking, and network administration processes.

I have over 33 years of network-related experience in the telecommunications industry. This experience includes more than 23 years with Southwestern Bell Telephone Company ("SWB") in Houston, Texas, before I transferred to my present position. I began my career with SWB in January 1977. During my tenure with SWB, I held management positions in the Traffic, Network Planning, Circuit Administration Center, Network Operations, and Trunk Planning and Engineering departments and work groups. Some of my duties included inter-departmental and inter-company coordination, in various capacities, on major telecommunications projects; network and dial administration; inter-office facility planning; special service forecasting; and inter-office message trunk servicing and forecasting. From June 2000 through May 2002, I presided over the CLEC and SWB Trunking Forum in Dallas, Texas, in addition to my other Network Regulatory duties.

Q. HAVE YOU PREVIOUSLY TESTIFIED IN ANY REGULATORY PROCEEDINGS?

A. Yes. In my current position, I have provided pre-filed and/or filed Direct Testimony, Affidavits, or appeared as a network witness before the Federal Communications Commission ("FCC") and before utility commissions or courts of law in the following states: Connecticut, Illinois, Kansas, Michigan, Missouri, Nevada, Ohio, Texas Wisconsin, and Kentucky.

Q. ON WHOSE BEHALF ARE YOU TESTIFYING?

A. AT&T Florida. I will refer to AT&T Florida as AT&T.

Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY?

A. I explain and support the network and technical aspects of AT&T's positions on Issues 25 *[DPL II.C(2)]*, 26 *[DPL II.C(3)]*, 27 *[DPL II.D(1)]*,28 *[DPL II.D(2)*, 29 *[DPL II.F(1)]*, 30 *[DPL II.F(2)]*, 31 *[DPL II.F(3)]*, 32 *[DPL II.F(4)]*, 33 *[DPL II.G]*, 34 *[DPL II.H(1)]*, 35 *[DPL II.H(2)]*, 36 *[DPL II.H(3)]*, 51 *[DPL III.A.4(3)]*, and 91 *[DPL V.B]*. Before addressing these specific issues, I discuss some fundamental network principles, particularly the distinction between trunks and facilities, a sound understanding of which is essential to understanding several of the DPL issues I discuss.

TRUNKS, FACILITIES, AND POINTS OF INTERCONNECTION

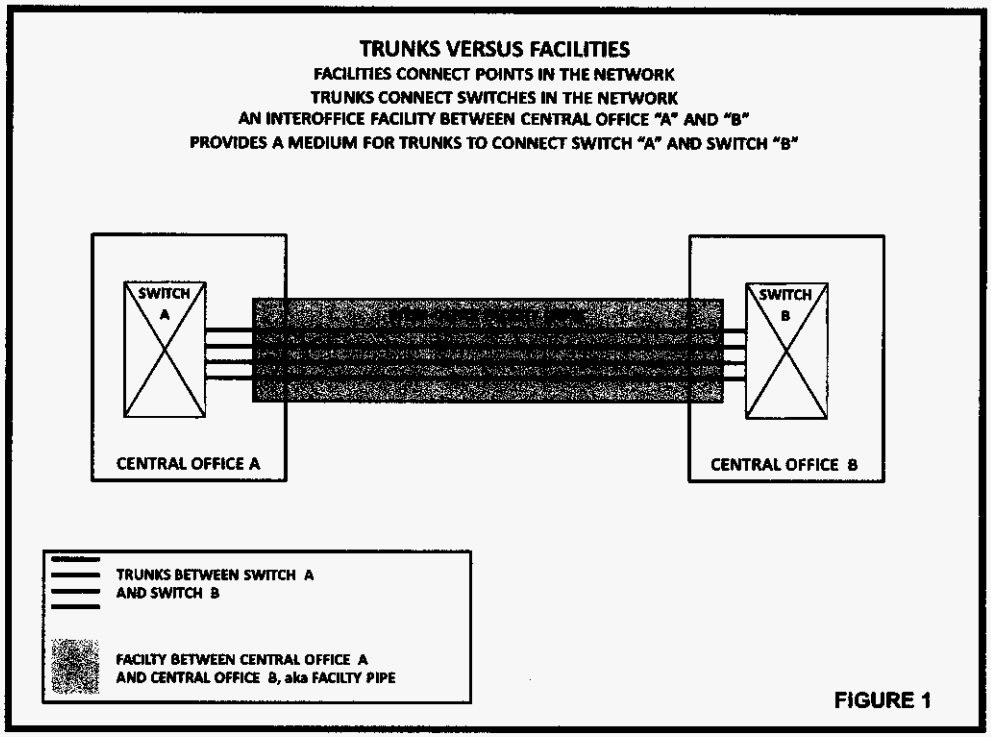
Q. HAVE YOU OBSERVED THAT SOME PEOPLE CONFUSE TRUNKS AND FACILITIES?

A. Yes, I have observed that some people mistakenly use both terms interchangeably. That is, they might use the term "trunks" when "facility" is the appropriate term.

Q. CAN YOU EXPLAIN IN SIMPLE TERMS WHAT IS A FACILITY AND WHAT IS A TRUNK, DESCRIBING THE FUNCTION OF EACH AND HOW THEY DIFFER?

A. Yes. A facility is a physical medium, such as copper wire or fiber optic cable used to connect two points on a network, or two different networks, over which telecommunications messages are transmitted. Central offices are points in a network – specifically, they are buildings that house telecommunications equipment, including switches. A facility is used to establish a physical connection between two central offices. Figure 1, below, illustrates a facility that connects two central offices. This

facility, represented by the gray-toned bar, can be considered as a "pipe" that connects the two offices.



Even though the two offices in Figure 1 have been connected with a facility pipe, calls between the offices cannot be exchanged until the two switches in these offices have been connected with trunks. The facility is the physical medium that is required to transport the trunks between the two offices. The four red lines in Figure 1 represent trunks that have been provisioned between the two switches over the interoffice facility. Each end of these trunks terminates on a switch in each office.[1] The trunks provide a talk path over which calls between the two switches are exchanged.

[1] Trunks terminate on trunk ports located on the trunk-side of the switch, while facilities terminate at a facility termination located within the central office.

Q. WHAT MATERIAL DOES AT&T USE FOR ITS INTEROFFICE FACILITIES?

A. For the most part, AT&T uses fiber cable facilities within its interoffice facility network. Typically, these facilities are described in "Digital Signal Level" (AT&T GT&C § 51.1.37) terms such as Digital Signal 0 ("DS0"), DS1, DS3, and, in the case of Synchronous Optical Network ("SONET"), Optical Carrier 3 ("OC3"), OC12 and higher. These terms refer to the transmission level, or equivalent number of trunks or circuits at each level. Table 1, below, displays the hierarchical transmission levels up to an OC-48 level[2] SONET system, and how many DS3s, DS1s, and DS0s or equivalent trunks each level can carry.

DIGITAL HIERARCHY: TRUNK QUANTITY
1-DS0 = 1-TRUNK

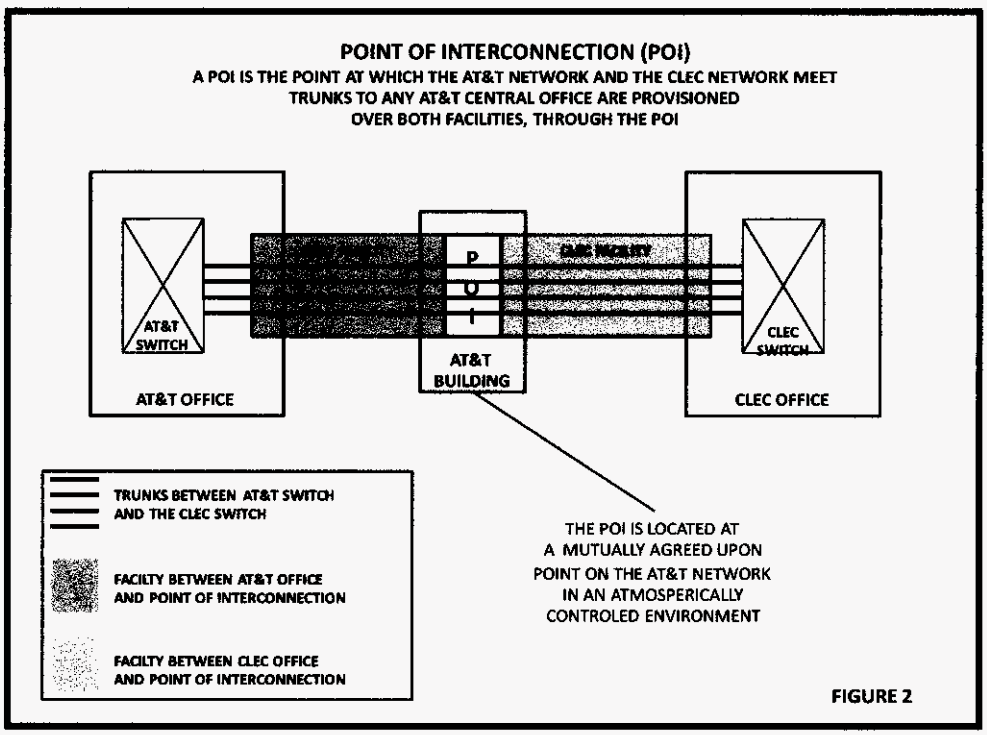
	DS3	DS1	DS0	Trunks
DS0			1	1
DS1		1	24	24
DS3	1	28	672	672
OC3	3	84	2016	2016
OC12	12	336	8064	8064
OC48	48	1344	32256	32256

TABLE 1

[2] SONET transmission levels can go higher than 48 DS3s. I used OC-48 as an upper limit only for purposes of illustration.

Q. WHAT IS A POINT OF INTERCONNECTION ("POI")?

A. The POI is the point at which the networks belonging to AT&T and the CLEC or CMRS provider physically meet. Figure 2 below illustrates how the AT&T network and a CLEC's network interconnect. The illustration shows where the POI is located, the facility for which each carrier is responsible, as well as how the trunks between the CLEC switch and an AT&T switch are provisioned. Each carrier is responsible for the facilities on its side of the POI.



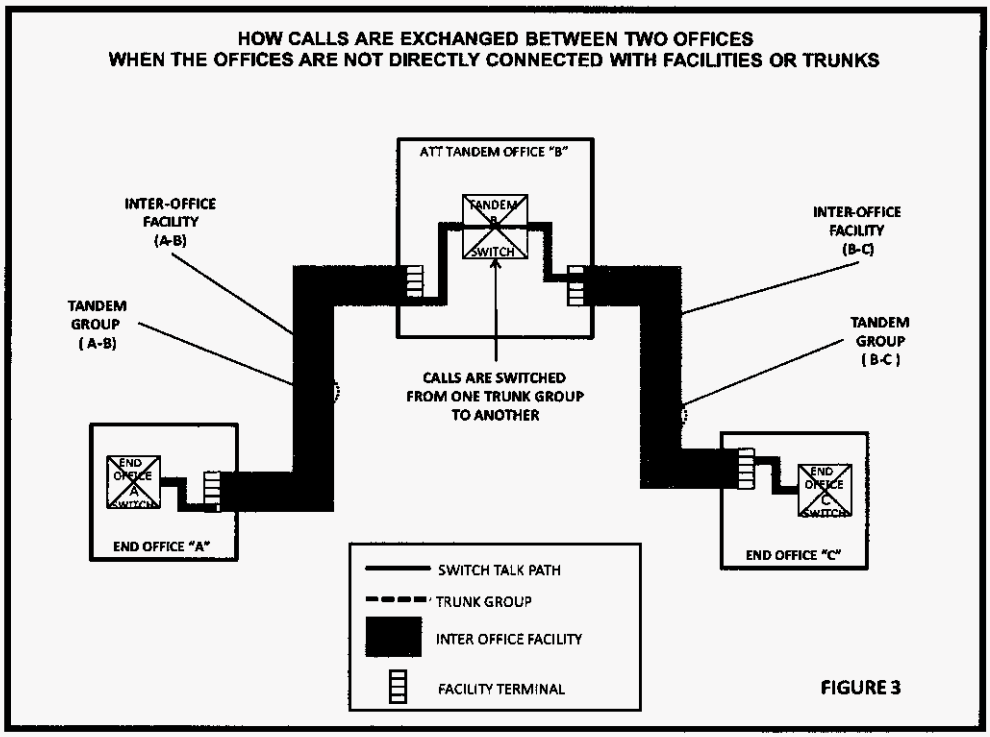
Some CLECs claim that every point in the network where they have established trunks is a POI. This is not the case, however. Merely trunking to a switch in the network does not create a POI. The POI is only created when a CLEC's network or facilities are physically connected to AT&T's network; the POI is the demarcation

point between the two networks. As shown in Figure 2, each carrier is responsible for the facilities on its side of the POI. While the facilities between the CLEC office and the AT&T office are owned by two carriers, their networks are physically linked together to form a continuous facility between both carriers' offices, which allows trunks to be provisioned between the AT&T switch and the CLEC switch. This allows AT&T and the CLEC to exchange calls between their switches.

Q. CAN A CALL BE TRANSMITTED BETWEEN TWO SWITCHES THAT ARE NOT DIRECTLY CONNECTED BY FACILITIES OR TRUNKS?

A. Yes. This is accomplished by using a tandem switch. Figure 3, below, illustrates how this is done. In this illustration, the two end offices ("A" and "C") utilize a tandem switch (Tandem "B") to set up and route calls between their customers –that is, between a customer whose phone is connected with End Office A and a customer whose phone is connected with End Office C. A facility has been established between each of the end offices and the tandem office. Over each facility, a trunk group has been provisioned between each end office switch and the tandem switch. Both trunk groups[3] terminate at the tandem switch.

[3] A "trunk group" is a set of trunks between two switches, designed to carry the same type of traffic between those two switches, which ride a facility between the offices. The minimum size trunk group is 24 trunks riding a DS1 facility.



A call between an end user in end office "A" and an end user in end office "C" is routed to the tandem switch by end office switch "A" over its tandem trunk group. The tandem switch then routes the call to switch "C" over its tandem trunk group. That is how a tandem switch is used to complete calls between two end offices that are not directly connected with facilities or trunks.

With no facility that directly connects end offices "A" and "C," the delivery of a call between those end offices requires the use of two separate facilities; two separate trunk groups; and an additional switch at the tandem. This is not an efficient way to trunk calls between these two offices. Depending on traffic volumes between end offices "A" and "C," a more efficient use of network resources would be to establish a Direct End Office Trunk Group (DEOT) between these offices and route

calls directly between them,[4] eliminating the need for a tandem switch, and reducing the number of trunk groups used for the call from two to one.

II. DISCUSSION OF ISSUES

ISSUE #25 *[DPL ISSUE II.C(2)]*

Should the ICA include Sprint's proposed language permitting Sprint to send wireline and wireless 911 traffic over the same 911 Trunk Group when a PSAP is capable of receiving commingled traffic?

Contract reference: Attachment 10, section 1.2 (CLEC); 1.1 (CMRS)

Q. WHAT IS THE DISAGREEMENT ABOUT COMMINGLING 911 TRAFFIC?

A. Sprint proposes to combine its CMRS and CLEC 911 traffic over a single trunk group "when the appropriate Public Safety Answering Point is capable of accommodating this commingled traffic." AT&T maintains that Sprint should not be permitted to combine (or commingle) its CMRS and CLEC 911 traffic.

Q. WHAT IS THE BASIS FOR AT&T'S OBJECTION?

A. Commingling wireless and wireline E911 calls on the same trunk groups can hamper the processing of emergency calls in two ways: by impeding proper call screening at the Public Safety Answering Point ("PSAP") and by causing congestion of E911 traffic at the PSAP.

[4] In Figure 3, no facility directly connecting end office "A" with end office "C" is depicted. Consequently, establishing a DEOT between those offices would require using the facilities that connect each end office to the tandem to provision trunks from end office "A" and "C". The facility over which these trunks are provisioned would cross-connect at the tandem. These are called "pass through" facilities and the DEOT trunks would not terminate at the tandem switch. If there were a facility connecting office "A" with office "B," a trunk group could be provisioned on that facility.

When an E911 call is delivered to a PSAP, the PSAP identifies the call type (landline, wireless, police, fire) based on the trunk group that delivers the call. There is a *screen* for each call type that displays at the attendant's position when a call comes in. The screen contains information that the attendant uses to determine how to respond to each call type. Because wireless callers are mobile, incoming wireless E911 calls may display a notice that directs the PSAP attendant to verbally obtain the location of the emergency from the call originator. If wireless and landline E911 calls were combined on the same trunk group, the PSAP would not know whether an incoming call was wireless or wireline. Because of this, the attendant would not know to obtain location information from the caller. .

Mixing wireless and wireline traffic on the same trunk groups could also impair *congestion control.* Typically, and especially in urban population centers, PSAPs receive more wireless calls that report vehicle accidents than landline calls. Assume a situation in which many drivers are making wireless E911 calls to report an accident on the highway, and at the same time a landline E911 call is made to report an emergency at a residence. If the wireless and landline calls are on the same trunk group, the wireless calls may busy up all of the trunks and block the landline call from reaching the PSAP. This problem is avoided by using a separate trunk group for landline E911 calls, which limits the number of wireless calls, yet allows wireline calls to also get through to an attendant.

Q. YOU MENTIONED THAT SPRINT'S PROPOSED LANGUAGE ALLOWS COMMINGLING ONLY "WHEN THE APPROPRIATE PUBLIC SAFETY ANSWERING POINT IS CAPABLE OF ACCOMMODATING THIS COMMINGLED TRAFFIC." DOESN'T THAT LIMITATION CARE FOR YOUR CONCERNS?

A. No, because Sprint might well argue that notwithstanding the risks I have described, the PSAP is "capable" of accommodating commingled traffic, because in many instances, the problems I have described will not arise. Every reasonable effort should be made to avoid blocked or mishandled E911 calls, and the risks I have described can and should be avoided by the simple expedient of not commingling wireless and wireline E911 traffic. Sprint's proposed language should be rejected.

ISSUE #26 ***[DPL ISSUE II.C(3)]***

Should the ICA include AT&T's proposed language providing that the trunking requirements in the 911 Attachment apply only to 911 traffic originating from the Parties' End Users?

Contract Reference: Att. 10, sections 1.2, 1.3 (CLEC); section 1.1 (CMRS)

Q. WHAT IS THIS ISSUE ABOUT?

A. In section 1.2 of Attachment 10 of the CLEC ICA, the parties have agreed that AT&T will provide Sprint with access to AT&T's 911 and E911 databases, and will provide 911 and E911 interconnection and routing for the purpose of 911 call completion only. AT&T proposes to firm that up by specifying that it shall be solely for the purposes of *Sprint* 911 call completion. Sprint opposes that limitation. The same disagreement appears in section 1.1 of Attachment 10 of the CMRS ICA.

Q. WHAT IS THE REASON FOR AT&T'S PROPOSED LANGUAGE?

A. In light of the critical nature of 911 service, every reasonable measure must be taken to ensure that the service functions as intended. Combining multiple carriers' end

users' 911 calls on the same trunk group would prevent identification of the originating carrier, which could be catastrophic in circumstances where the PSAP needs to isolate a call back to that carrier.

Q. WHY DOES SPRINT OPPOSE AT&T'S LANGUAGE.

A. I do not know. I can only assume that Sprint does not understand the purpose of the language.

Q. HOW SHOULD THE COMMISSION RESOLVE THIS ISSUE?

A. The Commission should rule that AT&T's proposed language will be included in the parties' ICAs.

ISSUE #27 ***[DPL ISSUE II.D(1)]***

Should Sprint be obligated to establish additional Points of Interconnection (POIs) when its traffic to an AT&T tandem serving area exceeds 24 DS1s for three consecutive months?

Contract Reference: Att. 3, AT&T section 2.3.2 (CMRS); AT&T section 2.6.1 (CLEC); Sprint section 2.3 (CLEC)

Q. WHAT IS THIS DISAGREEMENT ABOUT?

A. The parties agree that Sprint will initially establish one point of interconnection ("POI") with AT&T's network in each LATA in which Sprint provides service. AT&T proposes that if the volume of traffic passing through that POI exceeds a specified threshold, then Sprint, in order to maintain network reliability, should be required to establish one or more additional POIs. Specifically, AT&T proposes language for both the CLEC ICA and the CMRS ICA that would require Sprint to establish additional POIs in a LATA if the volume of traffic passing through the POI

exceeds 24 DS1s at peak times over three consecutive months. Sprint is opposed to any such requirement.

Q. WHAT IS THE BASIS FOR SPRINT'S OBJECTION TO AT&T'S PROPOSAL?

A. In its position statement in the DPL, Sprint states, "Federal law does not require Sprint to install additional POIs based on predetermined traffic thresholds. It is for Sprint to determine when it is most economical to increase the number, or change the locations of, existing POIs."

Q. ARE THOSE SOUND REASONS FOR REJECTING AT&T'S LANGUAGE?

A. No. There is no federal law that addresses, one way or the other, the question of whether additional POIs should be established when traffic volumes so warrant. That means the resolution of the issue is not predetermined by federal law. Section 251(c)(2) of the 1996 Act calls for interconnection on terms and conditions that are "just, reasonable and nondiscriminatory," and what AT&T is proposing here is just, reasonable and nondiscriminatory. Assuming the Commission agrees, it should resolve this issue in favor of AT&T.

As for Sprint's assertion that it is for Sprint, and Sprint alone, to determine when it is most economical to add POIs, I could not disagree more. As I will explain, the reliability of the public switched telephone network ("PSTN") is at stake here. If Sprint wants to make use of that network, which it does, Sprint has to accept some measure of responsibility for protecting it.

Q. YOU SAY THERE IS NO FEDERAL LAW THAT ENTITLES SPRINT TO A SINGLE POI. IS THERE AN FCC RULE THAT DOES?

A. No. The FCC has signaled on several occasions its view that a requesting carrier is entitled to a single POI, and in so indicating has made reference to its interconnection rules, including in particular 47 C.F.R. §§ 51.305 and 51.321. Neither of those rules, however, states that a requesting carrier is entitled to a single POI.

Q. ASSUMING THAT A NEW ENTRANT IS ENTITLED TO A SINGLE POI, DOES IT FOLLOW THAT SPRINT IS ENTITLED TO A SINGLE POI?

A. No. In order to foster competition, "*new entrants*" should be allowed to establish an initial single point of interconnection in a LATA within the network and franchise territory of the ILEC with which the requesting carrier seeks to compete.[5] But the new entrant's entitlement to a single POI is merely a vehicle to facilitate facilities-based entry and competition. In fact, the FCC itself has questioned whether the rationale applies, and has suggested that it does not, where we are no longer dealing with a truly "new" entrant in its Intercarrier Compensation NPRM.[6] Moreover, the fact that "new entrants" are entitled to a single POI does not mean that there are not

[5] As the FCC noted in its *Local Competition Order*, "[M]any new entrants will not have fully constructed their local networks when they begin to offer service. Although they may provide some of their own facilities, these new entrants will be unable to reach all of their customers without depending on the incumbent's facilities." First Report and Order, *Implementation of the Local Competition Provisions In the Telecommunications Act of 1996*, 11 FCC Rcd. 15499 (rel. Aug. 8, 1996) ("*Local Competition Order*") ¶ 14.

[6] FCC 01-132, Developing a Unified Intercarrier Compensation Regime, April 27, 2001, ¶ 113 ("If a carrier establishes a single POI in a LATA, should the ILEC be obligated to interconnect there and thus bear its own transport costs up to the single POI when the single POI is located outside the local calling area? Alternatively, should a carrier be required either to interconnect in every local calling area, or to pay the ILEC transport and/or access charges if the location of the single POI requires the ILEC to transport a call outside the local calling area?")

circumstances under which multiple POIs are more efficient than a single POI. Sprint is not a new entrant and has an extensive network. In fact, Sprint increases the risk of network outages and isolation if it retains a single POI, because the single POI becomes a single point of failure, especially if it has large volumes of traffic passing through that POI.

Q. PLEASE EXPLAIN.

A. A carrier that insists on a single POI without regard to traffic volumes jeopardizes the reliability of both its network and the ILEC's network. Though a single POI may help a new entrant establish a foothold in a given market or LATA, as growth accelerates, multiple POIs provide additional security and reliability that a single POI does not.

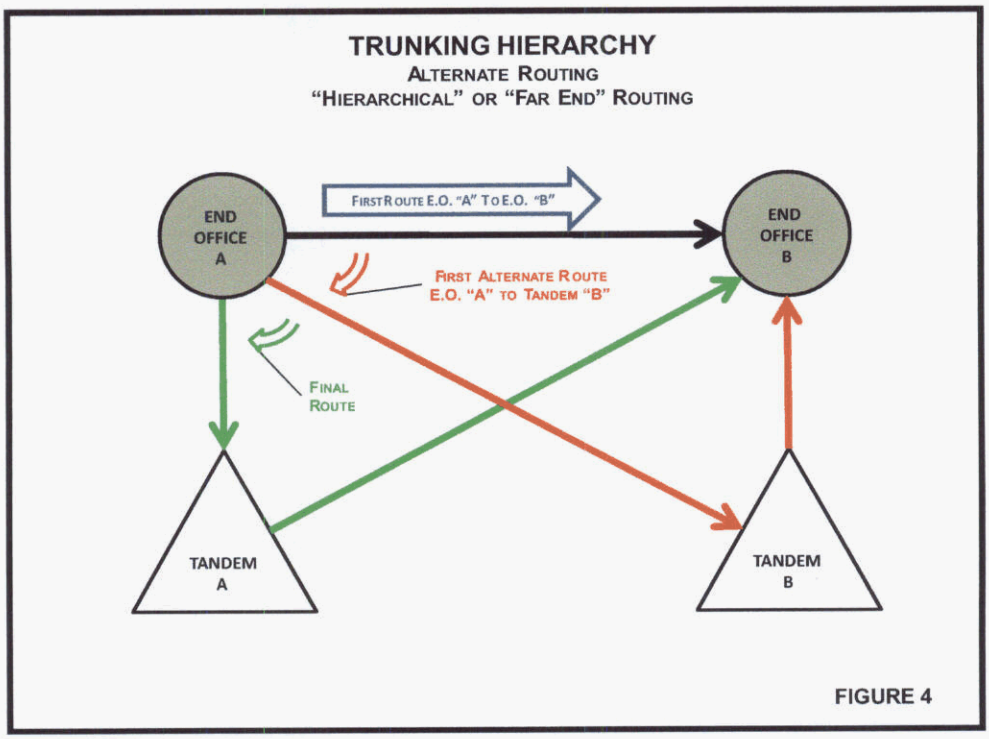
When an interconnecting carrier has only one POI, a catastrophic failure at that single POI, such as a fire, network failure, hurricane, tornado, or other disaster, could completely isolate that carrier's network from the PSTN. While the PSTN contains built-in redundancies to protect itself from such events, the PSTN cannot guarantee protection from a single point of failure to a carrier that chooses to limit its access to the PSTN to that one point. As noted above and depicted in Figure 2, all of the trunks between AT&T and the CLEC ultimately pass through the POI. If any of the catastrophic events I mentioned should happen, the CLEC in Figure 2 with only one POI is at a high risk of losing all ability to exchange calls with AT&T. And if the CLEC uses AT&T as a transit provider, it risks losing its ability to exchange calls with all others it interconnects with indirectly.

Additionally, problems in one carrier's network can create problems on other carriers' networks, causing blocked calls. This is due to congestion created by call set-up requests to the carrier that is experiencing the problem. What happens is that people make multiple attempts to complete their calls and the congestion continues to build exponentially. This phenomenon is called "regenerative attempts." Any long range planning of a telecommunications carrier's network should include protections on behalf of that carrier's end users as well as other carriers' end users and the public in general. The successful completion of calls, including 911 emergency calls, for any carrier's end users demands nothing less.

Q. DOES AT&T PROVIDE DIVERSITY FOR ITS OWN NETWORK SECURITY AND RELIABILITY SIMILAR TO THE MULTIPLE POI ARCHITECTURE THAT AT&T IS ADVOCATING IN THIS ARBITRATION?

A. Yes. AT&T provides redundancy in its network transport facilities, including advanced SONET rings (often referred to as self-healing networks). AT&T also maintains a Network Systems Management Center group (NSMC) dedicated to 24x7 monitoring of AT&T's network reliability and performance.

In addition, AT&T also provides redundancy in its trunking network arrangements, as illustrated in Figure 4, below.



In this scenario, AT&T has designed a Primary High Usage (PH)[7] DEOT between end office A and end office B. Normally, all calls between these two offices will route over this trunk group. Suppose a call originates in office A, destined for office B, and all trunks in the PH are busy. Because the first choice or first route from A to B is a PH group, the originating office A will alternate route the call over its IH group to tandem B, the home tandem of the terminating office B. This is the first alternate route. Tandem B will route the call to end office B over its Alternate Final trunk group (AF).

[7] A Primary High usage (PH) trunk group is a trunk group that is designed to "overflow" onto another trunk group – usually an Alternate Final (AF) or an Intermediate High Usage (IH) trunk group – thereby providing an alternate talk path when every trunk in the PH group is busy with other calls.

If the originating office A is unable to obtain a trunk on its IH to tandem B, it will route the call over its Alternate Final (AF) trunk group to its own home tandem A, which will then route the call to the terminating end office over the IH group between Tandem A and end office B. This is the final route of the call. If the call cannot be completed using this route, the call will block.

This trunking arrangement is known as a "hierarchical" or "far-end" tandem routing arrangement, because the call is first alternate routed to the terminating, or far-end tandem.[8] Under an alternative arrangement called "access-like routing," the call is first-alternate routed to the originating end office's home tandem. The use of the term "access" does not mean the traffic is access type traffic. Though not always possible in rural environments where end offices do not have alternate routes available, alternate trunking arrangements are common in high volume urban/metropolitan markets and are a very useful tool in protecting the network.

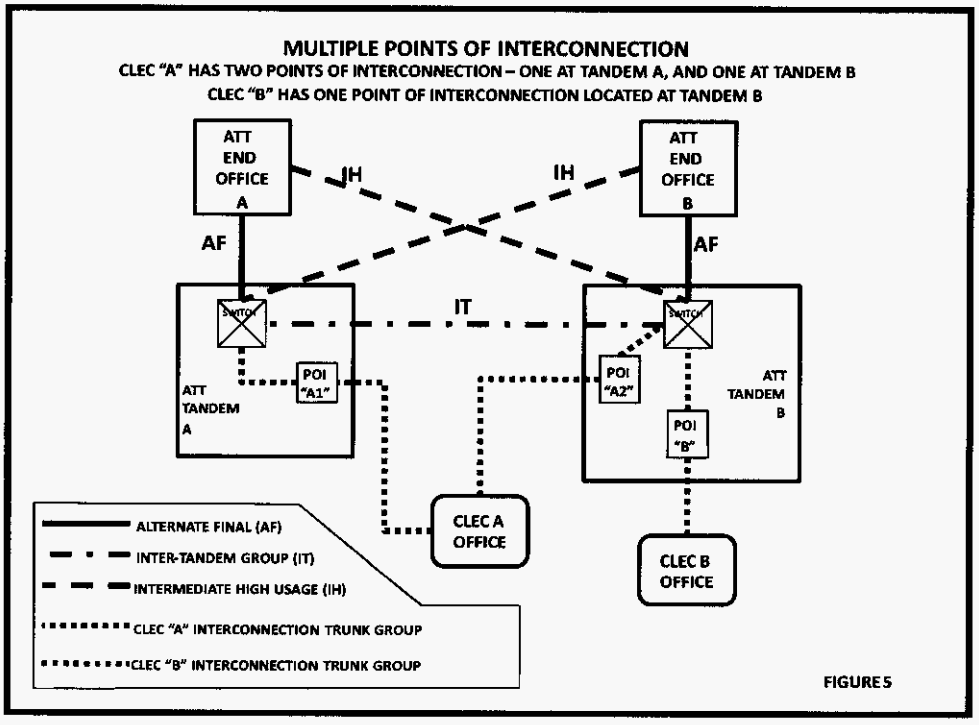
Even with all of the redundancy and self-healing capability built into the AT&T network, network failures such as transport equipment failures, cable cuts, traffic overload conditions, and software glitches still occur, and when they do the NSMC must perform a manual reroute to maintain service. Given intentional and accidental damage to cables, such as construction site cuts, car accidents, storm damage and vandalism, as well as equipment failures and traffic overload conditions,

[8] Traffic Call Flows: First choice - calls are routed between end offices A and B via direct end office trunk (DEOT); Second choice - calls are routed between end offices A and B via Tandem B; Third choice - calls are routed between end offices A and B via Tandem A.

the NSMC must manually reroute traffic on an almost weekly basis over AT&T's network.

Q. WHAT BENEFITS WOULD MULTIPLE POIS GIVE SPRINT?

A. I will answer that question by referring to Figure 5.[9] This drawing depicts two CLECs that have interconnected with AT&T – CLEC A and CLEC B. CLEC A has established two POIs. One is in the AT&T tandem building A, and is designated POI "A1." The other POI established by CLEC A is located in AT&T tandem building B, and is designated POI "A2." CLEC B, on the other hand, has only established the one POI located in AT&T tandem building B, designated as POI "B" in the drawing.



[9] Figure 5 only shows the trunk groups associated with this architectural arrangement. Since I have previously established that facilities must be present in order to establish trunks, it should be understood that the facilities exist, even though they are not depicted in the drawing.

Under normal network conditions, CLEC A delivers calls destined for AT&T end office A to AT&T tandem A, over its interconnection trunk group through its POI "A1." Also, under normal network conditions, CLEC A will similarly route calls destined for AT&T end office B to AT&T tandem B over its interconnection trunk group through its POI "A2." However, since CLEC B has established only one POI at tandem B, CLEC B will route all of its calls, destined for either end office A or end office B, through its POI "B."

If some catastrophic event should happen that causes tandem B to become isolated from the rest of AT&T's network, every carrier that interconnects with AT&T at tandem B will also be cut off from the rest of AT&T's network. Effectively, neither CLEC A nor CLEC B would be able to deliver calls to AT&T end office B, as they would under normal conditions. AT&T would also not be able to route calls, using normal routing procedures, from end office A to either CLEC A or B. AT&T would have to implement emergency network management controls as I discussed above.

Because there is an Intermediate High usage trunk group between AT&T tandem switch A and AT&T end office B, CLEC A, working with AT&T Network Management forces, is able to temporarily route calls to end office B on an emergency basis through its POI "A1." Since CLEC B only has the one POI and it is in tandem B, it will not have an available alternative arrangement that can be deployed in such an emergency. While AT&T will be able to implement emergency network management controls to get calls destined for CLEC A, it will not be able to

deliver calls to CLEC B. These calls will be blocked because there would be no path available.

Q. IN ADDITION TO CAUSING BLOCKED CALLS ON AT&T'S NETWORK, WHAT ELSE DOES A SINGLE POI ARRANGEMENT DO TO AT&T?

A. A single POI interconnection arrangement can also shift the burden of network costs from the CLEC to AT&T. For instance, referring to Figure 5, CLEC A has established a POI at each of the AT&T tandems and exchanges traffic between end office A through its POI "A1" at Tandem A. AT&T end office A homes on Tandem A – it is part of the calling scope of Tandem A. End office B homes on Tandem B. It does not home on Tandem A; consequently end office B is not in Tandem A's calling scope. However, CLEC A has also established a POI at tandem B, and exchanges calls with end office B through its POI "A2" at tandem B. CLEC A is paying for its part of the network (facilities to the both POIs) that is required to exchange traffic with all of AT&T's end offices behind both tandems. In this architecture, AT&T pays for the facilities that are on its side of the CLEC A POIs.

CLEC B, on the other hand, only has its POI B at tandem B. Consequently, if CLEC B refuses to trunk to Tandem A, all traffic exchanged between end offices A and B will be delivered to POI B. While CLEC B is paying for the network resources required to exchange calls with end office B, it is not paying for those resources to exchange calls with end office A. AT&T must pay for the facilities and trunks required to deliver CLEC B's calls to any office in the Tandem A calling scope.

Q. HAS THIS COMMISSION PREVIOUSLY RULED ON WHETHER ADDITIONAL POIS SHOULD BE ESTABLISHED WHEN TRAFFIC VOLUMES EXCEED A PARTICULAR THRESHOLD?

A. I believe not. The Commission has ruled on a number of occasions that a CLEC is entitled to single-POI architecture. In those proceedings, though, the ILEC was advocating multiple POI architecture without regard to traffic volumes – for example, a requirement that the CLEC establish a POI at every tandem in a LATA. Here, AT&T is making a considerably more modest proposal – one that requires multiple POIs only when warranted by traffic volumes. I do not believe the Commission's prior rulings foreclose AT&T's proposal here.

Q, HAVE PUBLIC UTILITY COMMISSIONS IN OTHER STATES ENDORSED THE PROPOSAL AT&T IS MAKING HERE?

A. Yes, I am aware of two arbitrations in which the Kentucky Public Service Commission ("KPSC") determined that the CLEC should be required to establish additional POIs in a LATA if the volume of traffic to the initial single POI exceeded one DS3 worth of traffic. In one case, an arbitration between Brandenburg Telecom and Verizon, the KPSC's arbitration order concluded: "Brandenburg has the right to establish a minimum of one point of interconnection per LATA. Brandenburg is also required to establish another POI when the amount of traffic passing through a Verizon access tandem switch reaches a DS-3 level."[10] The KPSC reached the same conclusion in an arbitration between South Central Telecom and Verizon.[11]

[10] *Petition of Brandenburg Telecom LLC for Arbitration of Certain Terms and Conditions of Proposed Agreement with Verizon South Inc. Pursuant to the Communications Act of 1934,*

Q. HAVE ANY OTHER COMMISSIONS RULED ON THE ISSUE?

A. Yes. The Public Utility Commission of Texas ("PUCT") ruled on this issue in both an MCI and a Level 3 arbitration. In the MCI proceeding (Docket No. 21791), the PUCT ruled:

> While the establishment of a single POI may be efficient during initial market entry, once growth accelerates, what was initially economically efficient may become extremely burdensome for one party. Although the FCC's First Report and Order expressly provides for interconnection at any technically feasible point, it does not appear to state that only one POI is required.[12]

In that docket, the PUCT also found:

> In order to avoid network and/or tandem exhaust situations, the Commission determines, on this record, that it is reasonable that a process exist for requesting interconnection at additional, technically feasible points.[13]

The PUCT ultimately approved language requiring the parties to negotiate additional POIs when MCI's traffic usage exceeds a traffic level equal to 24 DS1s.

AT&T's proposed language here is very similar to the multiple-POI language the PUCT approved.

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as Amended by the Telecommunications Act of 1996, 2001 WL 1910644, at *8 (Ky. Pub. Serv. Comm. Nov. 15, 2001).

[11] *Re: South Central Telecom LLC*, 2002 WL 861952, at *8 (Ky. Pub. Serv. Comm. Jan. 15, 2002).

[12] Docket No. 21791, MCIW Arbitration Award at 12 (Pub. Util. Comm. of Tex., May 23, 2000).

[13] *Id.* Approving Interconnection Agreement at 4. Docket No. 21791. (September 20, 2000)

In another arbitration, the PUCT required that Level 3 establish a POI in any mandatory local calling area where Level 3 offers service that qualifies for reciprocal compensation.

> [I]t is appropriate for the parties to negotiate the establishment of additional POIs within a mandatory local calling area where call traffic levels may lead to inefficient network utilization or the exhaustion of network facilities.
>
> Although the FCC's First Report and Order expressly provides for interconnection at any technically feasible point, it does not appear to state that only one POI is required.[14]

Q. HOW SHOULD THE COMMISSION RULE ON THIS ISSUE?

A. The Commission should rule that the ICAs should include AT&T's proposed language. Sprint is not a new entrant and should bear the cost of its interconnection arrangements. AT&T only asks to be treated fairly and equitably with language that requires Sprint to share the cost of its large interconnection network and not allow Sprint to shift its costs onto AT&T.

Q. DOES SPRINT CURRENTLY HAVE MULTIPLE POIS IN SOME LATAS IN AT&T INCUMBENT LEC TERRITORIES?

A. Yes, including in the state of Florida.

Q. IF AT&T'S PROPOSED LANGUAGE WERE REJECTED, WOULD THAT ALLOW SPRINT TO ELIMINATE EXISTING POIS?

A. As I read the contract language, that is not entirely clear. Sprint has not proposed any language about eliminating existing POIs, and the language we would be left with, if

[14] Arbitration Award, Docket No. 22241, *Petition of Level 3 Commc'ns, LLC for* Arbitration (Pub. Util. Comm. Texas Aug. 11, 2000), at 19-20.

AT&T's proposed language were not included in the ICA, makes no mention of that subject. I assume Sprint would say that it should be allowed to eliminate existing POIs if it so chooses, and Sprint's proposed language could be read as permitting that. Allowing Sprint to decommission existing POIs would run completely counter to the goals of the Act to promote facilities-based competition.

Q. WHAT, IF ANYTHING, SHOULD THE COMMISSION DO ABOUT THIS?

A. The Commission should not have to do anything about this, because if it resolves the issue in favor of AT&T, as it should, no question about decommissioning existing POIs will arise. In the event that the Commission determines that AT&T's proposed language should not be included in the ICAs, however, the Commission should make clear in its decision that it is not authorizing Sprint to take down POIs that the parties have already established.

ISSUE #28 *[DPL ISSUE II.D(2)]*

Should the CLEC ICA include AT&T's proposed additional language governing POIs?

Contract Reference: Att. 3, sections 2.6.1, 2.6.3 (AT&T CLEC)

Q. WHAT IS THE ADDITIONAL DISPUTED LANGUAGE IN THE CLEC ICA CONCERNING POIS?

A. In addition to the language that AT&T proposes for section 2.6.1 that would require Sprint to establish additional POIs when traffic volumes warrant, AT&T proposes other language concerning POIs in section 2.6.1, and in section 2.6.3 of the CLEC

ICA, that Sprint disputes. I will address the most pertinent of the disputed provisions in the order in which they appear.

Q. WHAT IS THE FIRST OF THESE DISPUTED PROVISIONS?

A. There is a sentence in AT&T's proposed section 2.6.1 that states, "Sprint and **AT&T-9STATE** shall each be responsible for engineering and maintaining the network on its side of the Point of Interconnection." Sprint apparently opposes that sentence.[15]

Q, WHAT IS THE BASIS FOR AT&T'S PROPOSED SENTENCE?

A. AT&T believes that each carrier is responsible, financially and otherwise, for the network on its side of the POI; indeed, that is what makes the POI the POI.

Q. ARE YOU AWARE OF ANY SUPPORT FOR AT&T'S VIEW?

A. Yes. This Commission has noted that "an originating carrier has the responsibility for delivering its traffic to the point(s) of interconnection designated by the alternative local exchange company (ALEC) in each LATA for the mutual exchange of traffic."[16] Many other state commissions have ruled or noted that each carrier is responsible for the network on its side of POI. For example:

[15] Earlier in section 2.6.1, as it appears in the DPL, there is language to the effect that the selection of the location of the POI will be by mutual agreement, subject to certain considerations set forth in the proposed contract language. AT&T has withdrawn that language.

[16] Order on Reciprocal Compensation, Docket No. 00075-TP, *Investigation into appropriate methods to compensate carriers for exchange of traffic subject to section 251 of the Telecommunications Act of 1996* (Fla. Pub. Serv. Comm'n Sept. 10, 2002), at 25.

North Carolina: ""Each party is technically and financially responsible for transporting and delivering its originating traffic to the chosen POI . . . ."[17]

South Carolina: "[CLEC] shall remain responsible for paying for the facilities necessary to carry calls to the single Point of Interconnection."[18]

Illinois: In a section 251(c)(2) interconnection, "[e]ach party is responsible for the facilities on its side of the POI(s)."[19]

Missouri: "Each party is financially responsible for facilities on its side of the POI."[20]

Ohio: "At the POI, the responsibility for the facilities shifts from one party to the other, as that point is the physical demarcation between the two systems."[21]

Q. WHAT IS THE BASIS FOR SPRINT'S OBJECTION TO AT&T'S PROPOSED SENTENCE STATING THAT EACH CARRIER IS RESPONSIBLE FOR THE NETWORK ON ITS SIDE OF THE POI?

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[17] Order, Docket No. P-21, Sub 71 *et al., Re Ellerbe Tel. Co.*, 2008 WL 5456092, at *1 (N. Car. Utils. Comm'n Dec. 31, 2008).

[18] Order on Arbitration, Docket No. 2000-527-C, *Re AT&T Commc'ns of the Southern States, Inc.*, 2001 WL 872914 (S. Car. Pub. Serv. Comm'n Jan. 30, 2001).

[19] Arbitration Decision, Docket No. 04-0469, MCI Metro Access Transmission Communications, Inc., et al. Petition for Arbitration of Interconnection Rates, Terms and Conditions, and Related Arrangements with Illinois Bell Telephone Company Pursuant to Section 252(b) of the Telecommunications Act of 1996 (Ill. Comm. Comm'n Nov. 30, 2004), at 79.

[20] Order Approving Arbitrated Interconnection Agreement, Docket No. TK20060050, In the Matter of the Interconnection Agreement between Southwestern Bell Telephone, L.P., d/b/a SBC Missouri, and the MCI Group, including MCI WorldCom Communications, Inc., and MCImetro Access Transmission Services, L.L.C., Arbitrated as a Successor Interconnection Agreement to the Missouri 271 Agreement ("M2A"), 2005 WL 1999950, at p. 5 (Mo. Pub. Serv. Comm'n Aug. 8, 2005).

[21] Supp. Opinion and Order, Case No. 02-2719-TP-ARB, Application of T-Mobile USA, Inc. f/k/a VoiceStream Wireless Corporation for Arbitration of Interconnection Rates, Terms and Conditions and Related Arrangements With SBC Ohio, 2003 Ohio PUC LEXIS, at *13 (Pub. Utils. Comm'n Ohio June 10, 2003).

A. Sprint's position statement on the DPL does not explain why Sprint objects to that sentence, and I cannot think of a basis for its objection.

Q. IS THERE ANOTHER PIECE OF DISPUTED LANGUAGE THAT TIES TO EACH CARRIER'S RESPONSIBILITY FOR THE NETWORK ON ITS SIDE OF THE POI?

A. Yes – and here I will depart from my sequential treatment of the contract language. AT&T proposes a section 2.6.2.4 that provides: "The Parties recognize that a facility handoff point must be agreed upon to establish the demarcation point for maintenance and provisioning responsibilities for each Party on its side of the POI." Assuming that the sentence I discussed just above is included in the ICA, so should this provision. It adds nothing to which I can see Sprint objecting.

Q. WHAT IS THE NEXT DISPUTED PROVISION ENCOMPASSED BY THIS ISSUE?

A. AT&T proposes, in section 2.6.2.1, that Sprint provide all applicable network information on forms acceptable to AT&T, as set forth in the AT&T CLEC Handbook, which is available on AT&T's CLEC Online website.

Q. WHAT IS THE REASON FOR AT&T'S PROPOSED LANGUAGE?

A. When Sprint interconnects with AT&T, AT&T needs certain information from Sprint – SS7 point codes, switch CLLI name, etc. AT&T asks Sprint to provide this information on a standard form because AT&T interconnects with many carriers, and standardization facilitates the process.

Q. WHY DOES SPRINT OPPOSE AT&T'S LANGUAGE?

A. I cannot imagine and, again, Sprint's position statement on Issue II.D(2) makes no mention of this particular language. Sprint cannot possibly be concerned about the

nature of the information AT&T's language calls for Sprint to provide, because the language simply calls for "all applicable network information." All that leaves is the requirement that Sprint use the form available on AT&T's website, and I would not think that Sprint would find that objectionable.

Q. WHAT IS THE NEXT DISPUTED PORTION OF AT&T'S PROPOSED POI LANGUAGE?

A. AT&T proposes, for section 2.6.2.2: "Upon receipt of Sprint's Notice to interconnect, the Parties shall schedule a meeting to document the network architecture (including trunking). The Interconnection Activation Date for an Interconnection shall be established based on then-existing force and load, the scope and complexity of the requested Interconnection and other relevant factors." This language hardly seems controversial, and again, Sprint has not explained its objection.

Q. NEXT?

A. AT&T proposes, for section 2.6.2.3, "Either Party may add or remove switches. The Parties shall provide 120 calendar days written Notice to establish such Interconnection; and the terms and conditions of this Attachment will apply to such Interconnection."

Q. WHY SHOULD THAT PROVISION BE INCLUDED IN THE ICA?

A. The addition and removal of switches are major network events and must be highly coordinated in order to provide continuous service when moving end users from one switch to another. I have seen switch conversion projects that were not coordinated

and resulted in network outages that could have easily been avoided. Again, Sprint has not indicated why it does not accept AT&T's language.

Q. WHAT ARE THE NEXT AT&T-PROPOSED PROVISIONS THAT SPRINT OPPOSES?

A. In sequence, there is section 2.6.2.4, which I discussed above in connection with each party's responsibility for facilities on its side of the POI. Next is section 2.6.4, which is another innocuous provision that Sprint does not accept but to which Sprint has articulated no objection. This provision states: "A Party seeking to change the physical architecture plan shall provide thirty (30) calendar days advance written Notice of such intent. After Notice is served, the normal project planning process described above will be followed for all physical architecture plan changes." I suspect that Sprint does not actually object to that provision. If Sprint indicates otherwise in its direct testimony, I will respond in my rebuttal.

Q. WHAT IS THE NEXT DISPUTED PROVISION?

A. Next and last is AT&T's proposed section 2.6.5, which provides: "Sprint is solely responsible, including financially, for the facilities that carry OS/DA, E911, mass Calling and Third Party Trunk Groups." Based on its position statement in the DPL, I take it that Sprint does not object to that language as it pertains to OS/DA and E911. Sprint states, however, that AT&T's language "imposes financial responsibility on Sprint for mass calling or third-party facilities installed for AT&T's benefit and use."

Q. WHY SHOULD SPRINT BEAR FINANCIAL RESPONSIBILITY FOR THE FACILITIES ON WHICH MASS CALLING AND THIRD PARTY TRUNK GROUPS RIDE?

A. Because these trunk groups are on Sprint's side of the POI *and* because, as between AT&T and Sprint, Sprint is the cause of the associated costs. Third Party Trunk Groups are for the transport of traffic between Sprint and third party carriers – no AT&T end user is even involved. This is clear from AT&T's proposed language in Attachment 3, section 2.8.11.1:

> Third Party Trunk Groups shall be two-way Trunks and must be ordered by Sprint to deliver and receive traffic that neither originates with nor terminates to an AT&T-9STATE End User, including interexchange traffic (whether IntraLATA or InterLATA) to/from Sprint End Users and IXCs. Establishing Third Party Trunk Groups at Access and local Tandems provides Intra-Tandem Access to the Third Party also interconnected at those Tandems. Sprint shall be responsible for all recurring and nonrecurring charges associated with the traffic transported over these Third Party Trunk Groups.

I believe that the basis for Sprint's objection as it relates to mass calling groups is that these trunk groups are installed in order to protect the public switched telephone network, which Sprint sees as AT&T's network – the protection of which should be to AT&T's account. That is not reasonable. If mass calling trunks are installed in order to protect the network against possible harms resulting from mass calling *by Sprint's customers,* it is Sprint, not AT&T, that should bear the attendant costs.

Q. HOW SHOULD THE COMMISSION RESOLVE ISSUE #28 *[DPL II.D(2)]*?

A. The Commission should rule that the ICA will include all of AT&T's proposed language. In the event that the Commission finds an isolated piece of AT&T's language objectionable, it should require that piece to be modified, but should not reject the language as a whole.

ISSUE #29 *[DPL ISSUE II.F(1)]*

Should Sprint CLEC be required to establish one way trunks except where the parties agree to establish two way trunking?

Contract Reference: Att. 3, CLEC section 2.5.1 (Sprint); CLEC section 2.8.1.1 (AT&T)

Q. WHAT IS THE DISAGREEMENT ABOUT ONE-WAY VS. TWO-WAY TRUNKING?

A. Actually, based on inquiries I have made during the preparation of this testimony, I believe the parties may well be able to resolve this issue. Accordingly, I do not address it in this direct testimony. I hope to be able to report in my rebuttal testimony that this issue has been closed.

Q. AT&T OFFERS LANGUAGE IN CLEC SECTION 2.8.1.1. WHAT DOES THAT LANGUAGE SAY, AND WHAT DOES IT MEAN?

A. Section 2.8.1.1 offers the following language in Section 2.8.1.1.:

> Sprint shall issue ASRs for two-way Trunk Groups and for one-way Trunk Groups originating at Sprint's switch. AT&T-9STATE shall issue ASRs for one-way Trunk Groups originating at the AT&T-9STATE switch.

This language refers to which carrier will have administrative control over a trunk group. Sprint will have administrative control for all two-way trunk groups and for all one-way trunk groups that originate at its switch. AT&T will have administrative control for all one-way trunk groups that originate at an AT&T switch.

Q, WHAT DOES THE TERM "ADMINISTRATIVE CONTROL" MEAN?

A. The term "Administrative Control" describes which carrier is responsible for initiating action that starts network activity required to design and establish a new

trunk group or to initiate the necessary activity to augment an existing trunk group. This term will be used later in my testimony.

Q. LET'S TALK ABOUT WHAT AT&T'S LANGUAGE MEANS. FIRST, WHAT IS AN ASR?

A. GTC Part B includes the following definition to which the parties have agreed: "'Access Service Request (ASR)' means the industry standard form used by the Parties to add, establish, change or disconnect trunks." Thus, the ASR is the standard form that AT&T and Sprint have agreed to use in order to communicate with each other the need to add, establish, change or disconnect trunks.

Q. UNDER AT&T'S LANGUAGE, SPRINT ISSUES THE ASR FOR ALL TWO-WAY TRUNK GROUPS AND FOR ONE-WAY TRUNK GROUPS THAT ORIGINATE AT SPRINT'S SWITCH, WHILE AT&T ISSUES THE ASR ONLY FOR TRUNK GROUPS THAT ORIGINATE AT AT&T'S SWITCH. WHAT IS THE SIGNIFICANCE OF THAT?

A. The carrier that issues the ASR has administrative control for trunk servicing requirements. AT&T's language gives Sprint administrative control over all trunking orders (whether augments, changes or disconnects) except those that pertain to one-way trunks that carry traffic from AT&T's switch to Sprint's switch.

AT&T takes administrative control of those trunks because the traffic on a one-way trunk group that originates at an AT&T end office switch is typically traffic that AT&T end users originate. Traffic delivered to Sprint from an AT&T tandem switch could originate from an AT&T end user or an end user that belongs to another carrier. AT&T is responsible for the service its end users experience when they call Sprint telephone numbers, as well as to other carriers that send their traffic across the

AT&T network. Consequently, AT&T should have administrative control over that trunk group.

Q. WHAT LANGUAGE DOES SPRINT CLEC OFFER REGARDING THE ADMINISTRATIVE CONTROL ISSUE?

A. Sprint's language does not appear to specifically address this issue. AT&T is hopeful that as the parties work to resolve the broader issue, the specificity needed to ensure which party has the responsibility for which trunk group will also be addressed.

ISSUE #30 *[DPL ISSUE II.F(2)]*

What Facilities/Trunking provisions should be included in the CLEC ICA e.g., Access Tandem Trunking, Local Tandem Trunking, Third Party Trunking?

Contract Reference: Att. 3, CLEC section 2.5.2 (Sprint); CLEC sections 2.8.1 and subparts (excluding 2.8.1.1); 2.8.2 – 2.8.6 and subparts (excluding 2.8.6.3); 2.8 – 2.9 and subparts (AT&T)

Q. WHAT IS THIS DISAGREEMENT ABOUT?

A. In the proposed contract provisions identified above, AT&T provides robust and detailed language governing interconnection trunking. (As you can see on the DPL Language Exhibit, interspersed in the language that is the subject of this Issue #30 *[DPL Issue II.F(2)]* are the provisions that are the subject of Issue #29 *[DPL Issue II.F(1)]*, Issue #31 *[DPL Issue II.F(3)]* and Issue #32 *[DPL Issue II.F(4)]*, which I discuss separately.) Sprint, in contrast, proposes a single short paragraph that purports to cover the same subject.

Q. WHAT IS SPRINT'S OBJECTION TO AT&T'S PROPOSED LANGUAGE IN THIS ISSUE?

A. In its DPL statement on this issue, Sprint alleges that AT&T's language adds inappropriate POI and cost-shifting provisions. In addition to that, they assert that AT&T's proposed language is unnecessary and burdensome—apparently, they believe their language, being smaller and more concise is all that is needed to establish trunking requirements.

Q. HOW DOES AT&T RESPOND TO SPRINT'S ASSERTIONS?

A. Sprint's allegation that the proposed AT&T language adds inappropriate POI and cost-shifting provisions is baseless. AT&T's language is in the Interconnection *Trunking* section of the ICA, which covers trunking items and not facility items. As I previously explained, Points of Interconnection are created where AT&T's network facilities meet Sprint's network facilities. Before trunk groups are established, AT&T and Sprint must have already established a POI with their respective facilities before a trunk group can be established. If an additional POI was to be established, it would be done with language from a section of the ICA other than the Trunking Requirements section. Once again, Sprint is confusing trunks and facilities.

Additionally, AT&T's language in this section does not create cost shifts or hidden charges. The language AT&T has proposed in the Trunking Requirements section of the ICA does not ignore nor remove either party from being responsible for facilities on their respective side of the POI.

AT&T believes the language it has offered is absolutely necessary. AT&T utilizes many tandems throughout its network. These tandems are not carbon copies of each other—many serve a different purpose or have a different function to perform

within the network. Some of these may be classified as Access Tandems or Local Tandems. Trunk groups must be connected to these tandems, and how those trunk groups are established and set up must be identified in the Trunking Requirements section of the ICA. Sometimes a group must be established to appropriately handle third-party traffic. The Trunking Requirements language that AT&T has proposed defines how these groups must be set up.

Q. FROM A NETWORK PERSPECTIVE, DOES SPRINT'S TRUNKING LANGUAGE PROVIDE THE SPECIFICITY REQUIRED TO ESTABLISH THE APPROPRIATE TRUNK GROUPS TO ROUTE TRAFFIC?

A. No. Sprint's proposed language is rather concise, but does not define the specifics required to establish all of the trunking requirements necessary for establishing the trunk groups AT&T and Sprint need to properly exchange traffic. Sprint's language is too sparse, which could lead to difficulty in understanding the requirements and obligations of the ICA.

Q. HAS AT&T AGREED TO GRANDFATHER SPRINT'S EXISTING NETWORK?

A. Yes. In Attachment 3, § 2.7, there is undisputed language allowing pre-existing interconnection arrangements to remain. AT&T recognizes that Sprint has made considerable investment in its existing network and does not wish to force Sprint into an expensive change of its network. It benefits neither party to require changes simply for the sake of change.

ISSUE #31 *[DPL ISSUE II.F(3)]*

Should the parties use the Trunk Group Service Request for to request changes in trunking?

Contract Reference: Attachment 3, section 2.8.6.3

Q. IS THIS STILL AN OPEN ISSUE?

A. I believe not. Based on testimony Sprint filed in another state, I believe Sprint has accepted AT&T's proposed language that requires the parties to use Trunk Group Service Requests to request changes in trunking.

ISSUE #32 *[DPL ISSUE II.F(4)]*

Should the CLEC ICA contain terms for AT&T's Toll Free Database in the event Sprint uses it and what those terms?

Contract Reference: Att. 3, section 2.8.7 (CLEC only)

Q. HAVE THE PARTIES PROPOSED LANGUAGE FOR 800/8YY TOLL FREE SERVICE?

A. AT&T proposes such language for Attachment 3 of the CLEC ICA, section 2.8.7 and subparts. Sprint opposes AT&T's language, and offers none of its own.

Q. WHAT DOES AT&T'S PROPOSED LANGUAGE COVER?

A. Generally, it addresses the proper routing of toll free traffic and defines query charges and matters pertinent to toll free calling.

Q. DOES SPRINT OBJECT TO ANY PARTICULAR ASPECT OF AT&T'S LANGUAGE?

A. No. Sprint states in its DPL position statement that it does not use AT&T's toll free service and so has no need for this language.

Q. IF SPRINT DOES NOT USE THE SERVICE, WHY SHOULD AT&T'S LANGUAGE BE INCLUDED IN THE ICA?

A. Inclusion of the language cannot possibly do any harm, and a carrier that would otherwise choose to adopt this ICA but that wants to use AT&T's service might be troubled by the absence of language governing the provision of the service. For that matter, Sprint may change its network architecture during the life of the ICA. Additionally, there may be an instance where Sprint will need the service used to ensure the proper routing of a call it hands off to AT&T for delivery to an IXC that it is not directly connected to.

ISSUE #33 ***[DPL ISSUE II.G]***

Which Party's proposed language governing Direct End Office Trunking ("DEOT") should be included in the ICAs?

Contract Reference: AT&T: Att. 3, section 2.3.2 (CMRS); sections 2.8.10-2.8.10.5 (CLEC); Sprint: Att., section 2.5.3(f)

Q. PLEASE EXPLAIN THIS DISAGREEMENT.

A. As I explained in my introductory discussion of trunks and facilities, direct end office trunking ("DEOT") is trunking that connects a Sprint switch network directly with an AT&T end office switch. As I also explained, when the amount of traffic that Sprint is sending from its switch to a particular AT&T end office switch reaches a certain level, efficient use of network resources calls for establishment of a DEOT, so that traffic between Sprint's network and that AT&T end office can be trunked directly, thus eliminating the need for tandem switching and reducing the number of trunk groups used for that traffic.

Both Sprint and AT&T propose language that addresses the establishment of DEOTs. The question is which Party's language should be included in the ICA.

Q. WHAT IS THE DIFFERENCE BETWEEN THE COMPETING PROPOSALS?

A. AT&T's language provides clear guidance for determining when a DEOT must be established. Specifically, AT&T's proposed language for the CLEC ICA (section 2.8.10.1) calls for a DEOT to be established when traffic between a Sprint switch and an AT&T end office switch requires 24 or more trunks. AT&T's proposed language for the CMRS ICA (section 2.3.2) provides the same threshold.

