COMMONWEALTH OF KENTUCKY

BEFORE THE PUBLIC SERVICE COMMISSION

PETITION OF BELLSOUTH TELECOMMUNICATIONS, INC. d/b/a AT&T KENTUCKY FOR ARBITRATION OF INTERCONNECTION AGREEMENT WITH SPRINT SPECTRUM L.P., NEXTEL WEST CORP., and NPCR, INC. d/b/a NEXTEL PARTNERS	)	CASE NO. 2010-00061

SPRINT SPECTRUM L.P., NEXTEL WEST CORP., NPCR, INC. D/B/A NEXTEL PARTNERS AND SPRINT COMMUNICATIONS COMPANY L.P.

DIRECT TESTIMONY

OF

JAMES R. BURT

FILED AUGUST 17, 2010

Introduction

Q. Please state your name and business address.

A. My name is James R. Burt. My business address is 6450 Sprint Parkway, Overland Park, Kansas 66251.

Q. On whose behalf are you testifying?

A. I am testifying in this proceeding on behalf of Sprint Spectrum L.P. ("Sprint PCS"), Nextel West Corp. and NPCR, Inc. (collectively "Nextel") and Sprint Communications Company L.P. ("Sprint CLEC"). Sprint PCS and Nextel may be collectively referred to as "Sprint wireless" or "Sprint CMRS". The Sprint wireless and Sprint CLEC entities may also be collectively referred to as "Sprint".

Q. By whom are you employed?

A. Sprint United Management Company ("Sprint United"), which is the management subsidiary of Sprint's parent entity, Sprint Nextel Corporation ("Sprint Nextel", i.e., as itself and its affiliated operating companies).

Q. **What is your position with Sprint United?**

A. I became Director – Regulatory Policy in February of 2001.

Q. Please summarize your educational and professional background.

A. I received a Bachelor of Science degree in Electronics Engineering from the University of South Dakota – Springfield in 1980 and a Masters in Business Administration with an emphasis in Finance from Rockhurst College in 1989.

I am responsible for developing state and federal regulatory policy and legislative policy for Sprint Nextel, including the coordination of regulatory and legislative policies across the various Sprint business units, and the advocacy of such policies before regulatory and legislative bodies. In addition, I interpret various orders, rules, or laws for implementation by Sprint Nextel.

From 1997 to February of 2001, I was Director-Local Market Planning. I was responsible for policy and regulatory position development and advocacy from a CLEC perspective. In addition, I supported Interconnection Agreement negotiations and had responsibility for various other regulatory issues pertaining to Sprint CLEC's efforts.

From 1996 to 1997, I was Local Market Director responsible for Sprint CLEC's Interconnection Agreement negotiations with BellSouth.

I was Director – Carrier Markets for Sprint Nextel's former Local Telecom Division ("LTD") from 1994 to 1996. My responsibilities included inter-exchange carrier account management and management of one of LTD's Inter-exchange Carrier service center.

From 1991 to 1994, I was General Manager of United Telephone Long Distance, a long distance subsidiary of the former Sprint/United Telephone Company. I had profit and loss, marketing and operations responsibilities.

From 1989 to 1991, I held the position of Network Sales Manager responsible for sales of business data and network solutions within LTD.

From 1988 to 1989, I functioned as the Product Manager for data and network services also for LTD.

Prior to Sprint Nextel I worked for Ericsson Inc. for eight years with positions in both engineering and marketing.

Q. Have you testified before any regulatory commissions?

Yes. I have testified in Arkansas, Florida, Georgia, Illinois, Indiana, Iowa, Louisiana, Maryland, Nebraska, North Carolina, Ohio, Oklahoma, Pennsylvania, Texas and Wisconsin and have supported the development of testimony in many other states.

Organization of Sprint Witness Testimony

Q. How many Sprint witnesses are providing testimony in these proceedings, and how has Sprint assigned the identified Issues among the Sprint witnesses?

A. There are three Sprint witnesses: myself, Mr. Randy G. Farrar and Mr. Mark G. Felton. The open Issues are addressed within the testimony of all three Sprint witnesses as shown in Attachment JRB-1 attached to my Direct Testimony. This Exhibit states the "Issue No." and "Issue Description (& Sub Issues)" as stated in the parties' Joint Decision Point List ("Joint DPL") and then identifies by name the Sprint witness that has primary responsibility to address a given Issue.

Q. What is the purpose and scope of your Direct Testimony?

A. The purpose and scope of my Direct Testimony is twofold. First, I provide an overview perspective to assist the Kentucky Public Service Commission ("Commission") in understanding the existence of these proceedings in the proper context. In addition to general background, such context includes not only how the parties are currently interconnected and have exchanged traffic since 2001, but also the significant industry changes that have occurred between 2001 and today. Second, on an Issue by Issue basis, I address each of the Issues in Attachment JRB-1 that identify me as the Sprint witness. I address various Issues that are contained within Section I. – Provisions related to the Purpose and Scope of the Agreements; Section II. How the Parties Interconnect; Section III. – How the Parties Compensate Each Other; and, the two remaining Section V. Miscellaneous Issues.

Background and Overview Perspective

Q. Please briefly describe Sprint's presence and commitment to the Commonwealth of Kentucky.

A. Throughout its history, Sprint Nextel has been and continues to be a leader in competitive innovation, providing Kentucky customers a competitive communications choice for three decades. It is a leader in deploying fiber optic networks, deploying the first nationwide 100% fiber long distance network. Today, Sprint Nextel continues to provide customers a choice as a significant wireless provider serving more than 500,000 customers throughout the Commonwealth of Kentucky. It is not only leading the way in 3G mobile broadband, but is the only national provider to offer 4G wireless mobility *now* - - made possible through Sprint Nextel's significant investment in Clearwire. In addition, Sprint Nextel promotes competition in its unique role providing wholesale services of every type - wireless, CLEC cable telephony and long distance - all of which challenge incumbent telephone companies in the provision of voice communications services. Sprint Nextel's presence in Kentucky is significant, including wireline and wireless capital investments of nearly $300 million dollars and over 250 Kentucky employees.

Q. What interconnection agreement are the parties currently operating under?

A. The current Sprint PCS/Sprint CLEC/AT&T interconnection agreement is the Commission-approved three-party agreement that became effective in January,

2001 (the "Sprint ICA"). Following protracted litigation between AT&T and Nextel arising from AT&T's refusal to acknowledge Nextel's rights to adopt the Sprint ICA based upon AT&T's merger promises and § 252(i) of the Act[1], the Commission approved Nextel's adoption of the Sprint ICA, effective December 18, 2007.[2]

Q. How did the negotiations for a new interconnection agreement come about?

A. Sprint sent AT&T a timely request to initiate negotiations for a subsequent agreement as contemplated by the Sprint ICA. A copy of Sprint's request is attached as Attachment JRB-2.

Q. Was Sprint willing to continue the Sprint ICA with a further extension?

A. Yes. Sprint told AT&T in Attachment JRB-2 that Sprint was agreeable to a 3-year extension of the existing Sprint ICA. AT&T, however, would not agree to any further extension of the Sprint ICA.

Q. How would you describe the general nature of the balance of the issues?

A. Many of the disputed Issues have resulted from a fundamental difference in approach to the ICA negotiations. Sprint approached the negotiations from the

[1] The Communications Act of 1934, as amended ("Act").

[2] *See In the Matter of Adoption by NPCR, Inc., d/b/a Nextel Partners of the Existing Interconnection Agreement By and Between BellSouth Telecommunications, Inc. and Sprint Communications Company L.P., Sprint Spectrum L.P.*; *In the Matter of Adoption by Nextel West Corp. of the Existing Interconnection Agreement By and Between BellSouth Telecommunications, Inc. and Sprint Communications Company L.P., Sprint Spectrum L.P.*, KPSC Case Nos. 2007-00255 and 2007-00256, Order, December 18, 2007.

paradigm that: 1) to obtain FCC approval of its merger, AT&T also promised to reduce competing carrier's interconnection transaction costs by agreeing to re-negotiate new agreements from existing agreements; 2) creation of the existing Sprint ICA originally consumed about two years of time to negotiate; 3) the parties have now operated under that ICA for almost 10 years; 4) to the extent issues have arisen during the course of that 10 years the parties made targeted revisions as reflected by the various negotiated amendments; and 5) Sprint envisioned a similar, targeted re-negotiation of specific provisions to further "update" the Sprint ICA. It quickly became apparent, however, that AT&T's paradigm was to use the re-negotiation as the opportunity to scrap the Sprint ICA and attempt to force Sprint into AT&T's new, separate, post-merger generic 22-state wireless and wireline template agreements.

While Sprint was not opposed to modifications to the Sprint ICA that are necessary and consistent with the Act, it could not accept the wholesale changes proposed by AT&T that are driving many of the now disputed Issues. To the extent possible, Sprint's proposed language on disputed items is intended to accomplish two overarching purposes. First, where a change really isn't necessary, to propose existing Sprint ICA language that has been time tested and proven to be workable for the past 10 years. Second, where change may be warranted, to propose language that is both a) consistent with Sprint's rights as a competing carrier under federal law; and b) wireless/wireline technology neutral.

Q. What are some of the high-level, fundamental Issues identified for resolution in these proceedings and how do these issues represent a stark departure from how Sprint PCS, Sprint CLEC and AT&T have operated since 2001?

A. The following are simply a few of the more egregious items where AT&T seeks drastically different treatment than what the parties have operated under since 2001 or is otherwise required by the Act and FCC's rules:

- Without any showing that any imbalance exists in the exchange of traffic, AT&T seeks to implement billing and collection for some (but not all) traffic that is subject to reciprocal compensation, rather than the continued use of bill and keep – AT&T has no problem, however, in proposing bill and keep when it is most likely to suit a unilateral AT&T interest (e.g., AT&T's proposal regarding FX-ISP service);

- AT&T proposes treatment for Interconnection facilities that not only eliminates AT&T's obligations to pay for its use of such facilities to serve AT&T's customers, but completely avoids AT&T's obligation to provide such facilities to Sprint at TELRIC prices;

- AT&T purports to seek elimination of any obligation to provide Transit Service from the ICA; but, what it is really proposing is avoidance of its obligation to provide Transit Service at TELRIC prices to deliver Sprint-originated traffic to third-parties *while* retaining its ability to send its wholesale third-party originated Transit traffic to Sprint for termination;

- As to the Sprint wireless entities, in addition to seeking to avoid its obligation to pay reciprocal compensation for IntraMTA traffic AT&T delivers to Sprint via an IXC, AT&T seeks to avoid its own obligation to pay Sprint for AT&T-originated InterMTA traffic and, instead, make Sprint pay for InterMTA traffic in both directions at access rates; and

- AT&T is attempting to reverse a more efficient form of interconnection referred to as multi-jurisdictional trunking that is allowed in the current agreement.

Q. Can you provide an overall perspective regarding the competitive environment that existed between requesting carriers and an RBOC such as AT&T prior to AT&T's merger in 2006, as compared to the competitive environment that exists between requesting carriers and AT&T today?

A. Yes. As it did with AT&T's predecessors, Sprint strives to compete head-to-head with AT&T in every facet of the communications business—wireless and wireline, wholesale and retail carriage — in an industry that is constantly changing. And while technology advancements and innovation, spurred by the positive forces of competition, have made it possible for people to connect with each other using an exciting and ever expanding array of communications tools, some fundamental truths endure:

1) The purpose of the communications industry is to connect people so that they can communicate with each other - without regard to who their "carrier" may be;
2) The communications industry is a network of many separate networks owned and operated by competing carriers;
3) Consumers, businesses, and the overall economy benefit from robust competition in the communications industry;
4) Just, reasonable, and nondiscriminatory interconnection is the linchpin to robust competition and remains the law of the land; and,
5) Efficient carrier-to-carrier interconnection serves the public interest.

While industry competition is driving promising technology advancements, one major development has significantly shifted the structure of the industry in a way that threatens the cause of competition. It is no secret that the series of

consolidations which produced the "new" AT&T has created a powerful force.[3] History provides valuable lessons and it is important to note that the primary cause for the government break-up of the original AT&T was AT&T's refusal to permit reasonable interconnection to would-be rivals. It is clearly evident, and not surprising, that the "new" AT&T understands that its dominant market position can be fortified by dictating rates, terms, and conditions for interconnection with its network, which inflate the costs of its rivals and produce excessive profits for AT&T. Make no mistake, the "new" AT&T, just like the original AT&T, possesses both the motive and the means to thwart competition.