Sprint's language, in contrast, has no defined threshold of traffic volume that establishes when a DEOT is required. Indeed, Sprint's language seems designed to ensure that Sprint will never have to establish a DEOT. It provides:

> Subject to Sprint's sole discretion, Sprint may (1) order DEOT Interconnection Facilities as it deems necessary, and (2) to the extent mutually agreed by the Parties on a case by case basis, order DEOT Interconnection Facilities to accommodate reasonable requests by AT&T-9STATE.

Q. IS AT&T'S 24 TRUNK THRESHOLD REASONABLE?

A. Yes. This standard is recognized and used by many carriers in the industry and is fair and equitable.

Q. DO YOU KNOW OF ANY STATE COMMISSIONS THAT HAVE ESTABLISHED THE 24 TRUNK DEOT THRESHOLD THAT AT&T IS PROPOSING?

A. Yes. In an arbitration between AT&T Illinois (Ameritech Illinois as it then was) and Verizon Wireless, the Illinois Commerce Commission ("ICC") addressed the DEOT issue. In its arbitration award, the ICC stated in pertinent part:

> Allowing Verizon to interconnect at the tandem in every instance it chooses could cause significant adverse impacts on Ameritech's network. . . . Additionally, the Commission agrees with Staff that a

> trigger point of . . . the equivalent of one DS-1 during the busy hour for three consecutive months is reasonable. . . . We agree that once Verizon's traffic reaches a certain level, it should do something to take traffic off the tandem. However, what that "something" should be will not always be direct trunking to the end office . . . We reach this conclusion because Ameritech does not claim that its trunk to the end office cannot carry Verizon's traffic. Ameritech merely claims that its tandem cannot handle the traffic. Verizon should not have to duplicate Ameritech's trunk to the end office. We agree with Staff's assertion that "Verizon should not be required to establish a direct trunk group to an end office where there are currently facilities from Verizon to the tandem and from the tandem to the end office." . . . Verizon should have several options available . . . including meet points and Digital Cross Connects. Verizon retains its right to interconnect at any technically feasible point of its choosing, which the tandem is not, once the traffic reaches a certain level. Any alternative connection, however, should not involve routing traffic through the tandem once the trigger point has been reached.[22]

Based on that decision, the parties to the ICC arbitration wound up with the following DEOT language, which the ICC approved:

> If the traffic from a single [Verizon] MSC through any [ILEC] Tandem Switch destined for another specific [ILEC] switch . . . at any time during each month of a three month period requires 24 or more fully utilized Trunks consisting of 864 CCS (24 ERLANGS) or more during the [Verizon] busy hour, then . . .[ILEC] may require that [Verizon] . . . establish a two-way (where such is available) direct Trunk Group to an alternative point of interconnection of [Verizon]'s choosing (such as a meet point or digital cross connect), at the [ILEC] tandem office building in which the Tandem Switch is located, for traffic destined for the specific [ILEC] end office and each Party will be solely responsible for the cost of facilities used for, and the transport of, such traffic on its side of the alternative point of interconnection and shall not charge the other Party for the use of such facilities.

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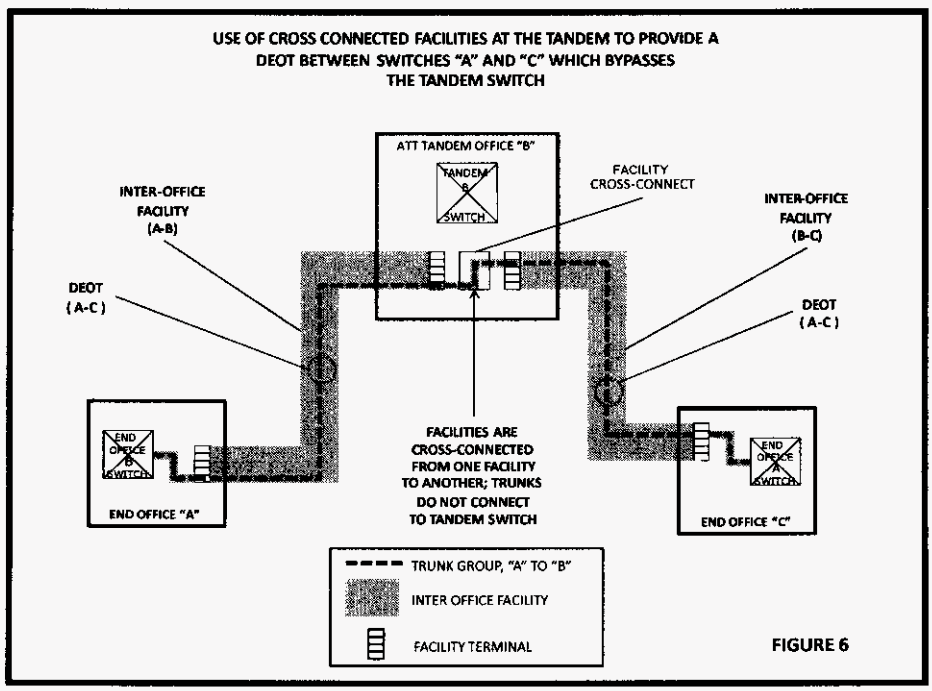
[22] Order, *Verizon Wireless Petition for Arbitration Pursuant to Section 252(b) of the Telecommunications Act of 1996 to Establish an Interconnection Agreement with Illinois Bell Telephone Company d/b/a Ameritech Illinois*, Docket No. 01-0007 (Ill. Comm. Comm'n May 1, 2001) (available at http://www.icc.illinois.gov/docket/files.aspx?no=01-0007&docId=17767&m=0).

Q. THE REFERENCES TO CROSS-CONNECTS AND MEET POINTS IN THE ICC'S DECISION AND THE LANGUAGE THE PARTIES WOUND UP WITH GIVE THE IMPRESSION THAT WHAT THE ILEC GOT IN THE ICC CASE IS QUITE DIFFERENT FROM WHAT AT&T IS ASKING FOR HERE. IS THAT CORRECT?

A. No, it isn't. As I indicated in my introductory discussion of trunks and facilities, the key is to take traffic off the tandem. That can be done (referring here to Figure 6 below) by establishing a trunk group directly from switch "A" to switch "C" over facilities that run from point "A" to a cross-connect in the tandem office, which then connects to switch "C" by way of another facility that runs from the tandem office to point "C." This trunk group bypasses the tandem switch, unlike the trunking arrangement in Figure 3, which uses two trunk groups and the tandem switch to deliver calls exchanged between switches "A" and "C."



Q. HAVE OTHER COMMISSIONS MADE DECISIONS THAT SUPPORT AT&T'S POSITION HERE?

A. Yes. The Public Utility Commission of Texas, in its "mega-arbitration" (Docket No. 28821), ruled:

> The Commission agrees with [the ILEC's] concerns that tandem exhaust, cost, network integrity and ability to serve multiple CLECs together suggest that CLECs should be required to establish DEOT once the parties exchange traffic in excess of 1 DS1. . . .
>
> [T]he Commission concludes that CLECs must establish DEOTs when a CLEC's traffic from a POI to an end office located in the same LCA exceeds 24 DS0s.

Q. WHAT IS YOUR CONCLUSION?

A. By far the most important aspect of the DEOT issue in this case is whether or not Sprint will be required to establish DEOTs when traffic reaches a level of 24 trunks, as AT&T proposes. Sprint will doubtless say that its proposed language provides for DEOTs. However, if the Commission were to adopt Sprint's language, there would be no DEOT requirement in the agreement. Sprint's language would "require" a DEOT only "subject to Sprint's sole discretion," and only "as it [Sprint] deems necessary" or "to the extent mutually agreed" – which means much the same thing, since there will be no mutual agreement if Sprint does not agree. Accordingly, the Commission should adopt AT&T's proposed DEOT language and reject Sprint's.

ISSUE #34 *[DPL ISSUE ILH(1)]*

What is the appropriate language to describe the parties' obligations regarding high volume mass calling trunk groups?

Contract Reference: Att. 3, section 3.3.1 (Sprint); Att. 3, section 2.9.12.2 (AT&T CMRS); Att. 3, section 3.4 (AT&T CLEC)

Q. WHAT ARE MASS CALLING TRUNK GROUPS?

A. A mass calling event – or High Volume Call-in ("HVCI") – is an occurrence in which unusually large numbers of people call a particular phone number. The classic example is what happens when a radio station offers a prize to the 100th person who calls a particular number. Mass calling events can create call blockage and jeopardize the PSTN. Mass calling trunks are trunk groups established to accommodate mass calling events in a manner that avoids those problems.

Q. IS THIS JUST A THEORETICAL PROBLEM, OR ARE THERE INSTANCES IN WHICH AT&T EXPERIENCED NETWORK ISSUES BECAUSE OF HIGH CALL VOLUMES?

A. The latter. In July 1992, the AT&T network in Oklahoma experienced an overload condition due to an HVCI that had a significant effect on emergency 911 calling abilities.

Also, on October 16, 2002, there was a significant HVCI event in California that was caused by media advertisements which caused the public to initiate calls to purchase World Series tickets. Two AT&T California Access Tandems experienced significant degradation during the event; both tandem switches went into "machine congestion;" call register capacity was exceeded; billing records were lost; and control, visibility and diagnostic capability were lost. The carriers that caused this outage were mainly wireless and interexchange carriers ("IXCs") that did not have mass calling trunks and used SS7 signaling instead of Multi-Frequency (MF) signaling.

Additionally, the Dallas/Fort Worth area experienced a similar "machine congestion" due to a Garth Brooks concert in 1993.

Q. WHAT IS THE MOST UNDESIRABLE POTENTIAL EFFECT OF A MASS CALLING EVENT?

A. A network failure caused by a mass calling event could trigger a delay in emergency services in a life or death situation.

Q. WHAT MEASURES DOES AT&T TAKE TO AVOID THE RISKS PRESENTED BY MASS CALLING EVENTS?

A. AT&T establishes, and asks carriers with which it is interconnected to establish, mass calling trunks, separate from the PSTN, in order to ensure reliability of the network in general and the 911 network in particular. Mass calling trunks (also referred to as choke trunks or high volume call-in trunks) limit the number of calls allowed at one time to a particular mass calling number.

Q. WHAT IS THE PARTIES' DISAGREEMENT ABOUT MASS CALLING TRUNKS?

A. Each party proposes mass calling language for the ICAs. The question is which party's language will be adopted.

Q. WHAT IS THE DIFFERENCE BETWEEN THE PARTIES' PROPOSALS?

A. AT&T proposes robust language that, among other things, requires the establishment of a dedicated trunk group to the designated Public Response Mass Calling Access Tandem in each serving area (Att. 3, section 2.9.12.2.1 (CMRS); section 3.4.1 (CLEC)) and calls for Sprint to notify AT&T if it acquires a mass calling end user (such as a radio station) (section 2.9.12.2.1 (CMRS); section 3.4.3 (CLEC)).

Sprint's language, in contrast, while nominally requiring mass calling trunk groups for high-volume customer calls, proposes that there be no mass calling requirement. Sprint's proposal states,

> If the need for HVCI trunk groups are identified by either Party, that Party may initiate a meeting at which the Parties will negotiate where HVCI Trunk Groups may need to be provisioned to ensure network protection from HVCI traffic.

Q. WHAT IS WRONG WITH SPRINT'S LANGUAGE?

A. Just about everything. By the time the meeting Sprint proposes is conducted and the negotiations are complete, the event may have already occurred. What is even worse under Sprint's language is, if Sprint becomes aware of a need for HVCI trunks (in Sprint's judgment, of course), Sprint *may* initiate a meeting. And if it is AT&T that becomes aware of the need and initiates the meeting, Sprint's language would not require Sprint to do anything at all – except negotiate.

Q. HOW DOES SPRINT JUSTIFY ITS APPROACH?

A. In its position statement on the DPL, Sprint states that it "is willing to address mass call trunks when its customer instigates mass calls; but it is typically AT&T's customer that creates an issue. Sprint should not be mandated to install and pay for typically idle trunks to address issues caused by AT&T's contest-type customers.

Q. HOW DO YOU RESPOND?

A. In the first place, the payment obligation is the subject of another issue – II.D(2). Beyond that, even if it is only occasionally that it is a Sprint customer that "instigates" mass calls, the ICAs should appropriately provide for that – and language that says only that Sprint *may* call a meeting does not suffice. Finally, to the extent

that it is Sprint's customers that make the calls that congest the network, Sprint must accept its fair measure of responsibility for safeguarding the network.

Q. HOW SHOULD THE COMMISSION RESOLVE THIS ISSUE?

A. In order to ensure the reliability of the telephone network, especially the 911 network, it is essential to have in place mass calling trunk groups and, in the case of interconnecting trunk groups, a plan for communication between the interconnected carriers. AT&T's proposed language provides this, and Sprint's does not. The Commission should resolve this issue in favor of AT&T.

ISSUE #35 *[DPL ISSUE II.H(2)]*

What is appropriate language to describe the signaling parameters?

Contract reference: Att. 3, section 3.5 (Sprint); Att. 3, section 2.3.2 (AT&T CMRS); Att. 3, section 3.6, 3.7 (AT&T CLEC)

Q. WHAT IS THE DISPUTE WITH SS7 SIGNALING PARAMETER LANGUAGE?

A. Sprint appears to reject the detail that AT&T presents with its language proposal, stating that it appears to discuss something other than signaling parameters. Once again, the question is whether the Commission should approve AT&T's appropriately detailed language that addresses signaling standards[23] and issues the parties are likely to encounter, or Sprint's cursory, high level language that leaves important matters open to dispute.

AT&T proposes detail regarding SS7 connectivity, on-hook and off-hook conditions, privacy indicators, CLASS features, and other items that are necessary to

[23] Telcordia Standard No. TR-NWT-00499

signaling operations. Additionally, AT&T's language provides information regarding the exchange of Calling Party Number ("CPN"), charge number, originating line information and other parameters that are essential to proper billing of calls. Also, the number of digits that each party will send to the other is specified. These are all items that should not be left to speculation, which is apparently what Sprint wishes to do.

Q. DOES SPRINT CLAIM THAT ANY OF AT&T'S PROPOSED LANGUAGE IS UNREASONABLE?

A. Not to my knowledge. Sprint's position seems to be that the detail is unnecessary.

Q. HOW SHOULD THE COMMISSION RESOLVE THE ISSUE?

A. Unless Sprint can affirmatively demonstrate that there is something wrong with AT&T's language, which I believe it cannot, the Commission should approve AT&T's language. Signaling is one of the most critical elements in switching today and specificity is a must. In particular, AT&T's language concerning the altering of SS7 parameters, such as CPN, serves to reduce or eliminate the possibility of billing disputes in the future.

ISSUE #36 *[DPL ISSUE II.H(3)]*

Should language for various aspects of trunk servicing be included in the agreement e.g., forecasting, overutilization, underutilization, projects?

Contract Reference: Att. 3, section 3.10 (AT&T CLEC); section 4.1 (AT&T CMRS); section 3.6 (Sprint CMRS)

Q. WHAT IS THE DISPUTE WITH TRUNK SERVICING LANGUAGE?

A. Once again, AT&T proposes detailed language in an effort to define all of the possibilities that may be encountered between two carrier's networks and Sprint

offers only high level language. AT&T's language better defines what is expected of each carrier for its trunking network and is used in hundreds, if not thousands of ICAs across the 22 states where AT&T operates as an ILEC. Sprint is relying on the non-disputed language in Attachment 3, §§ 3.1-3.3 that describes trunk servicing and network management at a very high level.

Q. HOW WILL AT&T'S MORE DETAILED TRUNK SERVICING LANGUAGE IMPROVE NETWORK PERFORMANCE?

A. AT&T's language in Attachment 3, § 3.10 provides details for project management, communications between the companies when trunk groups should be resized, as well as processes to work through these matters in order to provide the highest level of service to both parties' end users. AT&T's language also provides for tried and proven methods by which Sprint may augment trunks groups to plan for upcoming business arrangements and network requirements. The AT&T forecasting language provides a reasonable method for including trunk requirements in AT&T's trunk forecasts. This allows AT&T to more accurately plan for trunk, facility, switching, terminating, and power requirements several years into the future, which in turn enables AT&T to order future network resources in a timely manner.

Monitoring trunk groups for over- or under-utilization is necessary to maintaining an efficient, economical, and reliable network.

ISSUE #51 ***[DPL ISSUE III.A.4 (3)]***

Should Sprint CLEC be obligated to purchase feature group access services for its InterLATA traffic not subject to meet point billing?

Contract Reference: Att. 3, sections 6.7-6.7.1 (AT&T CLEC)

Q. WHAT IS THE DISPUTE HERE?

A. The dispute concerns instances where Sprint is acting as an interexchange carrier and delivering its interexchange end user traffic across LATAs and possibly state boundaries. AT&T has proposed language that requires Sprint to purchase feature group access services for its InterLATA traffic that is not subject to meet point billing. Sprint opposes AT&T's language and offers none of its own.

Q. DO THE FCC'S RULES ALLOW CLECS TO CARRY ACCESS TRAFFIC ON LOCAL TRUNK GROUPS?

A. No. Nothing in the Act or the FCC's rules requires AT&T to allow a CLEC to combine interexchange traffic on local interconnection trunks. When a CLEC carries calls across exchange lines – handing off calls to, and taking such calls from, AT&T – it is obtaining switched access service from AT&T, terminating access in the case of the "handoff" and originating access in the case of the "take." The terms and conditions that apply to the purchase of switched access service are governed by switched access tariffs – intrastate tariffs on file with the state commission in the case of intrastate long distance calls and interstate tariffs on file with the FCC in the case of interstate long distance calls. These tariffs require the use of separate, feature group trunks for interexchange traffic.

The Commission should award AT&T's language in support of Sprint establishing new feature group ("FGD") trunks for its CLEC traffic or utilizing its existing Sprint LD FGD trunks for its interexchange traffic.

ISSUE #91 ***[DPL issue V.B]***

What is the appropriate definition of "Carrier Identification Codes"?

Contract Reference: Att. GT&C Part B Definitions

Q. WHAT IS THE DISPUTE IN THIS ISSUE?

A. The dispute here concerns the proper definition of Carrier Identification Code (CIC). Sprint's language is vague and leaves out a critical component. The originating end user dialing the interexchange call is the IXC's customer and not the LEC's for the duration of that call. A LEC's access services are purchased by the IXC and the IXC pays the LEC for origination and termination to the LEC's networks. Sprint's language ignores the relationship between the LEC and the IXC, which is crucial to the service.

Q. WHAT IS A CARRIER IDENTIFICATION CODE?

A. A Carrier Identification Code (CIC) is a unique four digit code that identifies a particular IXC. This convention was invented in the 1980s to implement Equal Access so that end users could choose their IXC when placing long distance calls and is still in use today.

Q. FOR WHAT IS IT USED?

A. Basically, a CIC code is the number an end user customer would dial to access a particular Long Distance carrier. To access a carrier other than the IXC that is presubscribed to a particular phone line, the end user would dial the digits 950-

XXXX[24], where XXXX is the CIC code of the IXC the end user wishes to handle the call. This type call is known as a Feature Group B (FGB) call.

Feature Group D (FGD) calls are calls in which the end user dials "1" plus the desired telephone number and the IXC to which the end user's line is presubscribed will handle the call. However, dialing the code 101-XXXX will enable a subscriber to access any IXC. For instance, AT&T's CIC code is 0288. When the digits 101-0288, plus the desired 10-digit number, are dialed, AT&T will handle that call. In the past, this feature was advertised as dialing "ten-ten ATT"

Whenever a CLEC originates a call, which must be handled by an IXC, to the AT&T access tandem over its Meet Point trunk group, the CLEC must tell the access tandem which IXC must handle the call. The CIC code sent with the call is used by the access tandem to route the call to the proper IXC.

Q. WHAT DEFINITION DOES AT&T PROPOSE?

A. AT&T has proposed the following language:

> "Carrier Identification Codes (CIC)" means a code assigned by the North American Numbering Plan administrator to identify the entity that *purchases access services.* This code is primarily used for billing and routing from the local exchange network to the access purchaser. [Emphasis is mine.]

Q. IS AT&T'S DEFINITION ACCURATE AND APPROPRIATE?

A. Yes. Equal Access was ordered by the FCC to allow third party carriers, IXCs, to purchase access from LECs for the purpose of carrying interexchange long distance

[24] In the case of 950-XXXX, "X" represents any number from "0" to "9".

calls. The IXC must order its interconnection services from access tariffs provided by LECs and pay the originating and terminating carriers to access their networks. AT&T's definition identifies this aspect, which is an integral part of access services.

Q. WHAT DEFINITION DOES SPRINT PROPOSE?

A. Sprint CLEC proposes the following language:

> "Carrier Identification Codes (CIC)" means a code assigned by the North American Numbering Plan administrator to identify specific Interexchange Carriers. This code is primarily used for billing and routing purposes.

Q. WHAT IS WRONG WITH SPRINT'S DEFINITION?

A. Sprint's definition does not acknowledge the IXC/LEC relationship—that of the IXC purchasing access services from the LEC. This is the key element that their definition does not include. This cost structure has been in place for many years and the FCC still recognizes it. Sprint's definition ignores the fact that many ILECs today still rely on the access compensation regime, which, if and until the FCC changes it, will remain in effect.

Q. WHAT HARM *COULD COME* FROM SPRINT'S DEFINITION?

A. While AT&T is not accusing Sprint of any wrongdoing, there is always the potential for a CLEC to route interexchange traffic in a way that circumvents a LEC's access tariffs, thereby avoiding possible access charges. Even if Sprint had no intention of doing so, another CLEC that might engage in such activities could obtain this agreement pursuant to Section 252(i) of the Act. When a carrier does engage in these

activities, they will end up in billing disputes and/or lawsuits, which the Commission should want to avoid.

Q HAS AT&T OFFERED ALTERNATIVE LANGUAGE TO SPRINT IN AN EFFORT TO RESOLVE THIS ISSUE?

A. Yes. AT&T has offered two alternative definitions to Sprint that if either were accepted would resolve this issue.[25] The following language identifies these alternate definitions of CIC code:

> "Carrier Identification Codes (CIC)" means a code used to provide routing and billing information for calls from end users via trunk-side connections to interexchange carriers and other entities. Entities connect their facilities to access provider's facilities using several different access arrangements, the common ones being Feature Group B (FG B) and Feature Group D (FG D). Access providers are common carriers and connecting carriers that provide interconnection services between an entity and another provider of telecommunications services

AT&T has also provided a second alternative definition for Carrier Identification Code:

> CIC (Carrier Identification Code) - A numeric code that uniquely identifies each carrier. These codes are primarily used for routing from the local exchange network to the access purchaser and for billing between the LEC and the access purchaser.

Q. DOES THIS CONCLUDE YOUR DIRECT TESTIMONY?

A. Yes.

[25] AT&T's proposals include the definition from CARRIER IDENTIFICATION CODE (CIC) ASSIGNMENT GUIDELINES FINAL DOCUMENT, ATIS-0300050" dated January 15, 2010, published by The Alliance for Telecommunication Industry Solutions (ATIS) at 1.2 and 8.

AT&T FLORIDA

DIRECT TESTIMONY OF LANCE MCNIEL

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

DOCKET NO. 100176-TP AND DOCKET NO. 100177-TP

AUGUST 25, 2010

ISSUES
23 [DPL II.B.2], 87 [DPL IV.F.1],
88 [DPL IV.F.2] and
89 [DPL IV.G.2]

I. INTRODUCTION

Q. PLEASE STATE YOUR NAME, TITLE AND BUSINESS ADDRESS.

A. My name is Lance McNiel. I am a Senior Quality, Method and Procedure and Process Manager in AT&T's Wholesale organization. My business address is 1116 Houston St., Room 1101, Ft. Worth, Texas.

Q. WHAT ARE YOUR CURRENT RESPONSIBILITIES?

A. I am responsible, in part, for monitoring the performance of AT&T Wholesale's Access Service Center ("ASC"), Local Service Center ("LSC"), Wholesale Service Center ("WSC"), and Operations Support Systems ("OSS") operations. Additionally, I am responsible for investigating complaints involving or impacting ASC, LSC, WSC, and OSS operations. I coordinate changes within the ASC, LSC, WSC, and OSS to comply with regulatory requirements and provide requested information and testimony to regulatory bodies regarding these operations.

Q. WHAT IS YOUR EDUCATIONAL BACKGROUND AND PROFESSIONAL EXPERIENCE?

A1. **A.** I received a Bachelor of Business Administration degree with a Marketing Major in 1992 from Texas Wesleyan University in Fort Worth, Texas.

I began working for Southwestern Bell in June of 1997, as a Service Representative in the Local Service Center (LSC). I was promoted to the position of Manager LSC in October 1999, handling Residence, Simple Business and Coin Resale. Shortly thereafter, I assumed responsibility for handling Digital Subscriber

Line (DSL) matters. I remained in that capacity until I was promoted to my current position in June 2001.

Prior to coming to then Southwestern Bell, I was employed by Catalyst Construction as a Purchasing Manager.

Q. HAVE YOU PREVIOUSLY TESTIFIED IN ANY REGULATORY PROCEEDINGS?

A. Yes. I have testified, provided written testimony and/or provided affidavits on behalf of the AT&T incumbent local exchange carriers ("ILEC") in proceedings before the State commissions of California, Illinois, Indiana, Kansas, Kentucky, Michigan, Missouri, Ohio, Oklahoma, and Texas.

Q. ON WHOSE BEHALF ARE YOU TESTIFYING?

A. AT&T Florida, which I will refer to as AT&T.

Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY?

A. My Direct Testimony presents AT&T's positions on Issue 23 (*DPL Issue II.B.2*), Issue 87 (*DPL Issue IV.F.1*), Issue 88 (*DPL Issue IV.F.2*), and Issue 89 (*DPL Issue IV.G.2*).

II. DISCUSSION OF ISSUES

Issue # 23 [*DPL ISSUE II.B.2]*

Should the ICAs include Sprint's proposed language that would permit Sprint to combine its CMRS wireless and CLEC wireline traffic on the same trunk groups that may be established under either ICA?

Contract Reference: Attachment 3, Section 2.5.4(b)

Q. WHAT IS AT ISSUE IN II.B.2?

A. This issue is related to language Sprint has proposed that would allow it to route two vastly different traffic types – Sprint wireless-originated traffic and Sprint CLEC-originated landline traffic – to AT&T on a single combined trunk group. AT&T objects to this novel proposal because AT&T's billing processes would be unable to differentiate between a call originated by a Sprint wireless end user and a Sprint CLEC end user if the calls were delivered on the same trunk group. This is so because both types of calls have the same characteristics when they reach the AT&T tandem of termination. If AT&T were to receive both wireless and CLEC traffic over a single combined trunk group, it would be impossible for AT&T to determine whether a given call received on that trunk group was or was not a local call subject to reciprocal compensation.

AT&T must receive the Sprint calls over trunk groups that are dedicated to either Sprint CLEC or Sprint CMRS in order to be able to bill appropriately for the different types of traffic. **Exhibit LM-1** to this testimony is a high level depiction of

the network configuration proposed by Sprint compared to the network configuration proposed by AT&T.

Q. DOES SPRINT COMBINE ITS CLEC AND CMRS TRAFFIC TODAY ON A SINGLE TRUNK GROUP, AS SPRINT PROPOSES TO DO HERE?

A. No. For all the years that Sprint has been exchanging traffic with AT&T in Florida, up to and including the present, Sprint has had separate trunk groups associated with both its CLEC and CMRS subsidiaries and their respective networks that connect to AT&T's network. Sprint has never combined the wireless and wireline traffic it delivers to AT&T, either in Florida or any other state (at least not to AT&T's knowledge or with AT&T's consent). Thus, what Sprint is proposing on this issue is a dramatic departure from current practice.

Q. WHAT IS THE BASIS FOR SPRINT'S POSITION?

A. Based on its position statement in the parties' DPL, Sprint contends that its method is efficient and economical and that AT&T routes its own CMRS and ILEC traffic over the same trunk group. In the next several pages, I will respond to Sprint's first contention, and I will then return to Sprint's misleading claim that AT&T itself combines its own traffic in the way that Sprint proposes.

Q. IS SPRINT'S PROPOSAL TO COMBINE ITS WIRELESS AND WIRELINE TRAFFIC ON THE SAME TRUNK GROUP BASED ON NETWORK EFFICIENCIES AND SOUND BILLING PRINCIPLES?

A. No. Sprint doubtless has in mind the network architecture principle that one large trunk group is more efficient than two smaller ones. While that principle does hold true in some circumstances, it does not apply here, because Sprint's CMRS traffic and

Sprint's CLEC traffic each ride on two separate and distinct networks that may have multiple switches serving both the CLEC and CMRS end users of Sprint. The determination whether a CLEC call is subject to reciprocal compensation is based upon rate centers (which I believe are generally called "local calling areas" in Florida) as defined in the Local Exchange Routing Guide ("LERG"); generally a CLEC call that originates and terminates in the same rate center is subject to reciprocal compensation. The determination whether a CMRS call is subject to reciprocal compensation, on the other hand, is based upon Major Trading Areas ("MTA"), which are much larger than rate centers; generally, a CMRS call that originates and terminates in the same MTA is subject to reciprocal compensation.[1] In order to bill appropriately for traffic, each carrier must be able to discern the type of traffic that is being delivered.

Q. HOW DOES AT&T DETERMINE WHETHER A WIRELINE CALL THAT A CLEC DELIVERS TO AT&T IS LOCAL OR INTEREXCHANGE ?

A. AT&T, like carriers generally, determines whether a call is local or interexchange – also called jurisdictionalizing the call – by comparing the originating NPA-NXX of the originating caller with the NPA-NXX of the terminating caller to determine if they are within the same rate center as defined in the LERG. If they are within the same rate center, reciprocal compensation applies. If the NPA-NXXs are in different rate centers, the call is interexchange and switched access applies. A switched access

[1] *See* 47CFR701(b)(2). Telecommunications traffic exchanged between a LEC and a CMRS provider that, at the beginning of the call, originates and terminates within the same Major Trading Area, as defined in § 24.202(a) of this chapter, is subject to reciprocal compensation. AT&T witness Patricia Pellerin also discusses the difference between wireless and wireline local calling areas in her Direct Testimony.

call may either be intrastate, in which case the rates in the terminating carrier's intrastate access tariff apply, or interstate, in which case the rates in the terminating carrier's interstate (FCC) access tariff apply.

Q. IS THAT SAME PROCESS USED TO DETERMINE THE JURISDICTION OF A CMRS-ORIGINATED CALL?

A. No – and that is why CMRS-originated calls should not be delivered on the same trunk group as CLEC-originated calls. There is an additional step involved in determining the jurisdiction of a CMRS call, because the local calling areas for wireless calls are defined by MTAs, instead of the smaller rate centers from the LERG. Wireless calls, like wireline calls, originate and terminate in rate centers, but each rate center is in a particular MTA, and the determinant of whether a wireless call is local is whether it originates and terminates within a single MTA. Accordingly, AT&T builds tables into its billing systems for wireless traffic that associate each rate center with the MTA in which it is located. After a wireless call is received and processed and the switch billing record has been created, the billing systems determine by reference to those tables whether or not the call is local or interMTA, and bill accordingly. Nevertheless, as I explain below, before the billing systems can do so, they must know which trunk group the wireless call arrived on.

Q. IF SPRINT'S PROPOSAL TO COMBINE THE TRAFFIC WERE ADOPTED, COULD AT&T'S BILLING SYSTEMS DETERMINE WHICH CALLS WERE ORIGINATED BY SPRINT'S CMRS NETWORK VERSUS SPRINT'S CLEC NETWORK AND MAKE THE DETERMINATIONS NECESSARY TO CORRECTLY BILL CALLS?

A. No. AT&T's billing systems cannot differentiate between CMRS and CLEC traffic over a single trunk group. And even if AT&T's billing system could do so, there is no way to "flag" an originating call as being a CMRS or CLEC call, so that AT&T would know the proper compensation rates to apply.

Q. WHY ARE AT&T'S BILLING SYSTEMS UNABLE TO MAKE THAT DIFFERENTIATION?

A. Because the billing systems assign compensation to traffic according to the trunk group on which traffic is delivered. That is, all calls arriving on a single trunk group can only be subject to one billing scheme or the other not both at the same time. As I stated above, the jurisdiction of wireless traffic is determined by MTA, which may cover an entire state or more, while the jurisdiction of wireline traffic is based on smaller local exchange areas or rate centers. Consequently, even if Sprint were to demonstrate that it would be more efficient or economical for it to deliver all its traffic over the same trunk group, its proposal should still be rejected, because it would be impossible for AT&T to differentiate between categories of traffic and properly bill combined wireless and wireline traffic.

Q. ARE YOU SAYING THAT AT&T'S BILLING SYSTEMS ASSIGN COMPENSATION BASED ON THE TRUNK GROUP THAT A CALL ARRIVES ON AND, AT THE SAME TIME, THAT COMPENSATION IS BASED ON THE ORIGINATING NPA-NXX AND THE TERMINATING NPA-NXX?

A. Yes. It is a combination of the trunk group a call arrives on *and* the originating and terminating NPA-NXX that together determine how the billing system assigns compensation. That is, one first has to establish that all the traffic one receives over a

specific trunk group is either wireless or wireline. Only then can one determine the appropriate rate to apply based on the originating NPA-NXX and terminating NPA-NXX. For example, if the parties establish two trunk groups, one for Sprint wireless originations and one for Sprint CLEC originations, then AT&T will know that the MTA local calling area applies to the first trunk group and that the LERG local calling area applies to the second. AT&T can then bill the appropriate rate to Sprint for the calls it sends to AT&T for termination. If there were a single combined group, AT&T would not know the type of origination (wireless vs. wireline), and therefore also would not know whether the MTA local calling area applies or if the LERG local calling area applies. In other words, a call that came in on a mixed trunk group with an originating NPA-NXX of 614-298 and a terminating NPA-NXX of 318-457 might be subject to reciprocal compensation if it was a CMRS-originated call, but subject to access charges if it was a CLEC-originated call – and AT&T would not be able to tell which.

Q. DOES AT&T KNOW WHETHER A GIVEN ORIGINATING NPA-NXX IS EITHER A WIRELESS NPA-NXX OR A CLEC NPA-NXX BASED ON ITS LERG DEFINITION?

A. No. In the past, one generally knew that a given NPA-NXX combination was either a wireless NPA-NXX or a wireline NPA-NXX because the LERG defined it as one or the other. With the implementation of wireless number portability, however, one no longer knows whether a given call originated in a wireless or wireline network unless the calling party is one's own customer. By the time a call arrives at the tandem for termination, the terminating carrier has no idea which network (wireless vs. wireline)

originated the call. Hence, the only way that AT&T, as the terminating carrier, can know whether the call was CMRS-originated or CLEC originated is by segregating the traffic on separate trunk groups.

Q. SPRINT IMPLIES IN ITS POSITION STATEMENT THAT AT&T COMBINES CMRS AND ILEC TRAFFIC OVER THE SAME TRUNKS. IS THIS CORRECT?

A. Not in the sense that Sprint implies. Any AT&T Mobility traffic that AT&T the ILEC delivers to Sprint on the same trunk group as AT&T's landline traffic is transit traffic. Generally, in other words, AT&T Mobility does not mix its wireless traffic with AT&T ILEC landline traffic. To the extent that Sprint receives AT&T Mobility and AT&T ILEC traffic on the same AT&T ILEC trunk groups, it is only because Sprint does not interconnect directly with AT&T Mobility, but instead interconnects with AT&T Mobility indirectly, through AT&T ILEC. If Sprint interconnected directly with AT&T Mobility, AT&T Mobility-originated traffic would be sent to Sprint over separate trunks. It would not be intermingled with AT&T ILEC's traffic (or any other third party's traffic). Because AT&T ILEC is directly interconnected with both Sprint CMRS and Sprint CLEC, there is no occasion for either to perform a transiting function for the other and therefore no need for either to commingle its traffic with that of the other.

Q. SPRINT'S LANGUAGE ALSO SUGGESTS THAT IT IS DEVELOPING A METHOD TO IDENTIFY THE ORIGINATION TYPE (WIRELESS OR WIRELINE) AND COULD PROVIDE THAT INFORMATION TO AT&T. IS THAT AN ACCEPTABLE SOLUTION?

A. No. Sprint's proposed language provides that it can carry CMRS and CLEC traffic on a single trunk group so long as "the Sprint wireless entity or Sprint CLEC can demonstrate an ability to identify each other's respective Authorized Services traffic as originated by each other's respective switches." That provision is unacceptable for several reasons. In the first place, the question isn't whether Sprint can identify the traffic – it is whether AT&T can identify it. AT&T's billing systems have been developed over time based on the recommendations of the Ordering and Billing Forum ("OBF") committee of the Alliance for Telecommunications Industry Solutions ("ATIS"). Even if Sprint could provide some kind of indicator (wireless vs. wireline), that indicator must be vetted, tested and approved by the OBF so that all OBF participants can have input and agree with Sprint's proposed methodology.

Q. PLEASE EXPLAIN OBF.

A. The OBF is the industry body that defines the ordering and billing standards used throughout the industry. As its website states, "The ATIS-sponsored Ordering and Billing Forum (OBF) provides a forum for customers and providers in the telecommunications industry to identify, discuss and resolve national issues which affect ordering, billing, provisioning and exchange of information about access services, other connectivity and related matters" (http://www.atis.org/OBF/index.asp). Sprint is a member of the OBF and should be discussing billing system changes of this magnitude at the OBF. After discussion with AT&T's representative to the OBF, I can say that I am not aware that Sprint has

ever discussed the creation of a new billing indicator that could differentiate between wireless originations and wireline originations arriving over a single trunk group.

Q. WHY IS IT IMPORTANT FOR CARRIERS TO CONSISTENTLY FOLLOW OBF STANDARDS FOR ORDERING AND BILLINGS?

A. If each individual telecommunications company were free to create and use its own unique ordering and billing standards, the industry would be in chaos. The reason we have OBF is to ensure that the industry is on the same page with regard to ordering and billing standards so that new market entrants as well as long established companies can have ordering and billing confidence and stability.

Q. ARE THERE ANY OTHER REASONS THAT AT&T CANNOT ACCEPT SPRINT'S PROPOSED LANGUAGE?

A. Yes. AT&T's billing systems would have to be modified to capture and process the new indicator Sprint is proposing to develop. AT&T's switching systems might also require modification since it is the switching machine that creates the billing record that the billing system uses to create the bill. Such billing system and switching system modifications not only require discussion with the OBF, but also require system development by multiple manufacturers, testing and implementation. All of these activities can be time consuming and costly. Even if Sprint could provide an indicator tomorrow – and Sprint does not claim that it can – AT&T would not be able to recognize the indicator until the system development, testing and implementation phases could be completed both within its switching machines and its billing system. These activities may take months or even years to complete, particularly if Sprint has not brought the issue to the OBF for discussion and industry acceptance beforehand.

In the meantime, AT&T would not be able to differentiate between wireless origination and a wireline origination if that traffic arrived on a single trunk group.

Q. WHAT DO YOU RECOMMEND TO THE COMMISSION REGARDING THIS ISSUE?

A. The separate Sprint entities should continue to deliver their wireline traffic and their wireless traffic to AT&T on separate trunk groups, as they have been doing for years. Accordingly, the Commission should reject in its entirety Sprint's proposed language in Attachment 3, Section 2.5.4(b). If the language were included in the ICAs, AT&T would be unable to properly bill Sprint for the traffic its customers originate. The Commission should not support language that will lead to billing inaccuracies and, therefore, billing disputes.

Issue # 87 *[DPL ISSUE IV.F.1]*

Should the Parties' invoices for traffic usage include the Billed Party's state specific Operating Company Number (OCN)?

Contract Reference: Attachment 7, Section 1.6.3

Q. WHAT IS AT ISSUE IN IV.F.1?

A. The parties have agreed on the language in Attachment 7, Section 1.6.3 with the exception that AT&T has proposed that the parties' Operating Company Number ("OCN") be included on the billed party's invoice. Sprint opposes this AT&T-proposed language.

Q. WHY DOES AT&T PROPOSE TO INCLUDE THE OCN ON THE BILLED PARTY'S INVOICE?

A. One of the unique identifiers of a carrier is its state-specific OCN. OCNs for a given carrier can differ from state to state[2] and both AT&T and Sprint's OCNs in fact do. For example, AT&T Wisconsin's OCN is 9327[3] while AT&T Florida's OCN is 5191.[4] Sprint Communications Company OCN in Wisconsin is 8748 while its OCN in Florida is 8717. AT&T, therefore, includes the appropriate specific OCN on its transactions with all carriers, including Sprint. In receiving bills from Sprint, AT&T accounts payable processes for paying Sprint's (and other carriers') bills utilizes the state-specific OCN assigned to AT&T in the given state so that the traffic compensation expense is charged to the appropriate AT&T affiliate. If AT&T receives bills from Sprint without AT&T's specific OCNs associated with each state's usage, AT&T must resort to a costly and time-consuming manual process to allocate the bills appropriately.

Q. DO THE BILLS SPRINT SUBMITS TO AT&T TODAY CONTAIN THE STATE SPECIFIC OCN?

A. My understanding is that at one time there was a state-specific indicator on Sprint's invoices, but that Sprint stopped providing those indicators at some point after November 2009. Thus, Sprint cannot claim that it cannot provide the OCN. Attached as **Exhibit LM-2** is a series of notification letters that Sprint sent to AT&T that notified AT&T that Sprint's billing system was changing subsequent to

[2] There are also instances whereby a carrier may have multiple OCNs in a given state.

[3] The Local Exchange Routing Guide ("LERG") may still identify OCN 9327 as Wisconsin Bell Inc.

[4] The LERG may still identify OCN 5191 as BellSouth Telecommunications, Inc.

November 2009.[5] This change has forced AT&T to undertake additional manual steps to reconcile the invoices submitted by Sprint during the accounts payable bill validation process. The restoration of the state-specific indicator would allow AT&T to more readily separate the bill it receives from Sprint by OCN, which would make the bill validation and payment process more precise and would help ensure accurate and timely payment to Sprint. I understand that the various AT&T ILECs are separate legal entities, so that separate financial records must be maintained for each entity. Therefore, AT&T's bill validation and payment process must continue to be done at a state-specific level.

Q. WHAT SPECIFICALLY ARE THE ADDITIONAL MANUAL STEPS THAT AT&T MUST PERFORM DURING THE ACCOUNTS PAYABLE PROCESS BECAUSE SPRINT DOESN'T INCLUDE AT&T'S OCN ON ITS BILLS?

A. When the invoices Sprint submitted to AT&T included the state-specific indicator, they were more readily processed via the IntraLATA Access Information System ("ILAIS").[6] ILAIS processes monthly billing from independent telephone companies, including CLECs, to AT&T for switched access usage and reciprocal compensation traffic originating from AT&T and terminating to a CLEC, ILEC or wireless carriers as well as for shared facilities. The system allows for the mechanized receipt of billing data and provides bill editing, tracking and trend

[5] Exhibit LM-2 consists of four Sprint notification letters impacting AT&T's accounts payable process for multiple states.

[6] To be clear, ILAIS receives Sprint's invoice information based on manual key entry. However, that manual key entry process was kept to a minimum prior to Sprint's billing format change of November 2009 that excluded the state specific OCN. Nevertheless, Sprint's elimination of OCNs from its invoices requires AT&T to perform the additional manual steps I describe.

analysis. It also includes a reporting tool for end of month accounting activities and an end user query tool, thus providing data on an earned/incurred/processed basis.

After Sprint removed the OCN from its bills in November 2009, ILAIS could no longer readily process Sprint's invoices. Additionally, with this November 2009 unilateral change, Sprint's invoice submission to AT&T no longer included summary pages which AT&T's personnel relied on to validate Sprint's billing. Sprint resumed providing the summary pages in June, 2010 when the parties set up an email box for Sprint to submit its invoices.

As of today, Sprint submits its invoices to AT&T via email. Because the invoices are at a consolidated level and lack the OCN, AT&T must manually process each invoice. AT&T personnel must access the email box, open the Sprint email, open the email attachment and print certain pages of the invoice. In addition to Sprint sending its invoices to the email box, it also provides a usage summary to the AT&T Operations Manager responsible for validating and paying Sprint's invoice. The Operations Manager must then open the usage summary, filter the data by Billing Account Number ("BAN") and calculate a sub-total by BAN to verify it matches the Sprint invoice. If the sub-total by BAN matches the Sprint invoice, then the data must be filtered by state and totaled by state. Next, the filtered usage summaries are printed and the data are manually entered into ILAIS for validation and payment. If, however, the sub-totals by BAN do not match the actual invoice provided by Sprint, additional work must be done in cooperation with Sprint personnel to reconcile the differences. Prior to November 2009, the summary pages were provided on a state

specific basis and the required information could be directly entered into ILAIS without having to perform the manual steps mentioned above.

Q. WHAT DO YOU RECOMMEND TO THE COMMISSION?

A. I recommend that the Commission approve the inclusion of the OCN language that AT&T proposes in Attachment 7, Section 1.6.3 so that AT&T can regain processing functionalities that were lost due to Sprint's unilateral billing system change in November of 2009.

Issue # 88 [*DPL ISSUE IV.F.2]*

How much notice should one Party provide to the other Party in advance of a billing format change?

Contract Reference: Attachment 7, Section 1.19

Q. WHAT IS AT ISSUE IN IV.F.2?

A. The issue is related to the competing language the parties propose for Attachment 7, Section 1.19 which concerns the notice period required before a party can institute a change in billing format. Notwithstanding the Issue Description set forth above, the parties' disagreement is not about how much notice the Billing Party must provide before instituting a billing format change; the parties generally agree notice should be provided at least ninety calendar days or three billing cycles before the change goes into effect. Rather, the disagreement concerns other language in Section 1.19.

Q. WHAT LANGUAGE IS THE SUBJECT OF THE PARTIES' DISAGREEMENT?

A. There are two disputes. First, Sprint proposes to include language that would make the notification time period applicable only to billing format changes that "may impact the Billed Party's ability to validate and pay the Billing Party's invoices." AT&T opposes that language.

Q. WHY DOES AT&T OPPOSE SPRINT'S PROPOSED LANGUAGE?

A. Because it would create uncertainty about whether a notification is required for a particular billing format change. Sprint's proposed language appears to leave it up to the *Billing* Party – the party responsible for sending the notification – to decide whether a particular billing format change will "impact the *Billed* Party's ability to validate and pay the Billing Party's invoices." But it is the Billed Party that is in the best position to determine whether and how a billing format change will impact its ability to validate and pay invoices. Indeed, the Billing Party may have no way to determine whether or how a billing format change would impact the Billed Party's operations. The imprecision of Sprint's proposed language could lead to unnecessary disputes that this Commission might have to decide. It would be simpler and more effective to require the Billing Party to require notice whenever a billing format change is going to occur, and leave it to the Billed Party to assess how (if at all) that change will impact its ability to validate and pay its bills.

Q. WHAT LANGUAGE IS THE SUBJECT OF THE PARTIES' SECOND DISAGREEMENT ABOUT SECTION 1.19?

A. The second dispute concerns what happens if the Billing Party fails to provide the Billed Party a notification of billing format changes within the agreed notice period.

The parties agree that if notification of a billing format change is not received within the specified notice period, then the Billing Party will not immediately begin to impose Late Payment Charges on the invoices affected by the billing format change. The parties disagree, however, about the time period during which Late Payment Charges will be halted. Sprint proposes that if "the specified length of notice is not provided regarding a billing format change and such change impacts the Billed Party's ability to validate and timely pay the Billing Party's invoices," the invoices will be held and not subject to Late Payment Charges until "*at least ninety (90) calendar days has passed* from the time of receipt of the changed bill." (Emphasis added.) AT&T proposes instead that section 1.19 provide that if "notification is not received in the specified time" frame, Late Payment Charges will not be imposed until the "*appropriate amount of time has passed* to allow each Party the opportunity to test the new format and make the necessary changes." (Emphasis added.)

Q. WHY IS AT&T'S PROPOSED LANGUAGE PREFERABLE TO SPRINT'S PROPOSED LANGUAGE?

A. Sprint's proposed language places an arbitrary limit on the period of time the Billed Party is allotted to prepare for a billing format change. AT&T's proposed language does not. In some cases, it may take the Billed Party more or less than 90 days to make the necessary preparations. The Billed Party is in the best position to determine the amount of time it needs to prepare for, test and implement any new billing format changes rolled out by the Billing Party. Therefore, instead of a set 90 calendar day deadline, before Late Payment Charges can be imposed, AT&T proposes a flexible

timetable that allows for unforeseen obstacles the Billed Party may experience in preparing for the billing format change.

Issue # 89 [*DPL ISSUE IV.G.2]*

What language should govern recording?

Contract Reference: Attachment 7, Section 6.1.9.4

Q. WHAT IS THE PARTIES' DISAGREEMENT REGARDING DPL ISSUE IV.G.2?

A. This issue relates to language found in Attachment 7, Section 6.1.9.4, which concerns the recorded data that Sprint provides to AT&T when Sprint is the recording party. The parties agree that Sprint will provide AT&T with Access Usage Record ("AUR") detail data. The parties disagree, however, about whether Sprint must also provide "Billable Message" detail. AT&T proposes that Sprint be required to provide such detail, and Sprint asserts that this is unnecessary.

Q. WHAT IS "BILLABLE MESSAGE DETAIL"?

A. Billable Message detail refers to billing records that are created by switching machines that are used by the billing systems to pass end user billing detail from the recording and/or rating entity to the intended billing entity. Billable message are an integral part of the Non-Intercompany Settlements ("NICS") process.

Q. PLEASE EXPLAIN THE NON-INTERCOMPANY SETTLEMENT PROCESS AND ITS RELEVANCE.

A. NICS is the Telcordia (formerly BellCore) system that calculates non-intercompany settlement amounts due from one company to another within the same Regional Bell Operating Company ("RBOC") region. NICS includes credit card, third number and

collect messages. Essentially, the NICS process is an industry revenue settlement process for billing messages between a CLEC and AT&T. NICS allows AT&T to act as a revenue collector for the CLEC. Pursuant to NICS, AT&T collects the revenue due a CLEC within the AT&T service territory in Florida from another LEC. AT&T passes this money onto the CLEC, less a per message billing and collection fee identified in the parties' Pricing Schedule. These two amounts are subsequently netted together by AT&T and the resulting charge or credit is issued to CLEC via a monthly invoice in arrears.

Q. HOW ARE BILLABLE MESSAGES USED IN THE NICS PROCESS?

A. The NICS process uses the Billable Messages to calculate the amounts due to a given carrier for the appropriate settlement.

Q. ON WHAT BASIS DOES SPRINT OPPOSE AT&T'S LANGUAGE?

A. Sprint states on the DPL that it does not support the type of calls that generate (and, therefore, Sprint is not even currently capable of creating) "Billable Message detail."

Q. IS THAT A SOUND REASON FOR EXCLUDING AT&T'S LANGUAGE FROM THE ICA?

A. No. If Sprint does not support the type of calls that generate Billable Message detail, the inclusion of AT&T's language will have no effect on Sprint one way or the other, and so should not be objectionable to Sprint. At the same time, the language should be included in the ICA to serve its intended purpose when and if Sprint begins to support such calls. In addition, carriers that support calls that generate Billable Message detail may adopt Sprint's ICA, and AT&T's language should be included in those carriers' ICAs.

Q. WHY WOULD AT&T'S LANGUAGE HAVE NO EFFECT ON SPRINT IF SPRINT HAS NO TRAFFIC THAT REQUIRES "BILLABLE MESSAGE DETAIL"?

A. Simply stated, if Sprint does not serve as the recording party for Billable Messages, then the terms of the language will never apply. The AT&T proposed language in Attachment 7, Section 6.1.9.4 is as follows:

> When Sprint is the recording Party, Sprint agrees to provide its recorded **Billable Message detail** and AUR detail to AT&T-9STATE under the same terms and conditions of this section.

So, if there is no traffic with "Billable Message detail," then this language has no effect.

Q. WHAT DO YOU RECOMMEND TO THE COMMISSION?

A. I recommend that the Commission adopt the language proposed by AT&T. Its inclusion in no way harms Sprint and protects AT&T in the instance that Sprint begins to support calls that generate Billable Messages detail, or where another party chooses to adopt Sprint's ICA.

Q. DOES THIS CONCLUDE YOUR DIRECT TESTIMONY?

A. Yes.

Sprint

Sprint Nextel
KSOPHE0210-2B470
6360 Sprint Parkway
Overland Park, KS 66251

BELLSOUTH TELECOM
Recip Compensation Group
722 N Broadway, Floor 10
Milwaukee, WI 53203

Sprint Communications Company L.P. Billing Account Number (BAN) Consolidation Notice

Date: September 1, 2009

To simplify and enhance interactions between our companies, Sprint Communications Company L.P. is implementing a BAN consolidation effort effective with your November 2009 invoice. The intent of this letter is to provide notification of the changes and impacts to your October and November CABS invoices. Sprint's intent is to provide you with one invoice for all regions nationwide.

YOUR NEW CONSOLIDATED BAN NUMBER IS: [redacted]

605

The accounts that are consolidated to this new BAN are as follows:

[redacted]

You will receive your invoice for your consolidated BAN via CD-Rom which may or may not be a change to your current methodology. If you receive a mechanized invoice, state level summaries are included.

Your consolidated BAN invoice will be delivered to the same address of this notification. If you need to update this please provide written request to AtlantaSprintLP@sprint.com.

The consolidated BAN cycle date will be the 12th of each month.

You will receive multiple invoices the month of November 2009.

- Invoices for your previous BANs will reflect payment and adjustment activity up through the cutoff of your new consolidated BAN cycle. In addition, these invoices will reflect a transfer of any outstanding balance to your consolidated BAN listed above, thus leaving a zero balance.

Sprint

Sprint Nextel
KSOPHE0210-2B470
6360 Sprint Parkway
Overland Park, KS 66251

- The consolidated BAN November invoice will reflect the transfer of outstanding balances by "old BAN," invoice number and amount due. When making payments on any outstanding balances after receiving your new consolidated November invoice, please refer those payments to the November invoice number. This will ensure timely posting of these payments towards your account. Your November consolidated BAN invoice will include usage from October through cycle cutoff for the November cycle.

Sprint values your business and we appreciate your understanding during this conversion. If we can be of assistance during the conversion process, please feel free to call 866-254-6141.

Thank you,
Sprint Nextel
Wholesale Operations Support

Sprint

Sprint Nextel
KSOPHE0210-2B470
6360 Sprint Parkway
Overland Park, KS 66251

Bellsouth Telecom
722 N Broadway
Floor 10
Milwaukee, WI 53203

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[redacted]

You will receive your invoice for your consolidated BAN via CD-Rom which may or may not be a change to your current methodology. If you receive a mechanized invoice, state level summaries are included.

The factors we have in our system for Percentage Interstate Usage (PIU) are listed below. If a state is not listed, records that have no jurisdiction will be rated with a PIU of 50%. If you need to update these, please provide a written update to AtlantaSprintLP@sprint.com.

[redacted]

Your consolidated BAN invoice will be delivered to the same address of this notification. If you need to update this please provide written request to AtlantaSprintLP@sprint.com.

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- Invoices for your previous BANs will reflect payment and adjustment activity up through the cutoff of your new consolidated BAN cycle. In addition, these invoices will reflect a transfer

Sprint

Sprint Nextel
KSOPHE0210-2B470
6360 Sprint Parkway
Overland Park, KS 66251

of any outstanding balance to your consolidated BAN listed above, thus leaving a zero balance.

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Thank you,
Sprint Nextel
Wholesale Operations Support

Sprint

Sprint Nextel
KSOPHE0210-2B470
6360 Sprint Parkway
Overland Park, KS 66251

Pacific Bell
722 N Broadway
12th Floor
Milwaukee, WI 53202

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[redacted]

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Sprint

Sprint Nextel
KSOPHE0210-2B470
6360 Sprint Parkway
Overland Park, KS 66251

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Thank you,
Sprint Nextel
Wholesale Operations Support

Sprint

Sprint Nextel
KSOPHE0210-2B470
6360 Sprint Parkway
Overland Park, KS 66251

SBCB
722 N BROADWAY, FLOOR 10
MC - K03B19
MILWAUKEE, WI 53202-0000

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Sprint

Sprint Nextel
KSOPHE0210-2B470
6360 Sprint Parkway
Overland Park, KS 66251

[redacted]

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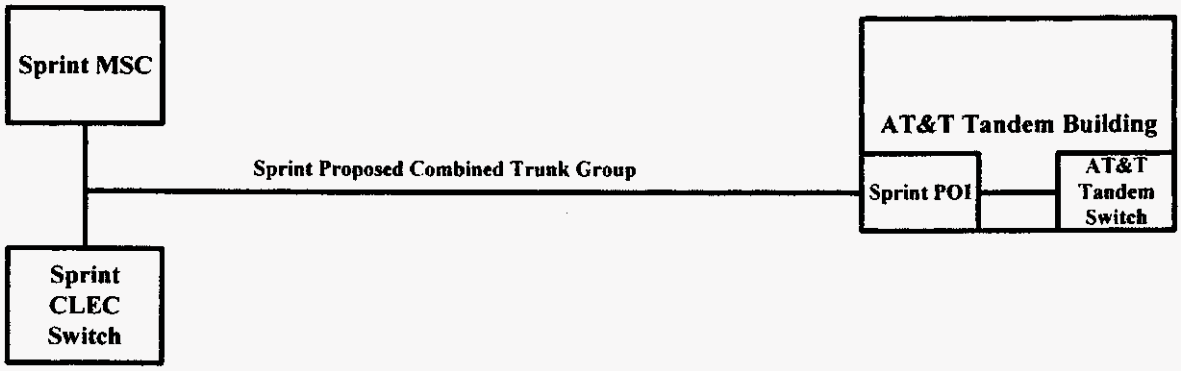
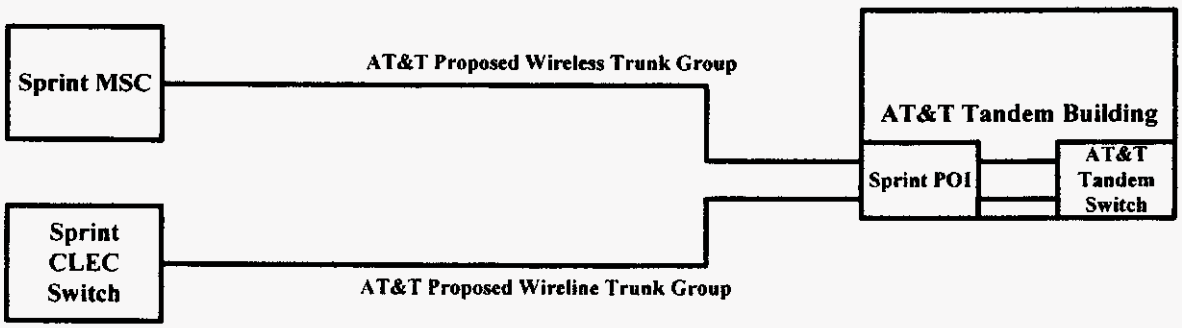
Thank you,
Sprint Nextel
Wholesale Operations Support

Sprint proposed Attachment 3, Section 2.5.4(b) language would result in a network configuration similar to that depicted below. In this configuration, AT&T is unable to differentiate between traffic originating in the Sprint wireless network and the Sprint CLEC network. AT&T is, therefore, unable to properly bill Sprint based on the traffic type Sprint delivers to AT&T.



AT&T's proposed language would require separate trunk groups. One trunk group for wireless originated traffic and one trunk group for CLEC originated traffic. In this type of network configuration, AT&T is able to bill Sprint appropriately based on the the originating traffic type (wireless v wireline).



AT&T FLORIDA

DIRECT TESTIMONY OF J. SCOTT McPHEE

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

DOCKET NO. 100176-TP AND DOCKET NO. 100177-TP

AUGUST 25, 2010

ISSUES

2 *[DPL Issue I.A(2)]*, 3 *[I.A.(3)]*, 4 *[I.A(4)]*, 6 *[I.A(6)]*, 9(ii) *[I.B(2)(b)]*, 12 *[I.B(4)]*, 13 *[I.B(5)]*, 14 *[I.C(1)]*, 15 *[I.C(2)]*, 16 *[I.C(3)]*, 17 *[I.C(4)]*, 18 *[I.C(5)]*, 19 *[I.C(6)]*, 42 *[III.A.1(3)]*, 43 *[III.A.1(4)]*, 44 *[III.A.1(5)]*, 45 *[III.A.2]*, 46 *[III.A.3(1)]*, 47 *[III.A.3(2)]*, 48 *[III.A.3(3)]*, 49 *[III.A.4(1)]*, 50 *[III.A.4(2)]*, 52 *[III.A.5]*, 53 *[III.A.6(1)]*, 54 *[III.A.6(2)]*, 60 *[III.E(3)]*, 61 *[III.E(4)]* and 62 *[III.F]*

I. INTRODUCTION

Q. PLEASE STATE YOUR NAME, TITLE AND BUSINESS ADDRESS.

A. My name is J. Scott McPhee. I am an Associate Director in AT&T Operations' Wholesale organization. My business address is 2600 Camino Ramon, San Ramon, California, 94583.

Q. PLEASE SUMMARIZE YOUR BACKGROUND AND EXPERIENCE.

A. I received my Bachelor of Arts degree with a double major in Economics and Political Science from the University of California at Davis. I began my employment with SBC Communications Inc. in 2000 in the Wholesale Marketing – Industry Markets organization as Product Manager for Reciprocal Compensation throughout SBC's legacy 13-state region. My responsibilities included identifying policy and product issues to assist negotiators and witnesses for SBC's reciprocal compensation and interconnection arrangements, as well as SBC's transit traffic offering. In June of 2003, I moved into my current role as an Associate Director in the Wholesale Marketing Product Regulatory organization. In this position, my responsibilities include helping define AT&T's positions on certain issues for Wholesale Marketing, and ensuring that those positions are consistently articulated in proceedings before state commissions.

Q. HAVE YOU PREVIOUSLY TESTIFIED IN ANY REGULATORY PROCEEDINGS?

A. Yes. I have filed testimony and/or appeared in regulatory proceedings in 18 of the states where AT&T provides local service, including Alabama, Georgia, Kentucky, Louisiana, North Carolina and South Carolina.

Q. ON WHOSE BEHALF ARE YOU TESTIFYING?

A. AT&T Florida, which I will refer to as AT&T.

Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY?

A. I explain and support AT&T's positions on Issues 2 *[DPL Issue I.A(2)]*, 3 *[I.A.(3)]*, 4 *[I.A(4)]*, 6 *[I.A(6)]*, 9(ii) *[I.B(2)(b)]*, 12 *[I.B(4)]*, 13 *[I.B(5)]*, 14 *[I.C(1)]*, 15 *[I.C(2)]*, 16 *[I.C(3)]*, 17 *[I.C(4)]*, 18 *[I.C(5)]*, 19 *[I.C(6)]*, 42 *[III.A.1(3)]*, 43 *[III.A.1(4)]*, 44 *[III.A.1(5)]*, 45 *[III.A.2]*, 46 *[III.A.3(1)]*, 47 *[III.A.3(2)]*, 48 *[III.A.3(3)]*, 49 *[III.A.4(1)]*, 50 *[III.A.4(2)]*, 52 *[III.A.5]*, 53 *[III.A.6(1)]*, 54 *[III.A.6(2)]*, 60 *[III.E(3)]*, 61 *[III.E(4)]* and 62 *[III.F]*.

II. DISCUSSION OF ISSUES

ISSUE 4 *[DPL ISSUE I.A(4)]*

Should Sprint be permitted to use the ICAs to exchange traffic associated with jointly provided Authorized Services to a subscriber through Sprint wholesale arrangements with a third party provider that does not use NPA-NXXs obtained by Sprint?

Contract Reference: GTC Part A, Section 1.4

Q. WHAT IS THE ISSUE?

A. In GTC Part A, Purpose and Scope of the interconnection agreement ("ICA"), the parties have agreed and incorporated interconnection agreement ("ICA") language in section 1.4 describing Sprint Wholesale Services. The parties have agreed the ICA may be used for the exchange of traffic associated with Sprint's wholesale arrangements with third-party carriers, so long as this wholesale traffic uses numbering resources Sprint acquires from the North American Numbering Plan Administration ("NANPA") or the Number Pooling Administrator. These numbering

resources, also commonly referred to as NPA-NXX blocks, are therefore associated with one specific carrier.

In addition to the above agreed language, Sprint has proposed language to allow it to possibly exchange wholesale traffic with NPA-NXX blocks not associated with Sprint, but rather assigned to a third party carrier.

Q. WHY DO YOU SAY "ALLOW IT TO *POSSIBLY* EXCHANGE?"

A. Because Sprint does not anticipate providing such a service at this time. Indeed, Sprint's proposed contract language for section 1.4 actually begins with the words, "Although not anticipated at this time . . . ."

Q. AS A GENERAL RULE, SHOULD THE ICA BE USED TO FORMALIZE ARRANGEMENTS OR TERMS THAT NEITHER PARTY ACTUALLY ANTICIPATES USING DURING THE LIFE OF THE ICA?

A. No, it should not. While it is sometimes appropriate to include ICA provisions that address pending resolution of outstanding issues,[1] it is generally not appropriate to incorporate a product or service the offering of which is "not anticipated at this time." If, at some point in the future, a carrier seeks to incorporate or implement a service that is not addressed in the ICA, it would be appropriate at that time for the parties to negotiate an amendment to the ICA. This is particularly so when, as here, there is legitimate reason for concern about the proposed language. It does not make sense to

[1] The FCC's treatment of ISP-Bound Traffic is an example. Though the FCC has established a regime for the treatment of ISP-Bound Traffic for intercarrier compensation purposes, it also made clear that that regime is interim, and that it will address the matter further. AT&T proposes language for the ICA that appropriately anticipates this future resolution. I discuss this in greater detail under Issue 45 *[III.A.2]*.

arbitrate questionable language for a service that the proponent of the language does not anticipate offering.

Q. WHAT IS AT&T'S CONCERN ABOUT SPRINT'S PROPOSED ICA LANGUAGE?

A. While it may be possible for Sprint to send AT&T traffic that is associated with another carrier's NPA-NXX, AT&T is unable to send a call originated by an AT&T end user with an NPA-NXX assigned to one carrier to another carrier for termination. All intercarrier call routing is governed by the Local Exchange Routing Guide ("LERG"). Each carrier inputs its NPA-NXX number blocks and the location of its switches into the LERG so that all other carriers will know where to send traffic associated with those NPA-NXXs. AT&T routes according to the LERG. If ABC Telephone Company has certain NPA-NXXs assigned to it, the LERG will reflect those NPA-NXXs as ABC Telephone's. Under Sprint's proposed language, if Sprint were to offer a wholesale service for some of ABC Telephone's end users, Sprint would want AT&T to route calls to those NPA-NXXs not to ABC Telephone, but instead to Sprint. That is not routing according to the LERG, and it is not routing that AT&T performs or should be required to perform.

Q. HAS SPRINT PROPOSED LANGUAGE TO ADDRESS HOW AT&T WOULD ROUTE TRAFFIC WITH NPA-NXXS ASSIGNED TO A THIRD PARTY CARRIER SO THAT IT WENT TO SPRINT INSTEAD OF THE THIRD PARTY CARRIER?

A. No, its language would just obligate AT&T to route this traffic appropriately without any explanation of how AT&T is to accomplish such routing. As a result, if the parties were to incorporate Sprint's additional proposed language in GTC Part A

section 1.4, and if Sprint were to subsequently start exchanging such wholesale traffic with AT&T, it is very likely that the calls – at least from AT&T to Sprint – would be misrouted.

Q. HOW SHOULD THE COMMISSION RESOLVE THIS ISSUE?

A. Sprint's proposed language should not be included in the ICA. If at some point in the future Sprint desires to provision wholesale services using a third party carrier's NPA-NXX numbering resources, the parties can work together to determine how such an arrangement might be accommodated, including working out any potential network routing problems and, if necessary, amending the ICA as appropriate. However, at this point there is no way to appropriately route this traffic and Sprint's proposed ICA language does not provide one.

ISSUE 6 ***[DPL ISSUE I.A(6)]***

Should the ICAs contain AT&T's proposed Scope of Obligations language?

Contract Reference: GTC Part A, Section 1.6

Q. WHAT IS THIS ISSUE ABOUT?

A. AT&T proposes a section 1.6 for GTC, Part A, which states that AT&T's obligations under the CMRS and CLEC ICAs apply only within AT&T's ILEC territory, and only to the extent that Sprint is offering service in that territory. Sprint objects to AT&T's proposed language.

Q. WHY SHOULD AT&T'S PROPOSED LANGUAGE BE INCLUDED IN THE ICA?

A. Because it properly delineates the extent of AT&T's obligations under the ICA. The purpose of an ICA is to establish rates, terms and conditions to fulfill the

requirements that section 251(b) of the Telecommunications Act of 1996 ("1996 Act") imposes on local exchange carriers and that section 251(c) of the 1996 Act imposes on incumbent local exchange carriers.[2] And the principal duties that are implemented through interconnection agreements – including, first and foremost, the duty to provide interconnection (as well as the duties to negotiate an ICA, to provide unbundled network elements, to provide services for resale, and to provide collocation), are those set forth in section 251(c), which applies only to incumbent local exchange carriers.

Section 251(h) of the 1996 Act defines incumbent local exchange carriers ("ILECs"), and it expressly defines them "with respect to an area." Section 251(h) provides: "For purposes of this section [251], the term 'incumbent local exchange carrier' means, *with respect to an area*, the local exchange carrier that [meets certain criteria]." Thus, AT&T is an ILEC in this state within a particular area – that is what makes it an ILEC – and its ILEC duties pertain only to that area. AT&T's proposed language appropriately reflects that geographic limitation.

Q. IS THERE REASON FOR CONCERN THAT IF AT&T'S LANGUAGE WERE NOT INCLUDED IN THE ICA, SPRINT MIGHT SEEK TO EXPAND THE SCOPE OF AT&T'S INTERCONNECTION OBLIGATIONS UNDER SECTION 251(c)?

A. Yes. Sprint is opposing AT&T's proposed language, but offers no competing language describing the scope of the ICAs. This suggests that Sprint's objection is

[2] *See* section 251(c)(1) of the 1996 Act, which requires negotiation of "the particular terms and conditions of agreements to fulfill the duties described in . . . subsection (b) and this subsection [(c)]."

not to matters of wording or detail, but to the concept of defining the geographic scope of the ICA. This gives reason for concern that if AT&T's proposed language were excluded from the ICAs, Sprint might attempt to seek products or services via the ICAs from AT&T in a territory beyond AT&T's incumbent regions.

Q. DOES AT&T OPERATE OUTSIDE ITS INCUMBENT TERRITORIES?

A. Yes. But when it does so, AT&T, like Sprint, is a competitor within *another ILEC's* incumbent territory. Where AT&T is operating as a CLEC, AT&T has no obligation to fulfill any of the duties listed in section 251(c). For example, portions of the Orlando metropolitan area are within AT&T's incumbent territory in Florida; and portions of the same region are within CenturyLink's incumbent territory in Florida. In order to offer services to customers *throughout* the Orlando metropolitan area, AT&T may offer service within CenturyLink's territory. AT&T would then be a Competitive Local Exchange Carrier in that geographic area – not the ILEC – and would have no incumbent obligations in that area.

Q. HOW IS AT&T OPERATING IN ANOTHER ILEC'S TERRITORY DIFFERENT THAN A CLEC OPERATING IN AT&T'S INCUMBENT TERRITORY?

A. There is no practical difference. When AT&T operates in areas outside its own incumbent territories, it is simply another CLEC, competing for the ILEC's or other CLECs' customers.

Q. HOW SHOULD THE COMMISSION RESOLVE THIS ISSUE?

A. The Commission should direct the Parties to include AT&T's proposed language in the ICAs to ensure that Sprint cannot contend in the future that AT&T has an

obligation under the ICAs to provide section 251(c) interconnection, UNEs, resale or collocation in areas of the state where AT&T does not operate as an ILEC.

ISSUE 15 *[DPL ISSUE I.C(2)]*

Should AT&T be required to provide transit traffic service under the ICAs?

Contract Reference: Attachment 3

Q. WHAT IS TRANSIT TRAFFIC?

A. In simplest terms, transit traffic is telecommunications traffic that originates on one carrier's network, passes through an intermediate network (AT&T's in this instance), and terminates on a third carrier's network. The intermediate carrier is said to be providing "transit service."

Q. WHAT IS THE PARTIES' CORE DISAGREEMENT CONCERNING TRANSIT TRAFFIC?

A. AT&T and Sprint disagree about whether transit service should be addressed in the ICAs they are arbitrating in this proceeding. Sprint contends the ICAs should address the subject, and AT&T contends they should not.

Q. WHAT IS THE BASIS FOR EACH PARTY'S POSITION?

A. Based on the way it has framed its position statement, Sprint contends that transit service is a form of interconnection transmission and routing that is encompassed by section 251(c)(2) of the 1996 Act, and that AT&T can therefore be required to provide transit service pursuant to arbitrated rates, terms and conditions in an interconnection agreement made pursuant to section 252 of the 1996 Act.

AT&T, on the other hand, maintains that transit service is not required by section 251(c)(2) – or by any other subsection of section 251(b) or 251(c) of the 1996

Act – and, therefore, AT&T cannot lawfully be required to provide transit service under rates, terms or conditions governed by the 1996 Act or imposed in an arbitration conducted under the 1996 Act. Consequently, transit service should not be covered by the ICA, but instead should be addressed, if at all, in a negotiated commercial agreement not subject to regulation under the 1996 Act.

Q. IS EITHER PARTY'S POSITION SUPPORTED BY THE LANGUAGE OF THE 1996 ACT AND BY FCC RULINGS?

A. Yes. As I will explain, the 1996 Act and the FCC's rulings concerning interconnection and transit traffic strongly support AT&T's position.

Q. PLEASE SUMMARIZE YOUR TESTIMONY ON THIS ISSUE.

A. There are several reasons why transit service should not be addressed in the parties' ICAs. First, the FCC has repeatedly declined to find transit service to be an interconnection requirement of the 1996 Act. These rulings are consistent with the meaning of "interconnection" as the FCC has defined that term. Second, transiting does not involve the mutual exchange of traffic with the ILEC's end user customers, which is the core characteristic of interconnection. Rather, transiting is the transport of traffic, which the FCC has expressly excluded from the definition of interconnection. Third, even if transit service did qualify as interconnection, it still would not be subject to mandatory inclusion in an ICA, because it is a function not of direct interconnection to the ILEC under section 251(c)(2) of the 1996 Act, but of indirect interconnection under section 251(a)(1), and section 251(a) requirements are not subject to mandatory negotiation or arbitration under the 1996 Act.

Q. IS EITHER PARTY'S POSITION SUPPORTED BY PREVIOUS DECISIONS OF THE FLORIDA PUBLIC SERVICE COMMISSION?

A. Yes. This Commission's precedents support AT&T's position here. In a 2005 arbitration, the Commission ruled,

> We agree with the reasoning of the FCC's Wireline Competition Bureau in rendering the *Virginia Arbitration Order* [discussed below] that found no precedent to require the transiting function to be priced at TELRIC under § 251(c)(2). The Bureau went further in saying that if there was a duty to provide transiting under § 251(a)(1), it did not have to be priced at TELRIC.[3]

Then, in a 2006 proceeding, the Commission declined to establish a rate for transit service and instead required the parties to negotiate a rate.[4]

Q. THESE RULINGS ARE VERY MUCH IN KEEPING WITH AT&T'S POSITION HERE THAT TRANSIT SERVICE IS NOT REQUIRED BY SECTION 251(C)(2) OF THE 1996 ACT AND THEREFORE IS NOT SUBJECT TO TELRIC PRICING, BUT SHOULD INSTEAD BE PROVIDED PURSUANT TO A COMMERCIALLY NEGOTIATED TRANSIT AGREEMENT. CAN YOU PROVIDE A MORE DETAILED EXPLANATION OF WHAT TRANSIT SERVICE IS?

A. I can do that best by referring to the interconnection requirements in the 1996 Act. There are actually two provisions in section 251 that deal with interconnection – sections 251(a)(1) and 251(c)(2). Section 251(a)(1) requires all telecommunications

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[3] Final Order Regarding Petition for Arbitration, Docket No. 040130-TP, *Joint petition by NewSouth Commn'cs Corp., et al. for arbitration of certain issues arising in negotiation of interconnection agreement with BellSouth Telecommunications, Inc.* (Fla. Pub. Serv. Comm'n Oct. 11, 2005) ("*New South Order*"), at 52.

[4] Order on BellSouth Telecommunications, Inc.'s Transit Traffic Service Tariff, Docket Nos. 050119-TP, *Joint petition by TDS Telecom d/b/a TDS Telecom/Quincy Telephone et al. objecting to and requesting suspension and cancellation of proposed transit traffic service tariff filed by BellSouth Telecommunications, Inc.*, 050125-TP (Fla. Pub. Serv. Comm'n Sept. 18, 2006) ("*Transit Tariff Order*"), at 44.

carriers "to interconnect directly or indirectly with the facilities and equipment of other telecommunications carriers." Direct interconnection occurs when two carriers physically connect their network equipment to each other in order to exchange calls, while indirect interconnection involves passing traffic through an intermediate carrier.

Section 251(c)(2) addresses interconnection in a more specific and limited way than section 251(a)(1), in that it applies only to incumbent LECs and only to direct interconnection. Specifically, section 251(c)(2) gives any requesting carrier the right to directly interconnect its network "with the [ILEC's] network" for the mutual exchange of traffic between the CLEC's and ILEC's end user customers.

Q. HOW DOES TRANSIT TRAFFIC FIT INTO THIS?

A. When two carriers are indirectly interconnected, so that traffic from one to the other passes through an intermediate carrier, that intermediate carrier is providing "transit service" (or "transiting"). Thus, AT&T provides transit service when an originating carrier delivers traffic to AT&T to be passed through AT&T's tandem switch and on to a terminating carrier. Traffic that AT&T transits does not originate or terminate with AT&T end users. Indeed, it does not involve AT&T's end users at all.

Q. DOES TRANSIT TRAFFIC INCLUDE LONG DISTANCE TRAFFIC, SUCH AS A CALL THAT AN INTEREXCHANGE CARRIER ("IXC") HANDS OFF TO AT&T FOR DELIVERY TO A CLEC THAT TERMINATES THE CALL TO ITS END USER CUSTOMER?

A. No. The transit traffic that is the subject of this issue includes only traffic that would be considered "local" traffic, *i.e.*, traffic for which the originating carrier would pay the terminating carrier reciprocal compensation, with no IXC or access charges involved.

Q. DOES ANYTHING IN THE 1996 ACT EXPLICITLY REQUIRE TRANSITING?

A. No. There is no reference to "transit" or "transiting" in the 1996 Act.

Q. HAS THE FCC EVER RULED THAT SECTION 251(c)(2), OR ANYTHING ELSE IN THE 1996 ACT, IMPLICITLY REQUIRES TRANSITING?

A. No, the FCC has never suggested such a thing. On the contrary, the FCC has repeatedly ruled that nothing in the 1996 Act or in the FCC's rules or orders requires it to treat transiting as part of interconnection under section 251(c)(2).[5]

Q. HAS THE FCC EVER ADDRESSED THE MATTER IN AN ARBITRATION?

A. Yes. The FCC's Wireline Competition Bureau was called upon to decide whether section 251(c)(2) requires transit service in an arbitration where the Bureau stood "in the shoes" of a state commission.[6] The Bureau, recognizing the FCC's repeated statements that there is no "clear Commission precedent or rules declaring such a duty," and noting that it was acting "on delegated authority" as a state commission, declined "to determine for the first time" that transiting was required under section 251(c)(2). *Petition of WorldCom, Inc. Pursuant to Section 252(e)(5)*, 17 FCC Rcd. 27039, ¶¶ 117 (Wireline Competition Bureau, 2002) ("*Virginia Arbitration Order*").

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[5] *E.g.*, *Application of Qwest Commc'ns Int'l, Inc.*, 18 FCC Rcd. 7325, n.305 (2003) ("we find no clear Commission precedent or rules declaring such a duty" to provide transiting under section 251(c)(2)); *Application of BellSouth Corp.*, 17 FCC Rcd. 25828, ¶ 155 (2002) (same); *Joint Application by BellSouth Corp., et al.*, 17 FCC Rcd. 17595, n.849 (2002) (same).

[6] When a state commission declines to arbitrate an interconnection agreement under section 252, the FCC may take the case. 47 U.S.C. § 252(e)(5). In such instances, the FCC typically assigns the case to its Wireline Competition Bureau, which stands in for the state commission.

This is the decision with which the Commission concurred in its 2005 *New South Order*, which I noted above.

Q. HAS A FEDERAL COURT EVER ADDRESSED THE MATTER?

A. Yes. Following the Wireline Competition Bureau's decision in the *Virginia Arbitration Order*, a federal district court affirmed another state commission's refusal to treat transiting as section 251(c)(2) interconnection, finding that "TELRIC pricing is not required for transit service rates. . . . Therefore, as a legal matter, the [state commission] was correct in holding that it was not required to apply TELRIC rates." *WorldNet Telecomms., Inc. v. Telecomms. Regulatory Bd. of Puerto Rico*, 2009 WL 2778058, *28 (D.P.R. 2009). AT&T is asking this Commission to decide here exactly what the FCC's Wireline Competition Bureau decided there.

Q. HOW DOES THE FCC'S TREATMENT OF TRANSIT TRAFFIC IN THE RULINGS YOU DISCUSSED ABOVE RELATE TO THE FCC'S TREATMENT OF INTERCONNECTION IN ITS RULES?

A. The definition of "interconnection" in the FCC's rules compels the conclusion – contrary to Sprint's position here – that interconnection under section 251(c)(2) of the 1996 Act does not encompass transit service. Specifically, 47 C.F.R. § 51.5 provides: "Interconnection is the linking of two networks for the mutual exchange of traffic. This term does not include the transport and termination of traffic."

Q. HOW DOES THAT DEFINITION SUPPORT AT&T'S POSITION?

A. In three ways. First, the FCC limits interconnection to the linking of two networks. (In the 1996 *Local Competition Order,* in which the FCC promulgated Rule 51.5, the FCC emphasized, in paragraph 176, that interconnection was the "*physical linking* of

two networks.)[7] Transit service is not physical linkage – rather it is the transport of traffic.

Second, the FCC states that interconnection is "for the mutual exchange of traffic." Fairly read, that means the mutual exchange of traffic between the interconnected carriers. Transit service does not involve the mutual exchange of traffic between the interconnected carriers; rather, it involves the exchange of traffic between one of those carriers (Sprint, in this instance) and a third party carrier, through the intermediation of, in this instance, AT&T.

Third, the FCC explicitly states that interconnection does not include the transport and termination of traffic. Transit, of course, is the transport of traffic.

Q. ARE YOU CERTAIN THAT THE "INTERCONNECTION" THE FCC DEFINED IN RULE 51.5 IS "INTERCONNECTION" AS USED IN SECTION 251(c)(2)?

A. Absolutely. As I mentioned, the FCC promulgated Rule 51.5 in its 1996 *Local Competition Order*. In its discussion in that Order (at ¶ 176), the FCC specifically said that it was defining "'interconnection' under section 251(c)(2)."

Q. SPRINT HAS SUGGESTED THAT INTERCONNECTION UNDER THE PARTIES' ICA SHOULD BE NOT ONLY AS DEFINED IN THE FCC RULE YOU JUST REFERRED TO, BUT ALSO AS DEFINED IN ANOTHER FCC RULE, 47 C.F.R. § 20.3. DO YOU AGREE?

A. No. This particular disagreement is the subject of another issue, 21 *[II.A]*, but it is also relevant here because the definition of "interconnection" in 47 C.F.R. § 20.3

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[7] First Report and Order, Implementation of the Local Competition Provisions In the Telecommunications Act of 1996, 11 FCC Rcd. 15499 (rel. Aug. 8, 1996) ("*Local Competition Order*").

includes language that Sprint would like to rely on in connection with the disagreement about transit service. But the definition of "interconnection" in 47 C.F.R. § 20.3, which applies only to CMRS providers, was not promulgated pursuant to the FCC's authority to implement the 1996 Act, and has no bearing on the meaning of "interconnection" in the 1996 Act. Rather, the FCC adopted the definition of "interconnection" in 47 C.F.R. § 20.3 pursuant to its authority to regulate commercial mobile radio service, and it did so in 1994, two years before the 1996 Act was enacted.[8] The only definition of "interconnection" that is relevant here is the one in 47 C.F.R. § 51.5, which limits interconnection to the physical linking of networks and excludes the transport of traffic.

Q. IS THERE ANYTHING ELSE IN THE FCC'S DISCUSSION OF INTERCONNECTION IN THE *LOCAL COMPETITION ORDER* THAT SHEDS LIGHT ON THE RELATIONSHIP BETWEEN INTERCONNECTION AND TRANSIT?

A. Yes. The FCC's discussion of interconnection in the *Local Competition Order* refutes Sprint's position that section 251(c)(2) encompasses or requires transit service. In the Notice of Proposed Rulemaking that raised the questions that the FCC answered in the *Local Competition Order*, the FCC sought comment on the relationship between "interconnection" and "transport and termination."[9] Some commenters argued that "interconnection" in section 251(c)(2) should be defined to include not only the physical linking of facilities, but also the transport and

[8] *See* 59 FR 18495 (April 19, 1994).

[9] *Id.* ¶ 174.

termination of traffic across that link.[10] One such commenter, CompTel, contended that "it would make no sense for Congress to require an incumbent LEC to engage in a physical linking with another network without requiring the incumbent LEC to route and terminate traffic from the other network."[11] This is essentially the argument Sprint makes here when it contends that the interconnection requirement in section 251(c)(2) implies that AT&T will route and terminate to Sprint traffic originated by third parties.

The FCC, as I noted above, ruled that "the term 'interconnection' under section 251(c)(2) refers only to the physical linking of two networks for the mutual exchange of traffic," and does not include the transport or termination of traffic. When it made that ruling, the FCC explained why it rejected CompTel's argument:

> We . . . reject CompTel's argument that reading section 251(c)(2) to refer only to the physical linking of networks implies that incumbent LECs would not have a duty to route and terminate traffic. That duty applies to all LECs and is clearly expressed in section 251(b)(5).[12]

That point is critically important, and it defeats Sprint's position here.

Q. HOW SO?

A. Because it says that the duty to route traffic under the 1996 Act is imposed *not* by section 251(c)(2), but by section 251(b)(5). And section 251(b)(5) has nothing to do with transit traffic. Rather, it requires LECs to enter into reciprocal compensation

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[10] *Id.*

[11] *Id.*

[12] *Id.* ¶ 176.

arrangements – arrangements, as section 252(d)(2) explicitly states, for the "reciprocal recovery by each carrier of costs associated with the transport and termination *on each carrier's network facilities of calls that originate on the network facilities of the other carrier.*" (Emphasis added.) As applied here, in other words, AT&T's *only* duty under the 1996 Act to route traffic to or from Sprint is its duty with respect to traffic the parties exchange directly between each other. The FCC could not have made more clear that section 251(c)(2) imposes no transit duty on AT&T.

Q. IN LIGHT OF WHAT YOU HAVE EXPLAINED, HOW SHOULD THE COMMISSION RESOLVE ISSUE 15 *[I.C(2)]*?

A. Sprint's position on this issue hinges on its contention that the interconnection requirement in section 251(c)(2) of the 1996 Act somehow comprises or implies a duty to provide transit service. The FCC's definition of the term "interconnection," however – including both what interconnection is and what it is not – refutes Sprint's contention. In addition, I have shown that when the FCC has been called upon to address the specific question of whether an ILEC must provide transit service in order to fulfill its duties under section 251(c)(2), it has answered in the negative. Accordingly, this Commission should resolve the issue in favor of AT&T by rejecting the transit language Sprint proposes for the ICA and ruling that the parties' ICA is not required to address AT&T's provision of transit service to Sprint.

Q. IS THE COMMISSION FREE TO RESOLVE THE ISSUE IN FAVOR OF SPRINT IF IT BELIEVES THAT WOULD BE PREFERABLE?

A. That is a legal question, and AT&T will address it in its briefs. It is my understanding, however, that AT&T will argue in its briefs not only that the definition of "interconnection" in the FCC's rules is controlling here, and thus requires the Commission to resolve the issue in favor of AT&T, but also that the FCC's decisions not to treat transit service as part of interconnection constitute a ruling that no such regulation is appropriate, and therefore preempts state commissions from deciding otherwise.

Q. AT THE BEGINNING OF YOUR DISCUSSION, YOU MENTIONED THAT IN ADDITION TO REQUIRING INTERCONNECTION UNDER SECTION 251(c)(2), THE 1996 ACT ALSO INCLUDES AN INTERCONNECTION REQUIREMENT IN SECTION 251(a)(1). COULD A STATE COMMISSION USE THE INTERCONNECTION REQUIREMENT IN SECTION 251(a)(1) AS A BASIS FOR A TRANSIT REQUIREMENT IN AN ICA?

A. Actually, transit is arguably more germane to section 251(a)(1) than to section 251(c)(2), because section 251(c)(2) concerns only direct interconnection, while section 251(a)(1) also concerns indirect interconnection, which entails transiting. Sprint apparently does not rely on section 251(a)(1), however, and there is a good reason for that. The 1996 Act requires ILECs to negotiate, and thus authorizes state commissions to arbitrate, matters concerning the requirements set forth in sections 251(b) and 251(c), but not section 251(a). This is a legal point, and it will be further developed in AT&T's briefs if necessary. Essentially, though, the bottom line is that the requirements Congress imposed on all telecommunications carriers in section 251(a) – including the interconnection requirement in section 251(a)(1) – are not subject to mandatory negotiation and arbitration under the 1996 Act and cannot form

the basis for any state commission-imposed provisions in an interconnection agreement. The Commission recognized this in the *New South Order* when it cited with approval the Wireline Competition Bureau's observation that even if section 251(a)(1) were read as requiring transit service, that would not be a basis for imposing TELRIC pricing.

Q. DO ANY POLICY CONSIDERATIONS BEAR ON THE COMMISSION'S RESOLUTION OF THIS ISSUE?

A. Ultimately, this is primarily a legal issue. Sprint may argue, however, that whatever doubt there may be about the legal question, the Commission should require AT&T to provide transit service under the ICAs at cost-based rates because AT&T's provision of transit service is indispensable. According to this argument, it is crucial for carriers throughout the state to be able to exchange traffic through an intermediary lest they all have to interconnect directly, and AT&T must be that intermediary.

A decision by this Commission's sister commission in Georgia refutes any such argument. In the Georgia proceeding, Neutral Tandem, a competitive provider of transit service, complained that a CLEC, Level 3, refused to interconnect directly with Neutral Tandem, as Neutral Tandem claimed it was required it to do. Level 3 maintained that it was willing to interconnect with Neutral tandem *indirectly*, through AT&T, and should not be required to interconnect directly. The Georgia Public Service Commission ("GPSC") rejected Level 3's objection and ordered it to interconnect directly with Neutral Tandem. The GPSC's discussion is pertinent here:

> Neutral Tandem is a provider of transit services. Its carrier customers use its service to transport calls that originate on one of their networks

> and terminate on the network of another. AT&T also provides transit services and is interconnected directly with the other telecommunications companies as a result of its historic position in the market. It would not serve any purpose for a carrier to transport a call originating on its network through Neutral Tandem if that call still must be transported through AT&T in order to terminate on Level 3's system. The carrier would simply use AT&T as the transit provider and exclude Neutral Tandem from the process. Therefore, indirect interconnection is not a reasonable option for Neutral Tandem. . . . The Commission finds that subject to the condition that Neutral Tandem pays all of the reasonable costs for interconnection, direct interconnection is reasonable. . . .
>
> The Commission finds as a matter of fact that: (1) the service provided by Neutral Tandem offers a competitive option to the ILEC for other carriers, improves the reliability of the system by providing redundancy and the investment that Neutral Tandem has made in Georgia enhances economic development within the state; . . . [and] (5) the transit service provided by Neutral Tandem is 'essentially the same' as the transit service that AT&T provides . . . .[13].

The GPSC thus recognized that AT&T is not the only transit provider. On the contrary, there is a competitive market for the provision of transit service, and it would distort that market – indeed, would be anti-competitive – to require one of the service providers, AT&T, provide the service at market-based rates. Neutral Tandem currently operates in Florida at nine different locations,[14] and does so at tariffed rates for transit services that are higher than the rates AT&T proposes for its transit service.[15]

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[13] Order Mandating Direct Interconnection, Docket No. 24844-U (GPSC Aug. 27, 2007), at 8-9, 11.

[14] http://www.neutraltandem.com/aboutUs/markets.htm

[15] Neutral Tandem – Florida, LLC, Florida Price List No. 3, Original Page 77, Section 4.1.1. http://www.neutraltandem.com/regulatory/tariffs.htm

Q. HOW SHOULD THE COMMISSION RESOLVE THIS ISSUE?

A. It should rule that any transit service that AT&T provides to Sprint will be pursuant to terms, conditions and rates in a commercially negotiated transit agreement, and not in the ICAs the Parties are arbitrating in this proceeding.

ISSUE 16 *[DPL ISSUE I.C(3)]*

If the answer to (2) is yes, what is the appropriate rate that AT&T should charge for such service?

Q. IN THE EVENT THIS COMMISSION DETERMINES THAT THE PARTIES' ICA SHOULD INCLUDE TERMS AND CONDITIONS FOR THE PROVISION OF TRANSIT SERVICE, WHAT RATES SHOULD BE APPLIED FOR TRANSIT?

A. Because neither section 251(b) nor section 251(c) of the Telecommunications Act, nor any FCC regulation implementing the 1996 Act, imposes a transit obligation on AT&T, transit rates are not subject to TELRIC-based pricing methodology. The Commission has already concluded that transit service is not subject to TELRIC pricing, both in its 2005 *New South Order* and its 2006 *Transit Tariff Order,* and it should reaffirm that conclusion here. Transit traffic is appropriately exchanged and compensated pursuant to rates established between the parties in a separate commercial agreement. In the event this Commission determines that transit services should be incorporated in this ICA, AT&T's proposed rates for transit service should be incorporated into the ICA, which are the same rates contained in the expired AT&T and Sprint ICA.

ISSUE 17 *[DPL ISSUE I.C(4)]*

If the answer to (2) is yes, should the ICAs require Sprint either to enter into compensation arrangements with third party carriers with which Sprint

exchanges traffic that transits AT&T's network pursuant to the transit provisions in the ICAs or to indemnify AT&T for the costs it incurs if Sprint does not do so?

Q. WHAT IS THIS ISSUE?

A. When Sprint sends transit traffic through AT&T to a third party carrier for termination, reciprocal compensation is due to the terminating carrier from the originating carrier. However, the call may look to the terminating carrier like a call that was originated by AT&T, thus prompting the terminating third party to seek reciprocal compensation from AT&T – particularly if Sprint has not entered into appropriate compensation arrangements with the third party carrier. AT&T, however, should not be subject to any expenses – including the expense of defending against claims brought by the third party carrier – resulting from Sprint's failure to enter into compensation arrangements with third party carriers with which it exchanges traffic. Accordingly, AT&T proposes language that would require Sprint *either* to enter into compensation arrangements with third parties with which it exchanges traffic through AT&T's network *or* to indemnify AT&T for any costs it incurs as a result of Sprint's failure to enter into such agreements. Sprint, however, opposes AT&T's proposed language.

Q. WHAT IS THE BASIS FOR SPRINT'S OBJECTION?

A. In its Position Statement in the DPL, Sprint states, "Federal law does not require Sprint to establish ICAs with AT&T's subtending carriers as a pre-requisite to Indirect interconnection. AT&T is not entitled to indemnification for costs that AT&T should not be paying a terminating carrier in the first place."

Q. HOW DO YOU RESPOND?

A. Sprint does not dispute, and cannot, that in the circumstances addressed by AT&T's proposed language, it is Sprint, and not AT&T, that owes compensation to the terminating carrier. Nor does Sprint dispute that the terminating carrier may nonetheless seek compensation from AT&T if it does not have an appropriate compensation arrangement with Sprint. It may be true that federal law does not require Sprint to enter into compensation arrangements with third party carriers to which Sprint sends traffic – but AT&T is not asking the Commission to require Sprint to enter into such arrangements. Rather, AT&T is asking the Commission to require Sprint *either* to enter into such arrangements, *or*, if it chooses not to do so, to bear the natural consequences of its decision not do to so. This is a perfectly reasonable proposal, and under section 251(c)(2) of the 1996 Act, the question for the Commission is whether AT&T's proposed language is a just, reasonable and non-discriminatory interconnection term – not whether it is something that is already required by federal law.

As for Sprint's comment that it should not have to indemnify AT&T for making payments to the terminating carrier that AT&T should not make in the first place, that misses the point. If Sprint does not enter into appropriate compensation arrangements with the carriers to which it sends traffic, AT&T may incur expenses defending against claims – even unsuccessful claims – that those carriers assert against AT&T. Also, Sprint's failure to enter into appropriate compensation arrangements exposes AT&T to a risk of being ordered – even if erroneously – to pay

compensation charges to those carriers – or even of paying their bills in error and then, upon discovery of the error, being unable to recoup the payments. In the situation addressed by AT&T's language, it is Sprint, not AT&T, that should be exposed to the risk of such losses.

Q. BUT WHAT IF AT&T'S LOSS IS NOT TRACEABLE TO SPRINT'S FAILURE TO ENTER INTO THE COMPENSATION ARRANGEMENTS THAT AT&T MAINTAINS IT SHOULD HAVE?

A. Then Sprint will not be obliged to indemnify AT&T.

Q. YOU SAY THAT AT&T'S LANGUAGE DOES NOT REQUIRE SPRINT TO ENTER INTO COMPENSATION ARRANGEMENTS WITH THIRD PARTIES. BUT DOESN'T AT&T'S PROPOSED LANGUAGE FOR SECTION 4.1 BEGIN BY SAYING, "SPRINT HAS THE SOLE OBLIGATION TO ENTER INTO TRAFFIC COMPENSATION ARRANGEMENTS WITH THIRD PARTY CARRIERS, PRIOR TO DELIVERING TRANSIT TRAFFIC TO AT&T-9STATE FOR TRANSITING TO SUCH THIRD PARTY CARRIERS"?

A. Yes, it does. The point of that sentence though is that as between Sprint and AT&T, the obligation is Sprint's – not AT&T's. If the Commission wants AT&T to clarify that language, it will. The remainder of section 4.1 makes clear, though, that the intent is not to say that AT&T will not transit Sprint's traffic if it does not enter into these compensation arrangements, but rather is to say that any such arrangements are for Sprint to make, and that if Sprint does not do so, it must indemnify AT&T.

Q. AT&T'S PROPOSED LANGUAGE IN SECTION 4.1 ALSO STATES THAT AT&T IS NOT LIABLE FOR CALL TERMINATION CHARGES IN THE EVENT THAT SPRINT FAILS TO ENTER INTO TRAFFIC COMPENSATION ARRANGEMENTS WITH THIRD PARTY TERMINATING CARRIERS. WHY IS THIS LANGUAGE NECESSARY?

A. In order to try to minimize the likelihood of potential disputes. AT&T's language makes clear that AT&T will not act as a billing "clearinghouse" for traffic it transits from Sprint to a third party carrier.

Q. AT&T HAS ALSO PROPOSED INDEMNITY LANGUAGE IN SECTION 5.3[16] AS IT WOULD APPEAR IF THE COMMISSION REQUIRES THE ICA TO INCLUDE TRANSIT TERMS, ADDRESSING THE SITUATION WHERE SPRINT IS TERMINATING THIRD PARTY ORIGINATED TRANSIT TRAFFIC. WHAT DOES THIS LANGUAGE ADDRESS?

A. AT&T's proposed indemnity language in section 5.3 of the Transit Traffic Service Exhibit addresses situations where calls are exchanged without accurate and complete Calling Party Number ("CPN"). When AT&T is providing a transit service, AT&T will pass CPN to Sprint if it is received from a third party originating carrier. However, AT&T does not have control over whether or not it receives accurate CPN from the originating carrier. If the originating carrier does not provide complete and accurate CPN to AT&T, AT&T has no means to forward complete and accurate CPN to Sprint. AT&T's proposed section 5.3 simply acknowledges this limitation, and provides that Sprint will not penalize or charge AT&T for traffic AT&T transits that is missing complete and accurate CPN.

ISSUE 18 ***[DPL ISSUE I.C(5)]***

If the answer to (2) is yes, what other terms and conditions related to AT&T transit service, if any, should be included in the ICAs?

Q. WHAT IS THE PARTIES' DISAGREEMENT CONCERNING TERMS AND CONDITIONS FOR AT&T'S PROVISION OF TRANSIT SERVICE?

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[16] Section 5.3 is in the CLEC Transit Exhibit; the same language appears in section 5.2 in the CMRS Transit Exhibit.

A. For the reasons I discussed in connection with Issue 15 *[I.C.(2)]*, the ICA should include no terms or conditions governing AT&T's provision of transit service to Sprint. If the Commission determines otherwise, however, the parties have a disagreement concerning what those terms and conditions should be.

AT&T has proposed robust terms that will provide clarity and certainty as to each party's responsibilities. Sprint's proposed language governing AT&T's provision of transit service, in contrast, consists of two bare bones sentences that are inadequate and do not do justice to the subject.

Q. WHAT SPECIFIC TYPES OF PROVISIONS ARE ADDRESSED IN AT&T'S TRANSIT LANGUAGE?

A. AT&T's proposed language, which is set forth in the DPL Language Exhibit (including the CLEC and CMRS Transit Exhibits), addresses where AT&T offers its transit traffic service, the types of traffic AT&T transits, the rates that apply, and how transit rates will be imposed on the originating carrier. The language also addresses appropriate compensation arrangements between Sprint and the third party carrier, whether Sprint is originating transit traffic to a third party carrier, or receiving transited traffic from a third party carrier. There also are terms addressing the need for all parties in a transit arrangement to send and deliver accurate and complete CPN information to facilitate billing between the originating and terminating carriers.

Q. DOES AT&T'S PROPOSED TRANSIT LANGUAGE ADDRESS ANY NETWORK PROVISIONING OR ROUTING TERMS?

A. Yes. Without terms governing the ordering, provisioning and servicing of trunking pertaining to transit service, the parties would have no way to track and treat transit

traffic. Section 6.0 of AT&T's proposed transit language for each ICA addresses that subject, and Section 7.0 provides terms for the provision of direct trunking between Sprint and another LEC when the volume of traffic between those carriers reaches a threshold of twenty-four (24) or more trunks. Such a provision is a reasonable limit for transit traffic; once reached, the two carriers should seek direct interconnection between each other. This provision allows AT&T to effectively manage its network in order to offer transit services to all CLECs and CMRS providers as an alternative to directly interconnecting with smaller third party carriers.

Q. HAS SPRINT OBJECTED TO AT&T'S LANGUAGE?

A. Sprint has not accepted it, but Sprint's position statement on the DPL does not actually state that AT&T's language should be rejected, and certainly does not suggest that anything is wrong with it.

Q. WHAT LANGUAGE DOES SPRINT PROPOSE TO GOVERN AT&T'S PROVISION OF TRANSIT SERVICE TO AT&T?

A. Sprint proposes two sentences. One sentence states only that AT&T will transit Sprint's Authorized Services traffic, and the other states only that a party providing transit service under the ICA will charge the originating party only the applicable transit rate for the traffic.

Q. WHAT IS WRONG WITH SPRINT'S LANGUAGE?

A. Putting aside the use of the disputed term "Authorized Services," Sprint's language comes nowhere close to providing the detail that is necessary to govern one party's provision of transit service to the other. In that connection, I would point out that AT&T's proposed language comes from AT&T's commercial transit agreement,

which many CLECs have executed, either in the form AT&T proposes here or with slight modifications. If those carriers thought that AT&T's provision of transit service could be adequately dealt with in two sentences, they presumably would not have accepted the detail that AT&T is proposing here.

Q. HOW SHOULD THE COMMISSION RESOLVE THIS ISSUE?

A. If the Commission decides that the ICAs should include language governing AT&T's provision of transit service to Sprint, which it should not, then the Commission should rule that AT&T's proposed language will be included in the ICA and that Sprint's woefully inadequate proposal should not.

ISSUE 19 ***[DPL ISSUE LC(6)]***

Should the ICAs provide for Sprint to act as a transit provider by delivering Third Party-originated traffic to AT&T?

Contract Reference: Attachment 3, [Sections 2.8.4(a) (CLEC), 2.5.4(a) (CMRS)]; 4.2, 4.3

Q. SPRINT'S PROPOSED ICA LANGUAGE IN ATTACHMENT 3, SECTIONS 2.8.4(d)[17], 4.2 AND 4.3 WOULD REQUIRE AT&T TO ACCEPT TRAFFIC THAT IS TRANSITED BY SPRINT FROM A THIRD PARTY, AS WELL AS POSSIBLY REQUIRE AT&T TO USE SPRINT AS A TRANSIT PROVIDER FOR AT&T-ORIGINATED TRAFFIC. WHY DOES AT&T OPPOSE THOSE PROVISIONS?

A. Because the language proposed by Sprint provides for a service that Sprint currently does not offer. Sprint's proposed language in CLEC section 2.5.4(d) makes this clear, *"As of the Effective Date of this Agreement Sprint is not a provider of Transit Service to either AT&T-9STATE or a Third Party. However, Sprint reserves the*

[17] This section reference is for the proposed CLEC ICA, the same Sprint proposed language is found in section 2.5.4(a) in the CMRS ICA.

right to become a Transit Service provider in the future…" The language simply acts as a placeholder for a service that Sprint may – or may not – offer at some point during the term of the ICAs, and as such, serves no practical purpose.

Q. ARE THERE OTHER CONCERNS WITH SPRINT'S PROPOSED SECTION 2.8.4(d)?

A. Yes. Sprint's language provides, after a 90-day notice from Sprint to AT&T, that Sprint will commence transit services for third party carriers. What Sprint's language does *not* provide, however, is how the parties would operate under such a service, or at what rates. As with Sprint's language in Issue 15 *[I.C(2)]* above regarding AT&T's provision of transit service, Sprint's purposed language for its own hypothetical future provision of transit service includes no provisions whatsoever governing how the Parties will route, record or bill for traffic destined to or from Sprint's transit service. So even though Sprint proposes, after sufficient notice to AT&T, that the parties will exchange Sprint transit service traffic, the ICA lacks any terms and conditions to implement such exchange. [18] Sprint's proposal is clearly inadequate for the parties to use in the event Sprint decides to initiate its "transit service."

Q. CAN AT&T PROPOSE LANGUAGE THAT WOULD ADDRESS ITS CONCERNS WITH SPRINT'S LANGUAGE?

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[18] AT&T's willingness to include ICA language related to *Sprint's* provision of transit service as a reasonable term of Sprint's section 251(c)(2) interconnection with AT&T is fully consistent with, and does not waive, AT&T's position that nothing in the 1996 Act requires AT&T to provide transit service and that AT&T's provision of transit service is not subject to inclusion in the ICA.

A. Yes. AT&T proposes language to provide that, in the event Sprint were to give AT&T the 90-day notice that Sprint proposes, the parties would work to amend the ICA to contain complete and appropriate provisions for Sprint's provision of transit service. The 90-day period that Sprint's language already includes should be sufficient to arrive at an appropriate amendment. AT&T proposes additional language to Sprint's proposed (and currently AT&T-disputed) language as shown below in bold underline:

> ***(d) Sprint as a Transit Provider. As of the Effective Date of this Agreement Sprint is not a provider of Transit Service to either AT&T-9STATE or a Third Party. However, Sprint reserves the right to become a Transit Service provider in the future, and will provide AT&T-9STATE a minimum of ninety (90) days notice before Sprint begins using Interconnection Facilities to provide a Transit Service for the delivery of Authorized Services traffic between a Third Party and AT&T-9STATE.*** **As promptly as practicable after AT&T-9STATE's receipt of such notice, the parties will negotiate an amendment to this Agreement setting forth just, reasonable and non-discriminatory terms and conditions to govern Sprint's delivery of such traffic to AT&T-9STATE, with any disagreements concerning the language to be included in said amendment to be subject to resolution by the Commission in a proceeding that the Parties will seek to expedite.**

Such language would enable Sprint to provide transit service at some point in the future, yet at the same time, ensure that the ICA appropriately incorporates complete terms and conditions for the exchange of this traffic.

Q. WITH RESPECT TO THE SPRINT CMRS ICA, AT&T HAS PROPOSED LANGUAGE IN SECTIONS 2.3.2.3 AND 2.3.2.4 LIMITING SPRINT TO DELIVERING ONLY ITS END USERS' TRAFFIC TO AT&T. WHY IS THIS APPROPRIATE?

A. Because the CMRS ICA is for the exchange of CMRS-only traffic, between AT&T and Sprint. AT&T's language provides that Sprint cannot aggregate the traffic of other (wireline) carriers for termination to AT&T.

ISSUE 14 ***[DPL ISSUE I.C(1)]***

What are the appropriate definitions related to transit traffic service?

Contract Reference: GTC Part B Definitions

Q. BOTH PARTIES PROPOSE A DEFINITION FOR "THIRD PARTY TRAFFIC." WHAT IS THE DIFFERENCE BETWEEN AT&T'S PROPOSAL AND SPRINT'S PROPOSAL?

A. AT&T's proposed definition for Third Party Traffic accurately describes what is contemplated under the ICA. It properly describes Third Party Traffic as traffic originated by a third party carrier and carried by AT&T across its network for termination to Sprint, or traffic originated by Sprint and carried by AT&T for termination to a third party carrier. In each instance, AT&T is providing a transiting service, facilitating indirect interconnection between Sprint and other carriers. Sprint's definition, on the other hand, provides that third party traffic may be transited by either AT&T or Sprint. As I just discussed under Issue 19 *[I.C(6)]* above, Sprint currently does not provide a transit service, so it is inappropriate for the ICA to define Third Party Traffic to include Sprint as a transit service provider. Unless and until Sprint initiates its own transit service, the ICA should define Third Party Traffic to include only AT&T as a transit service provider; the parties may revise transit-related provisions as appropriate if the ICA is amended to incorporate Sprint's transit service.

Q. SPRINT PROPOSES DEFINITIONS FOR "TRANSIT SERVICE" AND "TRANSIT SERVICE TRAFFIC," WHICH AT&T OPPOSES. WHY DOES AT&T DISPUTE THESE DEFINITIONS?

A. They are duplicative of "Third Party Traffic" which each party has already proposed for inclusion in the ICA. The term "Third Party Traffic" adequately addresses scenarios where AT&T may provide indirect interconnection between Sprint and third party carriers.

Q. BESIDES BEING DUPLICATIVE OF "THIRD PARTY TRAFFIC," ARE SPRINT'S PROPOSED DEFINITIONS FOR "TRANSIT SERVICE" AND "TRANSIT SERVICE TRAFFIC" OBJECTIONABLE FOR OTHER REASONS?

A. Yes. Both of Sprint's definitions refer to "Authorized Services" traffic, the definition of which the parties dispute. As discussed in more detail by AT&T witness Patricia Pellerin, Sprint proposes that "Authorized Services" traffic include all traffic that a party may "lawfully provide pursuant to Applicable Law." However, not all lawful traffic can be transit traffic. For example, interLATA traffic is lawful traffic, but cannot be transit traffic; because transiting is for the transport of intraLATA traffic only. Yet Sprint's proposed definition for Transit Service Traffic would allow for interexchange interLATA traffic to be transited. Sprint should not be allowed to evade tariffed switched access charges by routing interexchange traffic over local interconnection trunk groups, which are not intended for access traffic and do not permit AT&T to bill access charges to Sprint. Sprint's definition would inappropriately expand the scope of traffic that can be transited, and would result in disputes and inappropriate intercarrier compensation charges.

AT&T's proposed definition for Transit Traffic Service appropriately defines the categories of traffic eligible for the service. Specifically, the categories of traffic subject to being transited are Section 251(b)(5) Traffic, ISP-Bound Traffic, and CMRS-bound traffic within the same LATA. By clearly defining the appropriate categories of traffic subject to being transited, AT&T's proposed definitions will provide clear guidance as well as avoid future disputes.

ISSUE 9(ii) ***[DPL ISSUE I.B(2)(b)]***

(a) Should the term "Section 251(b)(5) Traffic" be a defined term in either ICA and, if so, (b) what constitutes Section 251(b)(5) Traffic for (i) the CMRS ICA and (ii) the CLEC ICA?

Contract Reference: GTC – Part B – Definitions

Q. WHAT IS THE ISSUE?

A. AT&T proposes to include the defined term "Section 251(b)(5) Traffic" in both the CLEC and the CMRS ICAs, and Sprint is opposed to including the term in either ICA. Subpart (a) of the issue asks whether the term should be defined in either ICA, and subpart (b) asks what the definition should be in each ICA, if a definition is to be included.

Q. ARE YOU ADDRESSING THE ENTIRE ISSUE?

A. No. AT&T witness Patricia Pellerin addresses subpart (a), and explains why both ICAs should include the defined term "Section 251(b)(5) Traffic." Ms. Pellerin also explains why AT&T's definition of that term for the CMRS ICA should be adopted. I explain why AT&T's definition of Section 251(b)(5) Traffic for the CLEC ICA should be adopted. In other words, I am addressing only I.B(2)(b)(ii).

Q. GENERALLY SPEAKING, WHAT IS INTERCARRIER – OR RECIPROCAL – COMPENSATION AS USED IN TELECOMMUNICATIONS?

A. "Intercarrier compensation" – which to my knowledge is not defined in a statute or FCC regulation – is used to refer to the financial mechanism telecommunications carriers use to compensate each other for completing the calls of their end users to end users of other carriers. As an example, if John, a customer of ABC Phone Co., picks up the phone and calls his friend, Mary, who happens to be a subscriber to XYZ Phone Co., then both carriers' networks are utilized in the completion of that call. John is the "cost-causer" because he initiated the call. John pays his retail subscription fees to his carrier, ABC Phone Co. In order to complete the call to Mary, ABC Phone Co. hands the call off to XYZ Phone Co., which then incurs switching and call termination costs on its network. XYZ Phone Co. incurred a cost in terminating the phone call to Mary, but XYZ Phone Co. did not cause the cost to be incurred. ABC Phone Co. compensates XYZ Phone Co. for its expenses incurred to complete ABC Phone Co.'s customer's call. At a high level, such expense recovery mechanisms are called intercarrier compensation; the expense recovery associated with a local telephone call is called reciprocal compensation. The originating carrier "reimburses" the terminating carrier for completing the call on behalf of the originating carrier. Thus, reciprocal compensation is designed for cost recovery. Depending upon the physical location of the calling and called end users, a call is generally jurisdictionalized as either a local (intra-exchange) or inter-exchange

call, with a few exceptions for specific types of calls – such as "FX" or foreign exchange calls – separately identified and treated for compensation purposes.[19]

Q. WHY DOES AT&T PROPOSE TO USE THE DEFINED TERM "SECTION 251(b)(5) TRAFFIC?"

A. As Ms. Pellerin explains, AT&T proposes to use that term to refer to traffic subject to reciprocal compensation under Section 251(b)(5) of the 1996 Act.

Q. WHAT DEFINITION OF SECTION 251(B)(5) TRAFFIC DOES AT&T PROPOSE FOR THE CLEC ICA?

A. AT&T proposes the following definition:

> "Section 251(b)(5) Traffic" shall mean Telecommunications traffic exchanged over the Parties' own facilities in which the originating End User of one Party and the terminating End User of the other Party are:
>
> both physically located in the same ILEC Local Exchange Area as defined by the ILEC Local (or "General") Exchange Tariff on file with the applicable state Commission or regulatory agency;
>
> or both physically located within neighboring ILEC Local Exchange Areas that are within the same common mandatory local calling area. This includes but is not limited to, mandatory Extended Area Service (EAS), mandatory Extended Local Calling Service (ELCS), or other types of mandatory expanded local calling scopes.

Q. WHAT IS THE BASIS FOR THE DEFINITION?

A. AT&T's definition is consistent with the FCC's approach in its Order on Remand and Report and Order, *In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, Intercarrier Compensation for*

[19] An FX – or Foreign Exchange – service allows a carrier to have a local presence in a given calling area even though it is not physically located in that area. This is done by assigning an NPA-NXX that is local to the desired calling area, even though the actual end user may be located in a distant exchange or LATA. Please see my testimony under Issue 52 *[III.A.5]* for further discussion of this subject.

ISP-Bound Traffic, FCC 01-131, CC Docket Nos. 96-98, 99-68 (rel. April 27, 2001) ("*ISP Remand Order*"), which was remanded but not vacated in *WorldCom, Inc. v. FCC*, 288 F.3d 429 (D.C. Cir. 2002). Section 251(b)(5) traffic originates from an end user and is destined to another end user that is physically located within the same ILEC mandatory local calling scope. Previously, the traffic subject to reciprocal compensation under Section 251(b)(2) was what we called "local" traffic. The FCC changed the terminology, though not the actual scope of Section 251(b)(5), in the *ISP Remand Order*. There, the FCC removed the potentially ambiguous term "local" from its reciprocal compensation rule, but Section 251(b)(5) traffic remains traffic that originates with and terminates to end users physically within the same ILEC mandatory local calling scope. Rulings by the FCC have characterized traffic as either being included within the scope of Section 251(b)(5) traffic, or as being beyond the scope of Section 251(b)(5) traffic. For instance, the FCC clarified that dial up traffic bound for ISPs is not Section 251(b)(5) traffic.[20]

Q. DOES SPRINT INDICATE THAT IT BELIEVES ANYTHING IS WRONG WITH AT&T'S DEFINITION OF "SECTION 251(b)(5) TRAFFIC" FOR THE CLEC ICA?

A. No. Sprint opposes the inclusion of *any* definition of "Section 251(b)(5) Traffic" in the ICAs, but I am not aware of any objection – certainly none is mentioned in

[20] *See ISP Remand Order*. Yet the FCC also ruled that, in certain circumstances, ISP-Bound traffic is subject to compensation in the same manner as Section 251(b)(5) traffic. See discussion of the FCC Compensation Plan elsewhere in my testimony for Issue 45 *[III.A.2]* regarding the application of rates to the termination of ISP-bound traffic.

Sprint's position statement on the DPL – to the particular definition AT&T is proposing.

ISSUE 42 ***[DPL ISSUE III.A.1(3)]***

What are the appropriate compensation rates, terms and conditions (including factoring and audits) that should be included in the CLEC ICA for traffic subject to reciprocal compensation?

Contract Reference: Attachment 3, Sections 6.1-6.1.7, 6.2.2-6.2.2.2, 6.8.1,6.8.2,6.8.4 Pricing Sheet – All Traffic, (AT&T CLEC)

Q. SHOULD THE ICA CONTAIN COMPLETE TERMS AND CONDITIONS TO IDENTIFY AND BILL FOR DIFFERENT CATEGORIES OF INTERCARRIER TRAFFIC EXCHANGED BETWEEN THE PARTIES?

A. Yes. In order to properly identify and bill for the various categories of traffic subject to different intercarrier compensation treatment, the ICA must contain clear and complete terms for each type of traffic. AT&T's proposed language for Attachment 3, sections 6.1 -6.1.7, 6.2.2 – 6.2.2.2, and 6.8.1 – 6.8.4 provides for appropriate reciprocal compensation for Section 251(b)(5) Traffic, as well as ISP-Bound traffic which I discuss in more detail under Issue 45 *[III.A.2]*. In addition to identifying the specific traffic subject to reciprocal compensation, AT&T's proposed language formalizes the parties' responsibility to include CPN, addresses compensation for traffic that is switched at more than one tandem switch,[21] and provides for appropriate billing arrangements for termination of Section 251(b)(5) Traffic and ISP-Bound traffic. The billing provisions in sections 6.8.1 through 6.8.4 provide that the parties will use actual recordings for purposes of generating bills to each other, and the steps

[21] Multiple Tandem Access

either Party may take in the event one disputes the other's intercarrier compensation charges.

Q. WHAT IS CPN?

A. When one telecommunications carrier hands off a call to another, not only is the telecommunication itself exchanged, but so is a "signal" – a stream of data that communicates from one network to the other routing and destination information and other data relating to the call.[22] One piece of information that may be communicated in a signal is CPN – Calling Party Number. "Carriers use this information to ascertain whether calls are subject to access charges or reciprocal compensation,"[23] because the calling party's number identifies the exchange area in which the call originated and so allows the terminating carrier to determine whether the call is local (subject to reciprocal compensation or long distance (subject to access charges).

Q. WHY SHOULD CARRIERS PROVIDE CPN INFORMATION WITH THEIR INTERCARRIER TRAFFIC?

A. As one state commission has explained:

> CPN is crucial because compensation for local calls differs from compensation for toll (long distance) calls. AT&T Texas (as well as

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[22] "In any telephone system . . . some form of signaling mechanism is required to set up and tear down the calls." Newton's Telecom Dictionary (25th ed. 2009) ("Newton's") at 1010 (definition of "Signaling"). Among other functions, signals transmit routing and destination signals over the network. *Id.* at 1012 (definition of "Signaling System 7"). Today, most signaling is done on a data network that overlies, but is separate from, the telecommunication network itself. *Id.* at 1011 (definition of "Signaling").

[23] *In re Petition of WorldCom, Inc. Pursuant to Section 252(e)(5) of the Communications Act for Preemption of the Jurisdiction of the Virginia State Corporation Commission Regarding Interconnection Disputes with Verizon Virginia Inc.*, 17 FCC Rcd. 27039, ¶ 186 (rel. July 17, 2002).

other carriers) depends on the CPN to determine whether to rate a call as local or toll. If traffic does not include any CPN information, the terminating carrier cannot determine the jurisdiction of the call [local or toll] and therefore cannot apply the appropriate rate. Generally, no charges apply to local calls (per the ICA's "bill and keep" provision), while access charges apply to toll calls. The higher access charges create a financial incentive to avoid categorization of a call as toll. Absent some contractual provision addressing traffic of unknown origin, toll traffic without proper CPN would avoid access charges. To address this problem, the ICA treats traffic without proper CPN as toll and applies access charges to the traffic by default.[24]

Q. WILL ALL CALLS THAT THE PARTIES DELIVER TO EACH OTHER UNDER THE ICAS THEY ARE ARBITRATING INCLUDE CPN?

A. Most will. The parties recognize, however, that they will probably deliver some traffic to each other that does not contain CPN. AT&T proposes language in Attachment 3, sections 6.1.1 – 6.1.3 to address how the parties will compensate each other for such traffic. AT&T's language provides that if less than 90% of the traffic that one party passes to the other includes CPN, then all of that party's traffic with missing CPN will be subject to intraLATA access charges. On the other hand, if at least 90% of a party's traffic has CPN, then the traffic that is missing CPN will be treated as local or intraLATA toll in proportions matching that Party's traffic which is delivered with CPN.[25] This arrangement, which is commonplace in ICAs, recognizes

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[24] Arbitration Award, Docket No. 33323. *Petition of UTEX Communications Corp. for Post-Interconnection Dispute Resolution with AT&T Texas*, (Pub. Util. Com. Texas June 1, 2009), at 3.

[25] For example: Assume that 96% of the traffic AT&T delivers to Sprint has CPN, and 4% is missing CPN. Assume further that of the AT&T traffic that is delivered with CPN, 60% is local and 40% is intraLATA toll. The traffic with missing CPN – the 4% – has to be jurisdictionalized somehow, so 60% of it is treated as local and 40% as intraLATA toll.

that some traffic will be missing CPN through no fault of the party that delivers it (thus, the allowance for 10% of a party's traffic to be missing CPN with no consequence), but at the same time provides an incentive for each Party to do what it can to include CPN on the traffic it delivers (by assigning the higher intraLATA access rate to all calls missing CPN if more than 10% of the carrier's traffic falls into that category).