The current generation of interconnection contracts which the parties operate under today were fought for in a period of time when the former AT&T, not the original AT&T or "new" AT&T, was a major force in the cause of *advancing* competition. Prior to being swallowed up by the monopolist RBOCs, the pro-competition AT&T and MCI were potent leaders and allies with Sprint and other competitive carriers in fighting for just, reasonable, and non-discriminatory interconnection with the RBOCs to pry open these monopoly markets to the enablement of competition. The pro-competitive provisions in existing interconnection contracts were obtained during this time period. Competitive rivals fully understood and correctly predicted that with RBOC/AT&T consolidation, the agenda of the "new" AT&T would be to

[3] VideoSift, *Colbert regarding the new AT&T* (2007), http://videosift.com/video/Colbert-regarding-the-new-ATT (a lighthearted, yet generally accurate depiction of the split up and recombination of AT&T). Of course, for those companies vying to compete with AT&T and for consumers which benefit from competition, in the absence of just, reasonable, and non-discriminatory interconnection agreements, AT&T's recombination is no laughing matter.

revert to the tradition of the RBOC monopolies and the original AT&T to stifle competition through the imposition of unreasonable and discriminatory interconnection rates, terms, and conditions and to do so in an environment in which the former pro-competition AT&T no longer exists to aid the cause of competition. For this reason, competitors opposed the AT&T merger with BellSouth, and for this reason the FCC imposed interconnection conditions on the "new" AT&T. However, immediately upon merger approval, as Sprint and others sought to invoke the very AT&T-merger interconnection conditions that were expressly promised for the purpose of reducing competitors' interconnection transaction costs, the "new" AT&T wasted no time implementing its anti-competition agenda and proving correct the prediction of would-be competitors. As this Commission and every other state commission throughout the nine-state legacy BellSouth region well know, AT&T refused to honor the merger conditions and instead forced costly, counter-productive litigation.[4] This same AT&T tact has likewise been followed throughout its remaining thirteen-state territories as well.[5]

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[4] *See, e.g., In the Matter of Adoption by Nextel West Corp. of the Existing Interconnection Agreement by and between BellSouth Telecommunications, Inc. and Sprint Communications Company Limited Partnership, Sprint Communications Company L.P., and Sprint Spectrum, L.P.*, Kentucky Public Service Commission, Case No. 2007-00255, Application filed June 26, 2007; *In the Matter of Adoption by NPCR, Inc. d/b/a Nextel Partners of the Existing Interconnection Agreement by and between BellSouth Telecommunications, Inc. and Sprint Communications Company Limited Partnership, Sprint Communications Company L.P., and Sprint Spectrum, L.P.*, Kentucky Public Service Commission, Case No. 2007-00256, Application filed June 25, 2007; *In the Matter of Petition of Sprint Communications Company L.P. and Sprint Spectrum L.P. d/b/a Sprint PCS for Arbitration of Rates, Terms and Conditions of Interconnection with Bellsouth Telecommunications, Inc. d/b/a AT&T Kentucky d/b/a AT&T Southeast*, Kentucky Public Service Commission, Case No. 2007-00180, Application filed May 7, 2007.

[5] *See, e.g., Complaint and Request to Open Docket on behalf of Sprint Communications Company L.P., Sprint Spectrum L.P., Nextel West Corp., and NPCR, Inc., against Wisconsin Bell, Inc.,*

With the expiration of the merger conditions and current interconnection contracts, the "new" AT&T seeks to further its anti-competition agenda in this arbitration proceeding. In the truly egregious disputed issues, the "new" AT&T seeks contract provisions which would: 1) undo pro-competitive provisions from the current contract; 2) impose new, costly, unnecessary, burdensome, asymmetric and/or technology-based discriminatory obligations on Sprint without any Act-compliant underlying rationale; and 3) place restrictions to unduly limit Sprint's network and business plans, ignoring the reality that traffic today does not neatly fit into traditional categories.

As the Georgia Public Service Commission ("GPSC") astutely observed in its 2006 Order which also approved the AT&T-BellSouth merger with conditions, at page 14: "The impact that this merger has on competition may not be experienced immediately. It is important for the Commission to continue to monitor the effects of the merger and take whatever actions it deems lawful and appropriate."[6] This arbitration proceeding is the time for this Commission to take that action. Further, the GPSC stated that "[BellSouth/AT&T] shall not, either directly or through affiliated companies, engage in any anticompetitive act or practice."[7] An

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d/b/a AT&T Wisconsin, Public Service Commission of Wisconsin, Case No. 6720-TI-211, Complaint filed December 18, 2007.

[6] *In re Notice of Merger of AT&T Inc. and BellSouth Corporation Together with its Certificated Georgia Subsidiaries*, GPSC Docket No. 22682-U, Order Approving Merger Subject to Conditions, Released September 8, 2006, page 14.

[7] Id., at page 17.

arbitration proceeding such as this one presents an important opportunity for this Commission to ensure the new AT&T cannot move to hinder competition through unlawful and unreasonable interconnection terms.

In Section I – Purpose and Scope of the Agreements, Sprint proposes language which permits both parties to provide all Authorized Services[8] using this contract. In stark contrast, AT&T would impose definitions intended to restrict Sprint's market-place offerings in another attempt to impose outdated regulatory labels on new technologies.

In Section II – How the Parties Interconnect, Sprint proposes provisions which permit both parties to interconnect their respective networks in an efficient manner that reasonably balances the parties' obligations and minimizes the overall cost of interconnection and traffic exchange. AT&T proposes to shift the burden of interconnection costs to Sprint, contrary to efficient engineering, the law, and relevant rules.

In Section III – How the Parties Compensate Each Other, Sprint proposes provisions which ensure just, reasonable, and nondiscriminatory compensation. AT&T proposes to increase Sprint's costs through the improper imposition of

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[8]As discussed in Issue I. B. (1), under Sprint's view, "Authorized Services" is a broad concept – as opposed to narrow and limiting – and should be defined to mean "those services which a Party may lawfully provide pursuant to Applicable Law. This Agreement is solely for the exchange of Authorized Services traffic between the Parties' respective networks as provided herein."

inflated tariff access rates to facilities and traffic for which tariff access rates do not apply.

In Section IV – Billing-Related Issues, Sprint proposes language to ensure accurate and efficient billing for and by both parties in order to minimize the overall cost of the billing transactions. AT&T seeks to impose unduly burdensome, and asymmetric billing arrangements intended to increase Sprint's costs.

In Section V – Miscellaneous, Sprint proposes reasonable contract language covering issues not covered in Sections I through IV. As with the other sections, AT&T proposes unreasonable contract terms.

Ultimately, the Commission will determine which party's proposed language – indeed, if either party's language - meets the requirements of federal law as to any given Issue(s). And, if the Commission were to determine neither party's language complies with federal law as to a given Issue(s), sufficient Commission guidance will also be necessary to direct the parties' mutual development and resubmission of appropriate language that conforms to the Commission's rulings as to such Issue(s).

Q. Describe some of the market and industry trends the Commission should consider when deciding the disputed issues in this arbitration.

A. The Commission should consider how the communications market and industry are evolving as it decides the disputed issues in this arbitration. The communications market is nothing like it was 14 years ago when Congress passed the Act. Three very fundamental changes have occurred since the passage of the Act: the explosion of the Internet; the proliferation of wireless technology; and, the integration of voice and data technology. These fundamental changes have resulted in a massive convergence of voice, data and video services and applications.

While the predecessor of what we now know as the Internet was around for decades, the Internet as we know it today was just beginning to take off in the 1990s. Now it is available virtually everywhere. Such is the case for wireless communications. The first cell phone conversation took place in 1973 leading to over a million users by 1987, and to the point today where there are more wireless phones than traditional landline telephones.

The evolution of technology has created a melting pot of services and applications never seen before. Telephones function as computers and computers function as telephones. Devices are multi-faceted and capable of enabling communications via voice, text, email, video, Internet protocol, etc. The manner in which service providers interface their networks and exchange the various forms of communications must adapt to the fact that communication devices are multi-faceted. The market will no longer tolerate segregation and the devices and the network no longer require segregation, therefore, the interface between Sprint and

AT&T must not be segregated. There are also new players in the market. In the past, voice communications providers were carriers and we recognized who they were. Today, there are dozens of voice service providers that are not considered carriers, don't want to be carriers and don't want to deal with all the regulatory hassles of the carrier world. These service providers look to others, such as Sprint, to do the "heavy lifting" required to connect their customers with other voice service users. Hence, there is a large wholesale communications market that must be accommodated. The 20th century walls between wireless and wireline, the old-fashioned Time Division Multiplexed ("TDM") voice and Internet protocol voice, and retail and wholesale must be removed.

Service providers like Sprint are evolving and modifying their networks to enable them to meet the demands of the marketplace. The days of segregated products are behind us and so are the days of segregated network platforms. Sprint, like AT&T and other providers, are evaluating and implementing network changes to maximize service capabilities and minimize network costs. These network changes are necessary due to the ever increasing competitive pressures in the marketplace. This evolution in the marketplace and the involved technology has brought Sprint to where it is today in its interconnection request of AT&T. The means by which Sprint interconnects with AT&T must keep up with what is occurring in the market and within Sprint's network. It is inefficient and unproductive to converge services in the market, and then within the customer-serving carrier's network, but then have

to segregate such services when the customer-serving carrier interconnects with AT&T.

Q. Please summarize your introductory statements.

A. These introductory statements are intended to shed light on the fact that the market and the networks used to serve those markets have changed and will continue to change drastically to meet the ever-expanding communications needs within the United States. In summary, Sprint's testimony demonstrates that Sprint proposes CMRS and CLEC contracts that will each ensure just, reasonable, and nondiscriminatory interconnection, in accordance with the law and relevant rules, which will permit Sprint and AT&T the opportunity to compete fairly in the provision of continuously evolving services in Kentucky to the benefit of Kentucky citizens.

I. Provisions related to the Purpose and Scope of the Agreements

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? (CMRS)

Q. Please describe Issue I.A (1).

A. Issue I.A (1) pertains to section 1.1 of the CMRS ICA. The fundamental difference in positions is whether section 1.1 should include a reference to the FCC's Part 20 regulations in addition to the FCC's Part 51 regulations, or only include a reference

to Part 51. It is Sprint's position that both the Part 20 and Part 51 regulations should be referenced in the CMRS ICA. AT&T prefers to only reference the Part 51 regulations.

Q. Why does Sprint think it is necessary to reference Part 20 regulations?

A. Section 1 of the ICA defines the Purpose and Scope of the entire ICA. Section 1.1 is the very first section. This section should generally reflect the entirety of the "purpose and scope" of the ICA. The FCC's Part 20 rules contain specific rules governing Interconnection between a wireless carrier and an ILEC. Further, the CMRS ICA not only contains undisputed language that expressly refers to provisions of Part 20, but also contains at least one open Issue for resolution that pertains to a negotiated subject matter for which the only existing, applicable FCC rule is contained in Part 20.

Q. Where has Part 20 been referred to by the Parties in undisputed language in the CMRS ICA?

A. In the CMRS ICA General Terms and Conditions – Part B Definitions, the Parties agree to the following:

> "**Interconnection or Interconnected**" means as defined at 47 C.F.R. § 20.3 and 51.5.[9]

[9] The referenced §§ 20.3 and 51.5 definitions are:

> 47 C.F.R. § 20.3: Interconnection or Interconnected. Direct or indirect connection through automatic or manual means (by wire, microwave, or other technologies such as store and forward) to permit the transmission or reception of messages or signals to or from points in the public switched network.

Q. What open Issues involve a subject matter for which the only applicable FCC Rule is contained in Part 20?

A. Each party has proposed CMRS ICA provisions regarding the compensation paid for InterMTA traffic. As explained in the testimony of Sprint witness Randy Farrar, 47 C.F.R. § 20.11 is the only existing, applicable FCC rule that addresses the compensation that may be charged for InterMTA traffic exchanged between a wireless carrier and an ILEC. Pursuant to § 20.11, any resolution of the InterMTA compensation Issue in the CMRS ICA must be premised upon the principles of mutual reasonable compensation paid by the originating Party to the terminating Party.

Q. How should the Commission resolve Issue I.A (1)?

A. The Commission should adopt Sprint's language that includes the Part 20 reference. The language is as follows:

> 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.

Issue I.A (2): Should either ICA state that the FCC has not determined whether VoIP is telecommunications service or information service? (CMRS & CLEC section 1.3)

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47 C.F.R. § 51.5: 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. Please describe Issue I.A (2).

A. Issue I.A (2) relates to whether the ICAs should reflect the fact that the FCC has not determined whether Interconnected VoIP service is a Telecommunications Service or an Information Service. It is important to recognize this fact in both agreements because it provides the basis upon which the Commission should require the exchange of such traffic on a Bill and Keep basis under both the CMRS and CLEC ICA. To the contrary, AT&T claims the statement has no bearing on the parties' dealings without even acknowledging an issue exists as to this traffic based upon current FCC inaction, or the federal authority addressing the impact of such inaction[10].

Q. Why is it important for the ICA to recognize the fact that the FCC has not made a determination on the regulatory classification of Interconnected VoIP as either a Telecommunications Service or an Information Service?

A. First, inclusion of the language proposed by Sprint is a statement of a fact relative to VoIP Traffic that the FCC has determined is subject to being exchanged between a requesting carrier and an ILEC pursuant to an Interconnection agreement. Second, the statement recognizes that the FCC has assumed jurisdiction over Interconnected VoIP service and has not determined what intercarrier compensation, if any, should apply to Interconnected VoIP traffic. Consequently,

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[10] *See PAETEC Communs. v. CommPartners, LLC*, D.D.C. Case No. 08-00397, Memorandum Order, Filed February 10, 2009, p. 8 ("Although some risk of inconsistent rulings is present, that risk is outweighed by the need for a decision: continued uncertainty about whether and when the FCC will ultimately address and decide the issue is unacceptable."). *See also PAETEC Communs. v. CommPartners, LLC*, 2010 U.S. Dist. LEXIS 51926 (D.D.C. February 18, 2010) (determining that access charges do not apply to VoIP).

until the FCC determines the regulatory classification of Interconnected VoIP, this Commission simply does not have authority to make such a determination and set a rate for Interconnected VoIP traffic. The exchange of Interconnected VoIP traffic on a default Bill and Keep basis is separately addressed in my testimony as Issues III.A.6 (1) and III.A.6 (2).

Q. How should the Commission resolve this issue?

A. The Commission should require the parties to adopt Sprint's language as stated below because it recognizes the current regulatory uncertainty with respect to Interconnected VoIP Service traffic.

> 1.3 Interconnected VoIP Service. The FCC has yet to determine whether Interconnected VoIP service is Telecommunications Service or Information Service. Notwithstanding the foregoing, this Agreement may be used by either Party to exchange Interconnected VoIP Service traffic.

Issue I.A (3) Should the CMRS ICA permit Sprint CMRS to send Interconnected VoIP traffic to AT&T? (CMRS section 1.3)

Q. Please describe Issue I.A (3).

A. Issue I.A (3) relates to whether the CMRS ICA will allow either: 1) Sprint CMRS to continue to develop and offer Interconnected VoIP services that will result in Sprint CMRS sending Interconnected VoIP traffic to AT&T; or 2) under AT&T's view of the world, AT&T can send its U-Verse Interconnected VoIP traffic to Sprint CMRS but Sprint CMRS will not be allowed to send any Sprint CMRS originated Interconnected VoIP traffic to AT&T. AT&T's position regarding

Sprint CMRS is particularly disconcerting in light of the fact AT&T agrees to the same language in the CLEC ICA that Sprint CMRS proposes – i.e., that the ICA can be used by "either" Party to exchange Interconnected VoIP traffic. AT&T offers no explanation why Sprint CMRS cannot originate Interconnected VoIP traffic, and it is patently discriminatory to preclude the exchange of Interconnected VoIP traffic based merely on the technology used by the originating carrier.

Q. What does the word "interconnected" refer to within the context of the term Interconnected VoIP service?

A. The word "interconnected" refers to the fourth criterion used by the FCC to define Interconnected VoIP service that defined the service as being "interconnected" to the PSTN. [11]

Q. Are Interconnection Facilities used today to exchange such VoIP traffic?

A. Yes. It has been common practice since the commercial availability of VoIP service to utilize Interconnection Facilities/trunks for the exchange of such traffic.

Q. Under what circumstances might a wireless carrier deliver Interconnected VoIP traffic to AT&T over Interconnection Facilities?

[11] 47 C. F. R. § 9.3 – Interconnected VoIP service. 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.

A. I can provide two examples. First, although the volume of such traffic is relatively small at this point, Sprint CMRS currently offers a device called the Airave. This product extends wireless coverage within a customer location in the form of a "mini" cell tower that is connected to the Sprint CMRS network via a broadband connection. The device meets all of the FCC's criteria for Interconnected VoIP. Second, as discussed in more detail in other portions of the various Sprint witnesses' testimony, it is Sprint's position that there is nothing under federal law that prevents Sprint CLEC or Sprint CMRS from offering a wholesale Interconnection Transit Service. Although Sprint CMRS does not offer such service today, if it so chose, it could offer such a service to any type of carrier, including a Sprint CMRS wholesale Interconnection Transit Service customer that originates Interconnected VoIP traffic.

Q. You mentioned that AT&T agrees to exchange Interconnected VoIP traffic under the parties' agreed to language in the CLEC ICA, but not under the CMRS ICA. Do you know why AT&T is proposing to discriminate between the Sprint entities under the respective ICAs?

A. No. I do not know the basis upon which AT&T believes it can discriminate between Sprint CMRS and Sprint CLEC based upon the type of traffic (VoIP or non-VoIP) a given Sprint entity sends to AT&T.

Q. Has the FCC addressed the exchange of Interconnected VoIP traffic within the context of Section 251?

A. Yes. Keeping in mind the fact that VoIP traffic has been exchanged over Interconnection Facilities since the commercial availability of VoIP service, the FCC has addressed the exchange of VoIP traffic multiple times.

In WC Docket No. 06-55 (the Time Warner Cable Order), the FCC stated:

> "... wholesale telecommunications carriers are entitled to interconnect and exchange traffic with incumbent local exchange carriers (LECs) when providing services to other service providers, including voice over Internet Protocol (VoIP) service providers pursuant to sections 251(a) and (b) of the Communications Act of 1934, as amended (the Act)."[12]

In WC Docket No. 06-122 (the Universal Service Contribution Methodology Order), the FCC stated:

> "...interconnected VoIP providers may rely on their own facilities or provide access to the PSTN through others. 'Over the top' interconnected VoIP providers generally purchase access to the PSTN from a telecommunications carrier who accepts outgoing traffic from and delivers incoming traffic to the interconnected VoIP provider's media gateway." (footnote omitted)[13]

In WC Docket No. 03-211 (the Vonage Order), the FCC stated:

> "If the destination is a telephone attached to the PSTN, the server converts the IP packets into appropriate digital audio signals and connects them to the PSTN using the services of telecommunications carriers interconnected to the PSTN."[14]

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[12] *In the Matter of Time Warner Cable Request for Declaratory Ruling that Competitive Local Exchange Carriers may Obtain Interconnection Under Section 251 or the Communications Act of 1934, as Amended, to Provide Wholesale Telecommunications Services to VoIP Providers*, FCC WC Docket No. 06-55, Memorandum Opinion and Order, Released March 1, 2007, 22 FCC Rcd 3513, ¶ 1.

[13] *In the Matter of Universal Service Contribution Methodology*, FCC WC Docket No. 06-122, Report and Order and Noticed of Proposed Rulemaking, Released June 27, 2006, 21 FCC Rcd 7518, 7539, ¶ 41.

[14] *In the Matter of Vonage Holdings Corporation Petition for Declaratory Ruling Concerning an Order of the Minnesota Public Utilities Commission*, FCC WC Docket No. 03-211, Memorandum Opinion and Order, Released November 12, 2004, 19 FCC Rcd 22404, 22408 ¶ 8.

In WC Docket No. 07-243 (the VoIP LNP Order), the FCC made it clear that interconnected VoIP service providers may partner with wireless carriers to acquire telephone numbers and in so doing recognized and validated the fact that interconnected VoIP providers could/would be utilizing wireless carriers for PSTN interconnection. The FCC stated:

> "Similarly, subject to a valid port request on behalf of the user, an interconnected VoIP provider that partners with a covered CMRS provider for numbering resources must, in conjunction with its numbering partner, port-out a NANP telephone number to..."[15]

Q. Are you aware of any regulatory basis for AT&T's discriminatory treatment with respect to Sprint CMRS?

A. No. I am not aware of any regulatory basis for AT&T's apparent discriminatory treatment with respect to Sprint CMRS. I am not aware of any restrictions in either Sections 251 or 332 of the Act, or Parts 51 or 20 of the FCC's regulations that even suggest AT&T may prohibit Sprint CMRS from sending AT&T Interconnected VoIP traffic pursuant to the CMRS ICA.

Q. Does AT&T obviously intend to send Interconnected VoIP traffic to Sprint?

A. Yes. As AT&T no doubt does today, it will continue to send Interconnected VoIP traffic from AT&T's own VoIP customers destined for Sprint CMRS customers over existing Interconnection Facilities between AT&T and Sprint CMRS. In

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[15] *In the Matter of Telephone Number Requirements for IP-Enabled Service Providers*, FCC WC Docket No. 07-243, Report and Order, Released November 8, 2007, 22 FCC Rcd 19531, 19550, ¶ 34.

addition, AT&T will no doubt also continue to deliver over those same Interconnection Facilities to Sprint CMRS any Interconnected VoIP traffic that is originated by AT&T wholesale Interconnection Transit Service customers who provide an Interconnected VoIP service to their retail customers. Simply put, AT&T uses and clearly intends to continue to use existing Interconnection Facilities to send Interconnected VoIP traffic to Sprint CMRS despite its attempt to prevent Sprint CMRS from exchanging the same type of traffic with AT&T. The Interconnection Facilities between Sprint and AT&T, whether CMRS or CLEC, are for the parties' mutual use and limited only by what a Party may be prohibited from doing by applicable law. There is no applicable law to prohibit Sprint CMRS from offering services that result in the origination of Interconnected VoIP traffic that will need to be delivered to and terminated by AT&T.

Q. Is it possible that AT&T is attempting to deny Sprint CMRS's right to send AT&T Interconnected VoIP traffic because of perceived or potential differences in intercarrier compensation?

A. Yes. It is conceivable that AT&T is concerned about intercarrier compensation *rate* differences.

Q Should perceived or potential *rate* differences dictate the resolution of this issue?

A. No. This issue has nothing to do with the termination rates for any given type of traffic, and it is very important to understand that any perceived or potential rate

differences are irrelevant to this issue. Whether the rates are the same or different, the only issue being raised in issue I.A.(3) is whether Sprint CMRS can deliver Sprint-CMRS-customer originated Interconnected VoIP traffic to AT&T, just like AT&T sends AT&T-customer originated Interconnected VoIP traffic to Sprint.

Q. How should the Commission resolve this issue?

A. The Commission should require the parties to adopt Sprint's language as stated below. Sprint's proposed language recognizes both parties' right to non-discriminatory treatment with respect to the exchange of Interconnected VoIP traffic between the parties:

> 1.3 Interconnected VoIP Service. The FCC has yet to determine whether Interconnected VoIP service is Telecommunications Service or Information Service. Notwithstanding the foregoing, this Agreement may be used by either Party to exchange Interconnected VoIP Service traffic.

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? (CMRS & CLEC section 1.4)

Q Please describe Issue I.A (4).

A. The issue relates to Sprint's right to exchange wholesale traffic with AT&T when Sprint's wholesale customer desires to obtain its own telephone numbers from the North American Numbering Plan Administrator ("NANPA"). AT&T does not have

any problem with and, therefore, agrees Sprint can exchange wholesale traffic when a Sprint wholesale customer uses telephone numbers that have been obtained from NANPA in Sprint's name.

Q. Please describe a situation in which a carrier such as Sprint might provide wholesale interconnection services to another service provider and that service provider might have its own telephone numbers.

A. I will provide three examples when a service provider, wishing to utilize Sprint as a wholesale provider of interconnection, could obtain its own telephone numbers from NANPA.

The first example could involve a VoIP service provider that sought and received from the FCC a waiver of 47 C.F.R. § 52.15(g)(2)(i). This rule requires that an applicant for numbering resources be authorized to provide service in the area for which it is seeking numbering resources. In such a case, the VoIP service provider may have its own numbering resources but is not deemed to be a "telecommunications carrier" with a right to interconnect in its own right, as a telecommunications carrier otherwise can. The VoIP service provider would seek to gain public switched telephone network ("PSTN") interconnection via a wholesale interconnection provider such as Sprint. In fact, an affiliate of

Southwestern Bell (now AT&T) called SBC IP Communications, Inc. sought and received such a waiver from the FCC in 2005.[16]

The second example could involve another telecommunications carrier that has acquired its own telephone numbers, but for whatever reason wishes to utilize a wholesale interconnection provider such as Sprint.

The third example is AT&T itself. AT&T certainly will be sending traffic to Sprint over the CMRS and CLEC Interconnection Facilities that result from the ICAs in this proceeding. Some of the traffic delivered by AT&T to Sprint will have been originated by other carriers or non-carrier service providers that have their own telephone numbers. As I understand the SBC IP Communications, Inc. request I previously mentioned, SBC IP (now an AT&T affiliate) intended to utilize Southwestern Bell (now AT&T) for PSTN Interconnection.

Q. Are you aware of any regulatory restrictions concerning wholesale Interconnection services that only allow the use of the wholesale carrier's telephone numbers?

A. No. I am not aware of any regulatory restrictions that limit Sprint's rights as a provider of wholesale Interconnection services in this manner. In fact, quite the opposite is true. The overarching goal of the Act was to foster competition. This

[16] *In the Matter of Administration of the North American Numbering Plan* , Order, CC Docket 99-200, Released February 1, 2005, 20 FCC Rcd 2957.

congressional goal is supported by the development and deployment of creative business models some of which have been seen and others that are yet to be seen.

Q Are you aware of technical reasons why a wholesale Interconnection customer would not be able to directly obtain its own telephone numbers from NANPA?