Q. HOW DOES SPRINT PROPOSE TO ADDRESS THE PROBLEM OF MISSING CPN.

A. It doesn't. It appears that the parties have agreed upon the following language, shown in section 6.3.3 on p. 34 of Attachment 3:

> Where SS7 connections exist, each Party will include in the information transmitted to the other Party, for each call being terminated on the other Party's network, where available, the original and true Calling Party Number ("CPN").

However, this language does not address how the parties will treat traffic that is delivered without CPN, or how the parties will determine whether CPN is "available." That is why AT&T has proposed additional language in sections 6.1.1 – 6.1.3 of Attachment 3 to specifically address these issues.

Q. DOES SPRINT PROPOSE A METHOD FOR BILLING UNIDENTIFIED TRAFFIC?

A. No. Sprint's proposed ICA language leaves the issue open for later resolution, as well as potential dispute. Though not directly tied to traffic lacking CPN, Sprint's only proposed language concerning the inability to bill based upon actual and accurate records (which would include traffic exchanged without CPN) is Sprint's

proposed section 6.3.6.1 (which is displayed on the DPL Language Exhibit under Issue 37 *[III.A)]*:

> *Actual traffic Conversation MOU measurement in each of the applicable Authorized Service categories is the preferred method of classifying and billing traffic. If, however, either Party cannot measure traffic in each category, then the Parties shall agree on a surrogate method of classifying and billing those categories of traffic where measurement is not possible, taking into consideration as may be pertinent to the Telecommunications traffic categories of traffic, the territory served (e.g. Exchange boundaries, LATA boundaries and state boundaries) and traffic routing of the Parties.*

In lieu of providing contractual certainty and clarity in the ICA, Sprint's proposed language punts the issue with no resolution for the treatment of unidentified traffic. In contrast, AT&T's proposed ICA language addressing CPN provides clarity specific to unidentified traffic, and how the parties should proceed when such traffic is exchanged over the parties' local interconnection trunks.

Q. WHAT IS THE BASIS FOR THE TEN PERCENT CPN THRESHOLD PROPOSED BY AT&T IN SECTION 6.1.3?

A. As long as no one is trying to game the system by intentionally stripping CPN from intraLATA toll calls that originate on its network, the percentage of traffic that does not contain CPN is very unlikely to exceed 10%. Thus, AT&T's proposed 10% threshold discourages arbitrage while having little, if any, effect upon the normal course of business. Due to the make-up of today's telephone network signaling systems, the volume of unidentified traffic should be small. The vast majority of all carriers' traffic is technically capable of passing CPN information. The minimal unidentified amount reflects occasional software errors where CPN is not generated at call origination.

Q. WHAT IS AT&T'S CONCERN WITH THE "WE'LL FIGURE IT OUT LATER" APPROACH IN SPRINT'S PROPOSED SECTION 6.3.6.1?

A. Sprint's ICA language does nothing to encourage the parties to ensure that the traffic each delivers to the other will contain accurate CPN. Though Sprint apparently agrees that the parties should exchange complete and accurate CPN, Sprint's language provides a very large loophole, that being the "where available" phrase. Furthermore, though Sprint agrees that the parties should work cooperatively to correct any problems concerning incomplete or inaccurate CPN, Sprint's proposed language is broad and open-ended, and could be interpreted to allow the exchange of incomplete or inaccurate CPN, for an unlimited period of time, so long as the parties are "working on the problem." Sprint's proposal fails to address two important concerns: (1) traffic deliberately passed without CPN, and (2) traffic passed without CPN by a CLEC lacking motivation to rectify the problem. With respect to the first concern, if all unidentified traffic were subject to "to be determined later" billing, carriers would have an incentive not to pass CPN information on calls that originate on their networks, even though the information is available. By "stripping" the CPN from their intraLATA toll calls, such carriers would be billed for those calls based on some to be determined "surrogate method." This may create an arbitrage opportunity by which carriers could game the compensation regime by paying reciprocal compensation on their intraLATA toll calls instead of the higher access rates that should apply. To reduce the opportunity for arbitrage, billing for unidentified traffic should be based upon the actual traffic patterns of the vast majority of the traffic

exchanged between the parties (at least 90% of the call volume) for which it is reasonable to anticipate that CPN is actually available.

Second, if a dispute were to arise, Sprint's language potentially continues the data analysis period indefinitely, during which time its "surrogate method" for traffic without CPN will apply to excessive unidentified traffic. Faced with an uncooperative CLEC (whether Sprint or any other CLEC that may decide to adopt this ICA pursuant to Section 252(i) of the Act), AT&T's only recourse would be dispute resolution. Yet Sprint's language has no provision for dispute resolution, and there is no indication as to when or how it could be invoked. This is not a reasonable outcome. Moreover, from a practical perspective, it makes more sense to address these logistical issues now rather than waiting for a dispute to occur and diverting resources to dispute resolution in order to resolve the matter.

ISSUE 45 ***[DPL ISSUE III.A.2]***

What compensation rates, terms and conditions should be included in the ICAs related to compensation for ISP-Bound traffic exchanged between the parties?

Contract Reference: Attachment 3, Pricing Sheet (Sprint)
Attachment 3, Section 6.1.2 (AT&T CMRS)
Attachment 3, Sections 6.3 – 6.3.3.1, 6.8.3, 6.26 – 6.26.1, Pricing Sheet – All Traffic (AT&T CLEC)

Q. DOES AT&T PROPOSE ICA LANGUAGE TO SEPARATELY IDENTIFY AND COMPENSATE ISP-BOUND TRAFFIC?

A. Yes, it does. Since AT&T has invoked the FCC ISP Compensation Plan described in the *ISP Remand Order* and outlined in its Order 01-131 on August 1, 2003, it is appropriate to distinguish ISP-Bound Traffic that is subject to the rates, terms and

conditions of the FCC Plan from other traffic types within the agreement. ISP traffic that originates and is delivered to an ISP within the same local mandatory calling areas is ISP-bound Traffic subject to the FCC Plan, including the FCC's ISP rate of $0.0007 per minute of use ("MOU"). Similar to my discussion on terms and conditions for Section 251(b)(5) Traffic, AT&T's proposed language for ISP-Bound Traffic provides terms for identifying and billing reciprocal compensation for ISP-Bound Traffic.

Q. ARE ISP-BOUND CALLS SUBJECT TO THE SAME RECIPROCAL COMPENSATION RATE AS SECTION 251(b)(5) TRAFFIC?

A. Yes. Consistent with the *ISP Remand Order,* AT&T has proposed that all Section 251(b)(5) Traffic and all ISP-Bound Traffic be subject to the FCC's ISP rate of $0.0007 per MOU.[26] AT&T's proposed ICA language in Attachment 3, section 6.,3 provides the rates, terms and conditions applicable for both traffic types, and section 6.8 provides terms for billing of both Section 251(b)(5) Traffic and ISP-Bound Traffic.

Q. ARE ALL CALLS TO AN ISP TREATED THE SAME UNDER AT&T'S PROPOSED LANGUAGE?

A. No. Only calls that originate from an end user and terminate to an ISP within the same ILEC mandatory local calling area are subject to the FCC Plan. AT&T's proposed Attachment 3, sections 6.4.4 through 6.4.5 describe scenarios where calls to an ISP would not be subject to the FCC's ISP rate.

[26] See, for example, paragraph 89 of the ISP Remand Order: "The rate caps for ISP-bound traffic that we adopt here apply, therefore, *only* if an incumbent LEC offers to exchange all traffic subject to section 251(b)(5) at the same rate." (footnote omitted)

Q. DOES SPRINT'S PROPOSED LANGUAGE PROVIDE FOR THE TREATMENT OF ISP-BOUND TRAFFIC?

A. No. Though Sprint has agreed upon a definition for ISP-Bound Traffic, it does not appear that Sprint's proposed compensation terms specifically address this traffic. Sprint's proposed language for intercarrier compensation uses the disputed term "Authorized Services" and appears to provide a multiple-choice of options for intercarrier compensation rates. AT&T witness Patricia Pellerin discusses Sprint's pricing proposals in more detail, but suffice to say Sprint's proposed language for intercarrier compensation rates and terms lacks any contractual certainty. In contrast with AT&T's specific provisions addressing each category of traffic expected to be exchanged via the terms of this ICA, Sprint's proposal attempts to lump many – or all, depending upon which of Sprint's proposals in its Attachment 3, section 6.1 is selected – categories of intercarrier traffic under one ambiguous classification of "those services which a Party may lawfully provide pursuant to Applicable Law." Such a lack of clarity with respect to traffic subject to reciprocal compensation would surely invite disputes.

Q. SHOULD THE ICA CONTAIN SPECIFIC PROVISIONS TO PROVIDE FOR ANY CHANGES TO THE TREATMENT OF ISP-BOUND TRAFFIC PURSUANT TO THE *ISP REMAND ORDER*?

A. Yes, it should. AT&T has proposed appropriate language in Attachment 3, section 6.26 to address the potential modification, replacement or elimination of the pricing scheme set forth in the *ISP Remand Order*. The FCC issued in its *ISP Remand Order*

the interim compensation plan I've outlined above, pending the outcome of its Notice of Proposed Rulemaking ("NPRM") that accompanied the *ISP Remand Order*.[27]

The FCC recognized that current market distortions in the intercarrier compensation regime would not be completely addressed within the *ISP Remand Order* regarding the treatment of ISP-Bound Traffic:

> We recognize that the existing intercarrier compensation mechanism for the delivery of this traffic, in which the originating carrier pays the carrier that serves the ISP, has created opportunities for regulatory arbitrage and distorted the economic incentives related to competitive entry into the local exchange and exchange access markets. As we discuss in the *Unified Intercarrier Compensation NPRM,* released in tandem with this Order, such market distortions relate not only to ISP-bound traffic, but may result from any intercarrier compensation regime that allows a service provider to recover some of its costs from other carriers rather than from its end-users. Thus, the *NPRM* initiates a proceeding to consider, among other things, whether the Commission should replace existing intercarrier compensation schemes with some form of what has come to be known as "bill and keep." The *NPRM* also considers modifications to existing payment regimes, in which the calling party's network pays the terminating network, that might limit the potential for market distortion.[28]

In reality, then, the FCC's NPRM is a continuation of the FCC's *ISP Remand Order*. The order and rules that result from the NPRM will provide long-term guidance as to the treatment of intercarrier traffic in addition to the interim remedies offered in the *ISP Remand Order.*

> Because the record indicates a need for immediate action with respect to ISP-bound traffic, however, in this Order we will implement an interim recovery scheme that: (i) moves aggressively to eliminate

[27] Developing a Unified Intercarrier Compensation Regime, CC Docket No. 01-92, Notice of Proposed Rulemaking, FCC 01-132.

[28] FCC ISP Remand Order, ¶ 2. [footnotes omitted]

arbitrage opportunities presented by the existing recovery mechanism for ISP-bound by lowering payments and capping growth; and (ii) initiates a 36-month transition towards a complete bill and keep recovery mechanism while retaining the ability to adopt an alternative mechanism based upon a more extensive evaluation in the *NPRM* proceeding.[29]

Because the FCC made clear that it would subsequently issue new rules for intercarrier compensation, it is reasonable and appropriate to anticipate this within the ICA in order to ensure a smooth transition to whatever new compensation mechanism the FCC determines is appropriate for ISP-Bound Traffic. By providing language acknowledging the FCC's intent to address intercarrier compensation for ISP traffic, including provisions to transition to any new pricing scheme, the parties can avoid disputes and delays in implementing the FCC's findings.

ISSUE 43 *[DPL ISSUE III.A.1(4)]*

Should the ICAs provide for conversion to a bill and keep arrangement for traffic that is otherwise subject to reciprocal compensation but is roughly balanced?

Contract Reference: Attachment 3, section 6.3.7.

ISSUE 44 *[DPL ISSUE III.A.1(5)]*

If so, what terms and conditions should govern the conversion of such traffic to bill and keep?

Contract Reference: Attachment 3, sections 6.3.7 – 6.3.7.10 (AT&T CMRS)
Attachment 3, sections 6.6 – 6.6.11 (AT&T CLEC)

Q. WHAT IS THE DISAGREEMENT ABOUT BILL AND KEEP?

[29] FCC ISP Remand Order ¶ 7.

A. Sprint proposes language that would provide for the parties to use bill and keep as their reciprocal compensation arrangement, *i.e.*, to not pay each other reciprocal compensation, if the volumes of Section 251(b)(5) Traffic and ISP-Bound Traffic they are exchanging are roughly balanced. AT&T maintains there should be no bill and keep language in the ICA, *i.e.*, that the parties should bill each other reciprocal compensation even if their traffic at some point becomes roughly balanced. In addition, in case the Commission rejects AT&T's position and concludes the ICA should include bill and keep language, AT&T proposes language that is more reasonable than Sprint's – one of the principal differences being that Sprint's language treats traffic volumes as roughly balanced if they are no more imbalanced than 60%/40%, while AT&T ILEC would draw the line at 55%/45%, which is consistent both with common sense and with decisions by numerous commissions.

I will first address DPL Issue 43 *[III.A.1(4)]*, which asks whether the ICA should allow for bill and keep – and I will explain why it should not. Then, in case the Commission decides otherwise, I will explain why Sprint's proposed language is defective and AT&T's proposed language should be adopted instead.

Q. YOU SAY THAT AT&T DOES NOT WANT THE ICAS TO ALLOW FOR BILL AND KEEP, BUT DOESN'T THE 1996 ACT CALL FOR BILL AND KEEP IF TRAFFIC IS ROUGHLY BALANCED?

A. No. The 1996 Act permits parties to agree on bill and keep, and the FCC's rules permit – but do not require – state commissions to impose bill and keep if traffic is roughly balanced. As I will explain, however, there are compelling reasons for not imposing bill and keep.

Q. WHAT ARE THE RELEVANT PROVISIONS OF THE 1996 ACT?

A. Section 251(b)(5) of the 1996 Act requires all local exchange carriers ("LECs") to "establish reciprocal compensation arrangements for the transport and termination of telecommunications." The compensation is for the cost a LEC incurs when it transports and terminates on its network a telecommunication that originates on the network of another LEC.

Section 252(d)(2) addresses reciprocal compensation charges. It provides:

> (2) Charges for transport and termination of traffic
>
> (A) In general
>
> For the purposes of compliance by an incumbent local exchange carrier with section 251(b)(5) of this title, a State commission shall not consider the terms and conditions for reciprocal compensation to be just and reasonable unless—
>
> (i) such terms and conditions provide for the mutual and reciprocal recovery by each carrier of costs associated with the transport and termination on each carrier's network facilities of calls that originate on the network facilities of the other carrier; and
>
> (ii) such terms and conditions determine such costs on the basis of a reasonable approximation of the additional costs of terminating such calls.
>
> (B) Rules of construction
>
> This paragraph shall not be construed—
>
> (i) to preclude arrangements that afford the mutual recovery of costs through the offsetting of reciprocal obligations, including arrangements that waive mutual recovery (such as bill-and-keep arrangements) . . . .

Q. IS THERE ANYTHING IN PARTICULAR IN THE STATUTE TO WHICH YOU WISH TO DRAW ATTENTION?

A. Yes. First, section 252(d)(2)(A) makes clear that AT&T is entitled to recover the costs it incurs to transport and terminate traffic that originates on Sprint's network; otherwise, the Commission cannot "consider the terms and conditions for reciprocal compensation to be just and reasonable." Second, the statute does not require bill and keep under any circumstances. Rather, it requires mutual and reciprocal recovery of transport and termination costs, but adds that that does not preclude bill and keep.

Q. WHAT IS THE RELEVANT FCC RULE?

A. The FCC's rule implementing the bill and keep language in the 1996 Act reads as follows:

> § 51.713 Bill-and-keep arrangements for reciprocal compensation.
>
> (a) For purposes of this subpart, bill-and-keep arrangements are those in which neither of the two interconnecting carriers charges the other for the termination of telecommunications traffic that originates on the other carrier's network.
>
> (b) A state commission may impose bill-and-keep arrangements if the state commission determines that the amount of telecommunications traffic from one network to the other is roughly balanced with the amount of telecommunications traffic flowing in the opposite direction, and is expected to remain so, and no showing has been made pursuant to §51.711(b).[30]
>
> (c) Nothing in this section precludes a state commission from presuming that the amount of telecommunications traffic from one network to the other is roughly balanced with the amount of telecommunications traffic flowing in the opposite direction and is

[30] FCC Rule 51.711generally requires reciprocal compensation rates to be symmetrical – *i.e.*, Sprint charges AT&T the same rate that AT&T charges Sprint. Rule 51.711(b), however, allows for asymmetrical rates if the requesting carrier proves that its transport and termination costs are higher than the incumbent's. Here, the parties agree that their reciprocal compensation rates will be symmetrical. Accordingly, I do not discuss the more complicated bill and keep scenario where rates are asymmetrical.

expected to remain so, unless a party rebuts such a presumption.

Q. IS THERE ANYTHING IN PARTICULAR IN THE RULE TO WHICH YOU WISH TO DRAW ATTENTION?

A. Yes. The FCC's rule, like the statute, does not require bill and keep under any circumstances. Rather, it merely allows a state commission to impose bill and keep if it finds that the amount of telecommunications traffic from one network to the other is roughly balanced with the amount of telecommunications traffic flowing in the opposite direction, and is expected to remain so.

Q. WHAT ARE THE CONSIDERATIONS UNDERLYING THE FCC'S BILL AND KEEP RULE?

A. The FCC promulgated Rule 51.713 in its 1996 *Local Competition Order*. In its discussion underlying the rule, the FCC stated in pertinent part:

> Section 252(d)(2)(A((i) provides that to be just and reasonable, reciprocal compensation must "provide for the mutual and reciprocal recovery by each carrier of costs associated with transport and termination." In general, we find that carriers incur costs in terminating traffic that are not *de minimis*, and consequently, bill-and-keep arrangements that lack any provisions for compensation do not provide for recovery of costs. In addition, as long as the cost of terminating traffic is positive, bill-and-keep arrangements are not economically efficient, because they distort carrier's incentives, encouraging them to overuse competing carriers' termination facilities by seeking customers that primarily originate traffic. On the other hand, . . . payments from one carrier to the other can be expected to be offset by payments in the opposite direction when traffic from one network to the other is approximately balanced with the traffic flowing in the opposite direction. In such circumstances, bill-and-keep arrangements may minimize administrative burdens and transaction costs. We find that, in certain circumstances, the advantages of bill-and-keep arrangements outweigh the disadvantages, but no party has convincingly explained to us why, in such circumstances, parties themselves would not agree to bill-and-keep arrangements. We are mindful, however, that negotiations may fail for a variety of reasons. We conclude, therefore, that states may impose bill-and-keep

arrangements if traffic is roughly balanced in the two directions . . . .[31]

Q. WHAT ARE THE KEY POINTS IN THAT DISCUSSION FOR AT&T'S POSITION ON BILL AND KEEP?

A. First, the FCC recognizes that the 1996 Act gives AT&T an unqualified right to compensation for its termination costs. Consequently, bill and keep is appropriate only in "certain circumstances," where the savings in "administrative burdens and transaction costs" outweigh the termination charges that AT&T would be foregoing.

Second, the FCC recognizes that bill and keep arrangements are economically inefficient because they distort carriers' incentives by encouraging them to originate more traffic than they terminate.

Third, in those limited circumstances where bill and keep might make economic sense, *i.e.*, where traffic is balanced, so that the savings from the avoidance of administrative burden and transaction costs outweigh the foregone termination compensation, the FCC recognizes that rational carriers would agree to bill and keep.

Q. PLEASE EXPLAIN WHY AT&T IS OPPOSED TO INCLUDING BILL AND KEEP LANGUAGE IN THE ICAS.

A. Sprint and AT&T exchange large volumes of traffic, and in most or all states, AT&T terminates more Sprint traffic (particularly Sprint CMRS traffic) than Sprint terminates AT&T Traffic. As a result, if reciprocal compensation payments are made, AT&T will be the net payee. AT&T believes that the revenue it would lose under a bill and keep regime (revenue to which the 1996 Act clearly entitles AT&T) would significantly outweigh any administrative savings AT&T might enjoy as a

[31] *Local Competition Order* ¶ 1112.

result of not having to send reciprocal compensation bills to Sprint or process reciprocal compensation bills from Sprint.

More important, though, AT&T is concerned that if the parties' ICAs – which of course may be adopted by other carriers – allow for bill and keep, carriers will game the system by qualifying for bill and keep (by achieving roughly balanced traffic) and then dumping on AT&T's network large volumes of traffic that AT&T will be obliged to transport and terminate for free.

Q. WHAT ADMINISTRATIVE SAVINGS WOULD AT&T REALIZE FROM A BILL AND KEEP ARRANGEMENT?

A. Almost none. Regardless of whether traffic is billed at reciprocal compensation rates or is subject to bill and keep, the call processing remains the same, including recording and processing the call usage data. This data is used either for invoicing via the Carrier Access Billing System (CABS) if reciprocal compensation applies, or it is used for monitoring the balance of traffic when a bill and keep arrangement is in effect. Either way, the call data processing and data storage capacity remain the same. Any additional cost to add a reciprocal compensation billing line, including usage and rate information, to an electronic invoice is certainly minimal. That is why I said the revenue AT&T would lose under a bill and keep regime would outweigh any administrative savings AT&T might enjoy.

Q. YOU ALSO MADE THE POINT THAT IF THE ICAS ALLOW FOR BILL AND KEEP, CARRIERS WILL GAME THE SYSTEM BY QUALIFYING FOR BILL AND KEEP AND THEN DUMPING ON AT&T'S NETWORK LARGE VOLUMES OF TRAFFIC THAT AT&T WOULD BE OBLIGED TO TRANSPORT AND TERMINATE FOR FREE. PLEASE EXPLAIN.

A. Assume that the Commission allows bill and keep language in the ICAs, and that as of the Effective Date of the ICAs, traffic is out of balance, so that the parties are paying each other reciprocal compensation. But then, at some point during the term of the ICAs, traffic comes into balance and the parties switch to bill and keep. At that point, Sprint (or a carrier that adopted either Sprint ICA) would have a powerful incentive to maximize the amount of traffic it sends AT&T for termination. As the FCC put it in the passage I quoted above, "bill-and-keep arrangements are not economically efficient, because they distort carrier's incentives, encouraging them to overuse competing carriers' termination facilities by seeking customers that primarily originate traffic."

When the FCC made that observation in 1996, it was eminently sensible, but it was based more on theory than actual experience with reciprocal compensation. Now that we have 14 years of experience operating under the 1996 Act, the risk of manipulation of the reciprocal compensation system has proven to be all too real.

Q. HOW SO?

A. Just as an example, and as the Commission is no doubt aware, the FCC found in its 2001 *ISP Remand Order* that there was "convincing evidence . . . that at least some carriers have targeted ISPs [Internet Service Providers] as customers merely to take advantage of . . . intercarrier payments" (including offering free service to ISPs and even paying ISPs to be their customers). For that reason, the FCC adopted an

intercarrier compensation payment regime for ISP-bound traffic in order "to limit the regulatory arbitrage opportunity presented by ISP-bound traffic."[32]

Here, we are not talking about ISP-bound traffic in particular. The point, though, is that carriers' proven manipulation of the reciprocal compensation system in the context of ISP-bound traffic shows some carriers will go to great lengths to game the intercarrier compensation system for a profit. One form that such manipulation could take would be for a carrier that has a bill and keep arrangement with an ILEC to increase the volume of traffic it sends to the ILEC for termination.

Q. HOW COULD A CARRIER DO THAT?

A. Let's call the carrier that wants to game the system Carrier X. Assume that Carrier X has achieved traffic balance with AT&T (perhaps even by taking measures specifically designed to achieve that balance) and on that basis moves to a bill and keep system as permitted by the Carrier X/AT&T ICA. Once it is on bill and keep, Carrier X could arrange to aggregate local traffic that originates on third party networks and deliver that traffic to the ILEC as if it were Carrier X's traffic. If Carrier X charges those third party originating carriers a rate that is one half of the ILEC's transport and termination rate, the third party originating carriers would cut their termination bills in half, and Carrier X would obtain revenue from the originating carrier.

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[32] *See Intercarrier Compensation for ISP-Bound Traffic*, CC Docket Nos. 96-98, Order on Remand and Report and Order, 16 FCC Rcd 9151 at ¶ 2 ("*ISP Remand Order*"), *remanded but not vacated by WorldCom, Inc. v. FCC*, 288 F.3d 429, 432 (D.C. Cir. 2002).

Q. BUT IF THAT HAPPENED, WOULDN'T THE TRAFFIC EXCHANGED BETWEEN CARRIER X AND AT&T GO OUT OF BALANCE, SO THAT BILL AND KEEP WOULD NO LONGER APPLY?

A. Under Sprint's proposal, apparently not – because Sprint's language includes no mechanism for changing from bill and keep to payment of reciprocal compensation if traffic goes out of balance. Under AT&T's language, the answer is yes in theory, because AT&T's language – which AT&T asks the Commission to consider only if it rejects AT&T's principal position that there should be no bill and keep language in the ICAs – provides that if bill and keep kicks in it will remain in effect only "so long as qualifying traffic between the parties remains in balance."

As a practical matter, however, there is no telling how long it would take to convert from bill and keep to a system of payments. Certainly, it would not happen instantaneously, and an arbitrageur would surely bank on continuing to operate under a bill and keep arrangement for several months, at a minimum, even after traffic went out of balance.

Q. ARE YOU SUGGESTING THAT SPRINT, IN PARTICULAR, WOULD ENGAGE IN SUCH ARBITRAGE?

A. Not necessarily – although I can not exclude the possibility. But even if Sprint would not, the ICAs that emerge from this proceeding will be available for adoption by other carriers, and some of them certainly would try to game the system.

Q. YOU ALLOW FOR THE POSSIBILITY, THOUGH, THAT SPRINT WOULD ENGAGE IN SUCH MACHINATIONS?

A. Yes, I do. After all, Sprint's strong push for bill and keep suggests that Sprint is looking for an unfair economic edge. As the FCC noted in the *Local Competition*

Order, in those circumstances where it makes true economic sense for bill and keep to apply – balanced traffic with the administrative savings provided by bill and keep outweighing the differential in inter-company payments – rational parties would agree on bill and keep. In addition to the comment to that effect that I quoted above, the FCC also observed, "Carriers have an incentive to agree to bill-and-keep arrangements if it is economically efficient to do so."[33]

Here we have two sophisticated, rational parties, AT&T and Sprint, in sharp disagreement over bill and keep. Sprint is pushing very hard for it, and AT&T is strongly opposed. There is only one plausible explanation for this disagreement: Sprint believes it will profit from a bill and keep arrangement – and not just because Sprint will save some administrative expense – and AT&T believes bill and keep would cost it money. Based on their positions, the obvious inference is that both parties expect Sprint to send more Section 251(b)(5) Traffic to AT&T than it receives from AT&T, and that will make Sprint a net payor – as it should be – under a paying reciprocal compensation arrangement. Sprint is already trying to game the system by advocating a bill and keep arrangement that will spare it from fully compensating AT&T for its costs.

Q. DO YOU HAVE ANY SUPPORT FOR THAT VIEW?

A. Yes, I do. Sprint proposes that traffic be regarded as roughly balanced, so that bill and keep would apply, if the traffic the parties exchange is in a ratio of 60%/40% – in other words, even if AT&T is terminating 50% more traffic than Sprint. As I further

[33] *Local Competition Order*, ¶ 1113.

discuss below, that is a very large imbalance to call "roughly balanced," and the fact that Sprint is proposing it tells me – and should also tell the Commission – that what Sprint is shooting for is an economic windfall, *i.e.* avoidance of reciprocal compensation payments even if Sprint is sending AT&T a great deal more traffic than AT&T is sending Sprint.

Q. WHAT IS YOUR CONCLUSION ON DPL ISSUE 43 *[III.A.1(4)]*?

A. As the FCC has recognized, the one thing to be said in favor of bill and keep is that it *may* save some administrative expense. The downsides far outweigh that upside. Even if no one tries to game the system, bill and keep creates a significant likelihood that the party that terminates more traffic will not be fully compensated for its termination costs, even after taking into account saved administrative expense (if any). In addition, bill and keep is an invitation to arbitrage. The parties should simply pay each other reciprocal compensation, and their ICAs should include no bill and keep alternative.

Q. IF THE COMMISSION IS NOT FULLY PERSUADED OF AT&T'S POSITION, IS THERE AN ALTERNATIVE APPROACH THAT WOULD BE REASONABLE?

A. Yes: Require Sprint to prove that if the parties' traffic is roughly balanced, going to bill and keep would actually result in administrative savings that exceed the reciprocal compensation differential that the parties would otherwise be paying each other. As the advocate of bill and keep, Sprint should bear the burden of proving that this case presents that set of "certain circumstances" that the FCC said justify bill and keep. To carry that burden, Sprint should have to show, on the facts of this case, that

this is one of those instances where, in the FCC's words, "the advantages of bill-and-keep arrangements outweigh the disadvantages."

Q. HOW WOULD SPRINT DO THAT?

A. Sprint should come up with its own methodology. Basically, though, unless Sprint proves that it is terminating more traffic for AT&T than AT&T is terminating for Sprint, Sprint would need to compare the dollar amount of the revenue loss that AT&T would incur as a result of bill and keep with the dollar amount of the administrative expense saved as a result of bill and keep, and would need to show that the latter amount exceeds the former.

Q. ASSUME FOR THE SAKE OF DISCUSSION THAT THE COMMISSION FINDS THAT THE PARTIES' ICAS SHOULD PROVIDE FOR A BILL AND KEEP ALTERNATIVE. SHOULD THE COMMISSION APPROVE THE LANGUAGE PROPOSED BY SPRINT?

A. No. Sprint's proposed language for bill and keep is unreasonable. Therefore, even though AT&T opposes inclusion of any bill and keep language in the ICAs, AT&T has proposed language that should be adopted in preference to Sprint's if the Commission decides that some bill and keep language must be included.

Q. SO THIS TAKES US TO DPL ISSUE 44 *[III.A.1(5)]*: "IF SO, WHAT TERMS AND CONDITIONS SHOULD GOVERN THE CONVERSION OF SUCH TRAFFIC TO BILL AND KEEP"?

A. Yes. And the competing language proposals, which appear on the DPL Language Exhibit, are Sprint's proposed section 6.3.7 and AT&T's proposed sections 6.3.7 (for the CMRS ICA) and 6.6 (for the CLEC ICA).

Q. WHAT IS UNREASONABLE ABOUT SPRINT'S PROPOSED LANGUAGE, AND WHY IS AT&T'S LANGUAGE SUPERIOR?

A. Sprint's proposed language is defective in three important ways – all of which are cured by AT&T's language. Specifically:

1. Sprint's proposal treats traffic as in balance, and therefore subject to bill and keep, if it the exchanged traffic "reaches or falls between 60%/40% . . . for at least three (3) consecutive months." That is far too great a disparity to be considered in balance. Under AT&T's language, bill and keep would go into effect if "qualifying traffic between the parties has been within +/-5% of equilibrium (50%) for 3 consecutive months."

2. Under Sprint's language once the parties enter a bill and keep regime, they stay in it for the duration of the contract, even if their traffic goes out of balance. That is unreasonable. Indeed, it would violate the 1996 Act, because it would mean that AT&T would not be compensated for its termination charges as the 1996 Act requires. Certainly, such an arrangement would provide Sprint (or any party opting into the ICA) a green light to use the provision to engage in the arbitrage opportunities I described above. Under AT&T's language, in contrast, if the parties are on bill and keep and their traffic goes out of balance for three consecutive months, they revert to paying reciprocal compensation. *See* AT&T sections 6.3.7.3 (CMRS) and 6.6.4 (CLEC).

3. Sprint's proposed language states that as of the Effective Date of the ICAs, the parties acknowledge that the traffic they are exchanging is in balance, so that bill and keep will apply. In reality, AT&T makes no such acknowledgment. If

Sprint wants bill and keep, Sprint should be required to prove that the parties' traffic is in balance.

Q. PLEASE ELABORATE ON THE FIRST POINT – SPRINT'S PROPOSED 60%/40% VS. AT&T'S PROPOSED 55%/45%.

A. Recall that FCC Rule 713(b) provides:

> A state commission may impose bill-and-keep arrangements if the state commission determines that the amount of telecommunications traffic from one network to the other is roughly balanced with the amount of telecommunications traffic flowing in the opposite direction, and is expected to remain so . . . .

When the FCC promulgated that rule in 1996, it did not specify when traffic is "roughly balanced." Instead, it "conclude[d] that states may adopt specific thresholds for determining when traffic is roughly balanced."[34] This Commission, consistent with most of the state commissions that have addressed the question, has found that to be roughly in balance for purposes of Rule 51.713(b), traffic volumes cannot depart from equilibrium by more than +/- 5% – in other words, the cut-off line is 55%/45%. Specifically, in a 2002 generic proceeding on reciprocal compensation, the Commission, in the course of declining to impose bill and keep as a default compensation mechanism, stated:

> [The] recommendation that 'roughly balanced' be defined as occurring when originating and terminating local traffic flows between two carriers are within 10 percent appears to be reasonable . . . .
>
> [W]e find roughly balanced to mean traffic imbalance is less than 10

[34] *Local Competition Order*, ¶ 1113.

percent between parties in any three-month period.[35]

In that decision, the Commission specifically criticized the very proposal that Sprint is making here, noting that "to presume that traffic is roughly balanced when one carrier terminates 50 percent more traffic than it originates is, as [one] witness . . . points out, 'an extremely "rough" definition of roughly balanced.'"[36]

Other state commissions agree. For example:

> Ohio: "The parties have . . . proposed two different thresholds for determining whether local traffic exchanged between the two parties is balanced. Sprint has proposed a 60 percent to 40 percent range while Chillicothe has proposed a 55 percent to 45 percent range. . . . [T]he Commission finds it unreasonable that one party would have to terminate in excess of 50% more of the local traffic exchanged between the two parties than the other party before the traffic is considered imbalanced. The Commission, therefore, finds that Chillicothe's threshold is more reasonable and should be used . . . ."[37]

> Texas: "The Commission finds the threshold SBC Texas has proposed, where traffic is considered to be out-of-balance when the amount of traffic exchanged between the parties exceeds +/-5% away from equilibrium for three consecutive months, is reasonable . . . . The Commission finds that the out-of-balance threshold of +/-15% proposed by the

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[35] Order on Reciprocal Compensation, Docket No. 00075-TP, *Investigation into appropriate methods to compensate carriers for exchange of traffic subject to section 251 of the Telecommunications Act of 1996* (Fla. Pub. Serv. Comm'n Sept. 10, 2002) ("*Reciprocal Compensation Order*"), at 56, 62.

[36] *Id.* at 56.

[37] Arbitration Award, *Petition of Sprint Commc'ns Co. for Arbitration of Interconnection Rates, Terms, and Conditions and Related Arrangements with The Chillicothe Tel. Co.*, Case No. 06-1257-TP-ARB, 2007 Ohio PUC LEXIS 279, at *4 (Ohio Pub. Utils. Comm'n Apr. 11, 2007).

CLEC Coalition would not ensure that traffic is roughly in balance, as required by the FCC."[38]

Kansas: The Commission approved an SBC Kansas proposal that, "To be in balance, the traffic exchanged between two carriers must be within 5 percent of equilibrium."[39]

These decisions reflect simple common sense. As this Commission pointed out, if traffic is at 60%/40%, that means one carrier is terminating 50% more traffic than the other – for example, for every 4,000,000 minutes of traffic that Sprint is terminating for AT&T, AT&T is terminating 6,000,000 minutes of traffic for Sprint. Sprint's view that this is rough balance is absurd. Indeed, it demonstrates that what Sprint is seeking here is not an economically rational bill and keep system that (as the 1996 Act requires) ensures that each carrier is compensated for its termination costs and that does away with billing only because the saving in administrative expense outweighs the payment differential. Rather, Sprint is seeking an unfair and unwarranted economic advantage.

Q. PLEASE ELABORATE ON YOUR SECOND POINT – THE FACT THAT SPRINT'S LANGUAGE DOES NOT PROVIDE FOR A RETURN TO BILLING AND PAYING RECIPROCAL COMPENSATION IF THE

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[38] Arbitration Award – Track I Issues, *Arbitration of Non-Costing Issues for Successor Interconnection Agreements to the Texas 271 Agreements*, Docket No. 28821, at 24-25 (Tex. Pub. Util. Comm'n Feb. 23, 2003) (Attachment 6 hereto).

[39] Arbitrator's Determination in Phase II on Interconnection, Subloop and 911 Issues, *Petition of CLEC Coalition for Arbitration against Southwestern Bell Tel. under Section 252(b)(1) of the Telecommunications Act of 1996*, Docket Nos. 05-BTKT-365-ARB et al., 2005 Kan. PUC LEXIS 689, at ¶ 46 (Kan. Corp. Comm'n June 6, 2005). No party took exception to the Arbitrator's resolution of the issue, and the Commission affirmed it. Order No. 16, Commission Order on Phase II Intercarrier Compensation, Subloop and 911 Issues, Docket Nos. 05-BTKT-365-ARB *et al.*, (Kan. Corp. Comm'n July 18, 2005).

PARTIES CONVERT TO BILL AND KEEP AND TRAFFIC THEN GOES OUT OF BALANCE.

A. I would like to think that this is an oversight on Sprint's part, but I fear it is not. The omission creates exactly the arbitrage scenario I described above. If Sprint's language were adopted, Sprint (or a carrier adopting Sprint's ICA) could, through calculated routing of traffic, qualify for bill and keep and then arrange to deliver increased volumes of traffic to AT&T for termination on AT&T's network – for free. And AT&T could do nothing about it, because once the parties are on bill and keep under Sprint's language, there is no way out without Sprint's agreement, which it would have no incentive to give.

Q. BUT DOESN'T AT&T'S LANGUAGE SUFFER FROM A SIMILAR DEFECT, IN THAT ONCE THE PARTIES GO OFF BILL AND KEEP, THEY COULD NOT RETURN TO IT?

A. AT&T's language assumes that as of the Effective Date of the ICAs, the parties will be paying each other reciprocal compensation, because AT&T does not believe Sprint will establish in this proceeding that traffic is currently balanced. AT&T's language provides for the parties to switch to bill and keep if traffic goes in balance and stays in balance for three months, and it then provides that if traffic goes out of balance for three consecutive months, reciprocal compensation payments will resume. It is true that AT&T's language does not provide for the parties to then return to bill and keep a second time, but that is not a defect. Rather, if a carrier's traffic is going in and out of balance then this in itself is proof that the carrier should not qualify for bill and keep – period. Carriers that get bill and keep should not get it on an interim basis, but should be able to demonstrate that traffic is in balance and consistently so. In other

words, the presumption is that if a carrier's traffic is in and out of balance that the carrier should not qualify for bill and keep. As FCC Rule 713(b) provides, "the amount of telecommunications traffic from one network to the other is roughly balanced with the amount of telecommunications traffic flowing in the opposite direction, and is *expected to remain so*." AT&T's language already provides sufficient wiggle room for Sprint to re-gain a balance of traffic by requiring that 3 months in a row be out of balance before returning to reciprocal compensation. Such fluctuations in traffic do not merit a conclusion that the traffic is "roughly balanced" and "is expected to remain so", and bill and keep should therefore not apply.

Q. YOUR THIRD POINT WAS THAT THE PARTIES' TRAFFIC IS NOT IN BALANCE AS OF THE EFFECTIVE DATE OF THE ICA, AS SPRINT'S LANGUAGE STATES?

A. I would prefer to keep the burden where it should be by saying that Sprint must show that the traffic is in balance – or will be in balance as of the Effective Date – and I believe Sprint cannot do so.

Q. BUT DOESN'T THE FCC'S RECIPROCAL COMPENSATION RULE SAY THAT THE COMMISSION CAN PRESUME TRAFFIC IS BALANCED?

A. Yes. FCC Rule 51.713(c) provides, "Nothing in this section precludes a state commission from presuming that the amount of telecommunications traffic from one network to the other is roughly balanced with the amount of telecommunications traffic flowing in the opposite direction and is expected to remain so, unless a party rebuts such a presumption."

Q. IS THERE ANY REASON THAT SUCH A PRESUMPTION SHOULD NOT BE MADE?

A. I will note three reasons. First, for the reasons I have discussed – especially including the risk of under-compensation and arbitrage – state commissions should, at a bare minimum, be wary of bill and keep. If the Commission decides, as AT&T urges, that the ICA should include no bill and keep language, it will not have occasion to reach the question whether traffic is balanced. But if the Commission decides to make some provision for bill and keep, it should ensure that bill and keep applies only when it demonstrably makes economic sense. And one part of that would be clear proof that traffic is balanced – not some presumption.

Second, it would be a mistake to presume that the traffic AT&T exchanges with Sprint CMRS is roughly balanced. Historically – and this is a matter of common knowledge – people make more calls from their cell phones than they receive on their cell phones. As a result, incumbent carriers have historically terminated much more CMRS traffic than CMRS providers have terminated ILEC-originated traffic. The disparity used to be in the 70%/30% range. The gap is narrowing, but it still exists. A presumption of balance in the CMRS world would be absolutely without basis.

Third, the proven tendency of carriers to game the reciprocal compensation system is another reason not to presume that traffic is balanced. When the FCC stated in 1996 that state commissions were not precluded from making the presumption, one might reasonably have imagined that, at least in theory, the volumes of traffic exchanged between two landline carriers would, by and large, be roughly equal. There was no compelling reason to believe otherwise. Now that we know, however, that carriers manipulate traffic in order to profit from a system that is merely

supposed to compensate the terminating carrier for its costs, the more plausible presumption is that traffic between two carriers is not balanced.

Q. HAS THIS COMMISSION EXPRESSED A VIEW ON WHETHER TRAFFIC SHOULD BE PRESUMED ROUGHLY BALANCED?

A. Yes. In its *Reciprocal Compensation Order*, the Commission declined to make such a presumption. Also, the Commission noted (at p. 62),

> Most persuasive to us is a record reflecting that bill-and-keep arrangements exist between carriers that have determined the approach best suits their needs. Conversely, the record indicates a number of carriers continue to bill each other for reciprocal compensation. The simultaneous existence of both compensation schemes in the market leads us to conclude that the parties involved in intercarrier relationships are best suited to determine what compensation mechanism is appropriate according to their unique circumstances.

That conclusion supports AT&T's position here that bill and keep should not be imposed under any circumstances. Rather, the decision whether bill and keep is suited to any particular interconnection relationship should be left to the interconnected carriers. And, certainly, a presumption that traffic is balanced would be starkly inconsistent with the Commission's conclusion in its *Reciprocal Compensation Order*.

Q. PLEASE SUMMARIZE AT&T'S POSITION ON DPL ISSUES 43 *[III.A.1(4)]* AND 44 *[III.A.1(5)]*.

A. The 1996 Act expressly and reasonably provides that terminating carriers are entitled to recover, in the form of reciprocal compensation, the costs they incur for transporting and terminating other carriers' traffic. The statute also states, however, that that requirement shall not be construed to preclude bill and keep.

In keeping with the statute, the FCC established a rule that permits state commissions to impose bill and keep if traffic is roughly balanced. At the same time, though, the FCC recognized that the benefits of bill and keep are limited; that bill and keep is economically inefficient; and that in those limited circumstances where bill and keep does make economic sense, parties can be expected to agree to it voluntarily.

AT&T is not willing to agree to bill and keep voluntarily, because it believes bill and keep will deprive it of the recovery of termination costs to which it is entitled and that any administrative benefit will be substantially outweighed by that loss. AT&T is also legitimately concerned that a bill and keep arrangement would promote arbitrage that would harm AT&T and disserve the purposes of the 1996 Act. AT&T therefore urges the Commission to rule that the parties' ICAs should not provide for bill and keep under any circumstances.

If the Commission overrules AT&T's objection and decides that bill and keep language must be included in the ICAs, it should adopt AT&T's language rather than Sprint's, which is unreasonable for the reasons I have discussed.

ISSUE 52 ***[DPL ISSUE III.A.5]***

Should the CLEC ICA include AT&T's proposed provisions governing FX traffic?

Contract Reference: Attachment 3, Sections 6.4.2 – 6.4.2.4.3.1 (AT&T CLEC)

Q. WHAT IS AT ISSUE?

A. The parties disagree as to how Foreign Exchange ("FX") traffic should be treated under this ICA. FX traffic is not subject to reciprocal compensation under Section

251(b)(5) of the 1996 Act, and AT&T therefore proposes ICA language that excludes FX traffic from reciprocal compensation. Sprint, on the other hand, does not differentiate FX traffic from other "Authorized Service" traffic and so would improperly subject FX traffic to the same reciprocal compensation treatment as Section 251(b)(5) Traffic.

Q. HAS THE FLORIDA COMMISSION ADDRESSED THIS ISSUE BEFORE?

A. Yes. The Commission has ruled on at least four separate occasions that FX traffic is *not* subject to reciprocal compensation, just as AT&T maintains here.[40] I can only assume that Sprint was not aware of these precedents when it initially decided to arbitrate the issue here. I will proceed to discuss the issue, but the bottom line is that if Sprint does not concede, the Commission should resolve this issue in favor of AT&T for the same reasons it has consistently found compelling since 2003.

Q. WHAT IS FX TRAFFIC?

A. FX is the industry term for locally-dialed calls that originate in one local exchange and terminate to another local exchange. An FX call therefore travels to an exchange that is not local, called "foreign," to the originating exchange. Imagine that Mary's

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[40] Order on Arbitration, Docket No. 041464, *Petition for arbitration of cerrtain unresolved issues associated with negotiatiosn for interconnection, collocation, and resale agreement with Florida Digital Network, Inc. d/b/a FDN Commn'cs, by Sprint-Florida, Incorporated* (Fla. Pub. Serv. Comm'n Jan. 10, 2006) ("*FDN Order*"), at 38; Final Order on Arbitration, Docket No. 011666-TP, *Petition by Global NAPS, Inc. for arbitration pursuant to 47 U.S.C 252(b) of interconnection rates, terms and conditions with Verizon Florida Inc.* (Fla. Pub. Serv. Comm'n July 9, 2003), at 42; Final Order on Petition for Arbitration, Docket No. 020412-TP, *Petition for arbitration of unresolved issues in negotiation of interconnection agreement with Verizon Florida by US LEC of Florida Inc.* (Fla. Pub. Serv. Comm'n June 25, 2003) ("*US LEC Order*"), at 39-40; *Reciprocal Compensation Order, supra*, at 33-34.

Pizzeria business telephone number has a virtual presence in John's local calling area by having a telephone number that is from the same rate center as John's telephone number, even though Mary's Pizzeria is physically located in a different local calling area. Therefore, when John calls Mary's Pizzeria, John is simply dialing a local telephone number. The key is that FX traffic is dialed by the originating caller as a local telephone number, and thus the dialing end user does not incur any toll charges for placing the call.

Q. HOW DOES AT&T PROVIDE FX SERVICE?

A. AT&T offers FX service through its retail tariff, basically charging the recipient of the FX call a discounted, flat and usage sensitive combination rate for the toll charges that would have applied if the call had been placed as an ordinary toll call. AT&T provisions its FX service via a dedicated circuit from the end office where the customer's NPA-NXX is assigned to the end user's premises, which are outside the service area of the end office to which the NPA-NXX is assigned. Therefore, when another party calls that end user's telephone number, the call is routed to the proper resident end office switch, and from there the call is diverted over the dedicated circuit to the end user's remote location.

Q. HOW DO CLECS TYPICALLY PROVIDE FX SERVICE?

A. CLECs could establish competing FX service in the same manner as AT&T, by building dedicated circuits to deliver dial tone outside the local calling scope. Instead, however, CLECs typically create an "'FX-type"' arrangement by reassigning the telephone number to a switch that is different than the "home" central office

switch where that NPA-NXX is assigned as a local number. The assignment of NPA-NXX codes is governed by the North American Numbering Code Administrator.[41] The CLEC tells the Code Administrator where it wishes to obtain numbers, and the Code Administrator goes to its database of available numbers for that location and makes the appropriate NPA-NXX assignment. To provide FX service, the CLEC takes the assigned NPA-NXX code and deploys it in a switch miles away from the geographic location to which it applies.

Q. WHAT IS THE PURPOSE OF CLECS' "FX-LIKE" SERVICE FROM THE POINT OF VIEW OF THE END USER THAT BUYS THE SERVICE?

A. The end result of CLECs' FX-type service and AT&T's dedicated circuit FX service is the same: it allows an end user customer to be assigned a telephone number and to receive calls as if he or she was located in a given exchange, regardless of the physical location of that customer. From the point of view of the end user that obtains the service, the objective is to enable callers to make what would otherwise be a toll call as if it were a local call – with no toll charge – typically, in order to induce potential callers to call.

Q. WHY ARE FX AND FX-LIKE CALLS NOT SUBJECT TO RECIPROCAL COMPENSATION?

A. Because the determinant of whether a call is or is not subject to reciprocal compensation is the actual geographic location of the calling party and the called

[41] The North American Numbering Code Administrator is currently Neustar Technologies, working under a governmental grant of authority from the North American Numbering Council, comprised of the U.S., Canadian, Caribbean and Mexican telecommunications regulatory agencies.

party. An FX or FX-like call "appears" local to the network, because the called party has been assigned a phone number that theoretically belongs to the exchange area in which the calling party is located, but the call in fact crosses an exchange boundary and therefore is not subject to reciprocal compensation.

The Code of Federal Regulations, 47 CFR 51.701(a), makes clear what traffic is subject to reciprocal compensation; "telecommunications traffic exchanged between a LEC and a telecommunications carrier other than a CMRS provider, except for telecommunications traffic that is interstate or intrastate exchange access, information access, or exchange services for such access." FX traffic is intraLATA intrastate access as it allows a caller located in one local exchange to reach an end user in a different local exchange. FX therefore provides the same functionality as an intraLATA access call, but without the calling party retail toll charges associated with an intraLATA access call.

Q. WHAT MIGHT BE THE CONSEQUENCES IF CALLS MADE TO SUBSCRIBERS TO A CLEC'S FX-LIKE SERVICE WERE MADE SUBJECT TO RECIPROCAL COMPENSATION?

A. The CLEC could use FX-like service to generate artificially high intercarrier reciprocal compensation revenues from the originating network (AT&T's) without having to charge the CLEC subscriber for the benefits of the FX-like service. This would create precisely the type of arbitrage and imbalanced competition that the FCC and some state commissions have sought to avoid in the regulations surrounding intercarrier compensation.

Q. HAS THE FLORIDA COMMISSION RULED ON WHETHER FX TRAFFIC IS SUBJECT TO ACCESS CHARGES?

A. Yes. As I noted above, the Commission has repeatedly ruled that FX traffic is not subject to reciprocal compensation. In two of the four decisions to that effect that I cited, the Commission went on to state expressly that FX traffic is subject to access charges payable by the terminating carrier to the originating carrier.[42]

Q. IF FX CALLS ARE INTRASTATE ACCESS, WHY DOES AT&T PROPOSE BILL AND KEEP INSTEAD OF THE APPROPRIATE SWITCHED ACCESS CHARGES?

A. AT&T's proposal for bill and keep is actually a compromise for the parties. While I have explained why it is inappropriate for a CLEC to charge AT&T reciprocal compensation for FX traffic, AT&T also understands how FX services are commonly used by CLECs. That is, CLECs often provision FX telephone numbers for dial-up ISPs.[43] FX telephone numbers allow for an ISP's end users throughout a specific LATA to make a local call to the ISP, which is typically located at only one location in the LATA. AT&T recognizes that applying switched access charges to a CLEC for FX traffic would likely result in those charges being passed on to ISP dial-up end users as toll charges. Applying toll charges to customers dialing their ISP would not

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[42] *US LEC Order* at 39-40 ("We find that the parties shall not pay reciprocal compensation for calls that originate in one local calling area and are delivered to a customer located in a different local calling area, if the NXX of the called number is associated with the same local calling area as the NXX of the calling number. In addition, we find that the originating carrier shall be able to charge originating access on the traffic described in Issue 6 (A) . We find that this treatment shall also apply to FX numbers"); *FDN Order* at 38.

[43] Though dial-up internet service is not as common as it was a few years ago, it still exists. AT&T's advocates bill and keep here the same as it has in other states.

be in the best interest of making internet access affordable to end users in areas beyond the ISP's physical location. Bill and keep for FX traffic therefore does not inappropriately compensate a CLEC, as reciprocal compensation would, nor does bill and keep harm those dial-up ISP end users that benefit from FX services.

Q. IS AT&T ATTEMPTING TO DICTATE SPRINT'S LOCAL CALLING AREAS?

A. No. Each local exchange carrier has the ability to define its own local calling areas for purposes of its retail calling plans, and AT&T's proposed contract language so provides under Attachment 3 section 6.1.5. AT&T does not dispute Sprint's right to assign NPA-NXX codes associated with one local calling area to subscribers that physically reside in another local calling area. AT&T's concern is not the assignment of such numbers or the service provided by Sprint to its customers. Rather, it is the appropriate intercarrier compensation associated with the delivery of calls to those customers. Calls that appear to be local because of the NPA-NXX assigned, but that are terminating to customers physically located outside of the originating party's local calling area, should not be classified as local calls subject to local reciprocal compensation.

Q. DOES AT&T'S PROPOSED BILL AND KEEP REGIME FOR FX AND FX-LIKE SERVICES EXTEND TO ISP-BOUND FX TRAFFIC?

A. Yes. Bill and keep is the appropriate mechanism for both voice and ISP-Bound FX traffic. As I previously discussed, ISP-Bound traffic is appropriately limited to ISP calls that originate and terminate to an ISP physically located within the same local

mandatory calling area. As ISP-Bound FX calls travel beyond the local mandatory calling area, they are subject to the same bill and keep regime as voice FX calls.

Q. IS IT APPROPRIATE TO INCLUDE TERMS IN THE ICA TO SEGREGATE AND TRACK FX TRAFFIC?

A. Yes. Because FX Traffic is a distinct category of traffic subject to a different compensation mechanism than other categories of traffic, it is necessary for the parties to be able to identify the FX traffic each terminates to its respective end users. AT&T has also proposed audit terms in order to ensure accurate application of the FX factor to intercarrier compensation billings.

ISSUE 49 ***[DPL ISSUE III.A.4(1)]***

What compensation rates, terms and conditions should be included in the CLEC ICA related to compensation for wireline Switched Access Service Traffic?

Contract Reference: Attachment 3, Sections 6.1.4, 7.1.2 (Sprint)

Attachment 3, Sections 6.4.1, 6.9, 6.11, 6.23-6.24.1 (AT&T CLEC)

Q. SHOULD ATTACHMENT 3 CONTAIN TERMS AND CONDITIONS FOR SWITCHED ACCESS SERVICE TRAFFIC?

A. Yes. Switched access service involves traffic destined either to an interexchange carrier ("IXC") or traffic from an IXC. It is appropriate to address this category of traffic in the ICA in order to ensure its proper routing and compensation.[44]

Q. HOW SHOULD COMPENSATION FOR SWITCHED ACCESS TRAFFIC BE ADDRESSED?

[44] AT&T witness Mark Neinast addresses appropriate trunking of Switched Access Services traffic under Issue 30 *[II.F(2)]*.

A. The ICA should be clear and concise as to what traffic falls under switched access compensation, and what traffic does not. AT&T's proposed language in Attachment 3 section 6.9 provides a clear and inclusive statement: "Neither Party shall represent switched access services traffic (e.g. FGA, FGB, FGD) as **Section 251(b)(5) Traffic** for purposes of payment of reciprocal compensation." The provision is clear that switched access service traffic is not subject to the same reciprocal compensation rate as Section 251(b)(5) and ISP-Bound traffic. AT&T's proposed sections 6.4.1 and 6.23.1 of the same attachment provide that switched access traffic is subject to applicable intrastate or interstate switched access charges as set forth in each Party's access tariffs, but not to exceed AT&T's access tariff rates. In addition, Attachment 3, sections 6.23.1.1 through 6.23.1.4 provide specific categories of switched access traffic not subject to these provisions: IntraLATA Toll traffic that is exchanged directly between Sprint and AT&T with no third-party IXC; switched access traffic delivered to AT&T from an IXC where the terminating number is ported to another CLEC and the IXC fails to perform a Local Number Portability ("LNP") query; and switched access traffic delivered to either Sprint or AT&T from a third party CLEC over interconnection trunk groups destined to the other Party.

Q. DOES SPRINT PROPOSE COMPETING LANGUAGE ADDRESSING TERMS AND CONDITIONS FOR SWITCHED ACCESS TRAFFIC?

A. No. Sprint's language addressing the treatment of switched access traffic is minimal, vague and somewhat circular. Sprint's proposed Attachment 3, section 6.9 states "***Except to the extent permitted by law,*** neither Party shall represent switched access

services traffic (e.g. FGA, FGB, FGD) as ***traffic*** for purposes of payment of reciprocal compensation." As with its definition of "Authorized Services," Sprint relies upon overly general descriptions for categorizing all of its intercarrier traffic – that is, traffic as "permitted by law." Furthermore, Sprint's language includes no provisions whatsoever governing how the parties will route, record or bill for switched access traffic. Without specific terms in the ICA categorizing the various types of traffic that will be exchanged between the parties, Sprint's proposed language is a recipe for disputes. An ICA is the means by which the parties should specify precisely what types of traffic are "permitted by law" and the appropriate compensation mechanisms for each of those lawful traffic types. To go through the process of negotiating – and arbitrating – contract provisions in order to provide certainty between the parties for a set period of time, yet to ultimately end up with vague generalizations such as Sprint's proposed traffic "type" or "types" is to not complete the task at hand. The purpose of ICA language is to provide specific guidance for terms and conditions of their interconnection arrangement, so that each Party can operate efficiently and without undue disputes. Sprint's language provides none of the certainty that is reasonably expected in an ICA.

ISSUE 50 ***[DPL ISSUE III.A.4(2)]***

What compensation rates, terms and conditions should be included in the CLEC ICA related to compensation for wireline Telephone Toll Service (i.e., intraLATA toll) traffic?

Contract Reference: Attachment 3, Sections 7.3.5-7.3.5.5 (Sprint)

Attachment 3, Sections 6.7-6.7.1, 6.16- 6.16.2, 6.17, 6.19-6.19.2, 6.22, – 6.22.3, 6.18-6.18.1.2 (AT&T CLEC)

Q. IS IT APPROPRIATE FOR THE ICA TO CONTAIN CLEAR TERMS FOR THE TREATMENT OF TELEPHONE TOLL SERVICE – OR INTRALATA TOLL TRAFFIC?

A. Yes. As with other categories of traffic, AT&T proposes language that makes clear how intraLATA toll traffic, both intrastate and interstate, is defined and billed. AT&T's proposed language also provides appropriate terms governing Primary Toll Carrier Arrangements, and the exchange of intraLATA 8YY traffic, including appropriate recording and billing provisions, which Sprint's language does not.

Q. HOW DOES AT&T DEFINE TELEPHONE TOLL SERVICE TRAFFIC?

A. Though both parties appear to agree that Telephone Toll Service traffic should be defined in the ICA under Attachment 3, section 6.16.1, the parties disagree what that definition should be. As with other types of traffic, AT&T proposes that the location of the end users of the call determine jurisdiction. An intraLATA toll call is a call between an AT&T end user and a Sprint end user in the same LATA but in different local or mandatory local calling areas. In other words, the call is intraLATA and interexchange, and is therefore not subject to reciprocal compensation. The parties have agreed in Attachment 3, section 6.16.2 that appropriate intrastate or interstate[45] tariffed switched access rates will apply.

[45] Though not common, there are LATAs that cross state boundaries, via FCC-approved LATA boundary waivers, making it possible to have an *intraLATA interstate* call.

Q. DOES SPRINT AGREE WITH AT&T'S PROPOSED DEFINITION FOR TELEPHONE TOLL SERVICE?

A. No. Sprint objects to defining an intraLATA toll call based upon the location of the calling and called end users. Instead, Sprint proposes in section 6.16.1 that an intraLATA toll call is any call within a LATA that "results in Telephone Toll Service charges being billed to the originating end user by the originating Party."

Q. WHY IS AT&T'S DEFINITION MORE APPROPRIATE?

A. First, AT&T's proposed language follows the basic tenet of determining and applying intercarrier compensation based upon the jurisdiction of the call. Intercarrier compensation is a *wholesale* mechanism that is applied to *traffic exchanged between two carriers*, not to traffic exchanged between two retail end users. Sprint's proposed definition ignores this premise and attempts to apply a *retail* arrangement to wholesale compensation.

Second, if the parties were to bill based upon Sprint's proposal, charges would apply only when the originating carrier charged its retail customer a toll charge, and the terminating carrier would not always know if intraLATA toll charges were applicable on a specific call, and would therefore be at the mercy of the other carrier to determine appropriate charges. Sprint has not proposed any terms or conditions to determine how such billings would take place. Further complicating Sprint's proposal, many carriers today offer wireline services in either "buckets of minutes" or on an unlimited basis at one flat charge for local and long distance calling. Sprint could potentially argue that it does not apply a "Telephone Toll Service" charge upon

any long distance calls its retail customers make, and therefore avoid paying any compensation whatsoever for this traffic.

Q. SHOULD THE ICA INCLUDE TERMS DETAILING APPROPRIATE RECORDS TO BE EXCHANGED FOR 8XX TRAFFIC?

A. Yes. Sprint's proposed language states that Each Party will provide to the other the appropriate "records necessary for billing intraLATA 8XX customers." While this statement is generally accurate, it is deficient in that it does not identify what those records necessary for billing actually are. In contrast, AT&T proposes detailed language specifying the parties provide to each other IntraLATA 800 Access Detail Usage Data for Customer billing and IntraLATA 800 Copy Detail Usage Data for access billing in Exchange Message Interface ("EMI") format in order to ensure complete and consistent billing data exchanged between AT&T and Sprint. Also, where technically feasible, each Party should provide to the other appropriate records in accordance with industry standards for billing intraLATA 8XX customers. AT&T's proposal reflects these obligations and points to AT&T's intrastate or interstate switched access tariffs for applicable intercarrier compensation rates for the exchange of this traffic.