A. No. I am not aware of any technical reasons why a wholesale Interconnection customer would not be able to directly obtain its own telephone numbers from NANPA.

Q. Is what Sprint is asking with respect to this issue any different from what you describe in your third example above?

A. No. This appears to be another example where AT&T is attempting to prevent Sprint from doing what AT&T is doing itself. The Interconnection Facilities between Sprint and AT&T, whether CMRS or CLEC, are for the parties' mutual use and limited only by what a party may be prohibited from doing by applicable law.

Q. How should the Commission resolve this issue?

A. Sprint asks the Commission to require the parties to adopt Sprint's proposed language for section 1.4 as follows:

> 1.4 Sprint Wholesale Services. This Agreement may be used by Sprint to exchange traffic associated with jointly provided Authorized Services to a subscriber through Sprint wholesale arrangements with third-party providers that use numbering resources acquired by Sprint from NANPA or the Number Pooling Administrator ("Sprint Third Party Provider(s)"). Subscriber traffic of a Sprint Third Party Provider ("Sprint Third Party Provider Traffic") is not Transit Service

traffic under this Agreement. Sprint Third Party Provider Traffic traversing the Parties' respective networks shall be deemed to be and treated under this Agreement (a) as Sprint traffic when it originates with a Sprint Third Party Provider subscriber and either (i) terminates upon the AT&T-9STATE network or (ii) is transited by the AT&T-9STATE network to a Third Party, and (b) as AT&T-9STATE traffic when it originates upon AT&T-9STATE's network and is delivered to Sprint's network for termination. Although not anticipated at this time, if Sprint provides wholesale services to a Sprint Third Party Provider that does not include Sprint providing the NPA-NXX that is assigned to the subscriber, Sprint will notify AT&T-9STATE in writing of any Third Party Provider NPA-NXX number blocks that are part of such wholesale arrangement.

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? (CLEC Section 1.5)

Q Please describe this issue.

A. Issue I.A.(5) relates to whether Sprint CLEC is allowed to select and utilize an affiliate or third party to construct and operate a portion of Sprint CLEC's wireline network without the approval of AT&T even though Sprint CLEC will remain solely responsible for traffic to and from that network, as well as any Interconnection Facilities that may be obtained under the ICA for Sprint CLEC's benefit.

Q. Has AT&T agreed to this concept in the CMRS ICA?

A. Yes.

Q. What was the fundamental reason for the creation and inclusion of this language in the CMRS ICA?

A. When Sprint CMRS started its initial network build-out, it used third parties to assist in that process. Originally, when the third parties purchased Interconnection services for the benefit of Sprint PCS under the existing Sprint ICA, AT&T sent the bill for such services directly to Sprint PCS even though the invoice review and payment functions were handled by the third parties. Ultimately the current language that is accepted by AT&T in the CMRS ICA was driven by the simple fact that *it expedited payment for AT&T to send its* bills directly to the third parties, which the third parties would pay – all the while Sprint PCS clearly remained ultimately liable for the services provided and billed to the third parties under the Sprint ICA.

Q. Do you understand why AT&T is not willing to accept this same concept in the CLEC ICA?

A. Apparently, AT&T does not accept the same concept in the CLEC ICA that it has already agreed to in CMRS ICA because AT&T believes it has some inherent right to "investigate" and thereby control how a CLEC conducts business with third parties. It is indeed surprising on its face that AT&T even suggests that it can insert itself into a competing carrier's day-to-day business in such a fashion.

Q. Does Sprint CLEC have an affiliate or third party identified for the purpose of extending the Sprint CLEC wireline network at this time?

A. No. The purpose of Sprint CLEC's proposed language is simply to enable it flexibility to freely negotiate an arrangement acceptable to Sprint CLEC if the

circumstances warrant it in the future - without the interference of AT&T. Outsourcing is an important issue and Sprint cannot allow AT&T to dictate whom Sprint CLEC may choose to outsource particular functions. AT&T has no right to interject itself into Sprint CLEC's business decisions to "qualify" whom Sprint wishes to work with.

Q. Would Sprint CLEC utilize its own criteria to determine whether an affiliate or third party is qualified?

A. Of course. As I mentioned, outsourcing network functionality is a critical function that could impact many aspects of any Sprint business including, but not limited to, its customer experience, reputation in the marketplace, and network reliability. Be it Sprint CMRS (with whom AT&T has already agreed to the same language) or Sprint CLEC, Sprint puts any potential entity through a very rigorous "qualification" process that considers many things including, but not limited to, technical capabilities, financial resources, and operational capabilities.

Q. The essence of the ICA between Sprint and AT&T is to govern the traffic that flows between the parties, including any intercarrier compensation. Would Sprint be financially responsible for traffic or facilities if it used an affiliate or third party as requested?

A. Yes. Sprint CLEC would bear all of the same financial responsibilities for traffic exchanged or for facilities acquired pursuant to the terms of the ICA if it chose to

utilize an affiliate or third party. In addition, AT&T has all the remedies included in the ICA available to it in the event Sprint does not fulfill its responsibilities.

Q. Has AT&T identified the criteria it would use to qualify an entity Sprint was considering?

A. No. AT&T has not identified the criteria it would utilize, let alone the performance standards or levels for the criteria. In effect, AT&T would have final say or veto power over the entity Sprint chooses, with no standards to limit AT&T's discretion.

Q. Would AT&T have an incentive to aid in Sprint CLEC's process of selecting an affiliate or third party, or an incentive to hinder the process?

A. AT&T has an incentive to hinder the process. AT&T and Sprint are competitors, so there is no incentive for AT&T to do anything but hinder Sprint's efforts.

Q. You mentioned that Sprint has the ability to do the type of network build-out outsourcing it desires in the CMRS ICA. Does the language in the CMRS ICA give AT&T the control it is seeking in the CLEC agreement?

A. No. The language in the CMRS agreement, which AT&T has agreed to, does not give AT&T the control it is seeking in the CLEC agreement. The AT&T-approved CMRS language does not give AT&T the ability to pre-qualify affiliates or third parties.

Q. Is there any basis for AT&T's discriminatory treatment between the CMRS and CLEC agreements?

A. No. I am not aware of any valid technology-neutral reason for AT&T to take a different position in the CLEC agreement as compared to the CMRS agreement.

Q. How should the Commission resolve this issue?

A. Sprint asks the Commission to require the parties to adopt Sprint's proposed language for section 1.5 in the CLEC ICA as follows:

> 1.5 Affiliates and Network Managers
>
> 1.5.1 Nothing in this Agreement shall prohibit Sprint from enlarging its wireline network through the use of a Sprint Affiliate or management contracts with non-Affiliate third parties (hereinafter "Network Manager(s)") for the construction and operation of a wireline system under a Sprint or Sprint Affiliate license. Traffic traversing such extended networks shall be deemed to be and treated under this Agreement (a) as Sprint traffic when it originates on such extended network and either (i) terminates upon the AT&T-9STATE network or (ii) is transited by the AT&T-9STATE network to a Third Party, and (b) as AT&T-9STATE traffic when it originates upon AT&T-9STATE's network and terminates upon such extended network. All billing for or related to such traffic and for the interconnection facilities provisioned under this Agreement by AT&T-9STATE to Sprint for use by a Sprint Affiliate or Network Managers under a Sprint or Sprint-Affiliate license will (a) be in the name of Sprint, (b) identify the Sprint Affiliate or Network Manager as applicable, and (c) be subject to the terms and conditions of this Agreement; and, Sprint will remain liable for all such billing hereunder. To expedite timely payment, absent written notice to the contrary from Sprint, AT&T-9STATE shall directly bill the Sprint Affiliate or Network Manager that orders interconnection facilities for all charges under this Agreement associated with both the interconnection facilities and the exchange of traffic over such facilities.
>
> 1.5.2 A Sprint Affiliate or Network Manager identified in Exhibit A may purchase on behalf of Sprint, services offered to Sprint in this Agreement at the same rates, terms and conditions that such services are offered to Sprint provided that such services should only be purchased to provide Authorized Services under this Agreement by Sprint, Sprint's Affiliate and its Network Managers. Notwithstanding that AT&T-9STATE agrees to bill a Sprint Affiliate or Network Manager directly for such services in order to expedite timely billing and payment

from a Sprint Affiliate or Network Manager, Sprint shall remain fully responsible under this Agreement for all services ordered by the Sprint Affiliate or Network Manager under this Agreement.

1.5.3 Upon Sprint's providing AT&T9-State a ten-day (10) day written notice requesting an amendment to Exhibit A to add or delete a Sprint Affiliate or Network Manager, the parties shall cause an amendment to be made to this Agreement within no more than an additional thirty (30) days from the date of such notice to effect the requested additions or deletions to Exhibit A.

Issue I.A.(6) Should the ICAs contain AT&T's proposed Scope of Obligations language? (CLEC & CMRS section 1.6)

Q. Please describe this issue.

A. AT&T is attempting to limit Sprint to only serving customers within AT&T's ILEC geographic serving territory. For the CLEC agreement, AT&T's position relates to interconnection, unbundled network elements ("UNEs"), collocation and resale. For the CMRS agreement, AT&T's position relates to interconnection and collocation but does not include UNEs or resale, as they are not relevant to the CMRS agreement.

Q. First discuss the CLEC agreement. Are the AT&T limitations related to resale relevant to even the CLEC agreement?

A. No. Even the CLEC agreement does not include terms or conditions for resale.

Q. Do the interconnection, UNE and collocation restrictions proposed by AT&T contradict the terms and conditions related to these issues as they are addressed elsewhere in the CLEC agreement?

A. Yes. As AT&T has proposed the language in section 1.6, Scope of Obligations, the restrictions proposed by AT&T would supersede and are contradictory to terms and conditions related to these issues elsewhere in the agreement. At a minimum, the contradictory nature of the proposed section 1.6 language creates ambiguity between, for example, the UNE attachment and the contradictory terms of section 1.6.

Q. What restriction would AT&T's proposed section 1.6 language place on Sprint?

A. AT&T's restrictive language would prevent Sprint from serving customers that are not located within AT&T's local exchange territory. For example, consider a metropolitan area that is entirely within a given local calling area but served partially by AT&T and partially by a rural ILEC. Within such a local calling area, the rural ILEC likely subtends AT&T. This means that the exchange of traffic between the rural ILEC and Sprint would be through AT&T. The restrictions AT&T is proposing would not allow Sprint to serve a customer located in the rural ILEC territory and exchange traffic with the rural ILEC via AT&T. This would violate Sprint's right to interconnect either directly or indirectly for the exchange of traffic. AT&T's restrictions could be construed to require Sprint to install costly direct interconnection facilities to exchange traffic with the rural ILEC.

With respect to the UNE restriction, Sprint CLEC may want to purchase a UNE from AT&T and connect it to Sprint CLEC's own facilities to serve a customer

outside AT&T's serving area and in the rural ILEC area I previously mentioned. Likewise, AT&T's collocation restriction could be construed to not allow Sprint to utilize equipment collocated at an AT&T location to serve any Sprint CLEC customers outside of AT&T's serving area.

Q. As for the CMRS agreement, do the general scope restrictions restrict the Interconnection and exchange of traffic and collocation?

A. Yes. On the one hand, the CMRS agreement includes numerous specific terms and conditions for the Interconnection and exchange of traffic and collocation. Yet, on the other hand, AT&T's general scope Interconnection restriction seek to impose the same nonsensical limitation that purports to restrict AT&T's obligations under the ICA to the extent *that Sprint CMRS is operating and offering service* to End Users that reside in AT&T ILEC territory. This language could be easily construed to prohibit Sprint CMRS from using the CMRS ICA to serve any Sprint CMRS wireless customer "residing" outside AT&T's serving territory – even when such customers are placing to, or receiving calls from, AT&T's own customers. AT&T's territory and the relationship of a Sprint customer's "residence" to such territory are simply irrelevant to the application of AT&T's obligations under the CMRS ICA.

Q. How does the restrictive language impact Sprint CMRS collocation rights?

A. The result is comparable to what I explained in the CLEC example. Sprint would not be able to collocate and place any equipment pursuant to the CMRS ICA if it

were to use the equipment to serve Sprint customers that "reside" outside AT&T territory.

Q. Is there a regulatory basis for the "Sprint customer must reside in AT&T territory" restrictions that AT&T is attempting to interject into the ICAs?

A. Absolutely not.

Q. How should the Commission resolve this issue?

A. Sprint asks the Commission to reject AT&T's proposed language in section 1.6 as it is unnecessarily overbroad and unduly restricts Sprint's rights as described above.

Issue I.B -- Service or traffic-related definitions

Issue I.B(1) What is the appropriate definition of Authorized Services?

Q. Please describe the disputed issue.

A. Sprint proposes a straightforward definition for Authorized Services which recognizes that the exchange of traffic and the services rendered are mutually provided by both parties and must be associated with a service that a party can legally provide. In contrast, AT&T proposes a series of definitions throughout section I.B designed to: 1) inappropriately restrict lines of business which Sprint is legally authorized to provide; 2) deny Sprint's right to collect applicable

terminating reciprocal compensation on traffic identified as AT&T-originated traffic; 3) deny Sprint's right to indirect interconnection; 4) cause inefficient interconnection; and 5) permit AT&T to unilaterally impose access charges on services for which access charges do not apply.