ISSUE 2 ***[DPL ISSUE I.A(2)]***

Should either ICA state that the FCC has not determined whether VoIP is telecommunication service or information service?

Contract Reference: GTC Part A, Section 1.3

ISSUE 3 ***[DPL ISSUE I.A(3)]***

Should the CMRS ICA permit Sprint to send Interconnected VoIP traffic to AT&T?

Contract Reference: GTC Part A, CMRS Section 1.1

Q. HAVE THE PARTIES AGREED UPON A DEFINITION FOR INTERCONNECTED VOICE OVER INTERNET PROTOCOL ("VOIP") SERVICE?

A. Yes. The parties agree that Interconnected VoIP Service shall have the same meaning as in 47 C.F.R. §9.3:

> An interconnected Voice over Internet protocol (VoIP) service is a service that:
>
> > (1) Enables real-time, two-way voice communications;
> > (2) Requires a broadband connection from the user's location;
> > (3) Requires Internet protocol-compatible customer premises equipment (CPE); and
> > (4) Permits users generally to receive calls that originate on the public switched telephone network and to terminate calls to the public switched telephone network.

Q. IS INTERCONNECTED VOIP SERVICE TRAFFIC ALSO REFERRED TO AS INTERNET PROTOCOL ("IP") – PUBLIC SWITCHED TELEPHONE NETWORK ("PSTN") TRAFFIC?

A. Yes. IP-PSTN traffic is traffic that originates from the end user's premises in IP format and is transmitted in IP format to the switch of its service provider. The service provider then converts that traffic to circuit-switched format and delivers that traffic (either by itself or by partnering with other service providers) to a LEC on the PSTN for termination over that carrier's circuit-switched network. Stated another way, one end of the call is on an IP network and the other end of the call is on the PSTN.

Q. WHAT IS PSTN-IP-PSTN TRAFFIC?

A. PSTN-IP-PSTN Traffic (also known as "IP-in-the-middle" traffic) is traffic that: 1) originates over a LEC's circuit-switched network; 2) is delivered to an IXC that

converts the traffic to IP format, transports that traffic across its network, and reconverts the traffic to the circuit-switched format; and 3) is delivered by the IXC (either by itself or by partnering with other service providers) to a different exchange for termination over a LEC's circuit-switched network. Traffic transmitted in this manner does not undergo any net protocol change – it both begins and ends in circuit-switched format. This use of IP technology is entirely transparent to the end user and does not enhance or change the content of the communications traffic in question or make the interexchange service any more functional or flexible to the end user. Indeed, the interexchange services that use IP technology in the transport component of the call are marketed, sold, and priced no differently than interexchange services that do not employ IP technology.

Q. FOR PURPOSES OF THIS ICA, DOES IT MATTER WHETHER OR NOT THE FCC HAS MADE A DETERMINATION WHETHER INTERCONNECTED VOIP SERVICE TRAFFIC IS TELECOMMUNICATIONS OR AN INFORMATION SERVICE?

A. No, it does not. First, under GTC Part A, section 1.2 the parties have agreed that "[t]his Agreement may be used by either Party to exchange Telecommunications Service or Information Service." So by agreement, both are already included under the terms of the ICA. Second, the relevant provision in section 1.3 of GTC Part A is that the parties have agreed to exchange Interconnected VoIP Services ("VoIP") traffic under the terms of this ICA. Sprint's proposed editorial statement "***The FCC has yet to determine whether Interconnected VoIP service is Telecommunications Service or Information Service"*** does not provide any contractual guidance for the

parties to operate under the ICA. Sprint even acknowledges that the statement has no bearing on the terms of the ICA, as Sprint's very next sentence states "***Notwithstanding the foregoing,*** *t*his Agreement may be used by ***either Party*** to exchange Interconnected VoIP Service traffic." Sprint's proposed sentence in section 1.3 regarding the FCC's lack of a determination on VoIP traffic has no bearing on the operational terms and conditions for the exchange of VoIP traffic in the ICAs and should therefore not be included in the ICA.

Q. WHAT DOES AT&T PROPOSE FOR CLEC SECTION 1.3?

A. AT&T proposes that CLEC GTC Part A, section 1.3 read "Interconnected VoIP Service. This Agreement may be used by either Party to exchange Interconnected VoIP Service traffic." The parties have agreed on this language.

Q. WHAT DOES AT&T PROPOSE FOR CMRS SECTION 1.3?

A. AT&T has proposed that section 1.3 of the CMRS ICA read "**T**his Agreement may be used by **AT&T** to exchange Interconnected VoIP Service traffic **to Sprint**."

Q. WHY DOES AT&T PROPOSE DIFFERENT LANGUAGE FOR THE WIRELESS ICA THAN WHAT'S AGREED UPON IN THE CLEC ICA?

A. Because the ICA is between AT&T, an ILEC and Sprint, a CMRS carrier. It appropriately addresses only CMRS traffic, either land to mobile or mobile to land, that is exchanged directly between the parties. CMRS traffic, *i.e.* cellular traffic, is not Interconnected VoIP Service traffic and would not be exchanged in the mobile to land direction.

Q. WOULD AT&T HAVE CONCERNS IF SPRINT WERE ALLOWED TO EXCHANGE INTERCONNECTED VOIP SERVICE TRAFFIC IN THE MOBILE TO LAND DIRECTION?

A. Yes. Because Sprint's CMRS entity cannot originate cellular VoIP traffic for exchange with AT&T, such a provision would technically allow Sprint CMRS to aggregate other carriers' VoIP traffic for termination on AT&T's network.

ISSUE 53 ***[DPL ISSUE III.A.6(1)]***

What compensation rates, terms and conditions for Interconnected VoIP traffic should be included in the CMRS ICA?

Contract Reference: Attachment 3, Pricing Sheet (Sprint)
Section 6.1.3 (AT&T CMRS)

ISSUE 54 ***[DPL ISSUE III.A.6(2)]***

Should AT&T's language governing Other Telecomm. Traffic, including Interconnected VoIP traffic, be included in the CLEC ICA?

Contract Reference: Attachment 3, Pricing Sheet (Sprint)
Attachment 3 Sections 6.4, 6.4.3 – 6.4.5, 6.23.1 (AT&T CLEC)

Q. PLEASE DESCRIBE THE DISPUTE INVOLVING INTERCONNECTED VOIP TRAFFIC?

A. Though the parties agree – with exception of the CMRS mobile to land direction issue I just discussed – that VoIP traffic will be exchanged between the parties, Sprint proposes that no intercarrier compensation rate applies for this traffic. Sprint justifies its proposal by stating in the DPL that the FCC has not decided what, if any, compensation is applicable, and as such believes such traffic should be exchanged at bill and keep. AT&T seeks to apply intercarrier compensation to VoIP traffic consistent with all other categories of traffic, based not upon the technology of the transmission of the call, but on the jurisdiction of the call based upon the location of the calling and called end users.

Q. HAS THE FLORIDA COMMISSION ADDRESSED THIS ISSUE?

A. Yes, and its decisions strongly support AT&T's position. I will save my comments about the Commission's decisions on VoIP until the end of my discussion of this issue, however, because the significance of those prior rulings will be clearest against that backdrop.

Q. IS IT ACCURATE FOR SPRINT TO SAY THE FCC HAS "NOT DECIDED WHAT, IF ANY COMPENSATION IS APPLICABLE"?

A. It is true only from the perspective that the FCC has not decided what, if any *VoIP-specific* compensation is applicable. In other words, the FCC has not come out and said that VoIP traffic *must* be subject to a compensation rate or regime different than PSTN traffic. Without anything specifying that the parties are to treat VoIP traffic differently than other traffic, it is appropriate to apply current intercarrier compensation terms and conditions to VoIP traffic.

Q. HAS THE FCC SAID ANYTHING THAT SUPPORT'S AT&T'S POSITION IN THIS REGARD?

A. Yes, the FCC has made absolutely clear that until and unless the FCC establishes VoIP-specific intercarrier compensation rules, state commissions arbitrating interconnection agreements are to apply current intercarrier compensation rules – the same rules that apply to all other traffic – to VoIP traffic.

Q. WHEN DID THE FCC SAY THAT?

A. In a decision rendered on October 9, 2009, on a petition brought by a CLEC that asked the FCC to preempt the jurisdiction of a state commission that had abated an

arbitration proceeding that involved VoIP issues.[46] The state commission had "declined to consider issues implicating VoIP because it believed that the [FCC] intended to address such issues," and on that basis held the arbitration proceeding in abeyance for an extended period.[47] The CLEC contended that the state commission had thereby "failed to act" in the arbitration, and that the FCC should therefore preempt the state commission and take over the arbitration as permitted by section 252(e)(5) of the 1996 Act. The FCC declined to preempt. Most importantly for present purposes, however, the FCC stated that the state commission "could have relied on existing law to reach a decision" on the VoIP issues.[48] The FCC further stated, "the lack of regulatory direction from the [FCC] regarding these issues does not, in fact, stand as a legal obstacle to the [state commission's resolution of the arbitration,"[49] and that the state commission "should not wait for [FCC] action to move forward," but instead should "proceed to arbitrate this arbitration in a timely manner, *relying on existing law*."[50]

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46 *Petition of UTEX Commc'ns Corp., Pursuant to Section 252(e)(5) of the Communications Act, for Preemption of the Jurisdiction of the Public Utility Comm. of Texas Regarding Interconnection Disputes with AT&T Texas*, WC Docket No. 09-134, 24 FCC Rcd. 12573 (Oct. 9, 2009.

47 *Id.* ¶ 5.

48 *Id.* ¶ 8.

49 *Id.* ¶ 9.

50 *Id.* ¶ 10.

That is exactly what AT&T's proposed language does, and what AT&T is asking this Commission to do: provide for compensation on VoIP traffic in accordance with existing intercarrier compensation rules.

Q. IS SPRINT CORRECT THAT THIS COMMISSION DOES NOT HAVE JURISDICTION TO ESTABLISH A RATE FOR VOIP TRAFFIC?

A. The FCC obviously does not think so. AT&T will address this further in its briefs, but it is my understanding the FCC has provided states with authority to arbitrate and adjudicate the terms of an ICA, including establishing intercarrier compensation rates, that are appropriately contained within such an ICA. As both AT&T and Sprint have agreed to the exchange of VoIP traffic under the terms of these ICAs, this Commission can certainly determine proper compensation under the ICAs for this traffic.

Q. HAS THE FCC MADE STATEMENTS THAT SUPPORT REQUIRING COMPENSATION FOR THIS TYPE OF TRAFFIC?

A. Yes. The FCC's access charge rule states: "Carrier's carrier charges [i.e., access charges] shall be computed and assessed upon *all* interexchange carriers that use local exchange switching facilities for the provision of interstate or foreign telecommunications services."[51] A telecommunications carrier that provides service to VoIP providers – such as when Sprint provides such carriers access to the PSTN - falls squarely under this rule, and a contrary conclusion cannot be squared with the

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[51] 47 C.F.R. § 69.5(b) (emphasis added).

FCC's *Time Warner Order*.[52] In that decision, the FCC held that whether VoIP traffic was classified as an information service or as a telecommunications service was irrelevant to whether a "wholesale telecommunications carrier" providing service to such VoIP providers is entitled to enter into an ICA under the 1996 Act to exchange such traffic with an incumbent carrier like AT&T. The FCC concluded that such *wholesale* carriers are providing "telecommunications service."[53]

The FCC in the *Time Warner Order* also concluded that whether IP-enabled voice traffic is classified as a telecommunications service or an information service is irrelevant because "[t]he regulatory classification of the service provided to the ultimate end user has no bearing on the wholesale provider's rights as a telecommunications carrier to interconnect under section 251."[54] The FCC made clear that an "explicit condition" of this right of interconnection is that "the wholesale telecommunications carriers have assumed responsibility for compensating the incumbent LEC for the termination of traffic under a section 251 arrangement between those two parties."[55] And to the extent the telecommunications carrier is providing interstate transport between different local exchanges, the carrier by definition is an "interexchange carrier" providing "interstate . . . telecommunications

[52] *In the Matter of Time Warner Cable*, 22 FCC Rcd. 3513, 2007 WL 623570 (FCC 2007) ("*Time Warner Order*").

[53] *See id.* ¶¶ 8-16.

[54] *Id.* ¶ 15.

[55] *Id.* ¶ 17.

services." 47 C.F.R. § 69.5(b). As a result, the FCC's access charge rule applies in such circumstances, as a matter of law.

Q. WHAT TYPE OF COMPENSATION IS AT&T ASKING FOR IN THIS PROCEEDING?

A. If an Interconnected VoIP Service call were to originate and terminate in the same local calling area, it should be subject to reciprocal compensation just as a traditional call. If the call were interexchange in nature (e.g., it originated and terminated in different local exchanges), then the relevant access charges should be applied. In short, AT&T recommends that no specialized compensation for Interconnected VoIP Service traffic exist in the ICA.

Q. IS THE FCC CURRENTLY DECIDING IF ANY SPECIALIZED COMPENSATION FOR VOIP TRAFFIC IS NECESSARY?

A. The FCC has already determined that no special compensation arrangements are appropriate for PSTN-IP-PSTN traffic, and the FCC has also developed rules regarding ISP-bound traffic, for which AT&T has proposed language.[56] However, the FCC is currently determining on a going-forward basis if there should be any specialized treatment for IP-PSTN traffic in its *IP-Enabled Services NPRM*.[57]

Q. WOULD SETTING A SPECIAL RATE, SUCH AS $0.0000 PER MOU TO APPLY BILL AND KEEP FOR VOIP TRAFFIC, CREATE A BILLING PROBLEM?

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[56] See my discussion under Issue 45 *[III.A.2]*.

[57] *In the Matter of IP-Enabled Services Notice of Proposed Rulemaking*, WC Docket No. 04-36, released February 12, 2004, FCC 04-28 ("*IP-Enabled Services NPRM*").

A. Yes. As a technical matter, IP-PSTN and PSTN-IP-PSTN traffic must be routed the same as, and subject to, the same compensation rates as traditional PSTN-PSTN traffic. That is because the PSTN cannot distinguish between traffic it sends to the PSTN and traffic it sends to an IP network. When an end user originates a call, neither the industry nor AT&T's switches have any way of knowing whether the call is destined to an IP-based network or the PSTN, but simply analyzes the number that was dialed and routes the call appropriately. For traffic going the other way, once such traffic terminates to the PSTN, it looks and is treated like all other traffic that terminates to the PSTN. No identifier exists for VoIP traffic that would enable AT&T, or any other carrier, to treat Sprint's traffic different from all other traffic that terminates to the PSTN.

Q. YOU INDICATED THAT SPRINT IS PROPOSING THAT NO COMPENSATION APPLY TO VOIP TRAFFIC. WHAT IS THE BASIS FOR SPRINT'S POSITION, AND HOW DO YOU RESPOND?

A. Sprint's view appears to be that since the FCC has not established compensation rules specifically applicable to VoIP traffic, and since (as Sprint incorrectly sees it) the Commission cannot subject VoIP traffic to compensation in accordance with existing compensation rules that apply to all traffic (which is exactly what the FCC said a state commission should do in the decision I discussed above), VoIP traffic should be exchanged on a bill and keep basis. Sprint's position makes about as much sense as it would make for a shopper who finds a product in a store with no price tag to claim he is entitled to have it for free.

Q PLEASE SUMMARIZE AT&T'S POSITION ON THIS ISSUE.

A. It is perfectly appropriate for this Commission to decide how the parties will compensate each other for interconnected VoIP traffic they exchange under the CLEC ICA. Sprint's position to the contrary is foreclosed by the FCC's direction to the Texas PUC last October to arbitrate that very issue. As the FCC also made clear in that decision, the Commission should decide how the parties should compensate each other for VoIP traffic by applying current intercarrier compensation principles. Pursuant to those principles, a VoIP call, just like a non-VoIP call, is subject to reciprocal compensation, intrastate access charges or interstate access charges, depending on the geographic endpoints of the call.

Q. YOU STATED THAT THE COMMISSION'S PRECEDENTS ARE CONSISTENT WITH AT&T'S POSITION. PLEASE ELABORATE.

A. I am aware of three Commission decisions that address VoIP traffic. The first was the 2003 *Reciprocal Compensation Order*, which I discussed earlier in connection with the bill and keep issue. At that time, the Commission "reserved any generic judgment on "the question of intercarrier compensation on IP traffic, finding that the issue was not ripe because IP was a "relatively nascent technology."[58] The Commission stated, however,

> We agree in principle with BellSouth that a call is determined to be local or long distance based upon the end points of the particular call. As such, the technology used to deliver the call, whether circuit-switching or IP telephony, should have no bearing on whether reciprocal compensation or access charges should apply.[59]

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58 *Reciprocal Compensation Order*, at 37.

59 *Id.* at 36.

This is precisely AT&T's position.

Two years later, the Commission crossed the bridge it had declined to cross in 2003. The Commission took this step in a case where Sprint took a position remarkably different than the one it espouses here. As the Commission stated,

> Sprint contends that the FCC has indicated that VoIP traffic that uses the public switched network in the same manner as circuit switched traffic should be subject to the same intercarrier compensation. Sprint notes that we have also stated that access charges are due when VoIP traffic is terminated over the public switched network in the same manner as circuit switched traffic.[60]

The Commission resolved the VoIP issue in that case precisely as AT&T urges the Commission to resolve the issue here, ruling:

> In the Reciprocal Compensation Order, we declined to rule on IP telephony, stating that it was a nascent technology and we did not want to make decisions that could constrain its emergency. However, we also stated that "a call is determined to be local or long distance based upon the end points of the particular call. As such, the technology used to deliver the call, whether circuit-switching or IP telephony, should have no bearing on whether reciprocal compensation or access charges should apply. Although we reserved any generic judgment on the issue until the market for IP telephony developed further, we also stated that carriers could petition for decisions regarding specific IP telephony services through arbitration or complaint proceedings. . . .
>
> The jurisdiction and compensation of a call shall be based on its end points, unless otherwise specified in the applicable interconnection agreement. Notwithstanding this decision, enhanced services traffic

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[60] Order on Sprint Complaint against KMC for Alleged Failure to Pay Intrastate Access Charges, Docket No. 041144-TP, *Complaint against KMC Telecom III LLC et al. for alleged failure to pay intrastate access charges pursuant to its interconnection agreement and Sprint's tariffs*, (Fla. Pub. Serv. Comm'n Dec. 19, 2005), at 6-7. Sprint also asserted that the Commission had jurisdiction to address the question that it here claims the Commission cannot properly address.

may be exempt from access charges.[61]

The third occasion on which the Commission addressed VoIP is notable because it also involved Sprint and, once again, featured Sprint forcefully asserting a position diametrically opposed to its position here. In its 2006 *FDN Order*, which I discussed earlier in my discussion of FX traffic, the Commission summarized Sprint's position as follows:

> Witness Sywenki testified that it is Sprint's position that intercarrier compensation for Voice over Internet Protocol (VoIP) traffic should be the same as compensation for non-VoIP traffic, i.e., reciprocal compensation, interstate and intrastate access charges, since VoIP traffic uses the public switched network. . . . Sprint asserts that the FCC has addressed VoIP compensation several times. Specifically, Sprint argues that in its Declaratory Ruling in WC Docket 02-361, *AT&T's Petition for Declaration Ruling that AT&T's Phone-to-Phone IP Telephony Services are Exempt from Access Charges*, the FCC determined that access charges are applicable when the connections are phone to phone, undergo no network protocol change, and use the North American Numbering Plan for routing the calls in. . . . Sprint agrees that there may be some specific types of IP services which the FCC has determined to be exempt from access charges, but the FCC has not exempted VoIP services in general.

In other words, Sprint's position in 2006 – as it had been in 2003 – was strikingly at odds with its position here. In its *FDN Order*, the Commission did not decide the VoIP compensation issue, but for reasons that do not pertain here. The CLEC, FDN, urged the Commission not to expend resources deciding the matter because the FCC was "currently in the process of rule making on the matter," and because FDN was not going to be delivering VoIP traffic to Sprint.[62] The Commission found those

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61 *Id.* at 17-18 (footnotes omitted).

62 *Id.* at 39.

considerations persuasive, and so did not decide how FDN and Sprint would compensate each other for VoIP traffic, but instead directed them to include language in their ICA to the effect that they would not be exchanging local VoIP traffic.[63]

Four years later, any hope of a resolution of this or any other intercarrier compensation issue by the FCC seems a pipe dream. Also, Sprint has given every indication that it wants to be free to deliver VoIP traffic to AT&T, so the compensation issue cannot realistically be avoided. The Commission should resolve the issue by approving AT&T's proposed language, pursuant to which VoIP traffic will be treated, for intercarrier compensation purposes, the same as any other traffic unless and until the FCC decides otherwise – just as the Commission presaged in 2003 and then ruled in 2005.

ISSUE 60 *[DPL ISSUE III.E(3)]*

How should Facility Costs be apportioned between the Parties under the CLEC ICA?

Contract Reference: Attachment 3 Sections 2.5.3 (Sprint)

Alternative Section 2.8.6.1.5 (AT&T CLEC)

Q. PLEASE DESCRIBE SPRINT'S PROPOSAL FOR APPORTIONING THE COSTS OF CLEC INTERCONNECTION FACILITIES.

A. Sprint proposes that the Parties use a "Proportionate Use Factor" (PUF) to apportion the costs associated with interconnection facilities that they use for the exchange of traffic. Sprint's proposed PUF coincides with the actual proportion of traffic each Party sends to the other Party over that specific facility. As an example, if AT&T

63 *Id.* at 39-40.

originates 900 minutes of Section 251(b)(5) and ISP-Bound traffic over that facility to Sprint, and Sprint originates 100 minutes of the same types of traffic to AT&T, then under the terms of Sprint's proposed contract language, AT&T would be liable for 90% of the costs associated with that facility.

Q. DOES AT&T OPPOSE SPRINT'S PROPOSAL?

A. Yes. Sprint's proposal is diametrically opposed to the established rule for assigning financial responsibility for each Party's portion of the network. Each Party is financially responsible for the facilities on its side of the Point of Interconnection ("POI"). Neither the Act nor any FCC rule or order provides for use of a Proportionate Use Factor to apportion financial responsibilities of CLEC interconnection or transport facilities for a Party's facilities to get to the POI. The CLEC is best able to forecast future demand and then build an efficient network that best suits its respective business needs. Sprint seeks to "bill" AT&T for building Sprint's own network facilities by applying a volume-sensitive network charge based on the proportional amount of traffic that AT&T sends to Sprint. With the current balance of traffic, AT&T would pay for most of Sprint's facilities, including capital assets. This is an improper attempt by Sprint to shift its costs to AT&T.

Q. IS SPRINT ATTEMPTING TO IMPOSE A "CMRS MODEL" FOR SHARED FACILITY FACTORS UPON THE CLEC INTERCONNECTION AGREEMENT?

A. Yes, it is. As described by Ms. Pellerin under Issue 58 *[III.E(1)]*, Sprint's proposal for apportioning facility costs attempts to cover both usage-sensitive costs as well as non-recurring costs. Such a model is entirely inappropriate, as well as unnecessary

for the provision of CLEC interconnection facilities. The standard "CLEC model" continues to assign financial responsibility to each party for those facilities on their respective side of the POI.

Q. IS THERE A MECHANISM CURRENTLY IN PLACE TO ALLOW FOR COST RECOVERY ASSOCIATED WITH ONE PARTY USING ANOTHER PARTY'S NETWORK TO EXCHANGE TRAFFIC?

A. Yes. Reciprocal compensation is the current and appropriate mechanism for a carrier to recover the costs associated with the use of another party's network. Reciprocal compensation recovers the costs associated with the *transport and termination* of Section 251(b)(5) and ISP-Bound traffic. So by attempting to apply a PUF to the facilities between AT&T and Sprint, Sprint is simply trying to gain a double-recovery of the costs associated with deploying its network. First, Sprint recovers costs by charging a PUF based upon traffic imbalances between it and AT&T, and second, it charges reciprocal compensation rates that separately recover the transport and termination of traffic from AT&T to Sprint. Not only would Sprint achieve a double recovery, but AT&T would pay twice for the same terminations.

ISSUE 61 ***[DPL ISSUE III.E(4)]***

Should traffic that originates with a Third Party and that is transited by one Party (the transiting Party) to the other Party (the terminating Party) be attributed to the transiting Party or the terminating Party for purposes of calculating the proportionate use of facilities under the CLEC ICA?

Contract Reference: Attachment 3 Sections 2.5.3 (Sprint)

Alternative Section 2.8.6.1.5 (AT&T CLEC)

Q. ARE THERE OTHER CONCERNS WITH SPRINT'S PROPOSAL TO IMPLEMENT APPORTIONED FACILITY COSTS TO THE PARTIES?

A. Yes. Sprint attempts to further shift its network costs to AT&T by proposing in its Attachment 3 section 2.8.3(e) that AT&T pay all the cost for facilities that carry third party transit traffic. This is simply another effort by Sprint to shift its network costs to AT&T.

Q. HOW IS THAT?

A. Contrary to Sprint's proposed language, AT&T does not recover costs for facilities through its transit service per minute of use charges. AT&T's transit service charges are usage-based charges for switching and transport that do not account for the cost of the underlying facilities. Yet Sprint proposes that AT&T pay for *all* transit interconnection facilities, even though it is only Sprint customers who benefit from third party transit traffic. This free network is inappropriate; as with other local interconnection facilities, each Party should be responsible for the facilities on its respective side of the POI. Further, as explained by Ms. Pellerin in regard to CMRS facilities, Sprint is the cost-causer of the transit traffic sent by third parties and should bear any responsibility for the facility if the Commission adopts Sprint's proposed PUF concept; if Sprint was interconnected directly with those third parties, then the traffic would not have to transit AT&T's network to Sprint.

Q. WHAT SHOULD BE THE OUTCOME OF THIS PROPOSAL?

A. The Commission should reject Sprint's proposed contract language, as it is contrary to the existing compensation regimes and allows for double-recovery of network costs incurred in the exchange of intercarrier Section 251(b)(5) and ISP-Bound traffic.

ISSUE 62 *[DPL ISSUE III.F]*

What provisions governing Meet Point Billing are appropriate for the CLEC ICA?

Contract Reference: Attachment 3, Section 7.3.6-7.3.6.5 (Sprint)

Attachment 3 Sections 6.23, 6.25, 6.25.2 – 6.25.6 (AT&T CLEC)

Q. WHAT IS MEET POINT BILLING?

A. Meet Point Billing ("MPB") is a service AT&T offers to a CLEC so that a CLEC's end user can access an IXC of his or her choice without the CLEC having to be directly interconnected with the IXC. The CLEC provides the originating (or terminating) switching function and jointly provided transport between its end office and AT&T tandem, and AT&T provides tandem switching and dedicated transport between its tandem and the IXC. Each bills the IXC from its access tariff for the functions each performs, and, presumably, the IXC bills the end user for the call. As such, in a MPB arrangement for IXC traffic, CLEC and AT&T jointly provide the switched access service. For interLATA and intraLATA toll traffic, compensation for the termination of MPB traffic will be at access rates as set forth in each party's own applicable interstate or intrastate access tariffs.

Q. WHY HAS AT&T PROPOSED A CHANGE IN ACCESS SERVICES FROM A MULTI-BILL-MULTI-TARIFF TO A MULTI-BILL-SINGLE TARIFF BASIS?

A. Because the Parties have agreed to conform to guidelines provided in the Multiple Exchange Carrier Access Billing ("MECAB") document. Multiple Bill-Single Tariff is appropriate for billing jointly provided access services to an IXC when those

services are provided by two carriers, such as AT&T and Sprint. Each carrier bills the IXC for its portion of the call, using its tariff rates. Typically, Multiple Bill-Multiple Tariff charges are applied to an IXC whenever there are more than two carriers involved in the joint provisioning of access traffic. In this billing arrangement when there are three switched-based providers, one company bills its portion of the service directly to the IXC and one of the other two companies sends one bill for both companies' portion of the service utilizing each company's tariff rates. The Multiple Bill-Multiple Tariff billing arrangement clearly does not represent the billing arrangement that we utilize with Sprint since there are only two companies involved in jointly providing the IXC service, Sprint and AT&T.

AT&T proposes the change from Multiple Bill-Multiple Tariff to Multiple Bill-Single Tariff in order to update the ICA language to be in accordance with current MECAB guidelines and the actual billing arrangement in place.

Q. DOES AT&T PROPOSE OTHER CHANGES FOR MEET POINT BILLING IN ORDER TO UPDATE THE ICA TERMS TO CONFORM TO THE LATEST MECAB GUIDELINES?

A. Yes. AT&T's language in Attachment 3, section 6.25 provides the Parties use and exchange appropriate Exchange Message Interface ("EMI") call detail records when each is the Official Recording Company for a jointly provided access call. Sprint's proposed language, on the other hand, continues to use the no-longer current summary usage data for billing.

The MECAB guidelines were updated in 2002 to eliminate the use of Summary Usage Records ("SURs") and associated processes. AT&T's ICA language conforms to the latest guidelines.

Q. ARE THERE OTHER DISPUTES RELATIVE TO THE PROVISIONING OF MEET POINT BILLING?

A. Yes. The Parties disagree on the appropriate provisions for records retention and the recreation of lost data. AT&T's language in section 6.25.2 provides clear terms governing the Parties' cooperation, as well as the parameters for recreating lost or damaged data using no less than three months and no more than twelve months of prior usage data. While AT&T does keep records for extended periods of time, such records are not readily available for redistribution. AT&T offers to keep records no more than 90 days for redistribution just in case there is a problem incurred by switch based CLECs/ILECs. This is more than a sufficient amount of time because companies like Sprint receive records daily from AT&T and should be able to quickly identify an issue within this time frame.

AT&T also proposes language in section 6.25.6 addressing compensation for 8YY database queries. If Sprint routes a non-queried 8YY call to AT&T, then AT&T must perform the query in order to properly route the call. When this occurs, it is appropriate for AT&T to charge Sprint for that query function performed on Sprint's behalf. This billing arrangement for 8YY queries is also supported by MECAB.

ISSUE 12 ***[DPL ISSUE I.B(4)]***

What are the appropriate definitions of InterMTA and IntraMTA traffic for the CMRS ICA?

Contract Reference: GTCs Part B Definitions

Q. TURNING NOW TO INTERCARRIER COMPENSATION SPECIFIC TO WIRELESS TRAFFIC, WHAT IS AN "MTA"?

A. The parties have agreed to define the term MTA "as defined in 47 C.F.R. § 24.202(a)." Simply, MTA stands for Major Trading Area and represents a geographic area established by the FCC for purposes of wireless licensing purposes. There are 51 MTAs in the United States and its island territories. The FCC's 1996 *Local Competition Order* established that the geographic scope of "local" traffic for wireless traffic under Section 251(b)(5) of the 1996 Act is an MTA, and therefore intraMTA calls are subject to the reciprocal compensation scheme.

Q. WHAT IS THE NATURE OF THE PARTIES' DISPUTE REGARDING THE DEFINITION OF "INTERMTA TRAFFIC"?

A. The parties agree that the term InterMTA Traffic refers to calls that originate in one MTA and terminate in a different MTA. The term may be applied in the ICA to both land-to-mobile ("L-M") traffic and mobile-to-land ("M-L") traffic. The dispute centers on how to designate the MTA associated with the mobile end point of a call, since there is no question regarding the MTA associated with the AT&T end user's location, which is fixed. AT&T proposes that the cell site to which the mobile end user is connected at the beginning of the call should serve to determine the MTA where the call originates (for M-L) or terminates (for L-M). Sprint proposes that the determination of MTA associated with the mobile end user be based on the geographic location of the POI between the parties.

Q. WHY IS AT&T'S DEFINITION OF INTERMTA TRAFFIC APPROPRIATE FOR THE ICA?

A. AT&T's definition provides the most accurate determination of the MTA associated with a mobile end user's actual location for purposes of determining the jurisdiction of a call. Sprint CMRS's use of the parties' POI, which will always be in Florida,[64] to designate the mobile caller's MTA may not be at all indicative of the MTA associated with the mobile end user's location, particularly if the mobile end user is outside the state. For example, if a Sprint CMRS end user in Texas calls an AT&T end user in Florida, AT&T's definition would use the mobile end user's cell site in Texas to designate the originating MTA, while Sprint CMRS's definition would have the MTA designated at the parties' POI in Florida. Sprint CMRS's definition of InterMTA Traffic would improperly exclude calls that actually originate and terminate in different MTAs and should be rejected. AT&T's definition should be adopted.

Q. HAS THE FCC PROVIDED GUIDANCE REGARDING DETERMINING APPROPRIATE END POINTS OF A CMRS CALL FOR PURPOSES OF INTERCARRIER COMPENSATION?

A. Yes. The FCC, in paragraph 1044 of its *Local Competition Order,* acknowledges that the obvious mobile nature of CMRS calls "could make it difficult to determine the applicable transport and termination rate or access charge." In lieu of carriers attempting to determine the precise geographic location of the CMRS devise at call origination, the FCC concludes "the location of the initial cell cite when a call begins shall be used as the determinant of the geographic location of the mobile customer."[65]

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[64] Per CMRS Attachment 3, section 2.3.2, the POI will actually not only be in the same state as the terminating AT&T landline customer, but also in the same LATA, an even *smaller* geographic area than the state boundaries.

[65] *Local Competition Order*, paragraph 1044.

Q. HAS THE FCC ADDRESSED SPRINT'S PROPOSAL TO USE THE POI TO DETERMINE THE WIRELESS CALLER'S LOCATION AT THE BEGINNING OF A CALL?

A. Yes, it has. The FCC, in paragraph 1044 of the *Local Competition Order*, describes use of the POI as "an alternative" to the location of the cell site for determining the location of a mobile customer at the beginning of a call. The FCC acknowledges the POI only as an alternative and not as the primary method for determining the location of a mobile customer because it is clearly less accurate than cell site information. As I previously discussed, use of the POI as a geographic determinant would drastically reduce the accuracy of InterMTA call identification, and would greatly reduce the amount of traffic subject to compensation as InterMTA traffic. Sprint's proposed definition, using the FCC's acknowledged second-choice method of identifying mobile calls by the location of the POI when a call begins, is simply an attempt by Sprint to reduce its intercarrier compensation obligations for its InterMTA traffic.

Q. DOES AT&T CURRENTLY FOLLOW THE FCC'S RECOMMENDED METHOD FOR IDENTIFYING MOBILE CALLS BY USING CELL SITE DATA TO DETERMINE THE LOCATION OF A MOBILE CUSTOMER AT THE BEGINNING OF A CALL?

A. Yes. AT&T typically works with CMRS carriers and, consistent with the terms of their respective ICAs, conducts traffic studies, typically on a quarterly basis, in order to identify the amount of InterMTA traffic being exchanged in a given state. The parties then agree to apply a factor reflecting the actual InterMTA percentage for traffic originated by the CMRS carrier and terminated to AT&T for purposes of billing intercarrier compensation.

Q. DO THE PARTIES HAVE A SIMILAR DISPUTE REGARDING THE DEFINITION OF "INTRAMTA TRAFFIC"?

A. Yes. The parties' dispute regarding the definition of the term IntraMTA Traffic is virtually identical to their dispute for the term InterMTA Traffic, discussed above. The only difference is that the term IntraMTA Traffic refers to calls that originate in one MTA and terminate in the same MTA. AT&T's definition should be adopted for the same reasons set forth above for InterMTA Traffic.

ISSUE 13 ***[DPL ISSUE I.B(5)]***

Should the CMRS ICA include AT&T's proposed definitions of "Originating Landline to CMRS Switched Access Traffic" and "Terminating InterMTA Traffic"?

Contract Reference: GTCs Part B Definitions

Q. WHY DOES AT&T PROPOSE THE INCLUSION OF THESE ADDITIONAL DEFINITIONS?

A. Because they specifically address two discrete types of InterMTA traffic that will be exchanged between AT&T and Sprint. There are differences in the routing of InterMTA calls exchanged between the Parties, depending upon whether the call is L-M or M-L.

Q. LET'S START WITH L-M TRAFFIC. WHENEVER AN AT&T END USER DIALS A NON-LOCAL SPRINT CMRS END USER'S TELEPHONE NUMBER, WILL THE CALL BE ROUTED OVER FEATURE GROUP ACCESS TRUNKS?

A. Yes. Using the above example, if an AT&T landline end user residing in Atlanta were to dial a Sprint CMRS customer that has a telephone number local to Dallas, Texas, then the AT&T end user would reach the Sprint end user by dialing the number as a typical "long distance" call; that is, she would dial "1+" and the

telephone number of the Sprint end user. That call would be routed over feature group access trunks to the AT&T end user's chosen IXC for termination to Sprint and Sprint's end user.

Q. WHAT HAPPENS WHEN AN AT&T LANDLINE CUSTOMER DIALS A LOCAL SPRINT CMRS TELEPHONE NUMBER?

A. Whenever an AT&T landline end user dials a Sprint CMRS telephone number where both the calling and called telephone numbers are assigned within the same MTA, the call is routed over the Parties' local interconnection. Yet, because of the inherent nature of mobile telephony, that locally-dialed Sprint end user may or may not be physically within the same MTA. If the Sprint end user is outside of their home MTA at the beginning of the call, then the call will cross MTA boundaries for termination, making the locally-dialed call an InterMTA call. AT&T's definition for "Originating Landline to CMRS Switched Access Traffic" accurately captures this call scenario, and applies appropriate compensation terms to these types of InterMTA calls. Though the call is dialed as local, and traverses the Parties' local interconnection, the call is subject to appropriate switched access charges as the call is not a local (section 251(b)(5)) call subject to reciprocal compensation.

Q. WHY DOES AT&T PROPOSE A DEFINITION FOR "TERMINATING INTERMTA TRAFFIC?"

A. Because, like with "Originating Landline to CMRS Switched Access Traffic," it describes a specific form of traffic that will be exchanged between the Parties. In this case, it is traffic that is M-L, originated by Sprint CMRS and terminated by AT&T. Unlike AT&T, Sprint transports traffic across LATA boundaries, and when it does so,

it is acting as an interexchange carrier for its end user traffic. AT&T's definition provides that when Sprint terminates this interexchange traffic to AT&T, it do so by routing it over appropriate Feature Group Access service.

Q. WHAT MIGHT SPRINT ACHIEVE IF ITS OPPOSITION TO AT&T'S DEFINITIONS IN ISSUE 13 *[I.B.(5)]* SUCCEEDED?

A. Any lack of clarity describing and administering the distinct types of L-M and M-L traffic exchanged between the Parties would serve to financially benefit Sprint. In the L-M direction, absent clear terms acknowledging that locally-dialed mobile traffic may be terminated beyond the local MTA would allow Sprint to 1) receive reciprocal compensation for that locally-dialed L-M call; and 2) relieve Sprint from its obligation to pay AT&T originating switched access on that interMTA call.

Similarly, without clear terms defining InterMTA traffic in the M-L direction, Sprint would simply pass *all* Sprint-carried traffic – local and interexchange traffic - over the local interconnection, bypassing the switched access regime in place for those interexchange calls.

ISSUE 46 *[DPL ISSUE III.A.3(1)]*

Is mobile-to-land InterMTA traffic subject to tariffed terminating access charges payable by Sprint to AT&T?

Contract Reference: Attachment 3, Sections 6.4-6.4.4, Pricing Sheet (Sprint CMRS)

Sections 6.4 - 6.6.3 Pricing Sheet 4,5, GTC - Part B definitions (AT&T CMRS)

Q. SHOULD TERMINATING INTERMTA TRAFFIC (M-L) BE SUBJECT TO ACCESS CHARGES IF IT IS ROUTED OVER LOCAL INTERCONNECTION OR EQUAL ACCESS INTERCONNECTION TRUNKS?

A. Yes. Under established industry practice, wireless carriers pay terminating access charges to LECs on mobile-to-land InterMTA calls transported on wireless networks. This is fully consistent with settled notions of when a LEC is entitled to a terminating access charge. The interexchange carrier's customer is making the call, and the interexchange carrier is receiving all the end user revenue for the call. The LEC's customer did not make the call, and the LEC receives no revenue for the call from its customer. The wireless company is thus obtaining "access" from the LEC to complete its (the wireless company's) call, and therefore the LEC is entitled to receive compensation from the wireless company to reimburse the LEC for its costs in completing the call.

Q. ARE SWITCHED ACCESS CHARGES FOR INTERMTA TRAFFIC CONSISTENT WITH FCC GUIDANCE?

A. Yes. The FCC's *Local Competition Order* addresses how calls are jurisdictionalized (local, intrastate, interstate) and the intercarrier compensation charges that apply to each category. Paragraph 1036 addresses application of reciprocal compensation for intraMTA traffic: "[T]raffic to or from a CMRS network that originates and terminates within the same MTA is subject to transport and termination rates under section 251(b)(5), rather than interstate and intrastate access charges." With regard to the rating of mobile traffic, the FCC states "[T]he geographic locations of the calling party and the called party determine whether a particular call should be compensated

under transport and termination rates established by one state or another, or under interstate or intrastate access charges."[66]

Q. DOES AT&T PROPOSE TERMS TO ADDRESS TERMINATING INTERMTA (M-L) TRAFFIC?

A. Yes. AT&T's language in Sections 6.4.1.1 and 6.4.1.2 provides that Sprint CMRS should route all InterMTA Traffic over tariffed switched access trunks and not over local interconnection or equal access interconnection trunks, and that such traffic is subject to access charges. In the event Sprint CMRS does improperly route InterMTA Traffic over local interconnection or equal access interconnection trunks, the traffic should still be subject to access charges. Sprint CMRS should not be permitted to avoid legitimate access charges by misrouting its InterMTA Traffic.

Q. WHAT INFORMATION WILL AT&T USE TO CLASSIFY SPRINT CMRS'S TRAFFIC AS EITHER INTRAMTA OR INTERMTA?

A. AT&T proposes language in Section 6.4.1.3 that will facilitate its classification of Sprint CMRS's traffic as either IntraMTA or InterMTA. Section 6.4.1.3 provides that Sprint CMRS will populate the Jurisdictional Information Parameter ("JIP") in the call records for its IntraMTA and InterMTA Traffic to AT&T. AT&T will use JIP as the preferred method to classify calls as IntraMTA or InterMTA for purposes of usage billing. If Sprint CMRS does not supply JIP, AT&T will use the next best available information. This may be the Originating Location Routing Number ("OLRN"), the CPN, or any other mutually agreed indicator of the originating cell site or Mobile Telephone Service Office ("MTSO"). Thus, if Sprint CMRS has what

[66] *Local Competition Order*, paragraph 1044.

it believes to be a more accurate way of identifying the originating location than JIP (or OLRN or CPN), it is welcome to discuss that with AT&T so the parties may agree to use another indicator.

Q. HOW WILL AT&T KNOW IF SPRINT CMRS IS ROUTING INTERMTA TRAFFIC OVER LOCAL INTERCONNECTION OR EQUAL ACCESS INTERCONNECTION TRUNKS?

A. As described in Section 6.4.1.4, AT&T will conduct quarterly traffic studies to determine if Sprint CMRS is routing InterMTA Traffic over local interconnection or equal access interconnection trunks. If Sprint CMRS is routing traffic in that manner, AT&T will use the results of its studies to estimate the percentage of terminating InterMTA Traffic delivered over the local interconnection or equal access interconnection trunks and will bill Sprint CMRS accordingly. AT&T will continue to perform traffic studies quarterly and notify Sprint CMRS of any changes in the factor that will be applied for Sprint CMRS's traffic in the following quarter.

ISSUE 47 ***[DPL ISSUE III.A.3(2)]***

Which party should pay usage charges to the other on land-to-mobile InterMTA traffic and at what rate?

Contract Reference: Attachment 3, Sections 6.4-6.4.4, Pricing Sheet (Sprint CMRS)

Sections 6.4 - 6.6.3 Pricing Sheet 4,5, GTC - Part B definitions (AT&T CMRS)

ISSUE 48 ***[DPL ISSUE III.A.3(2)]***

Which party should pay usage charges to the other on land-to-mobile InterMTA traffic and at what rate?

Contract Reference: Pricing Sheet 4, 5 (AT&T CMRS)

Q. SHOULD ORIGINATING INTERMTA TRAFFIC (L-M) BE SUBJECT TO ACCESS CHARGES?

A. Yes. Originating L-M InterMTA Traffic is not subject to reciprocal compensation. When an AT&T end user customer places a local call to a Sprint CMRS customer, but the call is terminated to that Sprint CMRS end user customer in another MTA, AT&T is entitled to originating access charges from Sprint at AT&T's tariffed rates, just as AT&T is entitled to originating access charges on any other long distance call. Paragraph 1043 of the FCC's *Local Competition Order* states that "most traffic between LECs and CMRS providers is not subject to interstate access charges unless it is carried by an IXC, *with the exception of certain interstate interexchange service provided by CMRS carriers, such as some 'roaming' traffic* that transits incumbent LECs' switching facilities . . ." Thus, where the wireless carrier is providing an interexchange service to its customer, the originating landline carrier is due access charges. Roaming is merely one example of such a situation, and the language does not foreclose other examples. Indeed, the FCC's statement that "[i]n this *and other situations* where a cellular company is offering interexchange service, the local telephone company providing interconnection is providing exchange access to an interexchange carrier and may expect to be paid the appropriate access charge" makes that clear. The plain reading of the language demonstrates that in any situation where a wireless provider is offering interstate, interexchange service, it should be subject to appropriate access charges. Sprint is acting as an interexchange provider when it

transports a call across MTA boundaries and as such, it owes AT&T appropriate access.

Q. DOES AT&T PROPOSE ICA LANGUAGE TO ADDRESS ORIGINATING INTERMTA TRAFFIC?

A. Yes. AT&T's language provides appropriate terms in Section 6.4.2.1. Because the parties cannot measure originating L-M InterMTA Traffic, AT&T's language provides that it will estimate the volume of such traffic based on a surrogate usage percentage of 6%, which will be applied to the total MOU AT&T delivers directly to Sprint. For lack of any better information, AT&T's proposed language assumes the originating InterMTA Traffic is 50% intrastate and 50% interstate, which will be billed at the relevant rates according to the Pricing Sheet.

Q. ARE THERE ANY POINTS UPON WHICH THE PARTIES AGREE WITH RESPECT TO INTERMTA TRAFFIC COMPENSATION?

A. Only one. The parties agree that they are unable to measure actual usage on InterMTA calls and that, therefore, a factor is needed for billing purposes.

Q. DOES SPRINT AGREE WITH ANY OF AT&T'S LANGUAGE IN SECTION 6.4?

A. No. Sprint's language in Section 6.4 is different than AT&T's language with respect to three basic principles: 1) the application of switched access charges to InterMTA Traffic (M-L and L-M); 2) how to estimate the volume of InterMTA Traffic; and 3) the appropriate rates to apply to InterMTA Traffic.

Q. DOES SPRINT AGREE THAT SWITCHED ACCESS CHARGES ARE APPROPRIATE FOR INTERMTA TRAFFIC IN ANY CIRCUMSTANCES?

A. No. Sprint's language does not provide for any switched access charges to be applied to InterMTA traffic, either originating L-M or terminating M-L, and the charges it does propose are only for call termination. In other words, Sprint proposes that it charge AT&T for originating L-M InterMTA traffic, rather than AT&T charging Sprint for such traffic. Under Sprint's proposal, AT&T could charge Sprint for terminating M-L InterMTA Traffic, but no charges for InterMTA Traffic would be at access rates in any circumstance.

Q. HOW DOES SPRINT PROPOSE TO ESTIMATE THE VOLUME OF L-M INTERMTA TRAFFIC?

A. Sprint proposes that the parties use a factor of 2% to represent the volume of L-M traffic that is InterMTA (i.e., 98% of the L-M traffic is IntraMTA). On either party's request, but no more often than once per year, Sprint will conduct a traffic study to review the percentage. Any revision to the percentage would be reflected in an ICA amendment.

Q. WHAT IS SPRINT'S PROPOSAL REGARDING THE RATES TO BE APPLIED TO INTERMTA TRAFFIC?

A. Sprint takes a novel approach with respect to the rates to be applied to terminating InterMTA Traffic.[67] For AT&T's bills to Sprint, Sprint's language provides that AT&T will charge the same rate for InterMTA Traffic that it does for IntraMTA Traffic, ignoring that traffic is subject to different intercarrier compensation schemes depending on the jurisdiction of the traffic. As I stated above, rather than AT&T

[67] The specific rates in dispute are discussed in the testimony of AT&T Witness Tricia Pellerin, under Issue 63 *[III.G]*.

charging originating switched access on L-M InterMTA calls, as AT&T proposes, Sprint's language would authorize it to charge AT&T for these calls. And since Sprint's language states (based on an unsupported presumption) that it costs Sprint more to terminate a L-M InterMTA call than AT&T incurs to terminate a M-L InterMTA call, Sprint is entitled to charge twice the AT&T rate.

Q. DOES THIS CONCLUDE YOUR DIRECT TESTIMONY?

A. Yes.

AT&T FLORIDA

DIRECT TESTIMONY OF PATRICIA H. PELLERIN

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

DOCKET NO. 100176-TP AND DOCKET NO. 100177-TP

AUGUST 25, 2010

ISSUES

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7 *[DPL I.B(1)]*
8 *[DPL I.B(2)(a)]*
9(i) *[DPL I.B(2)(b)(i)]*
11 *[DPL I.B(3)]*
21 *[DPL II.A]*
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40 *[DPL III.A.1(1)]*
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70 *[DPL III.I(3)]*
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72 *[DPL III.I(5)]*

I. INTRODUCTION

Q. PLEASE STATE YOUR NAME, TITLE AND BUSINESS ADDRESS.

A. My name is Patricia H. Pellerin. I am employed as an Associate Director – Wholesale Regulatory Support by The Southern New England Telephone Company d/b/a AT&T Connecticut ("AT&T Connecticut"), which provides services on behalf of AT&T Operations, Inc. – an authorized agent for the AT&T incumbent local exchange company subsidiaries. My business address is 1441 North Colony Road, Meriden, CT 06450.

Q. PLEASE SUMMARIZE YOUR BACKGROUND AND EXPERIENCE.

A. I attended Middlebury College in Middlebury, Vermont and received a Bachelor of Science Degree in Business Administration, magna cum laude, from the University of New Haven in West Haven, Connecticut. I have held several assignments in Network Engineering, Network Planning, and Network Marketing and Sales since joining AT&T Connecticut in 1973. From 1994 to 1999 I was a leading member of the wholesale marketing team responsible for AT&T Connecticut's efforts supporting the opening of the local market to competition in Connecticut. I assumed my current position in April 2000.

Q. HAVE YOU PREVIOUSLY TESTIFIED IN ANY REGULATORY PROCEEDINGS?

A. Yes. I have testified before this Commission. I have also testified on several occasions before the public utilities commissions of Alabama, California, Connecticut, Georgia, Illinois, Kansas, Kentucky, Michigan, North Carolina, Ohio, Oklahoma, Texas and Wisconsin.

Q. ON WHOSE BEHALF ARE YOU TESTIFYING?

A. AT&T Florida, which I will refer to as AT&T.

Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY?

A. I explain and support AT&T's positions on Issue # 1 *[DPL Issue I.A(1)]*, Issue # 7 *[DPL Issue I.B(1)]*, Issue # 8 *[DPL Issue I.B(2)(a)]*, Issue # 9(i) *[DPL Issue I.B(2)(b)(i)]*, Issue # 11 *[DPL Issue I.B(3)]*, Issue # 21 *[DPL Issue II.A]*, Issue # 37 *[DPL Issue III.A(1)]*, Issue # 38 *[DPL Issue III.A(2)]*, Issue # 39 *[DPL Issue III.A(3)]*, Issue # 40 *[DPL Issue III.A.1(1)]*, Issue # 41 *[DPL Issue III.A.1(2)]*, Issue # 55 *[DPL Issue III.A.7(1)]*, Issue # 56 *[DPL Issue III.A.7(2)]*, Issue # 58 *[DPL Issue III.E(1)]*, Issue # 59 *[DPL Issue III.E(2)]*, Issue # 63 *[DPL Issue III.G]*, Issue # 64 *[DPL Issue III.H(1)]*, Issue # 65 *[DPL Issue III.H(2)]*, Issue # 66 *[DPL Issue III.H(3)]*, Issue # 67 *[DPL Issue III.I(1)(a)]*, Issue # 68 *[DPL Issue III.I(1)(b)]*, Issue # 69 *[DPL Issue III.I(2)]*, Issue # 70 *[DPL Issue III.I(3)]*, Issue # 71 *[DPL Issue III.I(4)]*, Issue # 72 *[DPL Issue III.I(5)]*.

II. DISCUSSION OF ISSUES

ISSUE # 1 *[DPL ISSUE I.A(1)]*

What legal sources of the parties' rights and obligations should be set forth in section 1.1 of the CMRS ICA and in the definition of "Interconnection" (or "Interconnected") in the CMRS ICA?

Contract Reference: CMRS GTC Part A, section 1.1; GTC Part B, Definitions

Q. WHAT IS THE PARTIES' DISAGREEMENT CONCERNING THE PARTIES' RIGHTS AND OBLIGATIONS IN THE CMRS ICA?

A. While AT&T and Sprint agree that 47 C.F.R Part 51 applies to the parties' CMRS interconnection agreement ("ICA"), the parties disagree about whether 47 C.F.R

Part 20 also applies to that ICA. Sprint contends the ICA should reflect compliance with Part 20, and AT&T contends it should not.

Two provisions in the CMRS ICA reflect this disagreement. The first is section 1.1 of GTC Part A, which reads as follows, with the language in bold italics proposed by Sprint and opposed by AT&T:

> 1.1 This Agreement specifies the rights and obligations of the Parties with respect to the implementation of their respective duties under Sections 251 and 252 of the Act and the FCC's Part ***20 and*** 51 regulations.

The second provision that reflects the parties' disagreement about the Part 20 Rules is a definition in GTC Part B. AT&T proposes:

> "Interconnection" means as defined at 47 C.F.R. § 51.5.

Sprint proposes:

> "Interconnection" ***or "Interconnected"*** means as defined at 47 C.F.R. §§ ***20.3 and*** 51.5.

47 C.F.R. § 20.3 is one of the FCC's Part 20 Rules, and it includes a definition of "Interconnection" or "Interconnected." Sprint contends that that definition applies to the parties' Section 251/252 CMRS ICA, and AT&T disagrees.[1]

Q. WHAT IS THE BASIS FOR EACH PARTY'S POSITION?

A. Sprint asserts that the parties' negotiations addressed the FCC's Part 20 regulations and that the ICA should so reflect. AT&T, on the other hand,

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[1] At one point during the parties' negotiations, AT&T inadvertently agreed to Sprint's proposed definition. Although AT&T has been unable to reconstruct how that occurred, even after consultation with Sprint, it had to be inadvertent, because AT&T has at all times maintained that the FCC's Part 20 rules play no role in a section 251/252 ICA, and that necessarily encompasses the definition in 47 C.F.R. § 20.3. When AT&T caught the mistake, Sprint agreed to restore the dispute to the DPL. AT&T appreciates that courtesy, and notes that Sprint has not been disadvantaged in any way by the change.

maintains that the source of the parties' rights and obligations in the ICA is limited to the 1996 Act and the FCC's implementing regulations (*i.e.*, Part 51 only).

Q. IS AT&T'S POSITION SUPPORTED BY THE LANGUAGE OF THE 1996 ACT AND BY FCC RULINGS?

A. Yes. The 1996 Act and the FCC's rulings concerning local exchange carrier ("LEC")-CMRS interconnection support AT&T's position.

Q. PLEASE EXPLAIN.

A. I am not an attorney and am not offering legal opinions on this or other issues I address in my testimony. Rather, I explain my understanding of the 1996 Act and related FCC orders from my position as a fact witness. In passing the 1996 Act (*i.e.*, sections 251 and 252), Congress delegated to the FCC the authority to promulgate rules for implementation, which the FCC did in Part 51. The FCC promulgated its Part 20 regulations following Congress' passing of section 332 in 1993, and not pursuant to the 1996 Act. Such additional rights as Sprint may have under Part 20 regulations therefore are not, and need not be, reflected in the parties' ICA.

In considering whether and to what extent sections 251 and 252, rather than section 332, should govern LEC-CMRS interconnection, the FCC concluded that, "sections 251 and 252 will facilitate consistent resolution of interconnection issues for CMRS providers and other carriers requesting interconnection."[2] That

[2] First Report and Order, *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996,* 11 FCC Rcd. 1549 (1996), *subsequent history*

statement strongly implies that "consistent resolution of interconnection issues" for CMRS providers and CLECs is the goal. That goal would be undermined if CMRS providers were provided special interconnection rights in an ICA under the FCC's Part 20 regulations. In addition, the FCC stated that it "may revisit its determination not to invoke jurisdiction under section 332 to regulate LEC-CMRS interconnection rates" if "the regulatory scheme established by sections 251 and 252 does not sufficiently address the problems encountered by CMRS providers in obtaining interconnection on terms and conditions that are just, reasonable and nondiscriminatory."[3] To date, the FCC has not revisited its determination to regulate LEC-CMRS interconnection under section 251 (Part 51) rather than section 332 (Part 20).

Q. DO THE ARBITRATION STANDARDS IN THE 1996 ACT SHED ANY ADDITIONAL LIGHT ON THIS ISSUE?

A. Yes. Section 252(c)(1) of the 1996 Act provides that when a state commission arbitrates an interconnection agreement, it must ensure that its resolution of the issues "meet the requirements of section 251 . . . including the regulations prescribed by the [FCC] pursuant to section 251 . . . ." As I have explained, the FCC's Part 51 regulations were prescribed pursuant to the 1996 Act, *i.e.* pursuant to the authority Congress conferred on the FCC in section 251. The FCC's Part 20 regulations, on the other hand, were not. Thus, the 1996 Act specifically

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omitted. ("*Local Competition Order*") at ¶ 1024. Some people refer to this order as the *First Report and Order.*

3 *Id.* at ¶ 1025.

directs state commissions to give effect to the Part 51 regulations, and not to the Part 20 regulations, when it resolves arbitration issues.

Q. DOES ANY ADDITIONAL CONSIDERATION SUPPORT AT&T'S POSITION ON THIS ISSUE?

A. Yes. The contract provision in GTC Part A section 1.1 is actually a factual recital. It states, "This Agreement specifies the rights and obligations of the Parties with respect to the implementation of their respective duties under Sections 251 and 252 of the Act and the FCC's Part 51 regulations" – and Sprint would add a reference to Part 20. As a factual matter, if the Commission agrees with AT&T that the parties' interconnection in the ICA is pursuant to section 251 and not section 332, as it should, the CMRS ICA will not, to the best of my knowledge, include any provisions that are pursuant to Part 20 rather than Part 51. In other words, not only does AT&T maintain that the CMRS ICA *should not* give Sprint CMRS any interconnection rights that are not available under Part 51, but AT&T also believes that it in fact *does not*. Thus, an additional reason for not including Sprint's proposed reference to Part 20 in section 1.1 is that it would make the provision at issue factually inaccurate.

Q. HOW SHOULD THE COMMISSION RESOLVE ISSUE #1 *[DPL ISSUE I.A(1)]*?

A. The Commission should reject Sprint's language in GTC Part A section 1.1 and in the GTC Part B definition of "Interconnection" (or "Interconnected") that would mistakenly direct that the parties' rights and obligations in the CMRS ICA reflect the FCC's Part 20 regulations, which were promulgated pursuant to section 332 and not the 1996 Act.

ISSUE # 7 *[DPL ISSUE I.B(1)]*

What is the appropriate definition of Authorized Services?

Contract Reference: GTC Part B Definitions

Q. WHAT IS THE STATUS OF THE PARTIES' DISAGREEMENT REGARDING THE DEFINITION OF THE TERM "AUTHORIZED SERVICES" IN THE CMRS ICA?

A. AT&T has considered Sprint's position that the definition of "Authorized Services" in the CMRS ICA should be reciprocal and offers the following revised definition to address Sprint's concern:

> "Authorized Services" means those CMRS services that Sprint provides pursuant to Applicable Law and those services that AT&T-9STATE provides pursuant to Applicable Law. This Agreement is solely for the exchange of Authorized Services traffic between the Parties.

AT&T is hopeful Sprint will accept this language, resolving the parties' dispute for the definition of Authorized Services in the CMRS ICA.

Q. WHAT IS THE PARTIES' DISAGREEMENT REGARDING THE DEFINITION OF "AUTHORIZED SERVICES" OR "AUTHORIZED SERVICES TRAFFIC" IN THE CLEC ICA?

A. Sprint contends the appropriate term to define in the CLEC ICA is "Authorized Services" and that its definition properly captures the mutual nature of the parties' services. AT&T, on the other hand, contends the CLEC ICA should define the term "Authorized Services Traffic" based on how the term is used in the ICA.

Q. WHAT IS THE BASIS FOR AT&T'S POSITION?

A. "Authorized Services" is not a term AT&T uses in its CLEC ICAs, because, unlike CMRS providers, CLECs and ILECs are authorized to provide similar landline services, making the distinction between them unnecessary. However,

since the parties agree that the CLEC ICA is solely for the purpose of exchanging certain traffic between the parties, AT&T agreed to include "Authorized Services Traffic" to refer to the traffic exchanged between the parties pursuant to the ICA. AT&T's definition of "Authorized Services Traffic" makes clear what specific traffic types are exchanged pursuant to the ICA; any other traffic types are excluded.[4] The traffic types are specifically identified and listed in AT&T's definition to provide contractual certainty and clarity, as well as to address what traffic types are governed by the ICA. AT&T's definition is consistent with the traffic types for which the ICA contains terms, conditions, and rates.