Q. How does AT&T's proposed language restrict lines of business which Sprint is legally authorized to provide?

A. AT&T's definition of Authorized Services Traffic lists a number of types of traffic exchanged. However, for transit traffic, AT&T's definition includes only "traffic transited through AT&T-9STATE and terminated to Sprint." AT&Ts definition would not therefore recognize either a) Sprint-originated traffic that is transited through AT&T to a third party; or b) third party-originated traffic transited through Sprint and terminated to AT&T, despite the fact that Sprint is legally authorized to provide transit services. AT&T's definition denies Sprint's right to provide transit service and rejects any obligation on the part of AT&T to either transit Sprint-originated traffic to a third party, or to terminate third-party traffic transited through Sprint to AT&T.

Q. How would AT&T's proposed language deny Sprint's right to collect applicable terminating reciprocal compensation on traffic identified as AT&T-originated traffic?

A. AT&T proposes a definition of Section 251(b)(5) traffic that explicitly excludes a category of traffic that includes AT&T wholesale interconnection customer traffic that, on its face, will appear to Sprint to be AT&T traffic. Specifically, AT&T proposes that 251(b)(5) Traffic means calls "that originate on either Party's network, that terminate on the other Party's network" and further, "[a] call that is originated or terminated by a non-facility based provider is not a call that originates or terminates on either Party's network." AT&T appears to be carving out from AT&T's reciprocal compensation obligation all traffic that is associated with an AT&T commercial wholesale customer that uses an AT&T switch and numbering resource to exchange traffic with the PSTN (e.g., arrangements formerly referred to as UNE-P). When AT&T is the network provider that provides switching and numbering resources for its customers' PSTN interconnection, AT&T is responsible for that traffic on a carrier-to-carrier basis. AT&T's proposed language would effectively eliminate AT&T's obligation as the identified originating carrier from having to pay Sprint for terminating such traffic on Sprint's network.

Q: How does AT&T's proposed language deny Sprint's right to indirect interconnection?

A: AT&T's proposed definition of 251(b)(5) traffic includes only calls "exchanged directly between the Parties" (AT&T's CMRS language) and "exchanged over the Parties' own facilities" (AT&T's CLEC language). AT&T's proposal would prohibit Sprint's use of a third-party transit provider to indirectly interconnect and exchange traffic with AT&T.

Q. Why do you think AT&T wants to restrict not only Sprint's ability to provide a transit service to provide third parties an alternative means to indirectly interconnect with AT&T, but also Sprint's ability to use a third-party transit provider to exchange traffic with AT&T?

A. AT&T dominates the transit market and, by all indications, is seeking to cement this dominance by refusing to acknowledge either Sprint's right to provide transit service to third-parties, or Sprint's right to use a third-party transit provider to indirectly exchange traffic with AT&T. AT&T's efforts to thwart Sprint and any other carrier from developing a viable transit alternative to AT&T, coupled with AT&T's position that it is not required to provide a transit service in an ICA at TELRIC prices, is the epitome of anti-competitive monopoly behavior. On the one hand, AT&T seeks to prevent anyone from providing a transit service to compete with its otherwise ubiquitous bottle-neck transit service and, on the other hand, AT&T seeks to dictate how, when, where, to whom and at what price it may choose to provide its ubiquitous bottle-neck transit service.

Q. How would AT&T's proposed language in Section I.B cause inefficient interconnection?

A. AT&T proposes language which divides traffic into a wide variety of categories (CMRS, CLEC, 251(b)(5), AT&T9-State, Sprint, intraMTA, interMTA, Switched Access, Originating Landline to CMRS Switched Access, Terminating InterMTA)

for which there is no difference in AT&T's functional handling of such traffic. AT&T's cost of interconnection, transport, and termination does not vary based on these contrived, categorical distinctions and therefore these distinctions should not be permitted to dictate more costly interconnection arrangements. This issue will be more fully discussed in testimony addressing disputed language under Section II – How the Parties Interconnect.

Q. How would AT&T's proposed language impose access charges on traffic for which access charges do not apply?

A. The categorizations in AT&T's proposed traffic and service definitions inappropriately narrow the list of traffic and services subject to reciprocal compensation and thereby expand the list of traffic and services for which AT&T would impose its inflated tariff access rates. Each instance of this is discussed more fully throughout Sprint's testimony.

Q. What language does Sprint recommend the Commission adopt regarding Issue I.(B)(1)?

A. Sprint recommends the Commission adopt Sprint's proposed definition:

> **"Authorized Services"** means those services which a Party may lawfully provide pursuant to Applicable Law.[17] This Agreement is solely for the

[17] As to both the CMRS and CLEC ICAs, the parties agree in the General Terms and Conditions – Part B, Definitions, that "'**Applicable Law**' means all laws, statutes, common law, regulations, ordinances, codes, rules, orders, permits and approvals, including those relating to the environment or health and safety, of any Governmental Authority that apply to the Parties or the subject matter of this Agreement."

exchange of Authorized Services traffic between the Parties' respective networks as provided herein.

Issue I.B(2)(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?

Q. Does the interconnection agreement need a definition of 251(b)(5) traffic?

A. No, the Act and FCC rules already define what traffic is subject to reciprocal compensation pursuant to Section 251(b)(5). AT&T's "refinements" are neither necessary nor appropriate, and serve only to create unnecessary complexity and to inappropriately permit AT&T to impose access charges on traffic for which access charges do not apply.

Q. What is required under Section 251(b)(5) of the Act?

A. Section 251(b)(5) Reciprocal Compensation places a duty on local exchange carriers to establish reciprocal compensation arrangements for the transport and termination of telecommunications. Section 251(b)(5) does not contain any of the distinctions AT&T seeks to insert. And in several instances, AT&T proposes a compensation arrangement inconsistent with the FCC rules implementing Section 251(b)(5). The Act and the FCC's rules speak for themselves and AT&T should not be permitted to dictate definitions in conflict with the law and rules in the parties' new interconnection agreements.

Q. How should the Commission rule on Issue I.B(2)(a).

A. The Commission should determined that the Act and FCC rules speak for themselves and as a result, the Commission should reject the AT&T proposed definition for "Authorized Services Traffic" in the CLEC agreement and the proposed definition for "Section 251(b)(5) Traffic" in the CMRS agreement.

I.B (3) What is the appropriate definition of Switched Access Service?

Q. Please describe this disputed issue.

A. Sprint proposes a definition for Switched Access Service which appropriately recognizes that Switched Access Service is a distinct service that is offered by local exchange carriers ("LECs") to interexchange carriers ("IXCs") for the purpose of originating or terminating traffic to or from end users pursuant to a Switched Access Service tariff. AT&T, however, refuses to include in its definition that Switched Access Service is an offering from a LEC to an IXC for access to the LEC network. AT&T's definition would inappropriately subject the interconnection agreement and non-IXC parties to the interconnection agreement to AT&T's switched access tariff.

Q. Why should the Switched Access Service definition be confined to an offering to an IXC of access by AT&T ILEC to AT&T ILEC's network?

A. The parties to the interconnection agreements include Sprint CMRS, Sprint CLEC, and AT&T ILEC. The parties do not include Sprint IXC, AT&T IXC, AT&T

CLEC, or AT&T CMRS. The effect of AT&T's proposed definition is an overbroad, inappropriate incorporation of AT&T's access tariffs, expanding applicability to Sprint CMRS and CLEC entities (in addition to separate outside-the-ICA applicability of these tariffs to Sprint IXC), while simultaneously shielding its own CMRS and CLEC affiliates from incorporation of Sprint's access tariffs.

Q. How should the Commission rule on the definition of Switched Access Service?

A. The Commission should adopt Sprint's definition which correctly identifies the AT&T ILEC as the party offering switched access service pursuant to its AT&T ILEC tariffs, and correctly identifies IXCs as the parties to which AT&T ILEC offers its switched access services:

> "**Switched Access Service**" means an offering to an IXC of access by AT&T-9STATE to AT&T-9STATE's network for the purpose of the origination or the termination of traffic from or to End Users in a given area pursuant to Switched Access Services tariff.

The Commission should reject AT&T's definition as an inappropriate attempt to expansively incorporate its access tariff into interconnection agreements with parties to which AT&T's switched access service does not apply.

Issue I.B(4) - What are the appropriate definitions of InterMTA and IntraMTA traffic for the CMRS ICA?

Q. Please describe this disputed issue.

A. Sprint proposes a straightforward approach for identifying interMTA and intraMTA which: 1) is based on specific and relevant network points for both parties; and 2) provides for ease of administration for both parties. Specifically, Sprint's definitions distinguish the IntraMTA and InterMTA nature of exchanged traffic based upon the location of the parties' POI and the AT&T end office involved in a given call (i.e., if same points are located in the same MTA it is IntraMTA; if the POI and AT&T end office are in different MTAs, then it is an InterMTA call). AT&T's proposed definition requires the parties to distinguish the InterMTA/IntraMTA nature of exchanged traffic based on the location of cell-sites and AT&T end user locations.

Q. Why is Sprint's proposed definition appropriate?

A. Mobile service inherently transcends artificial geographic boundary lines, such as MTA borders. And the networks which serve mobile users are designed based on a number of factors (engineering, propagation, coverage, zoning) which have nothing to do with MTA boundaries. The inter/intraMTA distinction as to a given call between a mobile end user and a stationary end user is a purely regulatory artifact which AT&T seeks to exploit in order to increase Sprint CMRS's costs and unduly enrich AT&T. Sprint's proposal simply recognizes that since AT&T's cost of exchanging traffic with Sprint does not differ whether the traffic is InterMTA or IntraMTA, there really is no need for complicated mechanisms to determine the location of a mobile end user. AT&T's proposed definition, coupled with its proposal to impose the inflated access charge regime and rates on InterMTA traffic,

is designed to maximize Sprint CMRS's cost and AT&T's profit. The disputed InterMTA compensation rate issue will be covered in Section III testimony, but here the issue is establishment of an efficient basis for delineating Inter/IntraMTA traffic.

Q. Is Sprint's proposal consistent with FCC guidance regarding CMRS-ILEC interconnection?

A. Absolutely. The FCC recognized the difficulty inherent with mobile service for CMRS providers to determine in real time which cell site a mobile customer is connected to, let alone the customer's specific location. Although the FCC allows the initial cell site to be used to determine the location of a mobile end user at the beginning of the call, it also expressly authorized the further alternative that "LECs and CMRS providers can use the point of interconnection between the two carriers at the beginning of the call to determine the location of the mobile caller or called party."[18] Knowing that mobility creates unique challenges in determining a mobile user's location for a given call, and given that a the mobile end user's location has no bearing on the cost an ILEC incurs to terminate traffic handed to it by a wireless provider, the FCC provided flexibility in selecting a basis for determining such location.

Q. What benefits arise from adopting Sprint's definition?

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[18] *In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, Interconnection between Local Exchange Carriers and Commercial Mobile Radio Service Providers*, CC Docket No. 96-98, CC Docket No. 95-185, First Report and Order, Released August 8, 1996, ¶ 1044.

A. Sprint's POI-based proposal provides significant administrative ease for both parties. Because the POI and end office are fixed geographic locations, the Inter/IntraMTA determination is readily known and fixed. There is no need for the parties to expend cost and effort on complex, non-productive traffic studies and the associated disputing, auditing, billing, and litigating that comes with such traffic studies. These lower transaction costs for both companies will flow to the benefit of consumers.

Q. What language does Sprint recommend the Commission adopt regarding Issue I. (B)(4)?

A. Sprint recommends the Commission adopt Sprint's proposed definitions:

> "**IntraMTA Traffic**" means Telecommunications traffic to or from Sprint's wireless network that, at the beginning of the call, originates on the network of one Party in one MTA and terminate on the network of the other Party in the same MTA (as determined by the geographic location of the POI between the Parties and the location of the End Office Switch serving the AT&T-9STATE End User).
>
> "**InterMTA Traffic**" means Telecommunications traffic to or from Sprint's wireless network that, at the beginning of the call, originates on the network of one Party in one MTA and terminate on the network of the other Party in another MTA (as determined by the geographic location of the POI between the Parties and the location of the End Office Switch serving the AT&T-9STATE End User).

Issue I.B(5) – Should the CMRS ICA include AT&T's proposed definition of "Originating Landline to CMRS Switched Access Traffic" and "Terminating InterMTA Traffic"?

Q. Should the CMRS ICA include AT&T's proposed definitions for either "Originating Landline to CMRS Switched Access Traffic" or "Terminating InterMTA Traffic"?