Q. WHY DOES AT&T OBJECT TO SPRINT'S DEFINITION OF "AUTHORIZED SERVICES" FOR THE CLEC ICA?

A. Sprint would define "Authorized Services" in the CLEC ICA to mean "those services which a Party may lawfully provide pursuant to Applicable Law." That definition is unnecessarily vague. The CLEC ICA sets forth the terms, conditions, and rates for the exchange of specific *traffic* types governed by the ICA. A party may argue that it may "lawfully provide" a traffic type that is not included in the ICA, such as a new traffic category that may be identified at some point in the future and the rating, routing, and/or billing of which are not addressed by the ICA. Sprint's vague definition of "Authorized Services" could

[4] AT&T objects to including in the ICA its provision of transit traffic service to Sprint. *See* Issue # 15 *[DPL Issue I.C(2)]*, addressed by AT&T witness Scott McPhee. If the Commission rules that transit traffic service must be included in the ICA, AT&T would agree to add transit traffic to the definition of Authorized Services Traffic.

result in the parties exchanging traffic pursuant to the ICA, but for which there are no terms, conditions, or rates, which would likely lead to disputes.

Q. YOU STATED THAT SPRINT'S DEFINITION OF "AUTHORIZED SERVICES" IS TOO VAGUE FOR THE CLEC ICA. IS IT ALSO TOO VAGUE FOR THE CMRS ICA?

A. Yes. AT&T's proposed language for the CMRS ICA specifically indicates that, with respect to Sprint, Authorized Services is limited to CMRS services, while Sprint's definition would improperly broaden the type of services and traffic to be covered by the CMRS ICA to include services provided by Sprint's non-CMRS affiliates.

Q. HOW SHOULD THE COMMISSION RESOLVE ISSUE # 7 *[DPL ISSUE I.B(1)]*?

A. Sprint should accept AT&T's revised definition of the term "Authorized Services" for the CMRS ICA, resolving the CMRS portion of this issue. If not, the Commission should adopt AT&T's definition, because it is clearer than Sprint's.

The Commission should adopt AT&T's definition of the term "Authorized Services Traffic" for the CLEC ICA and reject Sprint's definition of "Authorized Services." AT&T's term and definition accurately depict the types of traffic the parties will exchange pursuant to the ICA, while Sprint's term is too vague.

ISSUE # 8 *[DPL ISSUE I.B(2)(a)]*

Should the term "Section 251(b)(5) Traffic" be a defined term in either ICA?

Contract Reference: GTC Part B Definitions

Q. WHAT IS THE PARTIES' DISAGREEMENT CONCERNING THE INCLUSION OF "SECTION 251(b)(5) TRAFFIC" AS A DEFINED TERM IN THE ICAS?

A. The parties disagree about whether the ICAs should include a definition of the term "Section 251(b)(5) Traffic." AT&T contends that the ICAs should define the term, and Sprint contends they should not.

Q. WHAT IS THE BASIS FOR EACH PARTY'S POSITION?

A. AT&T maintains that the parties' rights and obligations regarding reciprocal compensation are derived specifically from section 251(b)(5) of the 1996 Act. It is therefore appropriate for the ICAs to define and use the term "Section 251(b)(5) Traffic," as AT&T proposes, for traffic exchanged between the parties that is subject to section 251(b)(5) reciprocal compensation.[5] In contrast, Sprint proposes to use the terms "IntraMTA Traffic" in the CMRS ICA and "Exchange Access," "Telephone Exchange Service," and "Telephone Toll Service" in the CLEC ICA, none of which are grounded in section 251(b)(5). Sprint asserts that the term "Section 251(b)(5) Traffic" is unnecessary in the ICAs.

Q. HOW SHOULD THE COMMISSION RESOLVE ISSUE # 8 *[DPL ISSUE I.B(2)(a)]*?

A. The Commission should rule that the parties' ICAs will define and use the term "Section 251(b)(5) Traffic," because that is the proper term to reflect the parties' rights and obligations regarding reciprocal compensation under the 1996 Act.

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[5] The parties' disputes regarding AT&T's proposed definitions of "Section 251(b)(5) Traffic" are addressed in Issue # 9(i) *[DPL Issue I.B(2)(b)(i)]* and Issue # 9(ii) *[DPL Issue I.B(2)(b)(ii)]* for the CMRS and CLEC ICAs, respectively. I address the CMRS definition in my testimony, and Mr. McPhee addresses the CLEC definition.

ISSUE # 9(i) ***[DPL ISSUE I.B(2)(b)(i)]***

If so, what constitutes Section 251(b)(5) Traffic for the CMRS ICA?

Contract Reference: GTC Part B Definitions

Q. ASSUMING THE COMMISSION HAS FOUND THAT THE CMRS ICA SHOULD INCLUDE THE DEFINED TERM "SECTION 251(b)(5) TRAFFIC," WHY IS AT&T'S PROPOSED DEFINITION APPROPRIATE?

A. AT&T's proposed definition properly reflects the traffic exchanged between the parties that is subject to section 251(b)(5) reciprocal compensation, based on the best approximation of the locations of the originating and terminating parties to a call. For the AT&T end of a call, which is a landline end user, the location is certain. AT&T's language reflects that the AT&T end user is located at the serving end office switch. For the Sprint end of a call, which is a mobile line, the end user's location cannot be determined with complete precision. Therefore, AT&T's language appropriately deems the Sprint end user's location to be at the cell site that served the end user at the beginning of the call. This is consistent with the FCC's conclusion that "the location of the initial cell site when a call begins shall be used as the determinant of the geographic location of the mobile customer."[6]

Q. IF SPRINT'S TERM "INTRAMTA TRAFFIC" WAS SIMPLY RENAMED "SECTION 251(b)(5) TRAFFIC," WOULD THAT RESOLVE THIS ISSUE?

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6 *Local Competition Order* at ¶ 1044.

A. No. AT&T agrees it is appropriate to include a separate definition of "IntraMTA Traffic" in the ICA;[7] thus, it would not be workable to simply rename Sprint's term "IntraMTA Traffic" to "Section 251(b)(5) Traffic." In addition, the parties disagree as to whether IntraMTA Traffic is subject to section 251(b)(5) reciprocal compensation when traffic is carried by an IXC.[8] In order to further explain the problem with Sprint's proposed definition, it is important to understand what a Major Trading Area, or "MTA," is.

Q. WHAT IS A MAJOR TRADING AREA?

A. The parties have agreed to define the term Major Trading Area "as defined in 47 C.F.R. § 24.202(a)."[9] Simply, a Major Trading Area represents a geographic area established by the FCC for wireless licensing purposes. There are 51 MTAs in the United States and its island territories (46 in the continental U.S.). In Florida there are whole or parts of four MTAs. Under the FCC's reciprocal compensation rules, MTAs are used to define CMRS calls that are subject to reciprocal compensation in essentially the same way that local exchange areas are used to define landline calls that are subject to reciprocal compensation.

Q. WITH THAT BACKGROUND, WHAT IS THE PROBLEM WITH SPRINT'S PROPOSED DEFINITION WITH RESPECT TO THE APPLICATION OF RECIPROCAL COMPENSATION RIGHTS?

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[7] The parties' dispute regarding the definition of IntraMTA Traffic is reflected as Issue # 12 *[DPL Issue I.B(4)]* and is addressed by Mr. McPhee.

[8] The parties' dispute regarding the compensation associated with IntraMTA Traffic carried by an IXC is reflected as Issue # 37 *[DPL Issue III.A.1(1)]*, which I address below.

[9] 47 C.F.R. § 24.202(a) provides that "[t]he MTA service areas are based on the Rand McNally 1992 Commercial Atlas & Marketing Guide , 123rd Edition, at pages 38–39, with the following exceptions and additions:" (Exceptions omitted.)

A. Sprint's proposed definition would deem the mobile end user's location to be at the parties' point of interconnection ("POI"), rather than at the cell site to which the mobile end user is connected at the beginning of the call. The problem is that the parties' POI may not be at all indicative of the MTA associated with the mobile end user's actual location, particularly if the mobile end user is outside the state at the beginning of a call. Using Sprint's definition of "IntraMTA Traffic" (even if renamed "Section 251(b)(5) Traffic") rather than AT&T's definition of "Section 251(b)(5) Traffic" thus would incorrectly identify some calls as IntraMTA Traffic and subject to reciprocal compensation when they should instead be identified as InterMTA Traffic subject to access charges.[10]

Q. HOW SHOULD THE COMMISSION RESOLVE ISSUE # 9(i) *[DPL ISSUE I.B(2)(b)(i)]*?

A. The Commission should adopt AT&T's definition of the term "Section 251(b)(5) Traffic" for the CMRS ICA, because it most accurately identifies the originating and terminating points of a call for purposes of applying reciprocal compensation. There is a separate issue regarding whether reciprocal compensation applies to 1+ IntraMTA Traffic that AT&T routes to an interexchange carrier ("IXC") for termination to Sprint, which I address below for Issue # 40 *[DPL Issue III.A.1(1)]*. The Commission should adopt AT&T's proposal to use the term

[10] The parties also dispute the appropriate compensation for InterMTA Traffic, which is reflected under Issue # 46 *[DPL Issue III.A.3(1)]* and Issue # 47 *[DPL Issue III.A.3(2)]*, addressed by Mr. McPhee.

"Section 251(b)(5) Traffic" regardless of how it resolves Issue # 40 *[DPL Issue III.A.1(1)]*.[11]

ISSUE # 11 *[DPL ISSUE I.B(3)]*

What is the appropriate definition of Switched Access Service?

Contract Reference: GTC Part B Definitions

Q. WHAT IS THE PARTIES' DISAGREEMENT CONCERNING THE DEFINITION OF THE TERM "SWITCHED ACCESS SERVICE"?

A. The parties disagree about whether the defined term "Switched Access Service" should be limited to service provided to an IXC, as the ICAs define that term. Sprint contends that Switched Access Service is limited to service provided to an IXC, and AT&T contends it is not. This dispute applies to both ICAs.

Q. HOW DO THE ICAS DEFINE THE TERM "INTEREXCHANGE CARRIER"?

A. The parties have agreed to define the term "Interexchange Carrier" as "a carrier (other than a CMRS provider or a LEC) that provides, directly or indirectly, interLATA or intraLATA Telephone Toll Services." Thus, neither Sprint nor AT&T would be considered an IXC for services provided pursuant to the ICAs.

Q. THE ICAS DEFINE IXC WITH RESPECT TO INTERLATA OR INTRALATA TOLL SERVICES. WHAT IS A LATA?

A. The parties have agreed to define the term "Local Access and Transport Area (LATA)," which was originally established pursuant to the 1984 Modified Final

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[11] There is only one word in AT&T's definition of "Section 251(b)(5) Traffic" that is relevant to the 1+ IntraMTA Traffic issue – "directly." If the Commission decides for Issue # 40 *[DPL Issue III.A.1(1)]* that Sprint's position prevails, the only modification to AT&T's proposed definition of "Section 251(b)(5) Traffic" would be the deletion of the word "directly."

Judgment ("MFJ") breaking up the former Bell System, as defined at 47 C.F.R. § 51.5.

> A Local Access and Transport Area is a contiguous geographic area
>
> (1) Established before February 8, 1996 by a Bell operating company such that no exchange area includes points within more than 1 metropolitan statistical area, consolidated metropolitan statistical area, or State, except as expressly permitted under the AT&T Consent Decree; or
>
> (2) Established or modified by a Bell operating company after February 8, 1996 and approved by the Commission.

There are 195 LATAs in the continental United States, more than four times the number of MTAs.

Q. DO AT&T'S ACCESS TARIFFS DEFINE INTEREXCHANGE CARRIER THE SAME AS THE PARTIES' ICAS?

A. No. AT&T's state access tariff defines interexchange carrier as follows:

> The term "Interexchange Carrier(s)" denotes any individual, partnership, corporation, association, joint-stock Company, governmental entity, or any other entity, which subscribes to the services offered under this Tariff and is authorized by the Florida Public Service Commission by policy statement or certification to provide intrastate telecommunications services for its own use or for the use of its customers.[12]

Similarly, AT&T's federal access tariff defines interexchange carrier as follows:

> The terms "Interexchange Carrier" (IC) or "Interexchange Common Carrier" denotes any individual, partnership, association, joint-stock company, trust, governmental entity or corporation

[12] *See*, Bellsouth Telecommunications, Inc. Access Services Tariff for Florida, Section E2.6, Fourth Revised Page 57, Effective October 25, 2000.

engaged for hire in interstate or foreign communication by wire or radio, between two or more exchanges.[13]

In other words, for the purpose of providing switched access service (which AT&T only offers pursuant to tariff), any carrier that provides service between exchanges (*i.e.*, interexchange service) is an interexchange carrier, including LECs. Accordingly, AT&T's switched access tariffs apply to any carrier, including Sprint, that uses its network to access AT&T's network for the purpose of originating or terminating an interexchange call, *i.e.*, one that begins and ends in different exchanges (or MTAs for CMRS); the tariff is not limited to "IXCs" as defined in the parties' ICAs.

Q. WHAT WOULD BE THE EFFECT OF LIMITING THE APPLICATION OF THE TERM "SWITCHED ACCESS SERVICE" TO IXCS?

A. If the term "Switched Access Service" were limited to an offering of access to an IXC (as the ICAs define IXC), then no traffic exchanged directly between the parties would ever be considered Switched Access Service traffic and, therefore, the tariffs would never apply. However, when AT&T and Sprint directly exchange traffic that originates and terminates in different local calling areas within a LATA (*i.e.*, intraLATA toll) pursuant to the CLEC ICA, that interexchange traffic is properly considered Switched Access Service traffic subject to switched access tariffs. In the context of the CMRS ICA, traffic exchanged between the parties that originates and terminates in different MTAs

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[13] *See*, Bellsouth Telecommunications Inc. FCC Tariff No. 1, Section 2.6, 6th Revised Page 2-62, Effective January 1, 1998.

within a LATA (*i.e.*, InterMTA intraLATA) would properly be considered Switched Access Service traffic.

Q. DO THE PARTIES HAVE RELATED ISSUES REGARDING COMPENSATION FOR SWITCHED ACCESS SERVICE TRAFFIC?

A. Yes. Issue # 46 *[DPL Issue III.A.3(1)]* and Issue # 47 *[DPL Issue III.A.3(2)]* address the applicability of access charges to InterMTA Traffic for the CMRS ICA. Issue # 49 *[DPL Issue III.A.4(1)]* addresses the compensation rates, terms and conditions to be included in the CLEC ICA relative to Switched Access Service traffic. All of these issues are addressed by Mr. McPhee, so I will not discuss them here.

Q. WHAT IS THE BASIS OF SPRINT'S POSITION?

A. Sprint asserts that switched access service tariffs are only applicable to IXCs, and Sprint is never an IXC. In addition, since the parties will interconnect and exchange traffic pursuant to the ICAs, the tariffs will never apply to the parties – even if the ICAs reference the tariff.

Q. DO YOU AGREE?

A. No. As I explained above, AT&T's switched access tariffs apply to interexchange carriers as the tariffs define that term – and that includes LECs such as Sprint. It is not unusual for an ICA to reference a tariff for rates, terms and conditions. In this situation, a service may be addressed in the ICA, but the rates, terms and conditions of the tariff govern (*i.e.*, "pursuant to" the tariff). For example,

AT&T's language in Attachment 3 section 6.4.1.1 of the CMRS ICA[14] references Switched Access Services in the context of the access tariffs, but does so in a scenario for which there is no IXC involvement. This provision, if adopted, will direct the parties' arrangement, while the tariffs' terms, conditions, and rates govern the actual service at issue.

Q. HOW SHOULD THE COMMISSION RESOLVE ISSUE # 11 *[DPL ISSUE I.B(3)]*?

A. The Commission should adopt AT&T's definition of "Switched Access Service" for both ICAs and reject Sprint's definition. Sprint's definition would improperly exclude both parties from the offering of Switched Access Service to one another.

ISSUE # 21 *[DPL ISSUE II.A]*

Should the ICA distinguish between Entrance Facilities and Interconnection Facilities? If so, what is the distinction?

Contract Reference: GTC Part B Definitions; Attachment 3, section 2.2

Q. IN THE CONTEXT OF THIS ISSUE, WHAT ARE "FACILITIES"?

A. Facilities are the physical medium – for example, copper wire or fiber optic cable – through which telecommunications are transmitted. Facilities are used for the transmission of telecommunications between locations, including, for example, between two AT&T offices or between an AT&T office and a Sprint switch location. AT&T witness James Hamiter has an extensive discussion of what facilities are, and how they differ from trunks, in the introductory section of his direct testimony.

[14] Since the majority of contract sections referenced in my testimony concern Attachment 3, the Commission can assume any unidentified contract section references relate to Attachment 3.

Q. WHAT DO YOU MEAN BY "OFFICE"?

A. An office is a telecommunications carrier's building in which there is a switch. For example, an AT&T building in which there is a tandem switch may be referred to as a tandem office.

Q. WHAT FACILITIES ARE THE SUBJECT OF THIS ISSUE?

A. This issue concerns "entrance facilities," which are facilities that run from a CLEC's or CMRS provider's switch location to an ILEC's office – in this instance, AT&T's. An entrance facility is used to transport traffic from the CLEC or CMRS switch location (or point of presence ("POP")) in the LATA to the point at which the CLEC's or CMRS provider's network interconnects with the ILEC's network – the so-called "point of interconnection," or "POI." An entrance facility may be very short, measured in feet, or it may be very long, stretching for blocks or even miles.

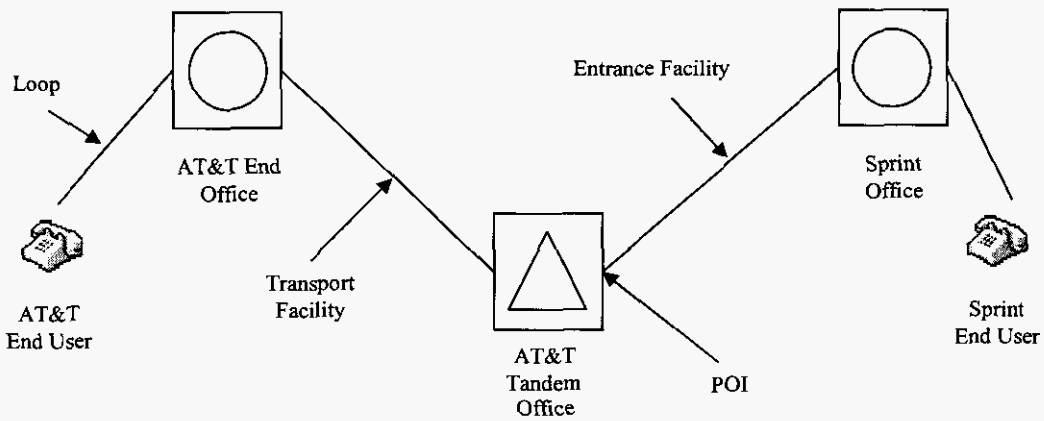
Q. WHY IS SUCH A FACILITY CALLED AN ENTRANCE FACILITY?

A. Because it is the entrance into the ILEC's network for the interconnected CLEC or CMRS provider.

Q. CAN YOU PROVIDE A DIAGRAM THAT ILLUSTRATES THIS?

A. Certainly. The diagram below, which is simplified but illustrative, shows part of AT&T's network – an end office that serves the AT&T customer via a "loop" (a wire or cable) that connects the customer with that end office, and a transport facility connecting the AT&T end office with an AT&T tandem office (tandem switches connect other switches). Sprint's switch location is connected with the AT&T tandem office by means of an entrance facility, which serves to transport

traffic between the Sprint switch location and the point in the AT&T tandem office at which the parties' networks are interconnected. Physically, there is no difference between the entrance facility and the other transport facility between the AT&T end office and the AT&T tandem (except that one might be higher capacity than the other). The entrance facility is an entrance facility because it provides Sprint with an entrance into AT&T's network at the POI.



Q. PHYSICALLY, WHERE EXACTLY IS THAT POINT OF INTERCONNECTION?

A. The POI might be, for example, at the trunk interconnection point for a tandem switch, which may be at a distribution frame, or at another cross-connect point in the tandem office.

Q. HOW CAN SPRINT OBTAIN THAT ENTRANCE FACILITY?

A. There are three ways. Sprint can install the facility itself, it can obtain the facility from a third party provider, or it can obtain the facility from AT&T.

Q. IS IT A REALISTIC OPTION FOR SPRINT TO PROVIDE ENTRANCE FACILITIES ITSELF, RATHER THAN OBTAINING THEM FROM AT&T?

A. Absolutely. As I will explain, the FCC has found that carriers can economically provision entrance facilities themselves and do not need to obtain them from the ILEC.

Q. WHAT IS THE PARTIES' DISAGREEMENT CONCERNING ENTRANCE FACILITIES?

A. Sprint objects to using the term entrance facilities in the ICAs at all. Instead, Sprint seeks to define interconnection facilities as though there is no distinction between entrance facilities and interconnection facilities. With Sprint's proposed language, if Sprint chooses to obtain interconnection facilities (which are really entrance facilities) from AT&T, Sprint wants the Commission to require AT&T to provide those (entrance) facilities to Sprint at cost-based, *i.e.,* TELRIC-based, rates.[15] I will explain the difference between entrance facilities and interconnection facilities, and AT&T will show through my testimony and its briefs that any requirement that AT&T price entrance facilities at cost-based rates would be contrary to law.

Q. DOES THIS ISSUE APPLY BOTH TO THE SPRINT CLEC ICA AND THE SPRINT CMRS ICA?

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[15] TELRIC stands for Total Element Long Run Incremental Cost.

A. Yes. As of today, there is no difference between the principles governing entrance facilities for CLECs and entrance facilities for CMRS providers.[16] I will note, though, that there is one change that might be made to my diagram to depict Sprint CMRS rather than Sprint CLEC. Historically, when ILECs have interconnected with CMRS providers, the parties have actually established not just the one POI shown in my diagram, but also a second POI, at the CMRS provider's switch. In the CMRS scenario, the CMRS provider is seen as handing off its traffic to the ILEC at the CMRS provider's POI on the ILEC network, and the ILEC is seen as handing off its traffic to the CMRS provider at the ILEC's POI on the CMRS network. Thus, my diagram could show a second POI at the point where the Entrance Facility hits the Sprint switch location.[17] This does not, however, affect my discussion of this issue.

Q. YOU SAY IT WOULD BE CONTRARY TO LAW FOR THE COMMISSION TO REQUIRE AT&T TO PROVIDE ENTRANCE FACILITIES TO SPRINT AT COST-BASED RATES. IS THIS PRIMARILY A LEGAL ISSUE, THEN?

A. It is in large part a legal issue, and it is one that has been heavily litigated throughout the country for the last several years. For that reason, my testimony will put the issue in context and outline the law as I understand it, but will not

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[16] As I will discuss, incumbent LECs were at one time required to provide entrance facilities as unbundled network elements ("UNEs"). CMRS providers, however, could not obtain entrance facilities, because the FCC ruled that CMRS providers were not entitled to UNEs. Now, entrance facilities are no longer available as UNEs to anyone.

[17] *See* my testimony below for Issue # 66 *[DPL Issue III.H(3)]* for a discussion and diagram specific to the CMRS interconnection arrangement.

delve as deeply into the law as AT&T's briefs will. Also, as I will explain, important policy considerations strongly support AT&T's position.

Q. WHAT GAVE RISE TO THE CURRENT DEBATE ABOUT ENTRANCE FACILITIES?

A. The rules that the FCC promulgated in 1996 to implement the network element unbundling requirement in section 251(c)(3) of the 1996 Act required incumbent LECs to provide entrance facilities to CLECs as a UNE at cost-based (or TELRIC-based) rates. In 2005, however, after the courts rejected its 1996 UNE rules (and several subsequent sets of UNE rules), the FCC released its *Triennial Review Remand Order ("TRRO")*,[18] which established that ILECs were no longer required to provide entrance facilities as UNEs, because the unavailability of entrance facilities would not impair CLECs in their ability to provide service. With this "declassification" of entrance facilities, which remains the law today, there was no longer a basis for requiring ILECs to provide entrance facilities at TELRIC-based rates.

However, competing carriers, such as Sprint, have seized on a side comment in the *TRRO* to argue that even though ILECs are no longer required to provide entrance facilities as UNEs under section 251(c)(3), they must now provide those same facilities at TELRIC-based rates pursuant to section 251(c)(2), which governs interconnection. According to this theory, entrance facilities are seen as "interconnection facilities" (a term the FCC used in the comment on

[18] Order on Remand, *Unbundled Access to Network Elements; Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, 20 FCC Rcd 2533 (2005) ("*TRRO*").

which the CLECs rely),[19] and since ILECs must provide interconnection facilities at TELRIC-based rates under section 251(c)(2), the argument goes, entrance facilities must – even though no longer subject to unbundling as network elements – be provided at TELRIC-based rates for purposes of interconnection.

Q. WHAT IS AT&T'S POSITION?

A. From AT&T's perspective, the CLEC position is contrary to common sense, contrary to sound policy, contrary to law, and based on a misreading of the FCC comment on which the CLEC position relies.[20] It simply makes no sense that the FCC, having decided that ILECs were no longer required to provide CLECs with entrance facilities as cost-based UNEs because CLECs could economically provide such facilities themselves, would turn around and hold that ILECs had to provide *the very same facilities* at cost-based rates under another label. And indeed, the FCC's comment in the *TRRO* that the CLECs contend represents such a turn-about does not say what the CLECs claims it says.

As a matter of policy, Sprint's position that ILECs must provide facilities between Sprint's switch locations and AT&T's network at TELRIC-based pricing is directly at odds with the fundamental aims and purposes of the 1996 Act. Under the 1996 Act, incumbent LECs, in order to facilitate local competition, must provide to their competitors at cost-based rates those things that are available (at least as a practical matter) only from the incumbents.

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19 *TRRO* at ¶ 140.

20 Generally, when I use the term "CLEC" in my discussion of this issue, I do not intend to exclude CMRS providers. Rather than repeatedly refer to a "CLEC or CMRS provider" position or switch location, for example, I use CLEC for short.

Interconnection with the incumbent – *i.e.*, a physical linkage with the incumbent's network – is available only from the incumbent, so the ILEC must provide it at TELRIC-based rates. Those elements of the incumbent's network that pass the FCC's impairment test are available only from the incumbent, so the incumbent must provide access to those elements as UNEs at TELRIC-based rates.

Conversely, that which the competing carrier can economically provide for itself or obtain in the marketplace is not subject to TELRIC-based pricing. That is precisely why the FCC, having determined in the *TRRO* that entrance facilities (as well as other former UNEs, such as local switching) could be self-provisioned or were readily available from alternate sources, declassified those network elements. To require ILECs to provide at cost-based rates things that CLECs can economically provide for themselves is not only not required; it is positively anti-competitive. Given that there is a competitive market for the provision of entrance facilities, as the FCC found, it would be anti-competitive to require one seller in that marketplace, the ILEC, to provide its product at cost.

That, though, is what Sprint is seeking to accomplish here with its definition and use of the term "Interconnection Facilities." The FCC made a conclusive, binding determination in the *TRRO* that carriers can provide their own entrance facilities, and that ILECs therefore cannot be required to provide them as UNEs at TELRIC-based rates. To then turn around and argue that those *very same facilities* should be provided at TELRIC-based pricing under another provision of the 1996 Act is, at best, nonsensical.

Q. IS THERE ANY FCC SUPPORT FOR YOUR VIEW THAT TO REQUIRE ILECS TO PROVIDE ENTRANCE FACILITIES AT COST-BASED RATES WOULD BE CONTRARY TO THE GOALS OF THE 1996 ACT?

A. Yes. The ultimate purpose of the local competition provisions in the 1996 Act is to spur sustainable, facilities-based competition – competition by carriers using their own facilities. The FCC recognized this in the *TRRO*:

> In this Order, the Commission takes additional steps to encourage the innovation and investment that comes from facilities-based competition. By using our section 251 unbundling authority in a more targeted manner, this Order imposes unbundling obligations only in those situations where we find that carriers genuinely are impaired without access to particular network elements and where unbundling does not frustrate sustainable, facilities-based competition. This approach satisfies the guidance of courts to weigh the costs of unbundling, and ensures that our rules provide the right incentives for both incumbent and competitive LECs to invest rationally in the telecommunications market that best allows for innovative and sustainable competition.[21]

Q. WHAT HAVE THE STATE COMMISSIONS AND COURTS SAID ABOUT WHETHER ILECS MUST PROVIDE ENTRANCE FACILITIES AT TELRIC-BASED RATES UNDER SECTION 251(c)(2)?

A. State commissions have gone both ways. Four federal courts of appeals have addressed the issue since the FCC issued the *TRRO*. Three of these courts – the Seventh, Eighth and Ninth Circuits – held that entrance facilities must be provided at TELRIC-based rates for purposes of interconnection. The Sixth Circuit sustained the ILEC position and held that a state commission cannot lawfully require an ILEC to provide entrance facilities at TELRIC-based pricing.

Q. IT SEEMS, THEN, THAT SPRINT HAS THE BETTER POSITION ON THE LAW, DOESN'T IT?

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[21] *TRRO* ¶ 2.

A. Only if you simply count the appellate court decisions and don't actually read them. I have read all four decisions, and I am very comfortable – as a non-lawyer who has had occasion to read many court decisions over the years – saying that the Sixth Circuit's decision is by far the most thorough of the four, and displays by far the best understanding of this issue. Significantly, the Sixth Circuit made its decision in February of this year – after the Seventh and Eight Circuit decisions – and took those two decisions into account in its analysis. The Sixth Circuit explained why the Seventh and Eighth Circuits were mistaken, and I believe this Commission will find that explanation persuasive. The Ninth Circuit issued its decision just about a week after the Sixth Circuit, and did not make any mention of the Sixth Circuit's decision.

Q. UNDERSTANDING THAT MOST OF THE LEGAL DISCUSSION WILL BE LEFT FOR THE BRIEFS, LET'S LAY MORE GROUNDWORK. WHAT ARE THE SECTION 251 ILEC DUTIES THAT PLAY A ROLE IN THE DISAGREEMENT ABOUT ENTRANCE FACILITIES?

A. The duty to provide UNEs in section 251(c)(3) and the duty to provide interconnection in section 251(c)(2). Section 251(c)(3) requires ILECs to provide "access to network elements on an unbundled basis at any technically feasible point." This unbundled access duty applies only where the FCC has concluded that the failure to provide access to the network element in question would "impair" the requesting carrier's ability to compete. Specifically, section 251(d)(2)(B) provides, "In determining what network elements should be made available [on an unbundled basis] the [FCC] shall consider, at a minimum, whether . . . the failure to provide access to such network elements would impair

the ability of the telecommunications carrier seeking access to provide the services that it seeks to offer."

Section 251(c)(2) requires ILECs "to provide, for the facilities and equipment of any requesting carrier, interconnection with the [ILEC's] network." This "interconnection" is to occur "at any technically feasible point within the ILEC's network." 47 U.S.C. § 251(c)(2)(B). Importantly for this issue, the FCC has ruled that the term "interconnection," as used in section 251(c)(2), means "the linking of two networks for the mutual exchange of traffic," and specifically does not include "the transport and termination of traffic." 47 C.F.R. § 51.5.

Q. WHEN DID THE FCC PROMULGATE THE RULE THAT SAYS INTERCONNECTION UNDER THE 1996 ACT MEANS ONLY THE PHYSICAL LINKING OF NETWORKS, AND DOES NOT INCLUDE TRANSPORT AND TERMINATION?

A. In its 1996 *Local Competition Order*, which was its first order implementing the 1996 Act. In paragraph 176 of that order, the FCC stated, "the term 'interconnection' under section 251(c)(2) refers only to the physical linking of two networks for the mutual exchange of traffic." Based on that determination, the FCC promulgated its rule defining "interconnection" as the linking of two networks and providing that interconnection does not include the transport or termination of traffic.

Q. AND THE 1996 ACT REQUIRES ILECS TO PROVIDE BOTH INTERCONNECTION UNDER SECTION 251(c)(2) AND UNES UNDER SECTION 251(c)(3) AT COST-BASED RATES, CORRECT?

A. Correct. And under the FCC's pricing rules, that translates into TELRIC-based pricing.

Q. DID THE FCC'S 1996 *LOCAL COMPETITION ORDER* SAY ANYTHING ABOUT ILECS PROVIDING ACCESS TO ENTRANCE FACILITIES AS A UNE?

A. Yes. In that order, the FCC purported to apply the statutory "impairment test," found impairment everywhere, and imposed blanket unbundling rules that required ILECs to provide CLECs with access to all facilities necessary to provide local telephone service. As the Commission knows, those initial unbundling rules were the beginning of a tortured history of FCC attempts to establish rules governing UNEs. In any event, though, the unbundling requirements in the *Local Competition Order* encompassed all ILEC dedicated transport – defined broadly in the order as "interoffice transmission facilities" – and that included entrance facilities.

Q. JUST TO BE CLEAR, WHAT IS THE RELATIONSHIP BETWEEN THE TERMS "DEDICATED TRANSPORT," "INTEROFFICE TRANSMISSION FACILITIES," AND ENTRANCE FACILITIES"?

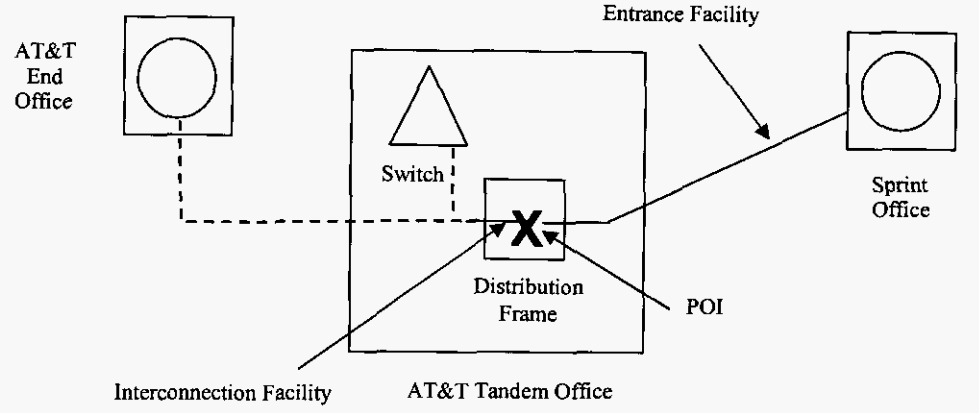
A. Interoffice transmission facilities are simply facilities (wires or cables, as I discussed above) that are used for transmissions between offices. (Generally, "office" refers to the telephone company building in which there is a switch. Thus, in the diagram above, the AT&T tandem switch is in the AT&T tandem office.) These interoffice transmission facilities can also be called "transport facilities." When transport facilities are used for the transport of traffic between the ILEC and one particular customer, they are called "dedicated transport" facilities. Entrance facilities are a subset of interoffice transmission facilities (or dedicated transport facilities), because they connect an ILEC's office with a CLEC's switch location – as opposed to two ILEC offices.

Q, DID THE *LOCAL COMPETITION ORDER* SAY ANYTHING TO SUGGEST THAT THE ILEC'S INTERCONNECTION DUTY UNDER SECTION 251(c)(2) INCLUDED ENTRANCE FACILITIES?

A. Quite the contrary. The FCC's declaration in that order that interconnection means only the physical linking of networks, and does not include transport, strongly implies that interconnection does *not* include transport facilities – including entrance facilities. Entrance facilities get the CLEC *to* the point of linkage – *i.e.*, the point of interconnection – but entrance facilities are not the interconnection.

Q. CAN YOU ILLUSTRATE WHAT YOU ARE TALKING ABOUT WITH A DIAGRAM?

A. Certainly. Zooming in on a portion of the previous diagram, the diagram below shows an AT&T tandem office with the POI established at a distribution frame cross-connect point. Each carrier is responsible for the facilities on its side of the POI. The entrance facility connects from the CLEC switch location to the cross-connect point (*i.e.*, the POI). The interconnection facility consists of the cross-connect itself, without which the CLEC would not be able to exchange traffic between its customers and AT&T's. The dotted lines represent facilities on AT&T's side of the POI for which AT&T is responsible.



Q. BUT DIDN'T THE FCC SAY IN THE *LOCAL COMPETITION ORDER* THAT THE SECTION 251(c)(2) INTERCONNECTION OBLIGATION INCLUDED THE BUILD-OUT OF FACILITIES?

A. Not in the sense that would include entrance facilities. What the FCC said (in ¶ 553) was that a limited build-out of facilities might be required to enable "meet point interconnection," an arrangement in which carriers meet at a designated point for the purpose of exchanging traffic. But we are not talking here about meet point arrangements, and the FCC said nothing in the *Local Competition Order* that suggests a duty to provide entrance facilities under section 251(c)(2). Entrance facilities were to be made available solely as UNEs under section 251(c)(3).

Q. WHAT BECAME OF THIS REQUIREMENT THAT ILECS PROVIDE ENTRANCE FACILITIES AS UNES?

A. I will spare the Commission most of the tortured history of the FCC's unbundling rules. Suffice to say the Supreme Court vacated the rules the FCC promulgated in 1996, and then the FCC, in its 1999 *UNE Remand Order*, made a second attempt

at UNE rules. These rules again required ILECs to unbundle all dedicated transport, including entrance facilities – and, again, made no suggestion that entrance facilities might also be subject to the interconnection requirement in section 251(c)(2).

The D.C. Circuit vacated the *UNE Remand Order* rules in 2002, finding them overbroad and not in keeping with the 1996 Act's goal of encouraging facilities-based competition.[22] On remand, in the 2003 *Triennial Review Order*,[23] the FCC for the first time limited the unbundling of entrance facilities, ruling that the only dedicated transport that constituted a network element that was even a candidate for unbundling was "those transmission facilities connecting incumbent LEC switches and wire centers within a [local calling area]" (the transport facility shown in my first diagram) – and that entrance facilities did not even fall within the definition of "network element."[24] The FCC recognized that this approach "effectively eliminate[d] 'entrance facilities' as UNEs."[25]

In 2004, the D.C. Circuit again vacated and remanded the unbundling rules the FCC set forth in the *TRO*.[26] Pertinent here, the court held that the FCC's approach to entrance facilities "had little or no footing in the statutory definition"

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22 *United States Telecom. Ass'n v. FCC*, 290 F.3d 415, 427-28 (2002) ("*USTA I*").

23 Report and Order and Order on Remand and Further Notice of Proposed Rulemaking, *Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, 18 FCC Rcd 16978 (2003) ("*TRO*").

24 *TRO* ¶ 365.

25 *Id.* ¶ 366 n.1116.

26 *United States Telecom Ass'n v. FCC*, 359 F.3d 554 (D.C. Cir. 2004) ("*USTA II*").

of "network element."[27] The court directed the FCC, "[i]f [it determines that] entrance facilities are correctly classified as 'network elements,'" to perform "an analysis of impairment" to determine whether those facilities should be provided to CLECs pursuant to § 251(c)(3)."[28]

On remand, in its 2005 *TRRO*, the FCC finally promulgated unbundling rules that survived judicial review.[29] In that order, the FCC restored its original definition of "dedicated transport" so that it again included entrance facilities.[30] The FCC then conducted the impairment analysis as directed by the D.C. Circuit, and concluded that requesting carriers would not be impaired if ILECs were not required to unbundle entrance facilities.[31] Accordingly, the FCC ruled, ILECs are not required to provide entrance facilities as UNEs, and the FCC promulgated a rule that so states. 47 C.F.R. § 51.319(e)(2)(i) provides: "*Entrance Facilities.* An incumbent LEC is not obligated to provide a requesting carrier with unbundled access to dedicated transport that does not connect a pair of incumbent wire centers."

Q. ON WHAT BASIS DID THE FCC DECIDE THAT REQUESTING CARRIERS WOULD NOT BE IMPAIRED WITHOUT UNBUNDLED ACCESS TO ENTRANCE FACILITIES?

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27 *Id.* at 586.

28 *Id.*

29 Order on Remand, *Unbundled Access to Network Elements; Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, 20 FCC Rcd 2533 (2005) ("*TRRO*").

30 *Id.* ¶¶ 136-137.

31 *Id.* ¶ 137.

A. That is an important question, because it gets at the policy reason that refutes Sprint's position here. The FCC reasoned that entrance facilities, unlike other forms of interoffice transport, "are less costly to build, are more widely available from alternative providers, and have greater revenue potential [for those that own them] than dedicated transport between incumbent LEC central offices."[32] The FCC also noted that because "entrance facilities . . . often represent the point of greatest aggregation of traffic in a competitive LEC's network," entrance facilities are likely "to carry enough traffic to justify self-deployment by a competitive LEC."[33] And CLECs "have a unique degree over the cost of entrance facilities," due to their ability to choose to locate their switches close enough to ILEC switches to minimize the cost of transport from one to the other.[34] Finally, the FCC noted that CLECs "are increasingly relying on competitively priced entrance facilities," further indicating that they were not "impaired" without unbundled access.[35]

Q. HOW DOES THAT GET AT THE POLICY REASON THAT REFUTES SPRINT'S POSITION?

A. Sprint, while recognizing that AT&T can no longer be required to provide Sprint with entrance facilities as a cost-based section 251(c)(3) UNE, wants the Commission to require AT&T to provide it with exactly the same facilities as a cost-based section 251(c)(2) interconnection product. Indisputably, though,

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32 *Id.* ¶ 138.

33 *Id.*

34 *Id.*

35 *Id.* ¶ 139.

everything that led the FCC to conclude that requesting carriers are not impaired without unbundled access to entrance facilities under section 251(c)(3) also means that it would be anti-competitive to require AT&T to provide those facilities at cost-based rates under a different label. If forced leasing of entrance facilities at TELRIC-based rates undermines competition and the goals of the Act when called unbundling, it does the same when relabeled as interconnection.

Q. WHAT, THOUGH, IS THE BASIS FOR SPRINT'S POSITION THAT THE COMMISSION SHOULD IMPOSE SUCH A REQUIREMENT?

A. As I have indicated, Sprint's position is based on an observation the FCC made in the *TRRO*. After explaining why entrance facilities need not be unbundled, the FCC stated, in paragraph 140 of the *TRRO*, "We note . . . that our finding of non-impairment with respect to entrance facilities does not alter the right of competitive LECs to obtain interconnection facilities pursuant to section 251(c)(2) for the transmission and routing of telephone exchange service and exchange access service." CLECs generally, and Sprint in this case specifically, argue that that observation means that while entrance facilities are not subject to unbundling under section 251(c)(3), they must still be made available as "interconnection facilities" under section 251(c)(3).

Q. IN OTHER WORDS, THE ARGUMENT IS THAT WHAT THE FCC TOOK AWAY FROM CLECS WITH ITS RIGHT HAND, IT GAVE BACK WITH ITS LEFT?

A. Yes, that is the argument. And this despite the fact that the FCC, in the comment on which Sprint relies, used the term "entrance facilities" to refer to what no longer needed to be provided as a UNE, and then used a different term,

"interconnection facilities," to refer to what ILECs still had to provide. This suggests that the FCC was differentiating interconnection facilities from entrance facilities (as in "you may no longer have apples but you may still have pears"). If the FCC had meant what Sprint claims it meant, the FCC would have said, "our finding of non-impairment with respect to entrance facilities does not alter the right of competitive LECs to obtain *these* facilities pursuant to section 251(c)(2) for the transmission and routing of telephone exchange service and exchange access service." But yes, that is the CLEC argument – that the FCC, by means of its comment in ¶ 140, indicated that ILECs had to provide dedicated transport between the CLEC's switch and the ILEC's switch as an interconnection facility under section 252(c)(2) at cost-based rates.

Q. LET'S FOCUS ON THE WORDS "DOES NOT ALTER" IN THE FCC'S COMMENT– "*DOES NOT ALTER* THE RIGHT OF COMPETITIVE LECS TO OBTAIN INTERCONNECTION FACILITIES PURSUANT TO SECTION 251(c)(2) FOR THE TRANSMISSION AND ROUTING OF TELEPHONE EXCHANGE SERVICE AND EXCHANGE ACCESS SERVICE." BEFORE THE FCC ISSUED THE *TRRO*, DID COMPETITIVE LECS HAVE A RIGHT TO OBTAIN ENTRANCE FACILITIES PURSUANT TO SECTION 251(c)(2)?

A. No, they did not, and that is another reason that the CLEC argument does not make sense. The "interconnection facilities" to which the FCC referred in ¶140 cannot be the dedicated transport facilities between CLEC and ILEC switches, because the FCC had never ruled that CLECs were entitled to obtain those facilities under section 251(c)(2) – CLECs had always been entitled to obtain them only under section 251(c)(3). When the FCC said it was not *altering* CLEC's interconnection rights, it had to mean that CLECs still had the same

rights under section 251(c)(2) that they had always had – and that did not include entrance facilities.

Q. THEN WHAT ARE THE "INTERCONNECTION FACILITIES" THAT CLECS WERE AND STILL ARE ENTITLED TO OBTAIN AT COST-BASED RATES UNDER SECTION 251(c)(2)?

A. To answer that question, I will first quote at some length from the Sixth Circuit's decision rejecting the position that Sprint asserts here, and holding that ILECs cannot be required to provide entrance facilities at TELRIC-based rates under the guise of interconnection facilities. I believe the Commission will find this illuminating:

> Suppose you lived next to a public park that had no electrical hook-up of its own. And suppose that the village elders decided that, rather than installing an electrical hook-up in the park, they would allow park-goers to hook up to your electricity at your house (and because they compensated you enough to cover the added electricity usage plus a tidy profit, you eagerly agreed). Thereafter, when park-goers arrived at the park needing electricity, you allowed them to plug into an electrical outlet in your garage. This outlet is the "interconnection facility."
>
> But, after a few days of having park-goers trample across your yard and enter your garage to plug into the electrical outlet on the wall inside the garage, you decide to buy one of those big orange extension cords, plug it into the outlet in your garage, and run it across your yard and into the park. This makes access to the electricity closer to (and hence more convenient for) the park-goers, and they are no longer trampling your yard or entering your garage. And note, because park-goers can still plug into the outlet in your garage if they want to (i.e., they need not plug into the big orange extension cord if they don't want to), the big orange extension cord is an "entrance facility" and the outlet in your garage remains the "interconnection facility." Even if *all* the park-goers are plugging into the big orange extension cord, the cord is still an entrance facility. The interconnection facility remains the outlet in the garage so long as the park-goers *could* plug in there if they wanted to.
>
> As more park-goers arrive, you might put out a second big orange

extension cord (i.e., a second "entrance facility"). And suppose that, at this point, all the park-goers are happily plugged into the big orange extension cords. Now suppose that a couple more park-goers arrive with their own big orange extension cords ("entrance facilities"), wanting to hook up to your electricity (as is their right). So, you get one of those surge protectors with six or eight plug-ins, plug it into the outlet in the garage, and plug your two big orange extension cords, as well as the two new park-goers' extension cords, into this surge protector. The big orange extension cord would still be the entrance facility, but the outlet in the surge protector would now be the "interconnection facility." By forcing the park-goers to plug into the surge protector (rather than the wall outlet), you have moved the "interconnection facility." (And here is a critical aside: if you forced the park-goers to plug in to the big orange extension cord – and forbade them from plugging into the wall outlet (or the surge protector) – the big orange extension cord would become the "interconnection facility." But, to ease the analogy, let's just assume you allowed them to plug into the surge protector.)

Now, some time later, you need a big orange extension cord for some other purpose (let's say, Christmas lights), but the park-goers are using your extension cords. So, you tell the park-goers that you are either going to take the extension cords back or charge for their use, so that you can buy yourself a new one. But the park-goers complain to the village that they were promised electricity and now you won't give it. The village elders think it over and decide that you are right: the electricity they promised did not include free use of your big orange extension cords, so they say:

138.[36] There is nothing special about big orange extension cords. If you park-goers don't like the rate that the homeowner is going to charge you to use her extension cords (i.e., "entrance facilities"), then bring your own (or lease one from another park-goer who has brought his or her own, if you can get a better deal).

139. Other park-goers are certainly doing that (i.e., bringing their own extension cords).

140. And, rest assured, if you bring your own big orange extension cord (i.e., "entrance facility"), the homeowner must still

[36] Here, the Sixth Circuit is tracking the paragraphs in the *TRRO* in which the FCC ruled on entrance facilities.

> let you plug it into her surge protector (i.e., her "interconnection facility") at no cost, just as you were doing before.
>
> **141**. Therefore, the homeowner need not provide big orange extension cords (i.e., "entrance facilities").
>
> That all seems simple enough.
> And it appears just as simple when we apply this analogy to the facts of our case. [The ILEC] offers each CLEC both an interconnection facility and an entrance facility. So long as [the ILEC] offers an interconnection facility at TELRIC rates . . . , it may charge competitive rates for the use of its entrance facilities. Correspondingly, the CLEC may connect directly to the interconnection facility (at TELRIC rates), connect to [the ILEC's] entrance facility (at [the ILEC's] competitive rate), or connect to a third party's entrance facility (at the third party's rate).[37]

And so concludes the Sixth Circuit's analogy, which does a wonderful job of explaining why the ILEC's duty to provide interconnection – a physical link to its network – does not encompass a duty to provide entrance facilities, which are a pathway *to* the linkage, and are not the linkage itself.

The question we started with, though, was, "What are the 'interconnection facilities' that CLECs were and still are entitled to obtain at cost-based rates under section 251(c)(2)?" In other words, what is it on AT&T's network that is represented by the electrical outlet and the surge protector in the Sixth Circuit's analogy? The answer to that question is actually quite simple. Since, as I stated above, each party is responsible for the facilities on its side of the parties' POI, the only facilities on AT&T's network that are used for interconnection, as the FCC has defined that term in the context of section 251(c)(2), *i.e.*, interconnection

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[37] *Michigan Bell Tel. Co. v. Covad Commc'ns Co.*, 597 F.3d 370, 379-81 (6th Cir. 2010) (footnote omitted).

facilities, are the cross connections themselves. Transport and termination on AT&T's side of the POI are encompassed by the intercarrier compensation regime, whether local reciprocal compensation or long distance switched access charges, and are therefore not part of "interconnection facilities."

Q. YOU GAVE THE IMPRESSION THAT THE CLEC POSITION ON THIS ISSUE RELIES HEAVILY ON THE FCC'S COMMENT IN PARAGRAPH 140 OF THE *TRRO*. IS THERE ANYTHING IN THE ACTUAL INTERCONNECTION LANGUAGE IN THE 1996 ACT, OR IN ANY FCC RULE, THAT SUPPORTS THE CLEC POSITION?

A. No. Interestingly enough, what Sprint is asking for here is not authorized either by any language in the 1996 Act or by any FCC rule. Section 251(c)(2) requires ILECs to "provide, for the facilities and equipment of any requesting telecommunications carrier, interconnection with the [ILEC's] network . . . at any technically feasible point within that network." Nothing about that language suggests that the ILEC has a duty to provide a facility for the requesting carrier to use to get to that technically feasible point within the ILEC's network. The only facilities mentioned are the requesting carrier's.

As for the FCC's rules, nothing in them suggests that ILECs have a duty to provide entrance facilities, either. Quite the opposite, the FCC's rule defining "interconnection" to mean the physical linking of two networks very strongly suggests that interconnection does *not* include transmission facilities between the two networks.

Thus, at the end of the day, Sprint's request for entrance facilities at TELRIC-based rates rests solely on Sprint's reading – misreading, actually – of a comment in the *TRRO*.

Q. PLEASE SUMMARIZE AT&T'S POSITION ON THIS ISSUE.

A. The FCC conclusively determined in the *TRRO* that requesting carriers are not impaired if they do not have access to entrance facilities at cost-based rates, because they can economically provide those facilities themselves. Based solely on a self-serving reading of a side comment in that order, Sprint asks the Commission nonetheless to require AT&T to provide Sprint with entrance facilities at cost-based rates, purportedly pursuant to the interconnection requirement in section 251(c)(2) of the 1996 Act. The Commission should reject Sprint's request. Such a requirement would be anti-competitive, in contravention of the goals of the 1996 Act, unsupported by the language of section 251(c)(2), contrary to the FCC's definition of "interconnection," and is not a reasonable reading of the FCC comment on which Sprint relies.

Q. YOU HAVE EXPLAINED THE DISTINCTION BETWEEN ENTRANCE FACILITIES AND INTERCONNECTION FACILITIES. DO YOU HAVE ANY COMMENTS REGARDING SPRINT'S DEFINITION OF "INTERCONNECTION FACILITIES"?

A. Yes. First, of course, is Sprint's incorrect assertion that the term entrance facilities has no place in the parties' ICAs because entrance facilities is a UNE concept unrelated to interconnection. I have already explained why Sprint is wrong in this regard. In addition, Sprint would define "Interconnection Facilities" to include everything and anything between its switch and AT&T's switch. With

Sprint's definition, for example, AT&T would even be obligated to provide Sprint with unbundled dedicated transport between non-impaired wire centers en route to the office where the parties have established a POI – simply because Sprint used a portion of those facilities to transport its traffic. Of course, Sprint should not be entitled to dedicated facilities between non-impaired wire centers, because the FCC removed such facilities from the ILECs' unbundling obligations. As with entrance facilities, it would be anti-competitive for Sprint to obtain dedicated transport at TELRIC-based pricing.

Second, Sprint expands its definition of the term "Interconnection Facilities" to include facilities that are beyond the parties' POI (which is how Sprint first improperly defines the term) when Sprint routes traffic to AT&T destined to terminate with a third party carrier.[38] It makes absolutely no sense to define interconnection facilities differently depending on the nature of the traffic being carried over those facilities. Nor does Sprint's interconnection with AT&T extend to another party's POI, which is what Sprint's definition would require. The FCC defined interconnection to be the linking of two parties' networks for the mutual exchange of traffic, excluding transport and termination[39] and Sprint's definition of "Interconnection Facilities" (*i.e.*, the facilities used for interconnection) is not compliant with that rule.

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[38] AT&T objects to including in the ICA its provision of transit traffic service to Sprint. *See* Issue # 15 *[DPL Issue I.C(2)]*, addressed by Mr. McPhee. Even if the Commission rules that transit traffic service must be included in the ICA, Sprint's definition of "Interconnection Facilities" to include facilities between AT&T and a third party's POI is inappropriate.

[39] 47 C.F.R 51.5.

Q. HOW SHOULD THE COMMISSION RESOLVE ISSUE # 21 *[DPL ISSUE II.A]*?

A. The Commission should adopt AT&T's separate definitions of "Entrance Facilities" and "Interconnection Facilities" for the parties' ICAs, because they are consistent with the Sixth Circuit's decision and the FCC's *TRRO* and accurately represent the facilities at issue: Entrance Facilities are used to transport traffic between Sprint's location and the parties' POI on AT&T's network (*i.e.*, the Sixth's Circuit's extension cord); Interconnection Facilities provide the link between Sprint's network and AT&T's network (*i.e.*, the Sixth Circuit's surge protector / outlet), and do not include transport. Sprint's definition of "Interconnection Facilities" to include transport between Sprint and AT&T should be rejected, because it is inconsistent with the Sixth Circuit's conclusion that what Sprint is defining is actually entrance facilities and not interconnection facilities. Sprint's language should also be rejected, because it improperly includes in the definition of Interconnection Facilities transport from AT&T's network to a third party's POI when terminating Sprint-originated transit calls.

ISSUE # 37 *[DPL ISSUE III.A(1)]*

As to each ICA, what categories of exchanged traffic are subject to compensation between the parties?

Contract Reference: Attachment 3, Sprint section 6.1.1, AT&T CMRS section 6.1.1

Q. CONSIDERING THE CMRS ICA FIRST, WHAT CATEGORIES OF TRAFFIC DOES EACH PARTY PROPOSE TO IDENTIFY AS SUBJECT TO COMPENSATION BETWEEN THE PARTIES?

A. AT&T's language sets forth the specific categories of telecommunications traffic subject to compensation between the parties, including Section 251(b)(5) Traffic, IXC traffic, and InterMTA Traffic. Sprint, on the other hand, offers two sets of Authorized Services traffic classifications depending on how billing will be handled. If the Commission determines that only two categories of billable traffic are necessary, Sprint proposes that the ICA categorize traffic as Authorized Services Terminated Traffic, Jointly Provided Switched Access Service Traffic, and Transit Traffic. (Indeed, Sprint does appear to propose three categories if the Commission determines that two categories are necessary.) If more than two billable categories of traffic are necessary, Sprint proposes to separately identify IntraMTA Traffic, InterMTA Traffic, Information Services traffic, Interconnected VoIP traffic, Jointly Provided Switched Access Service Traffic, and Transit Traffic.

Q. PLEASE EXPLAIN AT&T'S PROPOSAL TO IDENTIFY THE CATEGORIES OF COMPENSABLE TRAFFIC AS SECTION 251(b)(5) TRAFFIC, IXC TRAFFIC AND INTERMTA TRAFFIC?

A. The establishment of the appropriate classifications of traffic is critical to ensuring application of the appropriate rates. AT&T's three simple categories of telecommunications traffic are easily understood and accurately reflect the different compensation mechanisms applicable to each traffic type. Section 251(b)(5) Traffic is subject to reciprocal compensation. IXC traffic is subject to meet point billing, so the parties can each bill the appropriate rate elements to an IXC carrying a jointly provided switched access call. And InterMTA Traffic is

long distance traffic subject to access charges. There is no need to separately identify non-telecommunications traffic, since all traffic exchanged between the parties is treated as telecommunications traffic for the purpose of compensation.

Q. PLEASE EXPLAIN THE TWO SETS OF TRAFFIC CLASSIFICATIONS THAT SPRINT PROPOSES FOR THE CMRS ICA.

A. Sprint proposes two alternative sets of classifications for the CMRS ICA (one set with three classifications, which are different than AT&T's, and another set with six classifications), depending on the number of billable categories "deemed necessary." Sprint has offered no guidance upon which the Commission could rely to determine whether two or more than two billable categories of traffic are appropriate for the CMRS ICA, so it is unclear what Sprint actually advocates. Nor has Sprint yet explained why either of its proposals is appropriate.

Sprint's proposal if only two billable categories of traffic are necessary actually reflects three categories: "Authorized Services Terminated Traffic," "Jointly Provided Switched Access traffic," and "Transit Service Traffic." Sprint includes IntraMTA Traffic, InterMTA Traffic, Information Services traffic, and Interconnected VoIP traffic combined together in the category of "Authorized Services Terminated Traffic."

If more than two billable categories of traffic are necessary, Sprint proposes that its single large bucket of "Authorized Services Terminated Traffic" (if there are only two billable categories of traffic) be split into four separate buckets. The other two categories are the same as above, for a total of six traffic classification categories.

Q. WHY SHOULD THE COMMISSION ADOPT AT&T'S CMRS TRAFFIC CLASSIFICATIONS AS SET FORTH IN SECTION 6.1.1?

A. Because AT&T's traffic classifications not only are simpler than Sprint's approach, they also represent the appropriate way to categorize traffic exchanged between the parties for the purpose of intercarrier compensation and provide the parties with the best way to apply the proper rates based on call jurisdiction. As I stated above, the establishment of the appropriate classifications of traffic is critical to ensuring application of the appropriate rates. To this I would add that AT&T's proposed classifications are in common use today and familiar to the Commission and carriers. While that alone is not a sufficient reason to adopt them, the Commission should not depart from the typical classifications unless Sprint provides a sound reason to do so, which it has not yet done and, in any event, I do not believe there is any such reason.

Q. WHY SHOULD THE COMMISSION REJECT SPRINT'S ALTERNATIVE TRAFFIC CLASSIFICATIONS?

A. Sprint CMRS offers two alternative sets of classifications, with no guidance to the Commission regarding how to determine which set would actually apply to the parties' traffic. Sprint's proposal for when there are two billable categories inappropriately combines traffic types that are jurisdictionally distinct (*e.g.*, IntraMTA Traffic and InterMTA Traffic), treating them the same for compensation purposes. And its proposal for more than two billable categories creates an unnecessary distinction between telecommunications traffic and non-

telecommunications traffic. Sprint's language in its section 6.1.1 would likely lead to disputes regarding what traffic category applies to a particular call.[40]

Q. WITH RESPECT TO THE CLEC ICA, WHAT CATEGORIES OF TRAFFIC DO THE PARTIES PROPOSE TO BE SUBJECT TO COMPENSATION BETWEEN THE PARTIES?

A. AT&T does not propose specific language to list the categories of traffic subject to compensation between the parties under the CLEC ICA. Instead, AT&T's proposed CLEC classifications are reflected in contract language set forth in other issues (addressed by Mr. McPhee):

- Section 251(b)(5) Traffic / ISP-Bound Traffic (Issue # 42 *[DPL Issue III.A.1(3)]* and Issue # 45 *[DPL Issue III.A.2)]*;
- Telephone Toll Service traffic, both intraLATA and interLATA (Issue # 50 *[DPL Issue III.A.4(2)]* and Issue # 51 *[DPL Issue III.A.4(3)]*);
- Foreign Exchange ("FX") Traffic (Issue # 52 *[DPL Issue III.A.5]*); and
- Other telecommunications traffic, *e.g.*, 8YY traffic, Switched Access Service traffic (Issue # 53 *[DPL Issue III.A.6(1)]* and Issue # 54 *[DPL Issue III.A.6(2)]*).

Similar to its proposal for traffic categories for the CMRS ICA, Sprint offers two sets of Authorized Services traffic classifications for the CLEC ICA, again depending on how billing will be handled. If the Commission determines that only two categories of billable traffic are necessary, Sprint proposes that the ICA categorize traffic as Authorized Services Terminated Traffic, Jointly

[40] If the Commission concludes for Issue # 15 *[DPL Issue I.C(2)]* that AT&T must offer Transit Traffic Service to Sprint in the CMRS ICA, AT&T would agree to include Transit Traffic (as AT&T defines that term; *see* Issue # 14 *[DPL Issue I.C(1)]*) as an additional traffic type to be listed in AT&T's CMRS Attachment 3 section 6.1.1.

Provided Switched Access Service Traffic, and Transit Traffic. If more than two billable categories of traffic are necessary, Sprint proposes to separately identify Telephone Exchange Service Telecommunications traffic, Telephone Toll Service Telecommunications traffic, Information Services traffic, Interconnected VoIP traffic, Jointly Provided Switched Access Service Traffic, and Transit Traffic.

Q. WHAT IS THE BASIS FOR EACH PARTY'S POSITION?

A. AT&T's categories of traffic for the CLEC ICA accurately reflect the different compensation mechanisms applicable to each traffic type, as indicated by the bullet list above. Section 251(b)(5) Traffic, including ISP-Bound Traffic, is subject to reciprocal compensation. Telephone Toll Service traffic is long distance traffic subject to switched access charges. FX Traffic, which is not subject to section 251(b)(5) and also is not typical Telephone Toll Service traffic, is categorized separately.[41] And other types of traffic are subject to differing terms, *e.g.*, 8YY traffic is subject to switched access charges. There is no need to separately categorize non-telecommunications traffic, since all traffic exchanged between the parties is treated as telecommunications traffic for the purpose of compensation.

Sprint has offered no guidance upon which the Commission could rely to determine whether two or more than two billable categories of traffic are appropriate for the CLEC ICA. Nor has Sprint explained why either of its proposals is appropriate.

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[41] FX traffic is the subject of Issue # 52 *[DPL Issue III.A.5]*, addressed by Mr. McPhee.

Q. HOW SHOULD THE COMMISSION RESOLVE ISSUE # 37 *[DPL ISSUE III.A(1)]*?

A. The Commission should adopt AT&T's language in CMRS Attachment 3 section 6.1.1. AT&T's traffic classifications represent the appropriate way to categorize traffic exchanged between the parties for the purpose of intercarrier compensation and provide the parties with the best way to apply the proper rates based on call jurisdiction. The Commission should reject Sprint's proposed language for (Authorized Services) traffic categories in both the CMRS and CLEC ICAs. Sprint's proposal for two billable categories ignores the important jurisdictional distinction between local and toll calls (IntraMTA and InterMTA for CMRS), treating them the same for compensation purposes. And Sprint's proposal for more than two billable categories of traffic creates an unnecessary distinction between telecommunications traffic and non-telecommunications traffic.

ISSUE # 38 *[DPL ISSUE III.A(2)]*

Should the ICAs include the provisions governing rates proposed by Sprint?

Contract Reference: Attachment 3, Sprint sections 6.2 – 6.2.4

Q. WHAT IS THE PARTIES' DISAGREEMENT CONCERNING SPRINT'S PROPOSED LANGUAGE GOVERNING USAGE RATES SET FORTH IN SECTIONS 6.2 TO 6.2.4?

A. An ICA should provide the parties with certainty for a set period of time and not be subject to one carrier's opportunistic desire to select a different rate(s) as it may become available at some different point in time (or that it discovers after it agreed to other rates). But instead of providing that certainty, Sprint's proposed language would require AT&T to bill Sprint the lowest rate from several options

for each category of traffic, thus requiring AT&T to keep track of a variety of rates outside of the four corners of the ICA. Sprint's proposal would also unfairly and inappropriately provide Sprint with a reduced rate and refund under certain circumstances.

Q. WHAT IS YOUR UNDERSTANDING OF SPRINT'S PROPOSAL FOR ESTABLISHING USAGE RATES?

A. As reflected in its language for section 6.2.2, Sprint proposes that AT&T only be allowed to bill Sprint the lowest rate of four alternatives that might be applicable at a particular point in time, even if that rate is not captured in the ICA. Specifically, AT&T would be forced to determine, and then bill, the lowest rate available among the following four sources: (a) the rate in the Pricing Schedule;[42] (b) the rate the parties might negotiate as a replacement rate and include in the ICA; (c) the rate AT&T charges any other telecommunications carrier for the same category of traffic; or (d) the rate established by the Commission based upon an AT&T cost study, whether pursuant to this arbitration or any additional cost proceeding. Even though Sprint has populated certain rates or referenced a tariff in its Pricing Sheet, this is misleading. With Sprint's language in section 6.2.2, Sprint would not be bound by its own Pricing Sheet rates unless they were the lowest of the four options Sprint proposes.

Q. PLEASE EXPLAIN AT&T'S OBJECTION TO THIS PROPOSAL.

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[42] Sprint's "rates" actually appear in its Pricing Sheet and not in the Pricing Schedule. Similar discrepancies in nomenclature appear elsewhere in both parties' language, which can be corrected when the parties conform the ICAs to the arbitration award.

A. Sprint's proposal would obligate AT&T to bill rates that are different than the rates set forth in its Pricing Sheets, provided those rates are lower than those in the Pricing Sheets. The only legitimate source for rates is the Pricing Sheets that are incorporated in the ICAs (option (a)), and those rates should not be optional; AT&T should only be obligated to bill and Sprint should then be obligated to pay the rates set forth in the Pricing Sheets that are incorporated into the ICAs.

Sprint's option (b) is nonsensical. If the parties had negotiated rates and populated them in the Pricing Sheets, then Sprint's option (a) would be applicable; thus, option (b) serves no legitimate purpose. And as I explained for option (a), rates in the Pricing Sheets should not be optional.

Sprint's option (c) is unacceptable because AT&T has no obligation to charge all carriers the same rate. In fact, the imposition of such a duty would undermine the negotiation process that is a cornerstone of the 1996 Act and would subvert the FCC's "All-or-Nothing Rule," which provides that a carrier cannot adopt preferred elements of another carrier's ICA piecemeal.[43]

Sprint's option (d) is objectionable with respect to all traffic not subject to reciprocal compensation, *e.g.*, toll / InterMTA Traffic. AT&T is not obligated to exchange such traffic at cost-based rates.

And even though Sprint's option (d) is not objectionable in principle solely with respect to reciprocal compensation, it nevertheless is unnecessary

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[43] *See* Second Report and Order, *Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, CC Docket No. 01-338, 19 F.C.C. Rcd. 13,494, (rel. July 13, 2004). ("All-or-Nothing Order"); *see also* 47 C.F.R. 51.809(a) ("All-or-Nothing Rule").

even for that traffic because AT&T has offered Sprint the FCC's single rate of $0.0007 for Section 251(b)(5) Traffic and ISP-Bound Traffic. Sprint itself proposes $0.0007 as a negotiated rate for Information Services traffic in its Pricing Sheets, but fails to recognize that the same rate also applies to Section 251(b)(5) Traffic.

Q. PLEASE DESCRIBE SPRINT'S PROPOSAL FOR A TRUE-UP OF RATES.

A. Sprint's proposed language in its section 6.2.3 provides for a true-up of usage rates (*i.e.*, refunds) between the effective date of the ICA and the date when AT&T updates its billing system to reflect the new, reduced rates. Retroactive rate reductions and associated refunds would be applied under either of two conditions. First, a true-up would apply if the Commission established rates in conjunction with its approval of an AT&T cost study. And second, Sprint would receive a refund if AT&T charged lower rates to any other telecommunications carrier for the same service, but those rates had "not [been] made known to Sprint" before executing the ICAs. Sprint's language does not state how other carriers' rates would be "made known to Sprint," either before or after ICA execution, but presumably this language seeks to impose an affirmative duty on AT&T to disclose to Sprint every conceivable rate that might exist in the market, or face the consequence that Sprint would be entitled to a refund if a lower rate in fact existed and had "not [been] made known to Sprint."

Q. WHY IS SPRINT'S TRUE-UP LANGUAGE INAPPROPRIATE FOR THE ICAS?

A. It is not for Sprint to decide if or when retroactive rate adjustments and refunds are appropriate. If the Commission orders AT&T to perform a cost study to determine the reciprocal compensation rates for Sprint's ICA(s), it is for the Commission to decide whether to order a true-up and, if so, how. In addition, Sprint's proposal that it receive a true-up in the event AT&T has lower rates with another telecommunications carrier that Sprint did not know about before executing the ICAs, is ludicrous. Sprint is only entitled to another telecommunications carrier's rates if it elects to adopt that carrier's ICA in its entirety pursuant to section 252(i) and the FCC's "All-or-Nothing Rule." Furthermore, AT&T has no affirmative obligation to inform Sprint of other telecommunications carriers' rates. Those rates already are publicly available in any event, and Sprint, in the exercise of due diligence, had the ability to investigate those rates and explicitly propose them for inclusion in these ICAs. AT&T should not be penalized for Sprint's failure to do so.

Q. DOES AT&T OBJECT TO THE SYMMETRICAL APPLICATION OF USAGE RATES AS SET FORTH IN SPRINT'S SECTION 6.2.4?

A. AT&T does not object to the general concept of symmetrical usage rates; however, Sprint's language in its section 6.2.4 is objectionable when viewed in the context of Sprint's other pricing terms. For example, in its CMRS Pricing Sheet, Sprint includes an entry for Land-to-Mobile [L-M] InterMTA Traffic, but no entry for Mobile-to-Land [M-L] InterMTA Traffic. Thus, Sprint would be entitled to charge AT&T for termination of L-M InterMTA Traffic, but AT&T would not be able to charge Sprint a symmetrical rate for M-L traffic it terminates

from Sprint. This disparate and inappropriate rate treatment would be permissible pursuant to Sprint's section 6.2.4. It is more appropriate to address rate symmetry in language directly addressing compensation for particular traffic types, as AT&T proposes in, for example, its language in Attachment 3 section 6.2.2.1 of the CMRS ICA.

Q. HOW SHOULD THE COMMISSION RESOLVE ISSUE # 38 *[DPL ISSUE III.A(2)]*?

A. The Commission should reject Sprint's proposed language in its sections 6.2.2 through 6.2.4. An ICA should provide the parties with certainty for a set period of time, and Sprint's proposal subverts that purpose. In addition, Sprint's language violates the FCC's All-or-Nothing Rule and improperly provides for a retroactive true-up to the effective date of the ICAs for the difference between the initial contracted rate and any future rate Sprint might elect.

ISSUE # 39 *[DPL ISSUE III.A(3)]*

What are the appropriate compensation terms and conditions that are common to all types of traffic?

Contract Reference: Attachment 3, Sprint sections 6.3.1, 6.3.5, 6.3.6.1, AT&T CLEC section 6.1.1, 6.3.1[44]

Q. WHAT IS THE PARTIES' DISAGREEMENT CONCERNING THE COMPENSATION TERMS AND CONDITIONS COMMON TO ALL TYPES OF TRAFFIC?

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[44] Note: Attachment 3 in the CLEC currently has two sections 6.3.1. The first section 6.3.1 is AT&T language to which Sprint objects that is addressed under Issue # 37 *[DPL Issue III.A(1)]* and Issue # 38 *[DPL Issue III.A(2)]*. The second section 6.3.1 appears farther down in Attachment 3 and is reflected with Sprint's numbering. A portion of this language is agreed, and a portion is AT&T language to which Sprint objects. As indicated on the DPL Language Exhibit for this Issue # 39 *[DPL Issue III.A(3)]*, it is the language reflected in this second section 6.3.1 that needs to be decided here.

A. The parties generally agree that it is preferable to bill for traffic exchanged between the parties based on actual usage recordings and to use alternate methods only when necessary. The parties disagree, however, about how the ICAs should memorialize this understanding. In addition, Sprint objects to AT&T's proposed language in section 6.1.1 of the CLEC ICA that sets forth specific terms and conditions regarding the parties' responsibilities with respect to Calling Party Number ("CPN").

Q. WHAT IS THE BASIS FOR SPRINT'S POSITION?

A. Sprint asserts that its language in sections 6.3.1, 6.3.5, and 6.3.6.1 provides the necessary terms and conditions for the parties to a) accurately bill the originating party for usage, b) appropriately bill, apportion and share facility costs, and c) bill other ICA services. Sprint has not explained its objection to AT&T's proposed language.

Q. IS SPRINT'S POSITION SUPPORTED BY ITS PROPOSED CONTRACT LANGUAGE?

A. No. Sprint's proposed language merely states that the parties will use some unidentified surrogate method to classify traffic and render usage bills when actual usage data is not available, but it does not describe how the parties will do so. Thus, contrary to Sprint's assertion, it does *not* provide the essential terms for the parties to bill for usage in the absence of actual traffic data. Specifically, Sprint's language simply says: "If, however, either Party cannot measure traffic in each category, then the Parties shall agree on a surrogate method of classifying and billing those categories of traffic where measurement is not possible." Far

from providing the "necessary terms and conditions" of a method, this language is no agreement at all. It leaves completely to another day how the parties will deal with the matter. That is a wholly inadequate and inappropriate way to deal with it. An ICA should spell out clearly and precisely the parties' rights and obligations in order to provide certainty and avoid unnecessary disputes and disruptions in the future. Furthermore, Sprint's language (such as it is) only addresses usage billing, which is point a) above. It does not address billing for facilities or other ICA services.

Q. WHAT IS THE BASIS FOR AT&T'S POSITION?

A. The reason AT&T objects to Sprint's approach – which is essentially just an agreement to try to agree in the future – is set out in the last answer. AT&T's proposal, in contrast, spells out with specificity precisely how the parties will proceed where measurement is not possible. It leaves nothing to an undefined future agreement. AT&T's language setting forth the specific process the parties will use when actual usage data is not available for billing is addressed in other language based on the category of traffic being billed. For example, AT&T's surrogate billing process for CMRS Section 251(b)(5) Traffic is set forth in sections 6.3.2 through 6.3.6. The parties dispute regarding this process is reflected in Issue # 41 *[DPL Issue III.A.1(2)]*, addressed in my testimony below.

AT&T agrees with Sprint's language in section 6.3.1 as far as it goes. However, AT&T proposes additional language for needed clarity regarding the parties' responsibilities to record actual traffic measurements on traffic each

terminates from the other. That language simply indicates that each party will record its terminating minutes of use ("MOU") for calls received from the other party, and, unless otherwise provided, each party will use procedures that record and measure actual usage for billing purposes.

In the CLEC ICA, AT&T also proposes language in its section 6.1.1 that provides additional specifications setting forth how the parties will handle CPN for traffic they exchange. (CPN is necessary to properly jurisdictionalize and rate a call.) For example, AT&T's language states that neither party will manipulate the CPN it passes to the other party. Any such manipulation of CPN could affect the classification of a call as local or toll, resulting in application of the wrong usage rate and incorrect billing. In addition, AT&T's language requires the parties "to cooperate with one another to investigate and take corrective action" where a third party carrier is suspected of manipulating and/or misrepresenting CPN. AT&T's language thus seeks to minimize the potential for fraud associated with CPN. Sprint has not stated why it objects to this provision – the inclusion of which should be non-controversial – unless Sprint intends to manipulate/misrepresent CPN (which AT&T does not believe to be the case).

Q. HOW SHOULD THE COMMISSION RESOLVE ISSUE # 39 *[DPL ISSUE III.A(3)]*?

A. The Commission should adopt AT&T's additional clarifying language in section 6.3.1 of both ICAs, as well as its language setting forth CPN specifications in section 6.1.1 of the CLEC ICA. The Commission should reject Sprint's language in its sections 6.3.5 and 6.3.6.1, because the lack of a usage billing process clearly

set forth in the ICAs – an omission that would result from Sprint's language – would likely lead to billing disputes.

ISSUE # 40 *[DPL ISSUE III.A.1(1)]*

Is IntraMTA traffic that originates on AT&T's network and that AT&T hands off to an IXC for delivery to Sprint subject to reciprocal compensation?

Contract Reference: Attachment 3, AT&T sections 6.2.3.1.7

Q. PLEASE DESCRIBE THE TRAFFIC THAT IS THE SUBJECT OF THIS ISSUE.

A. This issue concerns what I will call "IntraMTA IXC calls." For present purposes, an IntraMTA IXC call is a call from an AT&T local exchange (landline) customer to a Sprint CMRS (mobile) customer in the same MTA,[45] but in a rate center that is a toll or long distance call for the calling party. Because the call is a toll call, the calling party dials "1+" and the call is handed off by his local exchange carrier, AT&T, to his chosen interexchange carrier ("IXC"), which in turn delivers the call to Sprint for termination to its customer.

Q. PLEASE PROVIDE A SIMPLE EXAMPLE OF AN INTRAMTA IXC CALL IN FLORIDA.

A. Miami and Fort Myers are not in the same AT&T local calling area, but both are in MTA 15, so a call from an AT&T landline customer in Miami to a Sprint mobile Fort Myers telephone number is an IntraMTA call. Since Miami is in LATA 460 and Fort Myers is in LATA 939, the call would also be an interLATA

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[45] I explain what is meant by "MTA" in my testimony above for Issue # 9(i) *[DPL Issue I.B(2)(b)(i)]*.

call. Because AT&T (the ILEC) does not carry interLATA traffic,[46] AT&T would hand the call off to an IXC for delivery to Sprint, and it would be the IXC of the caller's choice. Thus, a call from an AT&T end user in Miami to a Sprint end user with a Fort Myers telephone number, located in Fort Myers at the beginning of the call, would be an interLATA IntraMTA IXC call.[47]

Q. WHAT IS THE PARTIES' DISAGREEMENT ABOUT INTRAMTA IXC CALLS?

A. Sprint contends it is entitled to charge AT&T reciprocal compensation for transporting on its network and terminating to its customers IntraMTA calls that originate on AT&T's network and are routed to Sprint via an IXC. AT&T disagrees, and maintains that neither Sprint nor AT&T should be charging the other party for these calls.

Q. WHAT IS THE BASIS FOR SPRINT'S POSITION, AS YOU UNDERSTAND IT?

A. Generally, a call that originates on AT&T's network and that terminates on Sprint's network in the same MTA, or vice versa, is subject to reciprocal compensation. As I understand it, Sprint's position is that this general rule applies to the calls at issue here (land to mobile), because they originate on AT&T's network and terminate on Sprint's network in the same MTA. In

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[46] While AT&T's ILECs may provide specific services over LATA boundaries (e.g., 271 (f), 271 (g) services), those services do not affect the example used above.

[47] For simplicity, I use an example that makes it clear that the AT&T caller is placing a toll call to the Sprint end user. In this example, at the beginning of the call the Sprint end user is located in the same city where the Sprint telephone number is assigned, but that would not have to be the case. Any toll call (based on telephone number assignment) from an AT&T end user in Miami to a Sprint end user located in Fort Myers at the beginning of the call would be an interLATA IntraMTA call carried by an IXC.

Sprint's view, in other words, it makes no difference that the calling party dialed a toll call or that the call was carried by an IXC.

Q. WHAT IS THE BASIS FOR AT&T'S POSITION?

A. As I will explain, Sprint is mistaken, because an IntraMTA IXC call is not an AT&T call, and thus is not a call for which AT&T bears financial responsibility. Rather, it is the IXC's call, for which the IXC is responsible. The IXC charges the calling party a toll charge for carrying the call from one exchange to another, and the call, rather than being subject to reciprocal compensation between AT&T and Sprint, falls within the access regime. This is reflected in the FCC's reciprocal compensation rule for CMRS traffic, which, as I will explain, does not subject IntraMTA IXC calls to reciprocal compensation.

Q. HOW IS YOUR TESTIMONY ON THIS ISSUE ORGANIZED?

A. I will begin by reminding the Commission of the basic difference between reciprocal compensation calls and access calls, and I will explain why an IntraMTA IXC call falls within the access regime. In doing so, I will provide diagrams of three scenarios: an IntraMTA call routed directly between the parties, an InterMTA IXC call, and an IntraMTA IXC call. I will then show that the FCC's reciprocal compensation rule governing CMRS traffic does not apply to IntraMTA IXC calls. Finally, I will identify persuasive authorities that hold that IntraMTA IXC calls are not subject to reciprocal compensation.

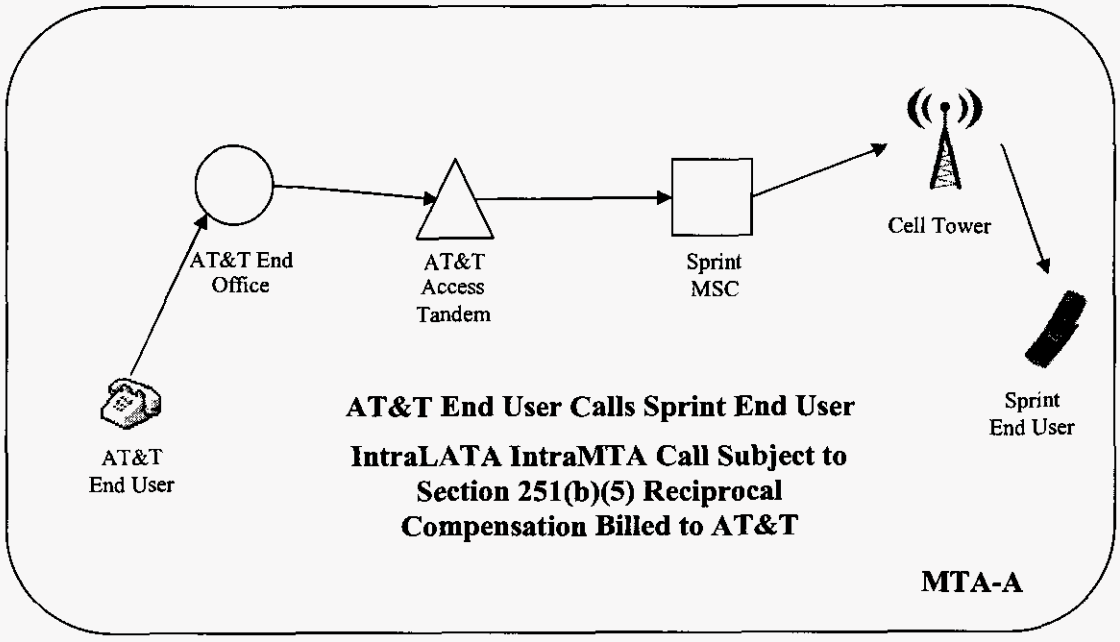
Q. WHAT IS THE BASIC DIFFERENCE BETWEEN A RECIPROCAL COMPENSATION CALL AND AN ACCESS CALL?

A. When a LEC's customer makes a local call,[48] the LEC (AT&T in this instance) is compensated for the call through its charges to that customer. When the call is terminated by another carrier – Sprint, for example – that second carrier incurs costs for transporting the call from the point at which the carriers' networks interconnect and for terminating the call to its customer. Since the originating LEC is paid for this call by its customer, the originating LEC compensates the terminating carrier for its contribution to the call by paying that carrier reciprocal compensation, which compensates the terminating carrier for the costs it incurred to transport and terminate the call. Diagram 1 below depicts such a call.[49] An AT&T end user calls a Sprint end user in the same MTA, and the call is routed directly between the parties. MTAs define local calling areas for CMRS providers, so this call is subject to reciprocal compensation. The parties have no disagreement about this.

DIAGRAM 1

[48] As the Commission is aware, the term "local traffic" is still commonly used to refer to traffic subject to reciprocal compensation under section 251(b)(5) of the 1996 Act, even though the term "local" no longer has the legal significance it once did. The FCC ruled in 1996 that reciprocal compensation under section 251(b)(5) applied only to "local" telecommunications. *Local Competition Order* at ¶¶ 1033-1038. This became problematic later, when the FCC turned its attention to ISP-bound traffic in the *ISP Remand Order*. There, the FCC deleted the word "local" from its reciprocal compensation rules and clarified that reciprocal compensation applies to all telecommunications except those excluded by section 251(g) of the 1996 Act. That still translates loosely into "local traffic," however, so the term remains in common use, and I use it throughout this testimony.

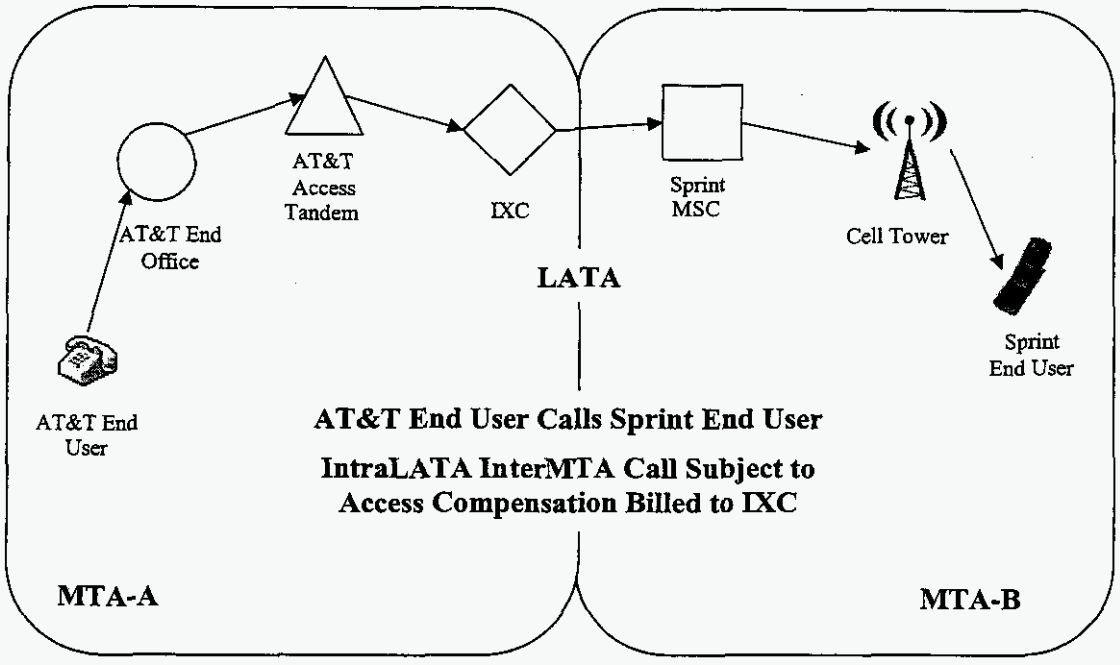
[49] The label Sprint "MSC" in this and subsequent diagrams refers to Sprint's Mobile Switching Center, which performs the end office switching function.



The model for intercarrier compensation on non-local (a/k/a "long distance" or "toll" or "access") calls is dramatically different. When a LEC's end user customer makes a toll call to a customer of another carrier, an IXC transports the call from the originating LEC to the terminating carrier. Because the call is a toll call, the calling party does not compensate its local exchange carrier (here, AT&T) for that specific call; rather, the calling party pays a toll charge to the IXC that she picked to carry her long distance calls. This is not the LEC's call. Instead, just as the originating carrier of a local call shares its revenue for the call with the carrier that terminated the call, the IXC, having received compensation for the call from its customer – the calling party – shares that revenue with the originating carrier and the terminating carrier by paying them access charges, *i.e.*, charges for providing access to their networks.

Diagram 2 below depicts such a call. Here, an AT&T end user calls a Sprint end user by making a toll "1+ call" to the Sprint end user's phone number. AT&T hands off the call to the calling party's chosen IXC, which provides interexchange transport and then delivers the call to Sprint.[50] This particular call happens to be an intraLATA InterMTA call.[51]

DIAGRAM 2



[50] To keep the diagram simple, I assume Sprint has a direct interconnection with the IXC. If Sprint does not have direct interconnection with the IXC, it may use a tandem provider (*e.g.*, AT&T) to effectuate indirect interconnection.

[51] I could also have shown this call as an interLATA InterMTA call routed to an IXC. The parties' disputes regarding compensation for InterMTA traffic routed directly between the parties (*i.e.*, without routing to an IXC) are reflected in Issue # 46 *[DPL Issue III.A.3(1)]*, Issue # 47 *[DPL Issue III.A.3(2)]*, and Issue # 48 *[DPL Issue III.A.3(3)]*, addressed by Mr. McPhee.

Q. WHEN THE END USER DIALS A LOCAL CALL, AS IN DIAGRAM 1, OF WHAT COMPANY IS SHE ACTING AS A CUSTOMER?

A. Her local exchange carrier. The local call is covered by the rate she pays her local phone company for providing local exchange service.

Q. WHEN THE END USER DIALS A TOLL CALL, AS IN DIAGRAM 2, OF WHAT COMPANY IS SHE ACTING AS A CUSTOMER?

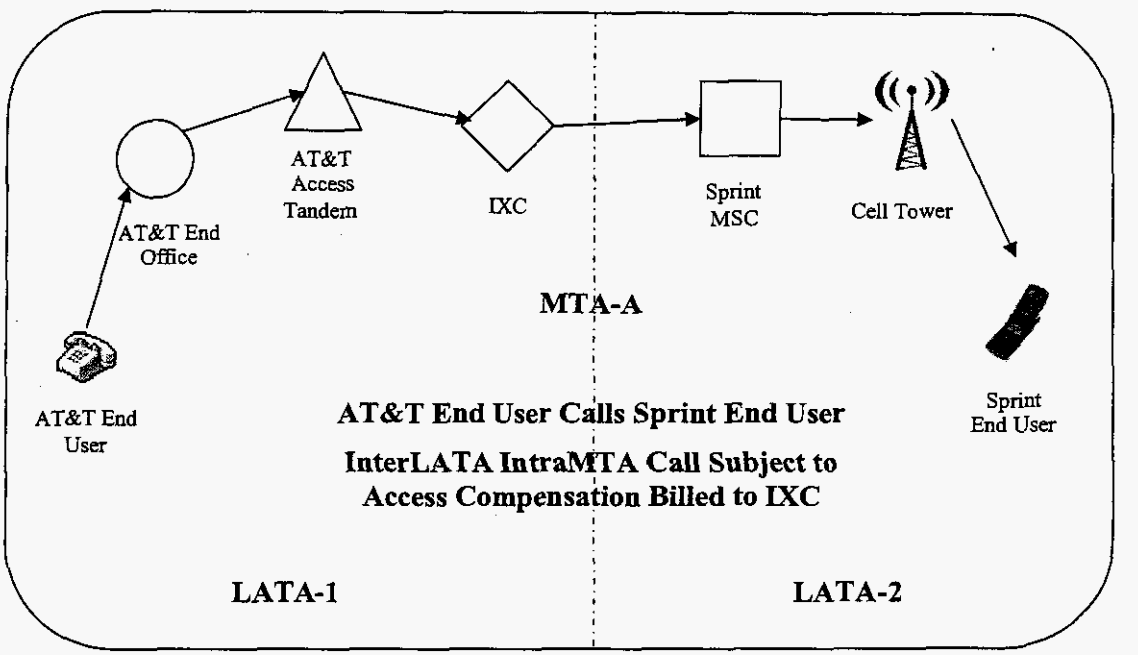
A. Her selected long distance carrier, which charges her a toll for the call. When the calling party dials a toll "1+" call, she may or may not be conscious of the fact that she is making the call in her capacity as a customer of her chosen long distance company, but she is. Her local exchange carrier is merely providing exchange access to her long distance company.

Q. WHICH MODEL FITS AN INTRAMTA IXC CALL THAT ORIGINATES ON AT&T'S NETWORK – THE RECIPROCAL COMPENSATION MODEL OR THE ACCESS MODEL?

A. The access model. When the calling party makes this call, she does so in her capacity as a customer of her long distance company. To be sure, the calling party is also a local exchange customer of AT&T, but by definition, the call is carried from AT&T to Sprint by an IXC, because the customer who placed the call placed it as an IXC call. Diagram 3 below depicts such a call. As the diagram illustrates, the call is made by an AT&T end user who calls a Sprint end user in the same MTA. The AT&T customer, however, is in LATA #1, while the Sprint customer is in LATA #2. The call is carried across the LATA boundary by the IXC (*i.e.*, the long distance company picked by the calling party). AT&T receives no revenue for this specific call from the calling party. Instead, the revenue goes to the IXC. Because the call is a toll call, the calling party does not

compensate AT&T for that specific call; rather, the calling party pays a toll charge to the IXC that carried the long distance call. AT&T, in turn charges the IXC for originating access, because AT&T is providing the IXC with (exchange) access to its network for call origination.

DIAGRAM 3



Q. IS THE CALL SUBJECT TO RECIPROCAL COMPENSATION?

A. No. As I explained above, a LEC on whose network a local call originates pays a terminating carrier reciprocal compensation when the terminating carrier makes a contribution to the LEC's call – and it is the LEC's call because the calling party makes the call as a customer of that LEC. On an IntraMTA IXC call, in contrast, the person who placed the call does not place the call in her capacity as the LEC's customer, but in her capacity as the IXC's customer. The LEC (AT&T) obtains

no revenue from its end user customer for that call, so the LEC does not owe reciprocal compensation to the terminating carrier (Sprint). AT&T is providing exchange access to the IXC for this call, and AT&T therefore charges the IXC originating access.

Q. SINCE IT IS AN ACCESS CALL, DOES SPRINT RECOVER TERMINATING ACCESS CHARGES FROM THE IXC?

A. The answer to that question is that Sprint "should" be able to recover terminating access charges from the IXC – because Sprint is providing terminating access for the IXC's call. Unfortunately, though, Sprint is typically unable to recover terminating access charges.

Q. WHY NOT?

A. The FCC has ruled that CMRS providers are not permitted to tariff access charges, and no FCC rule requires IXCs to pay CMRS providers access charges. As a result, the FCC ruled that a CMRS provider can recover terminating access charges from an IXC only if the CMRS provider and the IXC have entered into a contract that provides for such charges. Typically, as I understand it – and for obvious reasons – IXCs decline to enter into such agreements.

Q. WHEN DID THE FCC MAKE THAT RULING?

A. In 2002, in a case in which Sprint argued that it should be allowed to impose access charges on IXCs. The case was *In the Matter of Petitions of Sprint PCS and AT&T Corp. for Declaratory Ruling Regarding CMRS Access Charges*, 17 FCC Rcd. 13192 (rel. July 3, 2002). I will refer to this as the *Sprint Access Charge* case.

Q. YOU SAID IT IS UNFORTUNATE THE CMRS PROVIDER TYPICALLY CANNOT RECOVER TERMINATING ACCESS. WHY IS IT UNFORTUNATE?

A. Because I believe it is Sprint's inability to recover terminating access charges from the IXC that gives rise to the issue we are debating here. I am confident that if Sprint were able to charge the IXC terminating access for the calls we are talking about, Sprint would not be pushing to charge AT&T reciprocal compensation.

Q. IS IT UNFAIR THAT SPRINT CANNOT CHARGE IXCS TERMINATING ACCESS CHARGES WHEN IT TERMINATES THEIR CALLS?

A. That is a matter of opinion. I do note that in the *Sprint Access Charge* case, the FCC stated (at ¶14),

> CMRS carriers have never operated under the same calling party's network pays (CPNP) compensation regime as wireline LECs. Under a CPNP regime, LECs are compensated for terminating calls by the carrier of the customer that originates the call, not by the customer receiving the call. In contrast, since the advent of commercial wireless service, and continuing today, CMRS carriers have charged their end users both to make and to receive calls. Until 1998, when Sprint PCS first approached . . . IXCs about payment for terminating access service, all CMRS carriers recovered the cost of terminating long distance calls from their end users, and not from interexchange carriers.

Q. DOES SPRINT'S INABILITY TO RECOVER TERMINATING ACCESS CHARGES FROM THE IXC MEAN THAT THESE CALLS REALLY DO NOT FALL INTO THE ACCESS MODEL, AND SO SHOULD BE SUBJECT TO RECIPROCAL COMPENSATION?

A. Clearly not. In fact, in the very decision that held a CMRS provider can only recover access charges if it enters into a contract that provides for such charges, the FCC made clear that the CMRS provider is, nonetheless, providing access. The FCC stated:

> [T]here is a benefit to customers of both IXCs and CMRS carriers when CMRS carriers terminate IXC traffic. Because both carriers charge their customers for the service they provide, it does not necessarily follow that IXCs receive a windfall in situations where no compensation is paid for *access service provided by a CMRS carrier.*[52]

As the italicized language shows, the FCC understands that when an IXC delivers a call to a CMRS provider – including an IntraMTA IXC call – the CMRS provider is providing an access service to the IXC. Because such a call is the IXC's call, the CMRS provider is *not* providing a termination service to AT&T.

Q. WHAT CONCLUSION FOLLOWS FROM THE FOREGOING DISCUSSION?

A. Based on the fundamental principles of intercarrier compensation I have discussed, Sprint should not be permitted to charge AT&T reciprocal compensation on an IXC call that originates on AT&T's network, is routed to Sprint via an IXC, and terminates on Sprint's network in the same MTA.

Q. WHAT ABOUT THE FCC'S RECIPROCAL COMPENSATION RULE FOR CMRS TRAFFIC – DOES IT IMPOSE RECIPROCAL COMPENSATION ON INTRAMTA IXC CALLS?

A. No, it does not. FCC Rule 51.701 provides in pertinent part:

> (a) The provisions of this subpart apply to reciprocal compensation for transport and termination of telecommunications traffic between LECs and other telecommunications carriers.
>
> (b) Telecommunications traffic. For purposes of this subpart, telecommunications traffic means . . . .
>
> (2) Telecommunications traffic *exchanged between a LEC and a CMRS provider* that, at the beginning of the call, originates

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[52] *Sprint Access Charge* case ¶ 15 (emphasis added).

and terminates within the same Major Trading Area.[53]

Q. BEFORE YOU TALK ABOUT HOW THAT APPLIES TO INTRAMTA IXC CALLS, CAN YOU EXPLAIN THE REFERENCE TO "AT THE BEGINNING OF THE CALL?" WHAT IS THAT TALKING ABOUT?

A. People often find that confusing. The phrase is referring, not to the *geographic* origin of the call, but to the *temporal* beginning of the call – the moment when the call begins. A CMRS customer may be in motion during the course of a call, so a call that is IntraMTA when the call begins may become InterMTA by the time the call ends, and vice versa. The call is jurisdictionalized, however "at the beginning of the call."

Q. THE RULE STATES THAT TELECOMMUNICATIONS EXCHANGED BETWEEN A LEC AND A CMRS PROVIDER IS SUBJECT TO RECIPROCAL COMPENSATION IF, AT THE BEGINNING OF THE CALL, IT ORIGINATES AND TERMINATES WITHIN THE SAME MTA. DOES THAT DESCRIBE AN INTRAMTA IXC CALL?

A. No.

Q. WHY NOT?

A. Because an IntraMTA IXC call is not "exchanged between a LEC and a CMRS provider." A call is exchanged between a LEC and a CMRS provider if it is the LEC's call that the CMRS provider terminates, or if it is the CMRS provider's call that the LEC terminates. An IntraMTA IXC call is neither of those things. As I have explained, it is not the LEC's call. It is the IXC's call, for which the LEC provides originating access and the CMRS provider provides terminating access.

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[53] 47 C.F.R. § 51.701 (emphasis added).

Q. IS YOUR POINT THAT THERE IS NO EXCHANGE BECAUSE THERE IS NO DIRECT HAND-OFF FROM THE LEC TO THE CMRS PROVIDER?

A. It is true that there is no direct hand-off from AT&T to Sprint, but that is not really the point. In fact, there are reciprocal compensation calls that the originating carrier does not hand directly to the terminating carrier – *i.e.*, transit calls. The point, though, is that in the case of an IntraMTA IXC call, there is no "exchange" between the LEC and the CMRS provider in any sense of the word, because it is the IXC's call from its origination to the handoff from the IXC to the CMRS provider. At no time and in no way is it ever the LEC's call.

Q. SO FAR, YOU HAVE EXPLAINED THAT INTRAMTA IXC CALLS FIT THE ACCESS CHARGE MODEL RATHER THAN THE RECIPROCAL COMPENSATION MODEL, AND THAT THE FCC RULE THAT DEFINES THE CMRS TRAFFIC THAT IS SUBJECT TO RECIPROCAL COMPENSATION DOES NOT ENCOMPASS INTRAMTA IXC CALLS. IS THERE ANY CASE LAW ON THE QUESTION?

A. Yes, there is. There is authority on both sides of the issue. The decisions that support AT&T's position are considerably better reasoned, however – and not just because they support AT&T's position.

Q. PLEASE IDENTIFY AN AUTHORITY THAT SUPPORTS AT&T'S POSITION.

A. The Public Utility Commission of Texas ("PUCT"), in an arbitration between Fitch Affordable Telecom (Affordable Telecom) and AT&T, ruled:

> The issue before the Commission [PUCT] . . . is whether Affordable Telecom is entitled to reciprocal compensation on intraMTA traffic that is dialed 1+ and handled by a third-party IXC. IntraMTA traffic exchanged directly between a local exchange carrier (LEC) and a CMRS provider through their point of interconnection is subject to the Federal Communications Commission (FCC) reciprocal compensation regime. It is the

> introduction of a third-party IXC that switches and transports calls between the LEC and the CMRS provider's network facilities that is in dispute in this arbitration. In order to complete 1+ calls between carriers, IXCs are subject to originating and termination access charges (exchange access), instead of the FCC's reciprocal compensation regime.
>
> The Commission acknowledges that FCC Rule 47 C.F.R. 51.701(c) and (3) prescribes the application of reciprocal compensation for the transport and termination of FTA § 251(b)(5) telecommunications traffic as being MTA and "between" the LEC and the CMRS provider. . . .
>
> [T]he Commission . . . adopts the following contract language regarding reciprocal compensation for § 251(B)(5) calls:
>
> 1.27 "Section 251(b)(5) Calls" for the purposes of termination compensation, are Authorized Services pages originating on SBC Texas' network, terminating on Affordable Telecom's network, and that are exchanged directly between the Parties and, at the beginning of the call, originate and terminate within the same MTA.[54]

The PUCT's Order was affirmed by the federal district court, and then by the Fifth Circuit. *Fitch v. Pub. Util. Comm'n Texas*, No. 07-50088, 2008 U.S. App. LEXIS 919 (5th Cir. Jan. 16, 2008).

Q. YOU ACKNOWLDGE, THOUGH, THAT THERE IS CASE LAW ON THE OTHER SIDE OF THE ISSUE, DON'T YOU?

A. Yes, and to the extent that Sprint discusses that case law in its direct testimony, I will respond to it in my rebuttal testimony. Generally, the decisions that support Sprint's position on the issue fail to come to grips with the fundamental principles of intercarrier compensation that I have discussed, and consequently rely on a

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[54] Order Approving Arbitration Award with Modification, Docket No. 29415, *F. Cary Fitch d/b/a Fitch Affordable Telecom Petition for Arbitration against SBC Texas under § 252 of the Communications Act* (Pub. Util. Comm'n Tex. Dec. 19, 2005), at 3-4 (footnotes omitted).

reading of FCC Rule 701(b)(2) that glosses over the significance of the key words, "*exchanged between a LEC and a CMRS provider*," in that rule.

Q. HOW SHOULD THE COMMISSION RESOLVE ISSUE # 40 *[DPL ISSUE III.A.1(1)]*?

A. The Commission should find that AT&T is not obligated to pay reciprocal compensation to Sprint for IntraMTA calls AT&T originates and routes to Sprint via an IXC.

ISSUE # 41 *[DPL ISSUE III.A.1(2)]*

What are the appropriate compensation rates, terms and conditions (including factoring and audits) that should be included in the CMRS ICA for traffic subject to reciprocal compensation?

Contract Reference: Sprint Pricing Sheet; Attachment 3, AT&T sections 6.2 – 6.3.6, AT&T Pricing Sheet

Q. WHAT IS THE PARTIES' DISAGREEMENT CONCERNING THE COMPENSATION RATES, TERMS AND CONDITIONS TO BE INCLUDED IN THE CMRS ICA FOR TRAFFIC SUBJECT TO RECIPROCAL COMPENSATION?

A. AT&T proposes comprehensive terms and conditions in its sections 6.2 through 6.3.6 to govern the calculation of reciprocal compensation for Section 251(b)(5) Traffic, including the use of a factoring process if Sprint is unable to bill AT&T based on actual usage data. Sprint objects to AT&T's language in its entirety.

Q. HOW SHOULD THE PARTIES COMPENSATE EACH OTHER FOR SECTION 251(b)(5) TRAFFIC EXCHANGED PURSUANT TO THE CMRS ICA?

A. The parties should compensate each other for the Section 251(b)(5) Traffic (as AT&T defines that term) that each party originates and terminates directly to the other party in accordance with AT&T's CMRS ICA Pricing Sheet. AT&T's

language in section 6.2.2.1 refers to section 6.2.3 for the appropriate limitations to the applicability of reciprocal compensation. And in section 6.2.3 and its subsections, AT&T provides a list of traffic types that do not constitute Section 251(b)(5) Traffic and that are therefore not subject to reciprocal compensation.

Q. PLEASE EXPLAIN WHY THE TRAFFIC TYPES LISTED UNDER SECTION 6.2.3 ARE NOT SUBJECT TO RECIPROCAL COMPENSATION PURSUANT TO THE CMRS ICA.

A. The traffic types listed under section 6.2.3 are not subject to section 251(b)(5) reciprocal compensation between AT&T and Sprint because the calls are not IntraMTA calls that originate with one party's end users and terminate directly to the other party's end users. Several traffic types listed do not originate and terminate with the parties' end users (*i.e.*, non-CMRS traffic, Third Party Traffic, non-facilities based traffic, Paging Traffic). Other types are interexchange and/or IXC traffic (*i.e.*, toll-free calls, InterMTA Traffic, 1+ IntraMTA Traffic carried by an IXC). Section 6.2.3 also appropriately provides for the exclusion of any other type of traffic the FCC and/or Commission has found to be exempt from reciprocal compensation.

Q. WHAT IS AT&T'S PROPOSAL FOR RECIPROCAL COMPENSATION BILLING.

A. AT&T's language provides that each party will record terminating usage (MOU) for all calls it receives from the other party (section 6.3.1, addressed above for Issue # 39 *[DPL Issue III.A(3)]*). AT&T recognizes, however, that Sprint may not have the ability to measure and bill based on actual usage (section 6.3.2). Accordingly, AT&T proposes a specific method to bill based on a surrogate

billing factor (section 6.3.3). AT&T's language describes in detailed text how the surrogate billing factor is to be calculated and applied to the parties' traffic for the purpose of billing reciprocal compensation for Section 251(b)(5) Traffic, and it includes a specific numerical example to demonstrate how the factor will be calculated (section 6.3.4). Finally, AT&T's language provides that, to the extent Sprint uses the surrogate billing factor method to calculate its bills to AT&T (rather than actual usage data), Sprint will itemize its bills to reflect the application of the surrogate billing factor by state and by billing account number ("BAN") (section 6.3.5). Sprint retains the option (and the parties agree that it is preferable) to bill based on actual terminating usage data rather than using the surrogate billing factor.

Q. WHAT IS SPRINT'S OBJECTION TO AT&T'S PROPOSAL FOR RECIPROCAL COMPENSATION BILLING?

A. Sprint asserts that AT&T's language that provides for calculating reciprocal compensation bills based on a factoring process is unnecessary, because Sprint's language requires the parties to utilize actual traffic measurements.

Q. IS SPRINT'S OBJECTION CONSISTENT WITH ITS PROPOSED LANGUAGE FOR THE CMRS ICA?

A. No. As discussed above for Issue # 39 *[DPL Issue III.A(3)]*, Sprint's language in its section 6.3.6.1 provides for "a surrogate method of classifying and billing those categories of traffic where measurement is not possible." Thus, Sprint's own language, however otherwise vague, clearly provides for reciprocal compensation billing that is not based on actual usage.

Q. WHAT IS AT&T'S PROPOSAL FOR THE RECIPROCAL COMPENSATION RATE?

A. AT&T proposes that the parties compensate one another at the FCC's reciprocal compensation rate of $0.0007 per MOU for Section 251(b)(5) Traffic.

Q. DOES SPRINT CMRS AGREE THAT $0.0007 PER MOU IS THE APPROPRIATE RATE FOR SECTION 251(B)(5) TRAFFIC?

A. Sprint appears to agree that $0.0007 is an appropriate rate for some traffic in some scenarios, but Sprint's pricing proposal, like its proposed traffic categories (discussed above for Issue # 37 *[DPL Issue III.A(1)]*), is unclear because it is comprised of alternative choices to be made in some unspecified manner at some unspecified time. Sprint's alternatives are confusing because of the numerous variables, making it difficult to identify just what Sprint believes is appropriate. I will explain AT&T's straightforward pricing proposals, and then I will further discuss my understanding of Sprint's various alternatives.

Q. YOU INDICATED THAT AT&T PROPOSES THE FCC'S RECIPROCAL COMPENSATION RATE. WHY DOES AT&T PROPOSE SEPARATE "TYPE 2B SURROGATE USAGE RATES" FOR M-L TRAFFIC DELIVERED OVER TYPE 2B TRUNKS?

A. Because AT&T does not currently have the ability to measure actual M-L usage delivered to its end offices via Type 2B trunks. In order to achieve an effective rate of $0.0007 per MOU on Type 2B trunks, AT&T uses an estimate of 9,000 MOU per trunk per month times $0.0007 per MOU. That results in AT&T's proposed rate of $6.30 per Type 2B trunk per month.

Q. WHAT IS YOUR UNDERSTANDING OF SPRINT'S PRICING PROPOSAL REGARDING RECIPROCAL COMPENSATION?

A. It is not clear what Sprint is actually advocating as the appropriate rates for reciprocal compensation. As I discussed in my testimony above for Issue # 37 *[DPL Issue III.A(1)]*, Sprint proposes two alternatives for classifying traffic types but does not provide the Commission (or AT&T) with any guidance as to which set of classifications it believes is the proper one. In its proposed Pricing Sheet, however, Sprint provides rates only for one of its classification alternatives – the one with six traffic types. That still does not answer the question as to what reciprocal compensation rate(s) Sprint is advocating, because Sprint has again taken the position that it is entitled to the least of all possible rates in the state (past, present and future), showing the reciprocal compensation rates as simply "TBD."

Q. HOW SHOULD THE COMMISSION RESOLVE ISSUE # 41 *[DPL ISSUE III.A.1(2)]*?

A. The Commission should adopt AT&T's language in sections 6.2 through 6.3.6 because it provides comprehensive terms and conditions to govern the calculation of reciprocal compensation, including a specific mechanism to be used in the event Sprint is unable to bill reciprocal compensation based on actual usage measurements. The Commission should also adopt the rates AT&T proposes in its Pricing Sheet because the rates are clear and easy to understand, the rates are established with certainty for the term of the ICA, and the rates are reasonably based on the FCC's reciprocal compensation rate.

ISSUE # 55 ***[DPL ISSUE III.A.7(1)]***

Should the wireless meet point billing provisions in the ICA apply only to jointly provided, switched access calls where both Parties are providing such service to an IXC, or also to Transit Service calls, as proposed by Sprint?

Contract Reference: Attachment 3, Sprint sections 7.2.1, 7.2.3, 7.2.5, AT&T sections 6.11.1, 6.11.3 – 6.11.5

Q. WHAT IS THE PARTIES' DISPUTE REGARDING THE APPLICATION OF WIRELESS MEET POINT BILLING PROVISIONS TO TRANSIT SERVICE CALLS?

A. Sprint contends that the parties' Meet Point Billing language in the CMRS ICA should apply to Transit Service calls (as Sprint defines that term) in addition to IXC-carried calls. AT&T contends that the "Wireless Meet Point Billing" provisions are applicable when the parties are providing Switched Access Service to an IXC and should not apply to Sprint's Transit Service calls (if any).

Q. WHAT IS MEET POINT BILLING?

A. Meet Point Billing, as the parties have agreed to use that term in the CMRS ICA,[55] refers to billing arrangements supported by Multiple Exchange Carrier Access Billing ("MECAB") guidelines[56] that are necessary for jointly provided access services. In other words, meet point billing is the manner in which AT&T and a LEC collectively bill a third-party, like an IXC, for services AT&T and the LEC jointly provide. Meet Point Billing permits a LEC such as Sprint to indirectly interconnect with an IXC via AT&T. Sprint provides the originating

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[55] Attachment 3 section 6.11.1.

[56] The MECAB Guidelines are published by the Ordering and Billing Forum ("OBF"), which is sponsored by the industry Alliance for Telecommunications Industry Solutions ("ATIS"). The MECAB Guidelines are used to implement a meet point billing arrangement between providers.

(or terminating) switching function and transport between its end office (or MSC) and AT&T's access tandem, and AT&T provides tandem switching and transport between its access tandem and the IXC. Each provider bills the IXC for its portion of the service based upon its access tariff or contract rates.[57] Parties must agree to bill pursuant to a Meet Point Billing arrangement; otherwise, IXCs may be overcharged for the jointly provided access service if the parties bill based on different Meet Point Billing arrangements.

Q. SHOULD THE MEET POINT BILLING PROVISIONS EXCLUDE "TRANSIT SERVICE"?

A. Yes. While the parties disagree as to whether the term Transit Service should be defined in the ICA at all,[58] even if Transit Service is defined as Sprint proposes, Transit Service still should not be included in the Meet Point Billing provisions of the CMRS ICA. Sprint defines Transit Service to include all traffic that transits *either* party's network, including non-IXC traffic. If Sprint prevails on this position – which, as Mr. McPhee testifies, it should not – and the CMRS ICA thus includes terms and conditions that permit Sprint to act as a transit provider with respect to AT&T's traffic,[59] AT&T does not agree to participate in Meet Point Billing with Sprint for such traffic. In addition, the ICA describes Wireless Meet Point Billing "as supported by" MECAB guidelines. If the Commission orders

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[57] CMRS carriers may or may not be entitled to bill the IXC, depending on what contractual arrangements they may have. The meet point billing process ensures that the billing records are available for the parties to bill the IXC should they be entitled to do so.

[58] *See* Issue # 14 *[DPL Issue I.C(1)]*, which is addressed by Mr. McPhee.

[59] The parties' dispute regarding whether the ICA should govern Sprint's provision of transit service is reflected as Issue # 19 *[DPL Issue I.C(6)]*, which is addressed by Mr. McPhee.

AT&T to provide transit traffic service to Sprint pursuant to the ICA,[60] AT&T has proposed language that sets forth detailed terms and conditions regarding the exchange of records necessary for billing.[61] It is therefore improper to include any reference to Transit Service in the Meet Point Billing provisions of the CMRS ICA.

Q. ARE THERE OTHER DISPUTES REFLECTED BY THE PARTIES' PROPOSED LANGUAGE THAT ARE NOT SPECIFIC TO TRANSIT SERVICE?

A. Yes. There are three minor language disagreements, which are reflected in Sprint's objection to AT&T's proposed language in sections 6.11.3 and 6.11.4, and in both parties' proposed language in 6.11.5.

In section 6.11.3, AT&T refers to its access tandem as the switch where AT&T will provide Meet Point Billing. This is appropriate because AT&T does not provide Meet Point Billing service from its local tandems.

In section 6.11.4, AT&T includes language to address compensation for 800 database queries. If Sprint routes a non-queried 800 call to AT&T, AT&T must perform the query to identify how to route the call. In this situation, it is appropriate to charge Sprint for the query function AT&T performed on Sprint's behalf.

Finally, in section 6.11.5, AT&T provides language to make clear that reciprocal compensation does not apply to Meet Point Billing. This is appropriate

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60 See Issue # 15 *[DPL Issue I.C(2)]*, which is also addressed by Mr. McPhee.

61 See the DPL Language Exhibit for Issue # 15 *[DPL Issue I.C(2)]*, section 3.6 et seq.

since Meet Point Billing is for jointly provided access traffic, which is not subject to reciprocal compensation.[62] Sprint's language states that it will compensate AT&T at the transit rate when Sprint originates calls AT&T transits to third party carriers for termination. This language is not necessary for the Meet Point Billing provisions, since transit traffic compensation will be covered either by a separate commercial agreement or in another section of Attachment 3.[63]

Q. HOW SHOULD THE COMMISSION RESOLVE ISSUE # 55 *[DPL ISSUE III.A.7(1)]*?

A. The Commission should reject Sprint's language that includes Transit Service in the Meet Point Billing provisions of the CMRS ICA, because Transit Service is a local service, not an access service, and because AT&T does not agree to participate in Meet Point Billing in a situation where Sprint is a transit provider. The Commission should adopt AT&T's language in sections 6.11.3, 6.11.4, and 6.11.5 for the reasons set forth above.

ISSUE # 56 *[DPL ISSUE III.A.7(2)]*

What information is required for wireless Meet Point Billing, and what are the appropriate Billing Interconnection Percentages?

Contract Reference: Attachment 3, Sprint sections 7.2.2, AT&T sections 6.11.2

Q. WHAT IS THE PARTIES' DISPUTE REGARDING THE INFORMATION REQUIRED FOR WIRELESS MEET POINT BILLING?

A. AT&T's language identifies five pieces of information required for Meet Point Billing, and Sprint objects to three of them. Specifically, Sprint objects to

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62 The parties' dispute regarding compensation for IntraMTA calls routed to an IXC is addressed in my testimony above for Issue # 40 *[DPL Issue III.A.1(1)]*.

63 *See* Mr. McPhee's testimony for Issue # 15 *[DPL Issue I.C(2)]*.

including Percent Interstate Usage ("PIU"), Percent Local Usage ("PLU"), and 800 Service PIU. In addition, although the parties agree to include a Billing Interconnection Percentage ("BIP"), the parties disagree regarding what default BIP is appropriate. The DPL reflects AT&T's proposal to retain the parties' current default BIP of 95% AT&T and 5% Sprint. Sprint contends that the default BIP should be changed to 50% Sprint and 50% AT&T, consistent with Sprint's flawed proposal for the initial factor used to apportion facility costs for the first six months of the ICA's term.[64] AT&T is willing to accept Sprint's proposed default BIP percentages; however that should not be construed as agreement with Sprint's rationale for its proposal.

Q. WHY ARE PIU, PLU AND 800 PIU NECESSARY FOR MEET POINT BILLING?

A. The parties may route traffic destined for or received from IXCs over the same trunk group that carries non-IXC transit traffic, but the parties may be unable to ascertain jurisdiction mechanically. Therefore, PIU, PLU and 800 Service PIU factors will be used to indicate approximately how much traffic of each type is being carried so that proper billing may be rendered.

Q. YOU MENTIONED THAT THE PARTIES DISAGREE REGARDING THE DEFAULT BIP. PLEASE EXPLAIN.

A. The BIP is a factor required for CABS (Carrier Access Billing System) billing that a wireless carrier may file with the National Exchange Carrier Association ("NECA"). The BIP represents the percentage of mileage sensitive transport

[64] AT&T disagrees with Sprint's proposal for a default percentage of 50/50 for sharing facilities costs. *See* my testimony below for Issue # 58 *[DPL Issue III.E(1)]*.

charges belonging to each company on the call route utilized when the companies meet point bill to IXCs. In the context of Sprint's ICA, the call route is between Sprint's MSC and AT&T's access tandem within the LATA. With AT&T's proposed DPL language, AT&T would be entitled to bill 95% of the mileage sensitive transport charges between Sprint's MSC and AT&T's access tandem in the LATA, and Sprint would be entitled to bill 5%. Sprint has offered no supporting documentation for its proposed default BIP of 50/50 other than to claim that it should be the same as its equally unsupported shared facility factor. Furthermore, Sprint only proposes the 50% shared facility factor for the initial six months of the ICA's terms; Sprint's rationale for using a default BIP of 50/50 ignores that the shared facility factor will most likely change multiple times throughout the term of the ICA.

Q. HOW SHOULD THE COMMISSION RESOLVE ISSUE # 56 *[DPL ISSUE III.A.7(2)]*?

A. The Commission should adopt AT&T's language that includes PIU, PLU and 800 PIU factors, because these factors are necessary to identify the appropriate jurisdiction of a call for proper rate application. The Commission should retain the parties' existing default BIP of 95% AT&T and 5% Sprint, because Sprint has provided no documentation to support changing the default BIP to a ratio of 50/50. In the alternative, the Commission should accept Sprint's default BIP percentages, but should do so independent of its analysis of the parties' positions set forth for Issue # 58 *[DPL Issue III.E(1)]* regarding shared facility costs.

ISSUE # 58 *[DPL ISSUE III.E(1)]*

How should Facility Costs be apportioned between the Parties under the CMRS ICA?

Contract Reference: Attachment 3, Sprint sections 2.5.3(a) through 2.5.3(d), AT&T sections 2.3.2.1, 2.3.2.5 – 2.3.2 9

Q. WHAT IS THE DISAGREEMENT BETWEEN THE PARTIES REGARDING HOW SHARED FACILITIES COSTS SHOULD BE APPORTIONED BETWEEN THE PARTIES UNDER THE CMRS ICA?

A. The parties disagree regarding what traffic should be considered when determining each party's relative use of shared facilities, the method to calculate the proportionate use factor (also referred to as the shared facility factor), how often and by what means the factor will be updated, and how billing will be handled. AT&T contends that it is only responsible for recurring facilities costs associated with calls from its end users to Sprint's end users; costs associated with calls originated by Sprint's end users and by third party carriers are Sprint's responsibility. AT&T's language provides a formula for calculating the shared facility factor ("SFF"), which AT&T will update quarterly. Under this language, each party will render a bill to the other for facilities charges. Sprint, on the other hand, contends that AT&T is responsible for both recurring and nonrecurring facilities costs for all traffic AT&T delivers to Sprint. Sprint's language provides for an initial proportionate use factor of 50%, to be updated by traffic studies no more frequently than every six months. With Sprint's proposal, only one party will bill the other for facilities charges.

Q. WHAT IS THE BASIS FOR EACH PARTY'S POSITION?

A. Sprint essentially relies on 47 C.F.R. § 51.703(b), which Sprint contends prohibits AT&T from charging Sprint for traffic originated on AT&T's network. Sprint has not provided evidentiary support for its initial 50/50 allocation of facility costs. In contrast, AT&T believes the cited regulation does not even pertain to this matter. That notwithstanding, AT&T's proposal does reflect allocation of costs based on calls originated on AT&T's network, which is consistent with 51.703(b). AT&T proposes a fair and equitable method of allocating costs to each party based on the principle of cost causation, and calculates the parties' relative use factor based on actual data.

Q. PLEASE DESCRIBE AT&T'S PROPOSAL FOR SHARING FACILITY COSTS.

A. As set forth in AT&T's section 2.3.2.1, each party is responsible for providing facilities on its side of the parties' POI(s) through one of three alternative methods: a party may lease facilities from the other party (if available), obtain them from a third party, or self-provision them. AT&T will always elect first to use its own facilities. Section 2.3.2.5 provides that AT&T's obligations as an ILEC are limited to its service territory, and its transport obligations are limited based on LATA boundaries.[65] AT&T's language in section 2.3.26 provides that when Sprint uses AT&T's facilities, the parties will share the cost based on proportionate use. However, if Sprint elects to obtain facilities from a third party,

[65] AT&T also proposes to limit its financial responsibility to its local calling area or 14 miles, whichever is greater. This limitation of responsibility on Sprint's side of the POI is appropriate, as I explain further in my testimony for Issue # 66 *[DPL Issue III.H(3)]* below.

rather than from AT&T, AT&T should not be obligated to effectively lease facilities from a third party (via Sprint) that it prefers to provide for itself. In sections 2.3.2.7, 2.3.2.8, and 2.3.2.9, AT&T provides specific terms for how the parties will allocate costs based on AT&T's proportionate use of facilities for Section 251(b)(5) Traffic (*i.e.*, directly routed IntraMTA Traffic) compared to all traffic between the parties' networks in the state. AT&T will provide Sprint with a quarterly percentage to represent AT&T's use of the facilities. AT&T will bill Sprint for the entire cost of the facilities, and Sprint can apply AT&T's percentage to bill AT&T.