A. Absolutely not. This issue epitomizes AT&T's disregard for just, reasonable, and non-discriminatory interconnection, which are evident throughout AT&T's proposed contract provisions. AT&T's proposed definitions, coupled with AT&T's proposed compensation language, would permit AT&T to unilaterally and improperly impose the outdated access charge regime with its inflated access rates to the exchange of InterMTA land-to-mobile and mobile-to-land traffic. There is no basis for AT&T's proposal in law or the interconnection rules, or sound public policy.

Q. What is the effect of AT&T's proposal?

A. AT&T seeks to define InterMTA traffic exchanged between Sprint CMRS customers and AT&T ILEC customers in a manner that would allow AT&T to impose access charges on Sprint CMRS for traffic when it flows in either direction, i.e., for InterMTA calls from Sprint CMRS customers to AT&T customers = Sprint pays; and, for InterMTA calls from AT&T customers to Sprint CMRS customers = Sprint pays. Moreover, with its proposed definition, AT&T would simultaneously shield itself from paying compensation for InterMTA traffic AT&T originates and Sprint CMRS terminates. In effect, AT&T would improperly impose costs on Sprint CMRS and unduly enrich AT&T. The dispute over AT&T's proposed compensation scheme is more fully addressed in Sprint's Section III testimony, but

the definition AT&T proposes in this Section of the contract is designed by AT&T to set-up AT&T's faulty InterMTA compensation scheme and should be rejected.

Q. Does the access charge regime apply to InterMTA land-to-mobile traffic?

A. No. As further explained in Sprint's Section III testimony, CMRS-LEC interconnection and traffic exchange is governed by 47 C.F.R. Section 20.11. The standard for compensation for land-to-mobile traffic is set out in 20.11(b)(1), specifically:

> "A local exchange carrier shall pay reasonable compensation to a commercial mobile radio service provider in connection with terminating traffic that originates on the facilities of the local exchange carrier."

Q. Does the access charge regime apply to InterMTA mobile-to-land traffic?

A. No. The standard for mobile-to-land traffic compensation is set out in FCC Rule 20.11(b)(2), specifically:

> "A commercial mobile radio service provider shall pay reasonable compensation to a local exchange carrier in connection with terminating traffic that originates on the facilities of the commercial mobile radio service provider."

While 47 C.F.R. Section 51.701 includes rules regarding compensation for intraMTA traffic, the standard is reciprocal compensation, not access charges. As further explained in the testimony of Sprint witness Randy Farrar, as to InterMTA traffic, there is no rule other than § 20.11, and 20.11 does not provide for AT&T to charge a CMRS provider access charges, much less access charges in both the originating and terminating directions. As indicated above, Section 20.11 is

premised upon CMRS providers and ILECs charging each other mutual, reasonable compensation for termination of one another's traffic.

Q. Are access rates under the current access regime "reasonable compensation"?

A. No. It is widely understood that the access rates under the outdated access regime are inflated, grossly exceeding the cost of performing the traffic termination function. AT&T itself understands this and correctly describes the public policy harms caused by the imposition of access rates. As early as comments in the rulemaking establishing federal interconnection rules pursuant to the Telecom Act of 1996, AT&T stated that incremental cost, not access rates, is the appropriate standard for establishing just, reasonable, and non-discriminatory interconnection pricing, specifically:

> "TSLRIC is compatible with both the 1996 Act and the Commission's own congruent goal of pricing policies that 'replicate market-based incentives and prices' and thereby 'ensure the availability to consumers of goods and services at lower overall cost' and "an efficient level of innovation ... as well as the efficient entry of new firms." "The ILECs' existing interstate access charges, for example, are based on embedded, not economic, costs, are the product of complex and discretionary 'regulatory allocations,' and reflect subsidies. The result is access rates which bear no relation to the cost of providing access itself, much less the cost of providing unbundled network elements, interconnection, and collocation."[19]

[19] *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996,* CC Docket No. 96-98, AT&T Comments, May 16, 1996, Pages 48-49, 53 footnote 78.

And as recently as testimony filed by AT&T in an access rate proceeding in Kentucky, AT&T correctly pointed out that "excessive access rates harm consumers, harm competition, and distort investment." [20]

Q. Given AT&T's stance regarding the harms caused by the imposition of high access rates, why is AT&T seeking to impose its high access rates on Sprint CMRS?

A. AT&T's interest in its own financial gains and harming a competitor is understandably greater than its interest in maintaining a consistent public policy stance, and these same AT&T self-interests are apparently greater than the public harms AT&T intends to inflict through its proposed imposition of access rates. The Commission should weigh in favor of the public interest which, in other venues, AT&T correctly advocates is harmed by the imposition of high access rates – and reject AT&T's asymmetrical InterMTA access compensation scheme.

Q. How should the Commission rule on Issue I.B (5)?

A. The Commission should reject AT&T's attempt to create definitions for land-to-mobile and mobile-to-land traffic which are intended to permit AT&T to improperly impose access charges on InterMTA traffic.

II. How the Parties Interconnect

[20] *MCImetro Transmission Access Services LLC, v. Windstream Kentucky West, Inc.*, Case No. 2007-00503, Direct Testimony of Dr. Debra J. Aron on behalf of BellSouth Telecommunications, Inc. d/b/a AT&T Kentucky and AT&T Communications of the South Central States, LLC:, July 14, 2010, Page 40.

Issue II.B (1) Should the ICA include Sprint's proposed language that would permit Sprint to combine multi-jurisdictional traffic on the same trunk groups (e.g., traffic subject to reciprocal compensation and traffic subject to access charges? (CMRS & CLEC Section 2.5.4)

Q. Please describe this issue.

A. As a preliminary point it is important to understand the terms "multi-jurisdiction" and "multi-use" are closely related but distinct subjects. For the purpose of Issue II. B. (1), which addresses the "multi-jurisdiction" concept, and Issue II. B (2), which addresses the "multi-use" concept, Sprint draws the following distinctions:

- The concept of multi-jurisdiction trunking in Issue II. B (1) means the ability of a given requesting carrier (i.e., Sprint CMRS or Sprint CLEC) to send all of its own respective types of traffic that it delivers from its network to AT&T commingled on the same trunk; and,
- The concept of multi-use trunking in Issue II. B (2) means the ability of either Sprint entity (CMRS or CLEC) to combine and send all types of traffic of both Sprint CMRS and Sprint CLEC commingled so that it can be delivered from one of such Sprint entities to AT&T over the same trunk.

Turning specifically to Issue II.B (1), multi-jurisdictional trunking relates to whether a given Sprint entity will be allowed to combine over a common interconnection trunk all the types of traffic that it is authorized to carry. Put

another way, this issue relates to whether traffic that the Commission may find to be subject to access charges and traffic that is subject to either reciprocal compensation or no compensation for that matter (e.g., Interconnected VoIP), can all be combined on a common Interconnection trunk. This issue relates to both the CLEC and CMRS Interconnection trunks.

Q. Does this issue change or impact the compensation schemes for the different types of traffic?

A. No. It is important to separate the ability to mix traffic on a common trunk from the rates that apply to the different traffic types. Sprint's position is that it should have the ability to mix traffic types regardless of whether different rates may apply to the different traffic types. In addition, Sprint agrees to pay, and receive payment from, AT&T at the appropriate rates for different types of traffic, whatever such rates may ultimately be determined to be.

Q. Why is it important to decide this issue separately and distinctly, rather than tying it to the traffic rates that may ultimately apply to the different traffic types?

A. It is important to decide the issue of multi-jurisdictional trunking separate from the issue of traffic rates because it is fundamentally a different issue. Multi-jurisdictional trunking is an issue regardless of whether the same or different rates apply to the traffic. Addressing the issue of physically combining traffic for delivery separately from the rates that may apply to the different traffic types is

important as a matter of efficient network interconnection. The simple fact is that the communications industry is converging services, and the application of different rates to combined service traffic should not be a basis for disallowing efficient interconnection.

Q. Why is this issue important to Sprint?

A. Multi-jurisdictional trunking permits more efficient trunking between the parties. By combining Sprint's traffic onto a single PSTN interconnection, the Parties will improve network efficiency, reduce network costs, expand coverage for all services, and support integrated or converged services such as converged VoIP services and converged wireless and wireline services. There have been advancements in switching technology that enable Sprint to combine its different types of traffic onto a common switching platform. It would be highly inefficient for Sprint to combine the different traffic types onto a common switching platform on a single network but then have to segregate that traffic onto separate trunks where it interconnects with AT&T. Rather, Sprint seeks a single interconnection with AT&T by combining traffic of different jurisdictions on a single trunk group. A term used by Sprint and the industry to describe the consolidation of network platforms and service offerings is called convergence. Sprint is merely "keeping up with the times" by utilizing the latest technology has to offer and responding to customer demands to provide converged or integrated services. In addition, new services that customers are demanding are also pushing Sprint to a common switching platform.

It only follows that the form of interconnection for these converged platforms and services be supported through efficient PSTN interconnections.

Q. What network efficiencies are derived from multi-jurisdictional trunking?

A. Multi-jurisdictional trunking permits trunk utilization efficiencies that are not possible when traffic is segregated onto separate trunks. Multi-jurisdictional trunking can reduce the number of trunks required, reduce the number of trunk ports used on each party's switch, and reduce trunk order processing. In addition, reduced trunk requirements can reduce the capacity of the interconnection facility on which the trunks ride, e.g., the parties may be able to provision a single DS1 (24 trunks) between their switches instead of multiple DS1s.

Q. Do more efficient interconnection and reduced interconnection costs serve the public interest?

A. Yes. More efficient interconnection and the resulting reduction in interconnection cost do serve the public interest. In a competitive market, a reduction in costs leads to a reduction in price, which is in the public interest.

Q. Have other state commissions addressed the issue of combining different types of traffic on interconnection trunks?

A. Yes. Multiple states have ruled on this issue as identified below.

In a 2004 Indiana arbitration order addressing interconnection between Level 3 and SBC Indiana, the Indiana Utility Regulatory Commission ("IURC") decided that interconnection trunks could be used for all forms of traffic.[21] Specifically, the IURC found that:

> The FCC provides guidance for us in the appropriate manner in which to address the issue of whether Level 3 can carry all types of traffic over its interconnection trunk groups. For instance, in the Virginia Arbitration Order, Verizon had attempted to impose on WorldCom the obligation to create trunk group facilities distinct from WorldCom's existing trunk groups solely for the purpose of routing non-local exchange traffic. WorldCom objected because it imposed a disproportionate expense on WorldCom to create these additional trunk groups. Verizon contended that the separate trunk groups were necessary to ensure that it was receiving accurate compensation from WorldCom. The FCC Bureau, however, rejected the ILEC's argument:
>
> > We also find that establishing separate trunks for these calls, as Verizon proposes, would impose costs on WorldCom that are disproportionate to the problem sought to be solved. Carriers typically establish separate trunks when traffic levels are sufficient to make separate trunks cost-effective. Establishing separate trunks to carry only minimal volumes of calls would impose disproportionate costs on WorldCom compared to the benefits of Verizon's proposed solution.
> >
> > We believe, however, that measures less costly than establishing separate trunking may be available to ensure that Verizon receives appropriate payment.[22]

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[21] *In the Matter of Level 3 Communications, LLC's Petition for Arbitration Pursuant to Section 252(b) of the Communications Act of 1934, as amended by the Telecommunications Act of 1996, and the Applicable State Laws for Rates, Terms, and Conditions of Interconnection with Indiana Bell Telephone Company d/b/a SBC Indiana,* Indiana Utility Regulatory Commission, Cause No. 42663 INT-01, Arbitration Order at 10-11, (December 22, 2004) ("Level 3 Order"). Sprint is aware that this Order was vacated by the Commission on March 10, 2005, in response to a joint motion to vacate the decision by Level 3 and SBC Indiana, when those parties reached a 13 state agreement **after** the IURC issued its Arbitration Order, but before the parties filed a conforming agreement. However, Sprint has no reason to believe that the Indiana Commission would rule any differently in this proceeding than it previously ruled in the Level 3 proceeding on the identical substantive issue.

[22] *Id.* at 10. (*citing Memorandum Opinion and Order, Petition of WorldCom, Inc. Pursuant to Section 252(e)(5) of the Communications Act for Preemption of Jurisdiction of the Virginia State*

The Michigan Public Service Commission, over a decade ago, determined multi-jurisdictional trunks are appropriate. It said,

> "The Commission finds that the arbitration panel's determination on this issue should be upheld. It appears to the Commission that economic entry into the market requires that Sprint be permitted to use its existing trunks for all traffic whenever feasible. Sprint has committed to provide accurate, auditable billing records. Moreover, there are ways around the connection problems, as reflected by Suzanne Springsteen's admission that Ameritech Michigan can put local and non-local on the same trunk. The problems for Ameritech Michigan appear to be billing and measurement problems, which can be reasonably resolved through establishing percentage of use factors."[23]

The Iowa Utilities Board ("IUB") also determined that it is appropriate to combine various traffic types on common trunks. It said:

> "Because Sprint has indicated that it is technically possible to perform the measurement of traffic, but that it simply has not yet implemented those procedures, the Board will approve provisions related to commingling various types of traffic on individual trunks."[24]

The IUB order actually ruled that Sprint could utilize both multi-use and multi-jurisdictional trunking.