Q. PLEASE PROVIDE A SIMPLE EXAMPLE OF HOW AT&T WOULD CALCULATE THE SFF.

A. I will use very small numbers to keep the math simple and so it is clear that this is a hypothetical example. Suppose that the total amount of traffic delivered in both directions over the parties' shared facilities in the state is 1,000 MOU over a three-month period. And suppose that AT&T's end users generate 250 MOU of Section 251(b)(5) Traffic (as AT&T defines that term) to Sprint's end users during that period. AT&T would calculate the SFF as 250 divided by 1000, or 25%. This 25% SFF would be applied prospectively for the next three-month period.

Q. HOW WOULD THE PARTIES APPLY THE SFF FOR THE PURPOSE OF BILLING FOR SHARED FACILITIES?

A. Continuing the hypothetical example above, suppose further that Sprint has leased the facilities from AT&T at a monthly recurring rate of $100. In this example, AT&T would bill Sprint the total $100. Sprint would apply the SFF of 25% and

bill AT&T $25. The net result is that Sprint would pay $75 for its 75% use of the facilities, and AT&T would pay $25 for its 25% use of the facilities. This is a simple method that fairly allocates the cost of facilities the parties share.

Q. WHY IS IT APPROPRIATE TO APPLY THE SFF ONLY TO THE FACILITIES' RECURRING RATES AND NOT ALSO TO NONRECURRING CHARGES?

A. Recurring rates reflect the ongoing use of the shared facilities, previously established between the parties, based on the parties' proportionate use of the facilities. The parties agree that the SFF should apply to the recurring rates. In contrast, nonrecurring charges relate to cost recovery of the initial installation of the facilities and are not usage sensitive. Since the SFF is calculated based on actual usage of the facilities, and is revised over time as relative use changes, it is not appropriate to apply the SFF to nonrecurring charges. If Sprint does not want to pay AT&T's nonrecurring facilities charges, it can elect to self-provision the facilities or obtain them from a third party, as AT&T's language in section 2.3.2.1 provides.

Q. PLEASE DESCRIBE SPRINT'S PROPOSAL FOR FACILITY COST SHARING, AS YOU UNDERSTAND IT.

A. Sprint proposes that the parties share facilities costs within an MTA (as opposed to within a LATA), whether provided by one party directly to the other or obtained from a third party. In Sprint's proposal, all traffic that is delivered over the facilities in both directions is subject to facility cost sharing, including traffic that neither originates nor terminates with AT&T's end users (*i.e.*, transit traffic). Sprint proposes that the proportionate use factor be deemed to be 50% Sprint and

50% AT&T as of the effective date of the ICA. After six months, either party may request that a new SFF be calculated for use prospectively. Thereafter such a request may be made no more frequently than every six months. As for billing, Sprint proposes that the billing party would apply the SFF prior to rendering a bill, so the effect of facility cost sharing would appear as a bill credit to the billed party.

Q. IS AT&T RESPONSIBLE FOR THE COST OF FACILITIES OUTSIDE THE LATA WHERE THE POI IS LOCATED?

A. No. The parties have agreed in section 2.3.2 that the parties will establish at least one POI per LATA where Sprint is doing business, and each carrier is responsible for facilities on its side of the POI.[66] AT&T is therefore responsible only for certain facility costs *within* a LATA, but is not responsible for any costs outside the LATA. Sprint's language in section 2.5.3(c), when read in conjunction with Sprint's section 2.5.3(a), would improperly burden AT&T with facility costs within the MTA, but outside the LATA – costs that should rightfully be borne by Sprint.

Q. WHY DOES AT&T CONTEND THAT IT IS ONLY RESPONSIBLE FOR FACILITY COSTS ASSOCIATED WITH CALLS FROM ITS END USERS TO SPRINT'S END USERS?

A. There is no question that AT&T is responsible for facility costs on its side of the POI on AT&T's network (in the LATA) for calls its end users place to Sprint's

[66] As I explain in my testimony for Issue # 66 *[DPL Issue III.H(3)]* below, the parties have established "reciprocal" POIs at each other's offices in the LATA and share the use of the facilities between them. Importantly, the designation of a POI at Sprint's location for land-to-mobile traffic is not consistent with section 251(c)(2) interconnection, and such POIs cannot properly serve as a financial demarcation point with respect to facility cost sharing.

end users. AT&T is not, however, responsible for costs resulting from other carriers' end users making calls to Sprint's end users, because AT&T is not the cost causer for these calls. I address this more thoroughly in my testimony below for Issue # 59 *[DPL Issue III.E(2)]*.

Q. YOU MENTIONED THAT SPRINT RELIES ON 47 C.F.R. § 51.703(b) IN SUPPORT OF ITS POSITION REGARDING SHARING OF FACILITY COSTS? DOES THAT FCC RULE ADDRESS THE FACILITY COSTS AT ISSUE HERE?

A. No. 47 C.F.R. § 501.703, entitled "Reciprocal Compensation obligation of LECs," states as follows:

> (a) Each LEC shall establish reciprocal compensation arrangements for transport and termination of telecommunications traffic with any requesting telecommunications carrier.
>
> (b) A LEC may not assess charges on any other telecommunications carrier for telecommunications traffic that originates on the LEC's network.

This rule addresses reciprocal compensation obligations for telecommunications traffic that originates on a party's network and terminates to another party's network. Part (b) provides that a LEC may not charge another carrier for calls that originate on its own network. But AT&T is not proposing to charge Sprint for AT&T-originated traffic, either via reciprocal compensation or through calculation and application of the SFF. By stating that its language is consistent with this rule, Sprint appears to be claiming that calls originating with a third party carrier's end users, which AT&T switches and routes to Sprint for termination to Sprint's end users, actually originate on AT&T's network, and that therefore such calls should be attributed to AT&T for purposes of calculating the

SFF. But that is simply not the case – those calls originate on the third party's network, which is why it is the third party (and not AT&T) that has the reciprocal compensation obligation to Sprint for this transit traffic.

Q. WHY DOES AT&T OBJECT TO SPRINT'S PROPOSAL FOR DETERMINING THE SFF?

A. Sprint's proposal to use an initial SFF of 50% upon the effective date of the ICA, and to maintain this arbitrary factor for six months, is patently unreasonable. The parties are exchanging traffic over shared facilities today, and there is no legitimate reason for using an arbitrary factor when actual data is available to calculate the factor, apply it prospectively, and update it quarterly, as AT&T proposes. The use of facilities and the associated costs are directly affected by changes in traffic patterns. Because traffic patterns between carriers are dynamic, a minimum of six months is too long a period to wait to adjust the factor prospectively.

Q. WHY DOES AT&T OBJECT TO SPRINT'S BILLING PROPOSAL?

A. Sprint's billing proposal would require AT&T to modify its billing system just for Sprint. When Sprint leases facilities from AT&T, Sprint's language provides that AT&T would have to adjust its facilities bills to reflect a credit to Sprint for each affected billed circuit based on the SFF. For example, if AT&T's charge for a DS1 circuit was $100 per month and the proportionate use factor was 25%, Sprint's language would require AT&T to show the $100 charge for the DS1 with a $25 credit. AT&T would be required to do this adjustment for each and every

circuit billed. There is no reason to change the billing process the parties currently use.

Q. HOW SHOULD THE COMMISSION RESOLVE ISSUE # 58 *[DPL ISSUE III.E(1)]*?

A. The Commission should adopt AT&T's language because it sets forth a fair and equitable method of allocating costs when the parties share the use of facilities. It is based on actual traffic exchanged between the parties over the course of a three-month period, which provides a reasonable balance between the effort that would be required to calculate a factor monthly and the need for accurate billing. And AT&T's billing proposal permits it to continue to bill facilities charges to Sprint the same way it does today (for Sprint and other carriers), avoiding the need for billing system revisions, while providing Sprint the information it needs to bill AT&T. Sprint's language, which is based on an unnecessarily arbitrary 50/50 allocation of costs for at least the first six months of the ICA, with modifications to the SFF no more often than twice a year, and which would require AT&T to modify its billing system just for Sprint, is unreasonable and should be rejected.

ISSUE # 59 *[DPL ISSUE III.E(2)]*

Should traffic that originates with a Third party and that is transited by one Party (the transiting party) to the other Party (the terminating Party) be attributed to the transiting Party or the terminating Party for purposes of calculating the proportionate use of facilities under the CMRS ICA?

Contract Reference: Attachment 3, Sprint sections 2.5.3(d) and (e), AT&T section 2.3.2.b (excerpt)[67]

Q. WHAT IS THE FUNDAMENTAL DISAGREEMENT BETWEEN THE PARTIES REGARDING FACILITIES USED TO TRANSPORT TRANSIT SERVICE TRAFFIC?

A. AT&T contends that the cost of facilities between AT&T and Sprint used for the delivery of traffic originated by third party carriers' end users and transited by AT&T for completion to Sprint's end users are attributable to Sprint. Sprint contends that these costs are AT&T's responsibility.

Q. WHAT IS THE BASIS FOR SPRINT'S POSITION?

A. Sprint asserts that third party originated traffic that AT&T transits and delivers to Sprint for termination to Sprint's end users is deemed to be AT&T's traffic for the purpose of calculating the proportionate use of facilities. In other words, AT&T and the originating third party carrier jointly cause the costs associated with the use of facilities for transit calls between AT&T and Sprint. Therefore, Sprint bears no responsibility for those facility costs.

Q. WHAT IS THE BASIS FOR AT&T'S POSITION?

A. A call that originates with a third party and that AT&T transits to Sprint should be attributed to Sprint for purposes of calculating the proportionate use of facilities under the CMRS ICA, because, as between AT&T and Sprint, Sprint is the cause of that usage. AT&T has no stake in the call, because neither the calling party nor the called party is AT&T's customer. Moreover, the reason that AT&T must

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[67] Only the last sentence of AT&T's section 2.3.2.b is relevant for this issue, as reflected on the DPL Language Exhibit. The remainder of section 2.3.2.b is reflected for Issue # 35 *[DPL Issue II.H(2)]*, addressed by Mr. Hamiter.

transit the call is that Sprint has elected not to directly interconnect with the third party; it is for this reason that Sprint is the cause of the usage. Also, while the originating carrier is obliged to compensate AT&T for switching the call on the AT&T network, and for any interoffice transport within AT&T's network, the originating carrier does not compensate AT&T for transporting the call to Sprint from the last point of switching on the AT&T network. Accordingly, the facility costs incurred associated with transit traffic that AT&T delivers to Sprint are Sprint's responsibility.

Q. HAS THE FCC ADDRESSED COST RECOVERY FOR FACILITIES USED TO TERMINATE TRANSIT TRAFFIC?

A. Yes. The FCC addressed cost recovery for facilities used to terminate transit traffic in its June 21, 2000 *TSR Wireless Order*[68] and again in its November 28, 2001 *Texcom Order.*[69]

Q. BRIEFLY SUMMARIZE THE TSR WIRELESS ORDER.

A. TSR was one of two paging carriers complaining that they were being improperly charged for, among other things, facilities costs associated with LEC-originated calls.[70] The *TSR Wireless Order* affirmed that LECs are not entitled to charge terminating carriers for LEC-originated calls.[71] Importantly, however, the FCC

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68 *TSR Wireless, LLC v. U S West Communications*, Inc., Memorandum Opinion and Order, FCC 00-194, rel. Jun. 21, 2000 ("*TSR Wireless Order*").

69 *Texcom, Inc., d/b/a Answer Indiana v. Bell Atlantic Corp., d/b/a Verizon Communications*, Memorandum and Order, FCC 01-347, rel. Nov. 28, 2001, ("*Texcom Order*") aff'd in Order on Reconsideration, 17 FCC Rcd. 6275 (2002) ("*Texcom Recon Order*").

70 *TSR Wireless Order* at ¶ 2.

71 *Id.* at ¶ 18.

found that the complainants "are required to pay for 'transiting traffic,' that is, traffic that originates from a carrier other than the interconnecting LEC but nonetheless is carried over the LEC network to the paging carrier's network."[72]

Q. YOU MENTIONED THAT THE COMPLAINANTS IN THE TSR CASE WERE PAGING PROVIDERS. DOES THE *TSR WIRELESS ORDER* ALSO APPLY TO CMRS PROVIDERS?

A. Yes. The underlying premise of the FCC's analysis was that CMRS providers were most certainly covered by 47 C.F.R. 51.703(b),[73] so the question was the extent to which section 51.703(b) also applies to paging carriers.[74] In other words, the FCC found that the paging providers are required to pay for facilities used to terminate transit traffic – *just like CMRS carriers do*.

Q. YOU MENTIONED THE FCC'S *TEXCOM ORDER*. HOW IS THAT ORDER RELEVANT HERE?

A. In the *Texcom Order*, the FCC again addressed cost recovery associated with terminating transit traffic, which is the subject of the parties' dispute reflected in this issue. The FCC reaffirmed its prior determination from the *TSR Wireless Order* that the transit provider may charge the terminating carrier for calls that do not originate on the transit provider's network.

> Our rules state that a CMRS provider (such as Answer Indiana) is not required to pay an interconnecting LEC (such as GTE North) for traffic that terminates on the CMRS provider's network if the traffic originated on the LEC's network. As we stated in the *TSR Wireless Order*, however, an interconnecting LEC may charge the CMRS carrier for traffic that transits across the interconnecting LEC's network and terminates on the CMRS provider's network, if the

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72 *Id.* at n. 70.

73 *Id.* at ¶ 19.

74 *Id.* at ¶ 3.

> traffic did *not* originate on the LEC's network. (Footnotes omitted).[75]
>
> In the case of third-party originated traffic, however, the only relationship between the LEC's customers and the call is the fact that the call traverses the LEC's network on its way to the terminating carrier. Where the LEC's customers do not generate the traffic at issue, those customers should not bear the cost of delivering that traffic from a CLEC's network to that of a CMRS carrier like Answer Indiana. Thus, the originating third party carrier's customers pay for the cost of delivering their calls to the LEC, while the terminating CMRS carrier's customers pay for the cost of transporting that traffic from the LEC's network to their network.[76]

The *Texcom Order* is directly on point here.

Q. HAS THIS COMMISSION PREVIOUSLY ADDRESSED RECOVERY OF THE COST OF FACILITIES USED TO TERMINATE TRANSIT TRAFFIC?

A. Yes. In its September 18, 2006 Order in Docket Nos. 050119-TP and 050125-TP,[77] the Commission concluded that "the reasoning in the [ ] *Texcom Order* is compelling. [It is] consistent with and appear[s] to confirm the principle that the originating party must bear the costs of transiting the call." In reaching this conclusion, the Commission pointed to the *Texcom Order* (¶ 6), which I have quoted above, as well as the *Texcom Recon Order* (¶4). The Commission stated:

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75 *Texcom Order* at ¶ 4.

76 *Id.* at ¶ 6.

77 Docket No. 050119-TP, *Joint petition by TDS Telecom d/b/a TDS TelecodQuincy Telephone; ALLTEL Florida, Inc.; Northeast Florida Telephone Company d/b/a NEFCOM; GTC, Inc. d/b/a GT Com; Smart City Telecommunications, LLC d/b/a Smart City Telecom; ITS Telecommunications Systems, Inc.; and Frontier Communications of the South, LLC ["Joint Petitioners"] objecting to and requesting suspension and cancellation of proposed transit traffic service tariff filed by BellSouth Telecommunications, Inc.* Docket No. 050125-TP, *Petition and complaint for suspension and cancellation of Transit Traffic Service Tariff No. FL2004-284 filed by BellSouth Telecommunications, Inc., by AT&T Communications of the Southern States. LLC.* Commission Order dated September 18, 2006 ("Transit Order").

> The Texcom Order and the Texcom Recon Order reflect the FCC's intent to allow the transiting LEC to recover its cost of providing the transiting service from the originating LEC. Under the Texcom Recon Order, the terminating provider may seek reimbursement of these costs from the originating carrier. There is no mention that the terminating carrier would not be able to recover these costs, and no basis for the argument that the terminating carrier should have to bear any of the costs of transporting a call to the terminating carrier across the transiting carrier's system.[78]

Thus, the Commission has previously determined that it is appropriate for AT&T to allocate to Sprint (as the cost causer as between AT&T and Sprint) the cost of facilities used to route transit traffic to Sprint. Sprint may seek reimbursement of such costs from the originating LECs.

Q. THIS ISSUE IS STATED AS REFERRING ONLY TO SHARED FACILITIES. DOES THE SAME COST CAUSER PRINCIPLE APPLY WHEN THE PARTIES ARE NOT SHARING FACILITES?

A. Yes. In the case of facilities that are not shared between the parties, the cost causer principle would dictate that the party using the facilities for its originating traffic should be responsible for the entire cost. The parties generally agree on this principle, but disagree regarding how the ICA should reflect it.

Q. WHY DOES AT&T OBJECT TO THE LANGUAGE IN SPRINT'S SECTION 2.5.3(d) REGARDING ONE-WAY FACILITIES?

A. Because Sprint's language goes too far in one respect and not far enough in others. Sprint's language goes too far when it includes cost responsibility not only associated with traffic originated by a party's end users, as AT&T proposes, but also for any third party traffic. Sprint's language would obligate AT&T to

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78 Transit Order at pages 23-24.

bear the cost of facilities to terminate traffic to Sprint that AT&T transits on behalf of third party originating carriers. As I explained above, Sprint is the cost causer (as between AT&T and Sprint) in this scenario. AT&T should not be responsible for the facility costs associated with transit traffic it terminates to Sprint simply because the parties utilize one-way facilities. Facility costs associated with this third party traffic should be borne by the cost causer, which is Sprint. AT&T's proposed language at the end of section 2.3.2.b properly states that a party is responsible for one-way facilities associated with the party's *originating* traffic.

AT&T's language also provides that the parties will mutually agree to implement one-way trunking and will do so on a statewide basis; in this regard, Sprint's language is inadequate. Mutual agreement to use one-way trunking is important because the standard interconnection arrangement is two-way for network efficiency reasons. One party should not be permitted to force the other party to use a less efficient network arrangement. Facility cost allocation associated with the use of one-way trunking on a statewide basis is important because the SFF is calculated and applied based on statewide usage. Using one-way facilities in some locations in the state but not others would invalidate the SFF and result in either over or under billing of shared facilities.

Q. HOW SHOULD THE COMMISSION RESOLVE ISSUE # 59 *[DPL ISSUE III.E(2)]*?

A. The Commission should reject Sprint's language in sections 2.5.3(d) and 2.5.3(e), because it would improperly burden AT&T with the facility costs to deliver

transit traffic to Sprint – costs that the FCC has previously found should be borne by Sprint as the cost causer. The Commission should adopt AT&T's language in its excerpt of section 2.3.2.b, because it properly establishes that the parties will implement one-way trunking on a statewide basis upon mutual agreement, and that each party is responsible for the cost of facilities associated with the party's originating traffic.

ISSUE # 63 *[DPL ISSUE III.G]*

Should Sprint's proposed pricing sheet language be included in the ICA?

Contract Reference: Sprint Pricing Sheet

Q. WHY DOES AT&T OBJECT TO SPRINT'S PRICING SHEET?

A. The purpose of the ICAs is to provide certainty for both parties, and Sprint's Pricing Sheets subvert that purpose. When the Pricing Sheets are read in conjunction with supporting text in sections 2 and 6 of Attachment 3, it becomes clear that Sprint does not provide a single rate upon which the parties can rely with certainty. Instead, Sprint proposes that it be allowed to pay the lowest of various alternative rates, the majority of which are reflected as "TBD," "None at this time," or "Unknown at this time." In addition, Sprint's language refers to provisions in Attachment 3 reiterating that Sprint would be entitled to rate reductions as set forth therein. I address these improper rate treatments in my testimony for Issue # 38 *[DPL Issue III.A(2)]* above and Issue # 65 *[DPL Issue III.H(2)]* below. Sprint also offers three mutually exclusive rate combinations for AT&T to consider as negotiated rates. All three of these rate packages are

defective, and, in any event, such provisions are inappropriate for ICA Pricing Sheets.

Q. HOW SHOULD THE COMMISSION RESOLVE ISSUE # 63 *[DPL ISSUE III.G]*?

A. The Commission should reject Sprint's Pricing Sheets in their entirety, because they are, at best, vague and confusing. Moreover, Sprint's pricing proposals inappropriately permit Sprint to pick and choose whatever rates it likes at whatever time it likes, including the right to refunds, subjecting AT&T to perpetual uncertainty regarding what rates will apply. In contrast, AT&T's proposed Pricing Sheets for the parties' ICAs are clear and easy to understand, they establish rates with certainty for the term of the ICAs, and the usage rates are reasonably based on the FCC's reciprocal compensation rate and AT&T's access rates.

ISSUE # 64 *[DPL ISSUE III.H(1)]*

Should Sprint be entitled to obtain from AT&T, at cost-based (TELRIC) rates under the ICAs, facilities between Sprint's switch and the POI?

Contract Reference: Attachment 3, Sprint sections 2.9 – 2.9.4, AT&T CMRS section 2.3.6, AT&T CLEC sections 2.4, 2.4.1

Q. WHAT IS THE PARTIES' DISAGREEMENT REGARDING THE PRICING OF FACILITIES BETWEEN SPRINT'S SWITCH AND THE POI?

A. AT&T contends the facilities between Sprint's switch location and the parties' POI are entrance facilities, which are not subject to TELRIC-based pricing. Sprint, on the other hand, contends that the facilities between its switch and the POI are interconnection facilities, which AT&T must price at TELRIC-based

rates. This issue is directly related to Issue # 21 *[DPL Issue II.A]*, which I address above.

Q. WHAT IS THE BASIS FOR EACH PARTY'S POSITION?

A. Sprint asserts that the facilities between a Sprint switch and the parties' POI are section 251(c)(2) interconnection facilities and that they are, therefore, subject to TELRIC-based pricing.

As I explained in detail above for Issue # 21 *[DPL Issue II.A]*, the transport facilities between Sprint's switch location and the parties' POI are "entrance facilities," which are not subject to TELRIC-based pricing. Rather than reiterate here AT&T's thorough and rational support for its position, I direct the Commission to my testimony above for Issue # 21 *[DPL Issue II.A]*.

Q. HOW SHOULD THE COMMISSION RESOLVE ISSUE # 64 *[DPL ISSUE III.H(1)]*?

A. The Commission should order that entrance facilities, which are separate and distinct from interconnection facilities, are not subject to TELRIC-based pricing for the reasons set forth above for this issue and Issue # 21 *[DPL Issue II.A]*.

ISSUE # 65 *[DPL ISSUE III.H(2)]*

Should Sprint's proposed language governing "Interconnection Facilities / Arrangements Rates and Charges" be included in the ICA?

Contract Reference: Attachment 3, Sprint sections 2.9 – 2.9.4

Q. WHAT IS THE PARTIES' DISAGREEMENT REGARDING SPRINT'S PROPOSED LANGUAGE GOVERNING "INTERCONNECTION FACILITIES / ARRANGEMENTS RATES AND CHARGES"?

A. Sprint contends the ICA should include Sprint's language, which would provide Sprint the lowest possible rates for interconnection from a selection of five alternatives that Sprint has identified. AT&T contends it should not.

Q. PLEASE DESCRIBE SPRINT'S PROPOSAL FOR RATE SELECTION ALTERNATIVES.

A. Sprint's proposal for interconnection facility pricing is similar to its proposal for usage pricing, addressed in my testimony above for Issue # 38 *[DPL Issue III.A(2)]*. Sprint's proposed language in section 2.9.1 provides that AT&T would charge Sprint the lowest rate of five alternatives, including (a) its current rates, (b) rates the parties negotiate, (c) rates AT&T charges any other telecommunications carrier for similar services, (d) AT&T's tariffed charges as of June 1, 2010 less 35%, pending Commission approved rates based on a new cost study, or (e) rates in any other interconnection arrangement based on a Commission approved cost study.

Q. PLEASE EXPLAIN AT&T'S OBJECTION TO THESE RATE SELECTION ALTERNATIVES.

A. AT&T objects to Sprint's proposal that would obligate AT&T to bill any rates that are different than the rates set forth in the Pricing Sheets, if any, or in AT&T's tariff (to the extent the tariff applies). The only legitimate source for rates is the Pricing Sheets that are incorporated in the ICAs (option (a)), and those rates should not be optional; AT&T should only be obligated to bill and Sprint should then be obligated to pay the rates set forth in the Pricing Sheets that are incorporated into the ICAs.

Sprint's option (b) is nonsensical. If the parties had negotiated rates and populated them in the Pricing Sheets, then Sprint's option (a) would be applicable; thus, option (b) serves no legitimate purpose. And as I explained for option (a), rates in the Pricing Sheets should not be optional.

Sprint's option (c) is unacceptable because AT&T has no obligation to charge all carriers the same rate. In fact, the imposition of such a duty would undermine the negotiation process that is a cornerstone of the 1996 Act and would subvert the FCC's "All-or-Nothing Rule," which provides that a carrier cannot adopt preferred elements of another carrier's ICA piecemeal.

Sprint's options (d) and (e) presume that AT&T is obligated to provide entrance facilities at cost-based rates, which it is not, as I explain above for Issue # 64 *[DPL Issue III.H(1)]*.

Q. PLEASE DESCRIBE SPRINT'S PROPOSAL FOR A TRUE-UP OF RATES.

A. Sprint's proposed language in its section 2.9.2 provides for a true-up (*i.e.*, a refund) of facilities rates between the effective date of the ICA and the date when AT&T updates its billing system to reflect the new, reduced rates. Retroactive rate reductions and associated refunds would be applied under either of two conditions. First, a true-up would apply if the Commission established rates in conjunction with its approval of an AT&T cost study. And second, Sprint would receive a refund if AT&T had lower rates with any other telecommunications carrier, but which were "not made known to Sprint" before executing the ICAs – again, ostensibly imposing a duty on AT&T to disclose all possible rates to Sprint

or face the possibility of making retroactive refunds. Sprint's language also provides that any work AT&T must perform to bill Sprint the new rates will be at no charge to Sprint, even if, for example, AT&T incurs costs to effectuate Sprint's network rearrangements made as a prerequisite for Sprint to receive the new rates.

Q. WHY IS SPRINT'S TRUE-UP LANGUAGE INAPPROPRIATE FOR THE ICAS?

A. It is not for Sprint to decide if or when retroactive rate adjustments and refunds are appropriate. If the Commission orders AT&T to perform a cost study to determine the facilities rates for Sprint's ICA(s), it is for the Commission to decide whether to order a true-up and, if so, how. In addition, Sprint's proposal that it receive a true-up in the event AT&T has lower rates with another telecommunications carrier, but that Sprint did not know about before executing the ICAs, is ludicrous. Sprint is only entitled to another telecommunications carrier's rates if it elects to adopt that carrier's ICA in its entirety pursuant to section 252(i) and the FCC's "All-or-Nothing Rule." Furthermore, AT&T has no affirmative obligation to inform Sprint of other telecommunications carriers' rates. Those rates already are publicly available, and Sprint, in the exercise of due diligence, had the ability to investigate those rates and explicitly propose them for inclusion in these ICAs. AT&T should not be penalized for Sprint's failure to do so.

Q. SHOULD AT&T BE OBLIGATED TO PAY FOR SPRINT'S COST OF OBTAINING FACILITIES FROM ANOTHER CARRIER?

A. No. In its section 2.9.3, Sprint seeks to pass-through its costs of obtaining and providing interconnection facilities to AT&T. As I stated above for Issue # 58

[DPL Issue III.E(1)], AT&T should not be required to obtain (or pay for) facilities from another carrier (via Sprint) that it prefers to provide for itself.

Q. HOW SHOULD THE COMMISSION RESOLVE ISSUE # 65 *[DPL ISSUE III.H(2)]*?

A. The Commission should reject Sprint's proposed language in its sections 2.9 through 2.9.4. An ICA should provide the parties with certainty for a set period of time, and Sprint's proposal does the opposite. In addition, Sprint's language violates the FCC's All-or-Nothing Rule and improperly provides for a retroactive true-up to the effective date of the ICAs for the difference between the initial contracted rate and any future rate Sprint might elect.

ISSUE # 66 *[DPL ISSUE III.H(3)]*

Should AT&T's proposed language governing interconnection pricing be included in the ICAs?

Contract Reference: Attachment 3, AT&T CMRS section 2.3.6, AT&T CLEC sections 2.4, 2.4.1

Q. WHAT IS THE PARTIES' DISAGREEMENT REGARDING AT&T'S PROPOSED LANGUAGE GOVERNING INTERCONNECTION PRICING?

A. AT&T contends it is appropriate for the ICAs to state that certain facilities are available to Sprint pursuant to AT&T's tariff. Sprint, on the other hand, contends that all interconnection-related pricing must be at TELRIC-based rates.

Q. IS THE PARTIES' DISAGREEMENT THE SAME FOR BOTH THE CLEC AND THE CMRS ICA?

A. No. Because the parties have deployed very different network architectures for their CLEC and CMRS interconnection arrangements, this issue reflects disputes

that are distinctly different for each ICA. Because the CLEC dispute is simpler, I will address it first.

Q. WHAT IS THE PARTIES' DISAGREEMENT CONCERNING AT&T'S PROPOSED LANGUAGE GOVERNING INTERCONNECTION PRICING IN THE CLEC ICA?

A. AT&T contends its language stating that entrance facilities are available from AT&T's tariff and that interconnection facilities are priced pursuant to the ICA's Pricing Sheet, is appropriate for the CLEC ICA. Sprint opposes AT&T's language, contending that AT&T must provide Sprint with facilities from its switch to AT&T's office at cost-based rates.

Q. WHAT IS THE BASIS FOR EACH PARTY'S POSITION?

A. Both parties' positions regarding AT&T's proposed CLEC language are consistent with their positions for Issue # 21 *[DPL Issue II.A]* and Issue # 64 *[DPL Issue III.H(1)]*. As I explained in my testimony for those issues, facilities on Sprint's side of the parties' POI (*i.e.*, between Sprint's switch location (or POP) in the LATA and the POI on AT&T's network) are entrance facilities not subject to TELRIC-based pricing. AT&T's language makes the proper distinction between entrance facilities (on Sprint's side of the POI) and interconnection facilities (at the POI).

Q. HOW SHOULD THE COMMISSION RESOLVE ISSUE # 66 *[DPL ISSUE III.H(3)]* FOR THE CLEC ICA?

A. The Commission should adopt AT&T's language for the CLEC ICA, because it is consistent with the principle that each party is responsible for the facilities on its side of the parties' POI. In addition, AT&T's language is consistent with a

conclusion in Issue # 64 *[DPL Issue III.H(1)]* that entrance facilities AT&T provides to Sprint are not subject to TELRIC-based pricing.

Q. WHAT IS THE PARTIES' DISAGREEMENT CONCERNING AT&T'S PROPOSED LANGUAGE GOVERNING INTERCONNECTION PRICING IN THE CMRS ICA?

A. AT&T contends its reference to tariff pricing for the CMRS ICA is appropriate, and Sprint contends all interconnection-related pricing must be cost-based.

Q. YOU MENTIONED THAT THE PARTIES' CMRS ARCHITECTURE IS VERY DIFFERENT THAN THEIR CLEC ARCHITECTURE. PLEASE EXPLAIN.

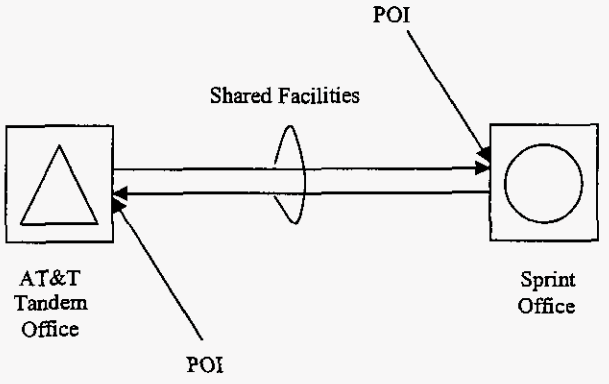
A. Sprint CLEC and AT&T have implemented a standard section 251(c)(2) interconnection arrangement. This includes the establishment of one or more POIs on AT&T's network that serve as the demarcation points between the parties' networks. In this arrangement, each party is responsible for the facilities on its side of the parties' POI(s).

Sprint CMRS and AT&T, on the other hand, have implemented an interconnection arrangement whereby Sprint delivers traffic to AT&T at a POI on AT&T's network, and AT&T delivers traffic to Sprint at a POI on Sprint's network. Since section 251(c)(2) requires that the POI be established on the ILEC's network, the designation of a POI at the CMRS location for land-to-mobile traffic is not consistent with section 251(c)(2) interconnection.

Q. CAN YOU PROVIDE A DIAGRAM TO REFLECT THE PARTIES' EXISTING CMRS INTERCONNECTION ARRANGEMENT?

A. Yes. As reflected in the simplified diagram below, there are two reciprocal POIs for a single interconnection arrangement, with facilities running between the

POIs. Sprint and AT&T have agreed to share the use of these facilities and apportion the costs based on the shared facility factor. I address the parties' dispute regarding how this apportionment should take place in my testimony above for Issue # 58 *[DPL Issue III.E(1)]*.



Q. IS THIS A COMMON INTERCONNECTION ARRANGEMENT BETWEEN ILECS AND CMRS CARRIERS?

A. Yes. This arrangement has been implemented by ILECs and CMRS providers throughout AT&T's 22-state footprint[79] and has been operational for many years. It is my understanding that other ILECs interconnect with CMRS providers in this manner as well.

Q. HAS EITHER AT&T OR SPRINT EXPRESSED AN INTEREST IN CHANGING THE CURRENT CMRS INTERCONNECTION ARRANGEMENTS TO THE CLEC (*i.e.*, SECTION 251(c)(2)) MODEL?

[79] The exception is Connecticut, where AT&T and CMRS providers do not share facilities. However, the reciprocal POI architecture in Connecticut is the same as in AT&T's other states, which is the pertinent point here.

A. No.[80] The parties' current interconnection arrangement has been an effective means of interconnection for a long time. Moreover, Attachment 3 section 2.4 provides for the parties to continue operating with their current arrangements unless Sprint specifically requests otherwise.

> Pre-existing Arrangements. For Sprint's pre-existing Interconnection arrangements in effect on the Effective Date of this Agreement, until otherwise requested by Sprint, in writing or until such time when the Interconnection described below is not Technically Feasible (e.g., tandem rehoming), AT&T 9-STATE shall continue to provide such pre-existing Interconnection arrangements through the existing Interconnection Facilities and Points of Interconnection established pursuant to the Interconnection agreement that is being replaced by this Agreement. After the Effective Date of this Agreement, AT&T 9-STATE shall provide any new Interconnection Facilities, Points of Interconnection and Interconnection arrangements as Sprint may request pursuant to the terms and conditions of this Agreement.

As a practical matter, I anticipate that the parties will continue to operate with the existing reciprocal POI configuration and the sharing of facilities between them for the foreseeable future.

Q. IS THE FACILITY BETWEEN AT&T AND THE POI AT SPRINT'S SWITCH LOCATION ACTUALLY AN ENTRANCE FACILITY?

A. Yes, and that is at the heart of the parties' dispute. The only legitimate POI (*i.e.*, compliant with section 251(c)(2)) is a POI on AT&T's network. Thus, the facility between Sprint and AT&T, which is on Sprint's side of the legitimate POI, is an entrance facility, as I explain in my testimony for Issue # 21 *[DPL Issue II.A]*.

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[80] If anything, it appears Sprint seeks to impose the CMRS model on its CLEC interconnection. With limited exceptions, Sprint has proposed language in Attachment 3 that is identical for both the CMRS and CLEC agreements. This includes such things as sharing facilities between the parties' offices and using a proportionate use factor to allocate costs, which are distinctly CMRS arrangements.

Despite this, AT&T has previously agreed to share in the cost on Sprint's side of the POI, but only with respect to IntraMTA calls originated by AT&T's end users and routed to Sprint over those facilities.[81] When the facilities are utilized for mobile-to-land calls and for transit traffic originating or terminating to Sprint, that is Sprint's responsibility.

Q. WHY DOES AT&T OFFER ENTRANCE FACILITIES TO SPRINT CMRS ONLY FROM THE TARIFF?

A. Because AT&T is not obligated to offer Sprint entrance facilities pursuant to the ICA. As I explain above for Issue # 21 *[DPL Issue II.A]*, entrance facilities are Sprint's responsibility because they are on Sprint's side of a POI established on AT&T's network in compliance with section 251(c)(2). In addition, entrance facilities may be self-provisioned or obtained from an alternate source. The FCC stated in its *TRRO* that:

> The record in this proceeding also demonstrates that competitive LECs are increasingly relying on competitively provided entrance facilities. … And it appears that incumbent LECs and competitors alike continue to agree that entrance facilities are more competitively available than other types of dedicated transport.[82]

Q. WHEN THE PARTIES BILL EACH OTHER FOR THE SHARED FACILITIES, DO BOTH PARTIES BILL AT AT&T'S TARIFF RATE?

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[81] It is for this reason that AT&T's proposed language in section 2.3.2.5 limits its financial obligation on Sprint's side of the POI to 14 miles or AT&T's local calling area, whichever is greater. AT&T should not be obligated to transport its traffic to Sprint a long distance on Sprint's side of the POI, while also paying Sprint for that transport via reciprocal compensation. *See also* my testimony above for Issue # 58 *[DPL Issue III.E(1)]*.

[82] *TRRO* at ¶ 139, footnotes omitted.

A. Yes. As I explain above for Issue # 58 *[DPL Issue III.E(1)]*, AT&T currently bills Sprint for the facilities (at 100% of the tariff rate), and Sprint then applies the shared facility factor (representing AT&T's share) and bills AT&T (also at the tariff rate). Thus, when AT&T pays Sprint for its (AT&T's) proportionate use of the shared facilities, it does so at its own tariff rate.

Q. SPRINT ASSERTS THAT AT&T'S REFUSAL TO PROVIDE SPRINT WITH FACILITIES AT TELRIC-BASED PRICING IS CONTRARY TO THE 1996 ACT'S INTERCONNECTION PRICING STANDARD. DO YOU AGREE?

A. No. The 1996 Act's interconnection pricing standard applies only to interconnection arrangements that comply with the terms of the 1996 Act, and that does not include the arrangement where the POI is on Sprint's network. To apply the 1996 Act's interconnection pricing standard, you must use the POI on AT&T's network as the foundation, and then apply the standard. Sprint is entitled to a TELRIC-based rate only for the interconnection facility (if any) on AT&T's network, not for entrance facilities on Sprint's side of the POI. In this regard, Sprint CMRS is treated in the same manner as Sprint CLEC.

Q. HOW WOULD THE COMMISSION DETERMINE THE CORRECT PRICING STANDARD IF IT CONSIDERED THE POI TO BE AT SPRINT'S SWITCH LOCATION?

A. I don't know. The 1996 Act requires that the POI be on AT&T's network, and a POI on Sprint's network does not satisfy that requirement. I am not aware of any pricing standard established in the 1996 Act or the FCC's implementing rules that the Commission could legitimately apply in this situation.

Q. HOW SHOULD THE COMMISSION RESOLVE ISSUE # 66 *[DPL ISSUE III.H(3)]* FOR THE CMRS ICA?

A. The Commission should adopt AT&T's language for the CMRS ICA, because providing entrance facilities from the tariff is consistent with the principle that each party is responsible for the facilities on its respective side of the POI on AT&T's network.

ISSUE # 67 *[DPL ISSUE III.I(1)(a)]*

If Sprint orders (and AT&T inadvertently provides) a service that is not in the ICA, should AT&T be permitted to reject future orders until the ICA is amended to include the service?

ISSUE # 68 *[DPL ISSUE III.I(1)(b)]*

If Sprint orders (and AT&T inadvertently provides) a service that is not in the ICA, should the ICAs state that AT&T's provisioning does not constitute a waiver of its right to bill and collect payment for the service?

Contract Reference: Pricing Schedule, sections 1.4.2.1, 1.4.2.2

Q. WHAT IS THE PARTIES' DISPUTE REGARDING WHETHER TO INCLUDE TERMS AND CONDITIONS IN THE ICA TO ADDRESS THE SITUATION WHEN SPRINT ORDERS A PRODUCT OR SERVICE THAT IS NOT IN THE ICA AND AT&T INADVERTENTLY PROVISIONS IT NONETHELESS?

A. AT&T contends that it should be permitted to reject Sprint orders for a product or service not in the ICA until the ICA is amended to include the product or service, even if AT&T previously accepted and provisioned such an order inadvertently. AT&T also contends that the ICA should state that AT&T's provisioning of a product or service that is not in the ICA does not waive its rights to bill and collect payment for that product or service.

Sprint contends that if there is a dispute over products and services it orders, the parties should utilize the dispute resolution provisions of the ICA to resolve the dispute. It also argues that once AT&T has accepted an order and

provisioned a product or service not in the ICA, AT&T should be obligated to accept and provision future orders for that product or service as long as Sprint placed its orders in good faith. Sprint also contends that AT&T's language is entirely extraneous and, therefore, there is no need to even consider the issue of AT&T's "waiver" language.

Q. PLEASE PROVIDE SOME CONTEXT FOR AT&T'S PROPOSED LANGUAGE.

A. In section 1.4.2, the parties have agreed that AT&T's obligation to provide products and services to Sprint is limited to those for which rates, terms, and conditions are contained in the ICA. The parties have also agreed in section 1.4.2 that to the extent Sprint ordered a product or service not contained in the ICA, AT&T may reject that order. If the order was for a UNE, Sprint could submit a Bona Fide Request ("BFR") in accordance with the ICA's BFR provisions. If the order was for a product or service available in AT&T's access tariff, Sprint could seek to amend the ICA to incorporate relevant rates, terms, and conditions.

Sections 1.4.2.1 and 1.4.2.2 address what happens in the unlikely event that Sprint orders a product or service not contained in the ICA, and AT&T inadvertently provisions it nonetheless. The introductory portion of section 1.4.2, which is agreed between the parties, is as follows:

> 1.4.2 ... In the event that Sprint orders, and **AT&T-9STATE** provisions, a product or service to Sprint for which there are not complete rates, terms and conditions in this Agreement, then Sprint understands and agrees that one of the following will occur: Sprint shall pay for the product or service provisioned to Sprint at the rates set forth in **AT&T-9STATE**'s applicable intrastate tariff(s) for the product or service or, to the extent there are no tariff rates,

terms or conditions available for the product or service in the applicable state, then Sprint shall pay for the product or service at **AT&T-9STATE**'s current generic contract rate for the product or service set forth in **AT&T-9STATE**'s applicable state-specific generic Pricing Sheet as published on the AT&T CLEC Online [CLEC] [or AT&T Prime Access (CMRS)] website; or

AT&T's proposed language in sections 1.4.2.1 and 1.4.2.2, to which Sprint objects, is as follows:

> **1.4.2.1 Sprint will be billed and shall pay for the product or service as provided in Section 1.4.2 above, and AT&T-9STATE may, without further obligation, reject future orders and further provisioning of the product or service until such time as applicable rates, terms and conditions are incorporated into this Agreement as set forth in this Section 1.4.2 above. If Sprint and AT&T-9STATE cannot agree on rates, terms, and conditions either Party may institute the Dispute Resolution provisions as contained in the GT&Cs.**
>
> **1.4.2.2 AT&T-9STATE's provisioning of orders for such Interconnection Services is expressly subject to this Section 1.4.2 above, and in no way constitutes a waiver of AT&T-9STATE's right to charge and collect payment for such products and/or services.**

Q. NOW THAT YOU HAVE PROVIDED SOME CONTEXT, WHAT IS THE BASIS FOR AT&T'S POSITION?

A. It is important to keep in mind in this example that Sprint has ordered, and AT&T has inadvertently provisioned, a product or service that is available to CLECs / CMRS providers, but is not in Sprint's ICA(s). AT&T's language in section 1.4.2.1 provides that AT&T may reject other orders for the same product or service until rates, terms, and conditions for that product or service are incorporated into the ICA. A fundamental purpose of an ICA is to provide the parties with certainty regarding terms, conditions, and rates for services AT&T

offers to carriers, including Sprint, pursuant to the 1996 Act. AT&T should not be expected or required to continue providing products and services that are not included in the ICAs simply because it did so once. Nor should AT&T have to waive its rights to be paid for any products and services not in the ICAs that Sprint nevertheless ordered and AT&T inadvertently provisioned.

Q. HOW SHOULD THE COMMISSION RESOLVE ISSUE # 67 *[DPL ISSUE III.I(1)(a)]* AND ISSUE # 68 *[DPL ISSUE III.I(1)(b)]*?

A. The Commission should adopt AT&T's proposed language in Pricing Schedule sections 1.4.2.1 and 1.4.2.2. It is reasonable to permit AT&T to reject a Sprint order for a product or service not in the parties' ICA until the ICA is amended to include the product or service, even if AT&T previously accepted and provisioned an order inadvertently. And it is reasonable that AT&T not waive its rights to charge and collect payment for such a product or service that Sprint in fact ordered and obtained.

ISSUE # 69 *[DPL ISSUE III.I(2)]*

Should AT&T's language regarding changes to tariff rates be included in the agreement?

Contract Reference: Pricing Schedule, section 1.4.3

Q. WHAT IS THE PARTIES' DISPUTE REGARDING CHANGES TO TARIFF RATES FOR SERVICES INCLUDED IN THE ICAS?

A. AT&T contends that when an ICA rate is identified as a tariffed rate, any changes to the tariffed rate (whether increase or decrease) should automatically be incorporated into the ICA. AT&T also asserts that if a tariff or tariff rate is withdrawn, the last effective rate should continue to apply during the remaining

term of the ICA. Sprint objects to AT&T's language, contending that any tariff rates utilized for the ICA must be frozen for the term of the ICA.

Q. WHAT IS THE BASIS FOR AT&T'S POSITION?

A. The rates for certain services available to Sprint pursuant to the ICAs are established by tariff, and it is appropriate for the most current rates to apply. When a referenced tariff rate changes, Sprint should be treated in a nondiscriminatory fashion with respect to other telecommunications carriers paying the new tariff rate. If Sprint's tariff rates are frozen when the ICA becomes effective, any tariff rate change will result in discriminatory treatment between Sprint and other carriers. Section 252(d) requires interconnection rates to be "just and reasonable," but it also requires that they be non-discriminatory. In addition, it is appropriate to retain the last rate in effect if a tariff or tariff rate is withdrawn. Otherwise, the parties would be left with no rate for the service at issue, which could lead to otherwise avoidable billing disputes.

Q. HOW DOES AT&T'S PROPOSAL HERE REGARDING TARIFF RATE CHANGES DIFFER FROM SPRINT'S PROPOSAL[83] THAT IT BE PERMITTED TO SELECT THE LOWEST FROM SEVERAL ALTERNATIVE RATES?

A. AT&T's proposal is nondiscriminatory, while Sprint's proposal would give it a competitive advantage over other carriers because it would receive preferential (*i.e.*, discriminatory) treatment. Incorporating tariff rate changes in Sprint's ICAs is a reasonable and fair outcome, because carriers are assured nondiscriminatory treatment when tariff rate changes apply equally to all carriers obtaining tariffed

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[83] *See*, for example, Issue # 63 *[DPL Issue III.G]*, which I address above.

services from AT&T. Moreover, not all tariff rate changes are increases; Sprint will enjoy the benefit of tariff rate reductions as well, just as other carriers do. With Sprint's proposal, which would permit it to select the lowest rate from several alternatives and receive refunds during the term of its ICAs, Sprint would receive preferential treatment with respect to other carriers. Other carriers are not entitled to pick and choose the lowest possible rates they can find, nor are they entitled to refunds during the term of their ICAs – Sprint should not be so entitled either.

Q. HOW SHOULD THE COMMISSION RESOLVE ISSUE # 69 *[DPL ISSUE III.I(2)]*?

A. The Commission should adopt AT&T's language in section Pricing Schedule 1.4.3, because it ensures non-discriminatory treatment among telecommunications carriers paying the tariff rates.

ISSUE # 70 *[DPL ISSUE III.I(3)]*

What are the appropriate terms and conditions to reflect the replacement of current rates?

Contract Reference: Pricing Schedule, sections 1.2 – 1.2.3.3

Q. WHAT IS THE PARTIES' DISAGREEMENT CONCERNING THE REPLACEMENT OF CURRENT RATES?

A. The parties disagree regarding how the ICA will treat changes to current rates for Interconnection Services (as that term is defined in the ICA) based on an FCC or Commission order. Sprint contends the parties must adopt the newly ordered rates, and that AT&T bears an obligation to notify Sprint of certain orders. AT&T, on the other hand, contends the parties should be able to retain the current

rates if neither party seeks to revise them, and that AT&T has no obligation to notify Sprint of FCC or Commission orders.

Q. HOW DO THE PARTIES DEFINE "INTERCONNECTION SERVICES"?

A. The parties have agreed to define Interconnection Services as "Interconnection, Collocation, functions, Facilities, products and/or services offered under this Agreement." Thus, when the term "Interconnection Services" is used in the ICAs, it includes significantly more services than what is meant by "Interconnection" in the context of section 251(c)(2) of the 1996 Act and the FCC's implementing rules, but it excludes reciprocal compensation.

Q. PLEASE DESCRIBE AT&T'S PROPOSAL.

A. AT&T's language describes the particular circumstances that would trigger a change to a current rate and how any such rate change would be implemented. It provides a description of what rates would be properly excluded from treatment as current rates, such as interim and TBD rates, since those rates are addressed by other provisions in the Pricing Schedule. It also includes language clarifying that only FCC or Commission orders that are generally applicable – as opposed to those arising from carrier-specific complaints or arbitration proceedings – are encompassed by these provisions.

If an FCC or Commission order changes a rate that is in the ICA, either party may notify the other that it wants to avail itself of the new rate. AT&T's language provides the necessary detail to address how and when such a notification would take place and when the new rate would become effective. If notification is made within 90 days of the order, the new rate is effective as of the

order date, with the appropriate retroactive adjustment. However, if notification is delayed beyond 90 days from the date of the order, the new rate would be effective upon execution of the ICA amendment. This provides the parties an unlimited period of time to elect to adopt the new rate, but does not burden the parties with a prolonged period of time where rates are subject to retroactive true-up. In the event neither party notices the other that it wants to implement the rate change, then the parties will continue to operate at the current rate level. This is important, because parties are free to negotiate rates that are different than Commission-ordered rates, and AT&T's language accommodates this option.

Q. WHAT IS YOUR UNDERSTANDING OF SPRINT'S PROPOSAL?

A. Sprint's language provides that only Interconnection Services rates (as defined in the ICAs) that are set by the Commission in compliance with section 252(d) of the 1996 Act are eligible for adjustment based on an FCC or Commission order. Sprint proposes that either party may notify the other that it wants to implement a new Commission-ordered rate, but, with one exception, does not provide any timeline for when such notification would need to take place. The exception is when Sprint elects not to participate in an FCC or Commission proceeding setting a new rate; in that event, Sprint's language would mandate that AT&T notify Sprint within 60 days of the order. Such notification would have the same effect as a voluntary AT&T notification that it wanted to implement the new ordered rate. Once either party has notified the other, the parties will negotiate an appropriate ICA amendment. Regardless of when notification is made, with

Sprint's proposal the new rate would be effective as of the effective date of the order. Finally, Sprint's language addresses, not only the replacement of current rates with newly ordered rates, but also the establishment of completely new rates that do not replace existing rates. Sprint does not describe what would constitute the creation of a new current rate.

Q. SHOULD SECTION 1.2 OF THE PRICING SCHEDULE BE LIMITED TO RATES FOR "INTERCONNECTION SERVICES" ESTABLISHED BY THE COMMISSION PURSUANT TO SECTION 252(d) OF THE 1996 ACT?

A. No. Sprint seeks to limit the application of the language regarding the replacement of current rates for Interconnection Services to Commission-approved section 252(d) rates, but not all Interconnection Services are subject to section 252(d). For example, collocation, which is offered pursuant to section 251(c)(6), is not subject to section 252 pricing at all. It is therefore appropriate for the Pricing Schedule to address all current rates in the ICA that may be affected by an FCC or Commission order, as AT&T proposes, and not simply those approved by the Commission pursuant to section 252(d).

Q. WHY DOES AT&T OBJECT TO SPRINT'S PROPOSED LANGUAGE REGARDING IMPLEMENTATION OF REPLACEMENT RATES?

A. Sprint's language would obligate AT&T to invoke the notification provision within 60 days of an FCC or Commission order affecting a current rate, even if neither party actually wanted to implement the new rate. Perhaps more importantly, AT&T should not be obligated to keep Sprint informed of FCC or Commission proceedings in which Sprint has decided (for its own reasons) not to intervene. That is not AT&T's responsibility.

Sprint's language also would make the new rate effective on the date of the order and require retroactive adjustments, regardless of when the notification took place. Except in the case above where AT&T would be obligated to notify Sprint within 60 days of an order, Sprint's language does not include any timeline for notification. Thus, for example, two years or more could pass after an order is issued before either party noticed the other. Yet, under Sprint's language, the new rate would still be effective on the date of the order, requiring retroactive rate treatment for an extended period of time. This is problematic for one party or the other no matter whether the new rate was higher or lower than the existing rate. If the rate was higher, the billed party would most likely not have set aside the funds to pay a substantial retroactive bill it could not have anticipated. And if the rate was lower, the billing party would not have accounted for the need to provide a substantial refund. Either way, Sprint's language does not provide either party with the level of certainty a contract should provide.

Q. HOW SHOULD THE COMMISSION RESOLVE ISSUE # 70 *[DPL ISSUE III.I(3)]*?

A. The Commission should adopt AT&T's language regarding replacement of current rates, because it sets forth comprehensive and reasonable terms and conditions to govern generally applicable future FCC and Commission orders affecting ICA rates. The Commission should reject Sprint's language that 1) limits replacement of current rates to those approved by the Commission pursuant to section 252(d), 2) obligates AT&T to notify Sprint of rate-affecting orders, 3) makes any rate adjustments retroactive to the order date, regardless of when

notification was made, and 4) includes undefined new rates that do not replace current rates.

ISSUE # 71 *[DPL ISSUE III.I(4)]*

What are the appropriate terms and conditions to reflect the replacement of interim rates?

Contract Reference: Pricing Schedule, sections 1.3.1 – 1.3.5

Q. WHAT IS THE PARTIES' DISAGREEMENT CONCERNING THE REPLACEMENT OF INTERIM RATES?

A. The parties disagree regarding how the ICA will treat changes to interim rates, if any, based on a Commission order. Sprint contends the parties must adopt the newly ordered rates and amend the ICA, with the new rates effective as of the date of the order. No notification is required. AT&T, on the other hand, contends the parties should be able to retain the interim rates if neither party seeks to revise them. If either party notifies the other, the parties shall amend the ICA and implement the new rates, but the effective date of the new rates is based on the timing of the notification.

Q. PLEASE DESCRIBE AT&T'S PROPOSAL.

A. AT&T's proposal for replacement of interim rates is similar to its proposal for replacement of current rates. If a Commission order establishes a rate that is identified in the ICA as interim, either party may notify the other that it wants to avail itself of the new rate. AT&T's language provides the necessary detail to address how and when such a notification would take place and when the new rate would become effective. If notification is made within 90 days of the order, the new rate is effective as of the order date with the appropriate retroactive

adjustment. However, if notification is delayed beyond 90 days from the date of the order, the new rate would be effective upon execution of the ICA amendment. This provides the parties an unlimited period of time to elect to adopt the new rate, but does not burden the parties with a prolonged period of time where rates are subject to retroactive true-up. If neither party notices the other that it wants to implement the rate change, then the parties will continue to operate at the existing interim rate level. This is important, because parties are free to negotiate rates that are different than Commission-ordered rates, and AT&T's language accommodates this option.

Q. WHAT IS YOUR UNDERSTANDING OF SPRINT'S PROPOSAL?

A. Sprint's language would mandate that the parties amend the ICA following a Commission order establishing rates to replace interim rates and provides that the new rates would be effective as of the date of the order.

Q. WHY DOES AT&T OBJECT TO SPRINT'S PROPOSED LANGUAGE REGARDING REPLACEMENT OF INTERIM RATES?

A. AT&T objects to the parties being denied their right to retain the interim rates if both parties agree.

Q. HOW SHOULD THE COMMISSION RESOLVE ISSUE # 71 *[DPL ISSUE III.I(4)]*?

A. The Commission should adopt AT&T's language regarding replacement of interim rates, because it sets forth comprehensive and reasonable terms and conditions to govern future Commission orders affecting interim rates. The Commission should reject Sprint's language that mandates that the parties adopt

replacement rates, even if both parties would otherwise agree to retain the existing interim rates.

ISSUE # 72 *[DPL ISSUE III.I(5)]*

Which Party's language regarding prices noted as TBD (to be determined) should be included in the agreement?

Contract Reference: Pricing Schedule, sections 1.5.1, 1.5.2

Q. WHAT IS THE PARTIES' DISAGREEMENT CONCERNING THE ESTABLISHMENT OF RATES DESIGNATED AS TBD OR WHEN NO RATE IS SHOWN?

A. The parties disagree regarding how the ICA will treat the establishment of rates for Interconnection Services (as the parties define that term in the ICAs) initially designated as TBD or when no rate is shown. Sprint contends that TBD rates will be established based on a Commission order and that rates left blank are excluded from these provisions. Sprint also contends that the provisioning of services pursuant to the TBD provisions should be reciprocal. AT&T, on the other hand, contends that TBD and blank rates will be replaced when AT&T has established rates and incorporated them into its generic pricing sheets available to all carriers.

Q. WHOSE RATES ARE REFLECTED IN AN ICA'S PRICING SHEET?

A. AT&T's rates. As an ILEC, AT&T is obligated by sections 251 and 252 of the 1996 Act to open its network to requesting telecommunications carriers providing telephone exchange service and/or exchange access and to negotiate (and arbitrate, if necessary) an ICA to memorialize the parties' arrangement. It is therefore appropriate that it is the ILEC's rates that are set forth in the ICA's pricing sheet.

Q. DOESN'T AT&T HAVE RECIPROCAL COMPENSATION OBLIGATIONS WHEREBY IT WOULD BE PAYING SPRINT?

A. Yes. However, reciprocal compensation is not an "Interconnection Service." Moreover, Sprint will charge AT&T the same rate AT&T charges Sprint. Thus it is appropriate to include AT&T's rates in the Pricing Sheet. The single exception is when a carrier proves to a state commission with a compliant cost study that its costs are sufficiently higher than the ILEC's costs to justify the application of a different rate than the ILEC's rate,[84] which Sprint has not done.

Q. DOES AT&T'S PROPOSED PRICING SHEET REFLECT ANY RATE ELEMENTS DESIGNATED AS TBD?

A. No.

Q. SINCE AT&T'S PRICING SHEET DOES NOT REFLECT ANY RATES AS TBD, WHY DOES THE PRICING SCHEDULE INCLUDE TERMS AND CONDITIONS TO ADDRESS TBD RATES?

A. AT&T proposes TBD language in the Pricing Schedule that is consistent with its generic Pricing Schedule offered to all requesting carriers. There may be circumstances where AT&T and the requesting carrier agree to reflect a rate as TBD or with no rate shown, such as for a new service for which AT&T has not yet established a rate. Once AT&T's rate is established and incorporated into its generic pricing sheet, it is appropriate for that rate to apply to all carriers obtaining that service from AT&T.

Q. YOU HAVE STATED THAT SPRINT HAS PROPOSED RATES DESIGNATED TBD. DOES THAT MEAN THAT THE FINAL PRICING SHEET WILL INCLUDE TBD RATES GOVERNED BY SECTION 1.5 OF THE PRICING SCHEDULE?

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84 *See* 47 C.F.R. § 51.711(b).

A. No. If the Commission adopts AT&T's proposed prices, there will be no need for the Pricing Sheet to reflect any rates as TBD. Even if the Commission were to adopt Sprint's position with respect to certain prices, the Commission could decide to establish interim prices while final prices are being determined. Furthermore, the Commission would most likely provide the specific parameters pursuant to which the parties would operate until final rates were set, including what retroactive true-up, if any, would be appropriate. Since the parties would comply with any such Commission order, the TBD terms of the ICA would not apply.

Q. WHY DOES AT&T OBJECT TO SPRINT'S LANGUAGE IN PRICING SCHEDULE SECTION 1.5.2 MAKING RECIPROCAL THE APPLICATION OF THE TBD TERMS TO THE PROVISION OF INTERCONNECTION SERVICES?

A. It is AT&T that offers Interconnection Services (as that term is defined in the ICAs) to Sprint, and it is AT&T that will provision Sprint's orders for such services. Sprint will not be provisioning such services to AT&T. Therefore, it is appropriate that section 1.5.2 state that it is AT&T's provision of Sprint's orders that is the subject of section 1.5.

Q. HOW SHOULD THE COMMISSION RESOLVE ISSUE # 72 *[DPL ISSUE III.I(5)]*?

A. The Commission should adopt AT&T's language regarding replacement of rates designated as TBD or for which rates are not shown, because it sets forth reasonable terms and conditions to govern the establishment of rates not set at the time the parties execute the ICAs. The Commission should reject Sprint's language requiring that rates established to replace TBD rates must be approved

by the Commission prior to inclusion in the ICAs, omitting any provisions regarding rates left blank, and making the TBD terms reciprocal.

Q. DOES THIS CONCLUDE YOUR DIRECT TESTIMONY?

A. Yes.