Corporation Commission Regarding Interconnection Disputes with Verizon Virginia Inc., and for Expedited Arbitration, 17 FCC Rcd 27039 (2002), ¶ 180-182, ("*Virginia Arbitration Order*")).

[23] *In the matter of the application of Sprint Communications Company, L.P., for arbitration to establish an interconnection agreement with Ameritech Michigan,* Before the Michigan Public Service commission, Case No. U-11203, January 15, 1997, page 5-6.

[24] *In the Arbitration of Sprint Communications Company L.P. Petitioning Party, vs. Ace Communications Group., et. al. Responding Parties*, Iowa Utilities Board, Docket Nos. Arb-05-2, Arb-05-5, and Arb-05-6, March 24, 2006.
p. 15.

The Florida Public Service Commission determined it was appropriate to transport multi-jurisdictional traffic over a single trunk group. It said:

> "Upon consideration, we find that the parties' agreement shall contain language providing Sprint with the ability to transport multi-jurisdictional traffic over a single trunk group, including an access trunk group."[25]

Q. Does AT&T combine traffic of all types, regardless of compensation, on the same trunks?

A. Yes. Sprint generally interconnects with AT&T at its tandems. Therefore, Sprint CLEC receives traffic from AT&T over local interconnection trunks, some of which is subject to access charges and some of which is subject to reciprocal compensation or at no-charge (bill and keep).

Q. How should the Commission decide this issue?

A. Sprint asks the Commission to allow for more efficient interconnection between AT&T and Sprint by requiring the adoption of Sprint's proposed Section 2.5.4 language on this issue as stated below. The specific portion of Section 2.5.4 that pertains to the "multi-jurisdiction" issue is the italicized, second sentence:

> 2.5.4 Use of Interconnection Facilities.
>
> (b) Multi-Use/Multi-Jurisdictional Trunking. Generally, there will be trunk groups between a Sprint MSC and a POI, and between a Sprint

[25] *In re: Petition of Sprint Communications company Limited Partnership for arbitration of certain unresolved terms and conditions of a proposed renewal of current interconnection agreement with BellSouth Telecommunications, Inc.*, Docket No. 000828-TP, Order No: PSC-01-1095-FOF-TP, Issued May 8, 2001, pp. 37-38.

CLEC switch and a POI. *Nothing in this Agreement shall be construed to prohibit a Sprint wireless entity or Sprint CLEC from sending and receiving all of such entity's respective Authorized Services traffic over its own respective trunks on a combined trunk group.* Further, provided 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, upon ninety (90) days notice, either the Sprint wireless entity or Sprint CLEC may also commence delivering each other's originating Authorized Services traffic to AT&T-9STATE over such Sprint entity's combined trunk group.

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?

Q. Please describe this issue.

A. As mentioned in my preliminary discussion under Issue II. B (1), Issue II.B (2) refers to the concept of multi-use trunking. This issue relates to whether Sprint CMRS will be allowed to combine its authorized traffic *and* Sprint CLEC's authorized traffic over a common Sprint CMRS interconnection trunk for commingled delivery to AT&T; and, whether Sprint CLEC may likewise be allowed to combine its authorized traffic *and* Sprint CMRS authorized traffic over a common Sprint CLEC interconnection trunk for commingled delivery to AT&T.

Q. How is this issue related to the previous issue, Issue No. II.B (1)?

A. Issue No. II.B (2) is related to Issue No. II.B (1) in multiple ways. First, both issues are derived from the same proposed contract language which incorporates the idea that Sprint should be able to combine any traffic it is authorized to carry on a

common trunk. Second, both issues are a result of Sprint's desire to have a more efficient interconnection with AT&T. Third, both issues are derived from the evolution of technology and the evolution of products being provided in the communications market and a recognition of the need for efficient traffic exchange between the parties. Finally, both issues involve the same forward-looking concept of combining traffic, regardless of jurisdiction or traffic type, on a common trunk rather than continuing the inefficient and more expensive segregation of traffic of years past.

Q. Does this issue change or impact the compensation schemes for the different types of traffic?

A. No. As explained in the previous issue regarding multi-jurisdictional trunking, it is important to separate the ability to mix traffic on a common trunk from the rates that apply to the different traffic types. Sprint's position is that it should have the ability to mix traffic regardless of the fact that different rates may apply to the different traffic types. In addition, Sprint agrees to pay and receive payment from AT&T at the appropriate rates for different traffic types, whatever they are determined to be.

Q. As with the multi-jurisdictional trunking issue previously discussed, is it important to decide this issue in isolation rather than tying it to the rates that may apply to the different traffic types?

A. Yes. It is important to decide the issue of multi-use trunking separate from the issue of traffic rates because it is fundamentally a different issue. Multi-use trunking is an issue regardless of whether the same or different rates apply to the traffic. Isolating or separating the issue of combining traffic for delivery to AT&T from the rates that may apply to the different traffic types is important because Sprint's position is based on its desire to more efficiently interconnect with AT&T. As with the previous issue of multi-jurisdictional trunking, the application of rates to the combined CMRS/CLEC traffic – whether delivered by Sprint CLEC or Sprint CMRS - should not be a basis for disallowing efficient interconnection.

Q. How has the communication industry's converged service offerings affecting traffic delivery?

A. The very nature of services being provided within the industry and by Sprint will require the combining of the different traffic types. Services available today allow a user to have a single telephone number assigned to both a mobile and desk telephone. This creates the situation where it may not be determinable whether a particular call is a wireline call or a wireless call in the historical sense until the user answers either his wireline telephone or his wireless telephone because the two telephones are effectively integrated into a single service with a single telephone number. In addition, the user of such an integrated service has the ability to switch between the wireless telephone and the desk telephone during a conversation. This reality creates the situation where carriers exchanging traffic over segregated trunks will not know which trunk to place the call on because its true nature is not known

until the call is answered, and may change mid-conversation. From a user's perspective, services are no longer viewed as wireless or wireline, but rather are viewed as integrated or converged services.

Q. Does multi-use trunking also permit more efficient trunk utilization?

A. Yes. As with the multi-jurisdictional trunking issue, multi-use trunking allows more traffic to be placed on fewer trunks. Rather than a separate CMRS and CLEC trunk, a combined multi-use trunk can be utilized reducing the overall number of trunks. Fewer trunks mean fewer trunk ports are used on both Sprint's and AT&T's switches and fewer trunk orders need to be processed. Multi-use trunking also permits better trunk utilization by combining different traffic types which may peak at different times allowing more overall traffic to be placed on fewer trunks.

Q. Does more efficient interconnection and the reduced costs of interconnection serve the public interest?

A. Yes. More efficient interconnection and the resulting reduction in interconnection cost does serve the public interest. In a competitive market, a reduction in costs either leads to a reduction in price or some other improvement, which is in the public interest.

Q. Have other state commissions addressed the issue of combining multi-use traffic on interconnection trunks?

A. Yes. In a Sprint arbitration the IURC ruled that multi-use trunking was allowable.[26]

The IURC stated that:

> "Sprint's arguments on the general issue of whether the Interconnection Agreement permits the combination of differing types of traffic on the same multi-use interconnection trunks are persuasive. No technical reasons have been raised by the RTCs why Sprint's proposal here should not be adopted..... We agree that the combination of wireline, wireless, and IP-PSTN traffic as the parties have defined it in the proposed interconnection agreement would create network efficiencies for both parties."
>
> "We further agree with Sprint that the intercarrier compensation aspects do not pose roadblocks to combining the different types of traffic on the same trunks."

The Iowa Utilities Board ("IUB") also determined that it is appropriate to combine various traffic types on common trunks. It said:

> "Because Sprint has indicated that it is technically possible to perform the measurement of traffic, but that it simply has not yet implemented those procedures, the Board will approve provisions related to commingling various types of traffic on individual trunks."[27]

The IUB order actually ruled that Sprint could utilize both multi-use and multi-jurisdictional trunking.

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[26] *In the Matter of Sprint Communications Company, L.P.'s Petition for Arbitration Pursuant to Section 252(B) of the Communications Act of 1934, As Amended by the Telecommunications Act of 1996, and the Applicable State Laws for the Rates, Terms and Conditions of Interconnection with Ligonier Telephone Company, Inc.*, Indiana Utility Regulatory Commission, Cause No. 43052-INT-01, September 6, 2006, p. 16-17.

[27] *In the Arbitration of Sprint Communications Company L.P. Petitioning Party, vs. Ace Communications Group., et. al. Responding Parties*, Iowa Utilities Board, Docket Nos. Arb-05-2, Arb-05-5, and Arb-05-6, March 24, 2006.
p. 15.

Q. Does AT&T, today, combine CMRS and CLEC traffic destined for Sprint CLEC on current Sprint CLEC local interconnection trunks?

A. Yes. Sprint CLEC generally subtends AT&T's tandem switch and does not have direct interconnections with wireless carriers or wireline carriers. Therefore, carriers subtending AT&T, both wireless and wireline, terminating traffic to Sprint CLEC telephone numbers do so through AT&T's tandem switch. The Sprint CLEC interconnection trunks connected to AT&T's tandem will carry both the wireless and wireline traffic transiting AT&T's network.

Q. Does AT&T, today, combine CMRS and CLEC traffic destined for Sprint CMRS on current Sprint CMRS trunks?

A. Yes. Sprint CMRS also generally connects to the AT&T tandem switch for the indirect-interconnection exchange of traffic with carriers that subtend AT&T's tandem. The connection between the Sprint CMRS wireless switch and the AT&T tandem will be the AT&T-Sprint CMRS interconnection trunks. Any call destined for a Sprint CMRS telephone number from AT&T's subtending transit customers will pass through the AT&T tandem and over the AT&T-Sprint CMRS interconnection trunk, regardless of whether it is a wireless or wireline originated call.

Q. How should the Commission decide this issue?

A. Sprint asks the Commission to allow for more efficient interconnection between AT&T and Sprint by requiring the adoption of Sprint's proposed Section 2.5.4 (b)

language on this issue as stated below. The specific portion of Section 2.5.4 that pertains to the "multi-use" issue is the italicized, third sentence:

> 2.5.4 Use of Interconnection Facilities.
>
> (b) Multi-Use/Multi-Jurisdictional Trunking. Generally, there will be trunk groups between a Sprint MSC and a POI, and between a Sprint CLEC switch and a POI. Nothing in this Agreement shall be construed to prohibit a Sprint wireless entity or Sprint CLEC from sending and receiving all of such entity's respective Authorized Services traffic over its own respective trunks on a combined trunk group. *Further, provided 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, upon ninety (90) days notice, either the Sprint wireless entity or Sprint CLEC may also commence delivering each other's originating Authorized Services traffic to AT&T-9STATE over such Sprint entity's combined trunk group.*

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?

Q. Please describe the dispute over this issue.

A. Each party proposes provisions that address the essential issue that a party will not represent switched access traffic as traffic subject to reciprocal compensation. (See Sprint 6.1.4 and AT&T 6.9). AT&T proposes additional language which is unnecessary, inaccurate, and written in a manner designed to expand the application of access charges. AT&T's proposed language would apply access charges to any traffic AT&T deems is not explicitly subject to reciprocal compensation (AT&T 6.4.1). In effect, AT&T's language would improperly subject all Information

Service traffic (be it ISP or Interconnected VoIP) to being jurisdictionalized – and thereby charged – as switched access traffic based on end points rather than based on the service being provided.

Q. Are the end points of a call the sole basis by which compensation is determined?

A. No. Compensation is based on the underlying service provided. Information Services traffic (whether ISP or Interconnected VoIP) is not subject to access charges. ISP traffic is subject to the FCC ISP compensation regime capped at $0.0007 per minute, not access charges. With respect to Interconnected VoIP, until the FCC determines the compensation regime, access charges do not apply and the default compensation is bill & keep.

Q. Are there other problems with AT&T's proposed language?

A. Yes. In addition to attempting to expand the application of access charges to services for which access charges do not apply, AT&T's language appears to require Sprint to install access trunks per access tariffs (see AT&T 6.23.1) even for traffic for which access charges do not apply.

Q. How should the Commission rule on this disputed issue?

A. The Commission should reject AT&T's attempt to dictate an expanded application of access charges to services for which access charges do not apply and adopt the language Sprint proposes, which is substantially the same language the parties

operate under today, to prohibit improper representation of switched access traffic as reciprocal compensation traffic:

> 6.1.4_Except as may be otherwise provided by Applicable Law, neither Party shall represent switched access services traffic (e.g., FGA, FGB, FGD) as traffic subject to the payment of reciprocal compensation.
>
> 7.1.2. Notwithstanding the foregoing, neither Party waives its position on how to determine the end point of any traffic, and the associated compensation.

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?

Q. Please describe this dispute.

A. Sprint proposes language which appropriately applies compensation based on the Act's statutory definition of Telephone Toll Service. AT&T proposes language which references "local calling area" as an additional criterion for determining compensation. It is unclear what AT&T intends with reference to "local calling area," but it would be inappropriate to base compensation on a geographic distinction without regard to determining the compensation that applies to the underlying service. Sprint is willing to pay applicable access charges for Telephone Toll Service traffic, but is neither obligated nor willing to pay access charges for traffic that is not Telephone Toll Service, regardless of the calling area.

Q. Are there other language disputes under this issue?

A. Yes. AT&T proposes to include in the ICA language regarding 8YY database queries (see AT&T 6.2.2).

Q. Aren't database queries offered pursuant to tariff?

A. Yes, and these tariff charges are paid by the Interexchange Carrier providing the 8YY service. It is both unnecessary and inappropriate to include 8YY query charges in a CLEC ICA since the query charge is a matter between the LEC and the 8YY service provider IXC, not between the parties to this ICA.

Q. How should the Commission rule on this disputed issue?

A. The Commission should reject AT&T's proposed language to reference "local calling area" and reject AT&T's proposal to include 8YY charges in the ICA. The following Sprint language should be adopted since it comports with the statutory definition of Telephone Toll Service, ensures that the applicable access charge applies to such calls, and appropriately leaves 8YY query charges to 8YY service providers:

> (6.16)7.3.5 Compensation for Sprint Telephone Toll Service traffic.
>
> (6.16.1)7.3.5.1 Telephone Toll Service traffic. For purposes of this Attachment, Telephone Toll Service traffic is defined as any telecommunications call between Sprint and AT&T-9STATE End Users that originates and terminates in the same LATA and results in Telephone Toll Service charges being billed to the originating end user by the originating Party. Moreover, AT&T-9STATE originated Telephone Toll Service will be delivered to Sprint using traditional Feature Group C non-equal access signaling.
>
> (6.16.2) 7.3.5.2 Compensation for CLEC Telephone Toll Service Traffic. For terminating its CLEC Telephone Toll Service traffic on the other company's network, the originating Party will pay the terminating Party the

terminating Party's current effective or Commission approved (if required) intrastate or interstate, whichever is appropriate, terminating Switched Access rates.

(6.22)7.3.5.3 Compensation for CLEC 8XX Traffic. Each Party (AT&T-9STATE and Sprint) shall compensate the other pursuant to the appropriate Switched Access charges as set forth in the Party's current effective or Commission approved (if required) intrastate or interstate Switched Access tariffs.

7.3.5.4 Records for 8XX Billing. Each Party (AT&T-9STATE and Sprint) will provide to the other the appropriate records necessary for billing intraLATA 8XX customers.

7.3.5.5 8XX Access Screening. AT&T-9STATE's provision of 8XX Toll Free Dialing (TFD) to Sprint requires interconnection from Sprint to AT&T-9STATE 8XX SCP. Such interconnections shall be established pursuant to AT&T-9STATE's Common Channel Signaling Interconnection Guidelines and Telcordia's CCS Network Interface Specification document, TR-TSV-000905. Sprint shall establish CCS7 interconnection at the AT&T-9STATE Local Signal Transfer Points serving the AT&T-9STATE 8XX SCPs that Sprint desires to query. The terms and conditions for 8XX TFD are set out in AT&T-9STATE's Intrastate Access Services Tariff as amended.

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?

Q. Please describe this issue.

A. AT&T seeks to improperly impose access charges on the basis of call end points without regard to whether the underlying service is subject to access charges. Moreover, AT&T seeks to improperly dictate the means by which Sprint delivers traffic to AT&T by proposing that Sprint be required to purchase feature group access service from state and federal tariffs rather than using interconnection trunks pursuant to the ICA.

Q. What is the appropriate basis for determining compensation?

A. The first basis for determining compensation is the service being provided. For example, if the service is Telephone Toll Service, then exchange access rates apply. The end points of a call then determine which access rates apply, e.g., interstate or intrastate. For those services for which access charges do not apply (e.g., services subject to reciprocal compensation, Information services, CMRS services), LATA boundary lines, and local calling area distinctions have no effect on compensation.

Q. Should AT&T be permitted to dictate that Sprint purchase feature group access on all traffic that crosses a LATA boundary?

A. No. As explained more fully in Sprint's Section II testimony, regarding how the parties interconnect, the compensation for traffic need not dictate the type of facility (whether an access or interconnection facility) the parties use to exchange traffic. AT&T should not be permitted to require Sprint to purchase access services for traffic just because call end points are in different LATAs.

Q. How should the Commission rule on this disputed issue?

A. The Commission should reject AT&T's proposal to dictate the form of compensation and to require the purchase of feature group access service based on the end points of a call.

Issue III.A.5. Should the CLEC ICA include AT&T's proposed provisions governing FX traffic? (CLEC)

Q. Please describe Issue III.A.5.

A. Issue III.A.5 relates to a disagreement between the parties as to the CLEC ICA language related to FX and ISP-Bound Traffic, if provisioned via an FX-type arrangement. Sprint CLEC's position is that there is no need for specific language since FX traffic can be handled today based on the calling and called party numbers. ISP-Bound Traffic should be treated as the FCC has dictated regardless of how it is provisioned. AT&T suggests a complicated and system intensive means of identifying FX traffic and the ISP-Bound Traffic and that it be subject to Bill and Keep.

Q. What is FX traffic?

A. Generally, FX traffic is a service purchased by End Users that enable an End User to obtain service from a local calling area that is different from the local calling area where the End User is physically located. End Users are generally businesses that want the appearance of being in a given location when they are actually located somewhere else or want their customers to be able to make a locally dialed call rather than a toll call. For example, a business that is physically located in town A wants the appearance of being located in town B by having a telephone number associated with town B and/or wants to enable customers in town B to call the

business using a locally dialed town B telephone number rather than making a toll call to a town A telephone number.

Q. How do AT&T and Sprint CLEC compensate each other for FX traffic in the current interconnection agreements?

A. The current AT&T/Sprint interconnection agreement appears to call for the extreme opposite of the treatment that AT&T is asking for in the replacement ICA. The current agreement appears to require Sprint CLEC to pay AT&T intrastate access rates for calls from AT&T end users terminating to Sprint end users. Payment by Sprint CLEC to AT&T for AT&T originated traffic is contrary to the general principle of payment being made by the originating carrier. Further, there appears to be no mention of a payment by AT&T to Sprint for AT&T FX traffic. The current agreement is completely one-sided to AT&T's benefit. Attachment 3 of the current AT&T/Sprint CLEC agreement states the following:

> 6.1.5 For BellSouth and Sprint CLEC traffic, the jurisdiction of a call is determined by its originating and terminating (end-to-end) points, not the telephone number dialed.
>
> 6.1.5.1 Further, if Sprint CLEC assigns NPA/NXXs to specific BellSouth rate centers within a BellSouth originating end user's local calling area, and the assigns numbers from those NPA/NXXs to Sprint CLEC end users physically located outside of the BellSouth originating end user's local calling area, Sprint CLEC agrees to identify such traffic to BellSouth and to compensate BellSouth for originating and transporting such traffic to Sprint CLEC at BellSouth's intrastate switched access tariff rates. If Sprint CLEC does not identify such traffic to BellSouth, to the best of BellSouth's ability BellSouth shall determine which whole Sprint CLEC NPA/NXXs on which to charge the applicable rates for originating intrastate switched access service as reflected in BellSouth's Intrastate Access Service Tariff. BellSouth shall make appropriate billing adjustments if Sprint CLEC can provide sufficient information for BellSouth to determine whether said traffic is Local Traffic.

6.1.5.2 Notwithstanding the foregoing, neither Party waives its position on how to determine the end point of ISP traffic and the associated compensation.

Q. It appears the proposed AT&T language is attempting to eliminate the payment of access charges by Sprint CLEC to AT&T for Sprint CLEC's FX traffic. Is that acceptable to Sprint?

A. AT&T's proposal is certainly better than the current contract language because it eliminates the one-sided treatment that benefits AT&T and would require the traffic be treated as Bill & Keep. However, AT&T's current proposal is not acceptable to Sprint CLEC. Sprint CLEC prefers that FX traffic be treated as non-FX traffic, i.e., based on the calling and called party telephone numbers. Sprint believes that is how traffic is generally treated today unless there is some unique arrangement between any carriers to treat it differently. AT&T's suggestion that the terminating party track and report to the originating party a usage summary for traffic terminating to its FX telephone numbers is overly burdensome and unnecessary.

Q. In Sprint CLEC's opinion, is there enough FX traffic to warrant the special treatment proposed by AT&T?

A. No. I will address ISP-Bound traffic below, but from Sprint's perspective, there is not enough FX traffic to warrant the creation of an entirely new tracking mechanism for FX traffic. AT&T has not identified the amount of its FX traffic and Sprint has either no FX traffic or only a minimal amount. Besides, with the

nomadic nature of Interconnected VoIP traffic, it is impossible to determine where an end-user is physically located.

Q. It appears AT&T is taking a very different position with respect to FX traffic as compared to any other traffic exchanged between the parties. Is that correct?

A. Yes. AT&T generally wants to receive and pay compensation for traffic exchanged between the parties. However, with the FX traffic, AT&T is taking the opposite position, i.e., it wants FX traffic to be at Bill & Keep. I believe AT&T's position on this issue relates to its inclusion of ISP-Bound traffic. AT&T has apparently determined that it can avoid paying the FCC prescribed compensation for ISP-Bound traffic by including it within AT&T's proposed FX language.

Q. Would Sprint be agreeable to a Bill & Keep arrangement with AT&T?

A. Yes – if it applied to all traffic exchanged between the Parties rather than only when it benefits AT&T. While addressed elsewhere in testimony, it is Sprint's position that the traffic exchanged between the Parties should be at Bill & Keep.

Q. What is ISP-Bound Traffic?

A. ISP-Bound Traffic is dial-up Internet traffic. While many Internet users today have broadband connections, there are still numerous users that access the Internet via a dial-up modem connection.

Q. Has the FCC determined a compensation rate applicable to ISP-Bound Traffic?

A. Yes. Generally, the FCC has determined that a maximum rate of $0.0007 should apply to ISP-Bound Traffic.[28]

Q. Why did the FCC order the rate of $0.0007?

A. The FCC determined that some carriers, primarily CLECs, were taking advantage of the intercarrier compensation system by providing high-volume one-way services to ISPs at below market rates. The intercarrier compensation system at the time allowed the CLEC to be compensated in whole or in part based on the compensation it would receive from the carriers, predominantly ILECs, whose end users were calling the ISPs for Internet access. The FCC determined that this created a market distortion in which one service was subsidized at the expense of other services. The FCC attempted to resolve the issue by setting a very low rate for ISP-Bound Traffic.

Q. How does Sprint suggest the Commission resolve this issue?

A. Sprint requests the Commission to adopt Sprint's position, which would eliminate the need for the proposed AT&T language. Adopting Sprint's position would subject FX traffic and ISP Bound traffic to rates addressed elsewhere in the Agreement. Unless bill and keep is ordered by the Commission as to all traffic, FX

[28] *See In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996 and Intercarrier Compensation for ISP-Bound Traffic*, CC Docket No. 96-98 and CC Docket No. 99-68, Order on Remand and Report and Order, Released April 27, 2001, 16 FCC Rcd 9151, 9156-57, ¶ 8.

should be charged at the same rate as any other traffic, based on dialed digits, and ISP would be charged at the FCC rate of $0.0007 (whether it is "FX" or not).

Issue III.A.6(1) What compensation rates, terms and conditions for Interconnected VoIP traffic should be included in the CMRS ICA? (CMRS Section 6.1.3)

Q. Please describe Issue III.A.6 (1).

A. Issue III.A.6 (1) relates to Interconnected VoIP traffic exchanged between the parties over CMRS interconnection trunks. Sprint CMRS's position is that until such time as the FCC determines the regulatory classification and proper compensation for VoIP traffic, it should be tracked separately and be exchanged at a Bill & Keep rate. AT&T would prefer not to track the traffic and that it be treated as Telecommunications traffic with compensation being based on the jurisdictional end points of the call.

Q. Is there an inconsistency between AT&T's position on this issue and another issue in this arbitration?

A. Yes, it appears there is. AT&T's position and proposed language for this issue recognizes that VoIP traffic will be exchanged between each Sprint entity and AT&T. However, in Issue I.A (3) AT&T takes the position that Sprint CMRS is not allowed to send VoIP traffic to AT&T over wireless Interconnection Facilities. The position AT&T appears to be taking on this issue confirms my testimony on

Issue I.A (3), i.e., that the CMRS agreement should include Interconnected VoIP traffic. In other words, the issue isn't whether Interconnected VoIP traffic should be exchanged or sent by "either" Party (Sprint CMRS or AT&T) to the other, but what compensation rate should apply, as the current issue, Issue III.A.6, is meant to address.

Q. Has the FCC determined the regulatory classification of Interconnected VoIP traffic?

A. The FCC has determined that interconnected VoIP traffic is interstate traffic and is subject to FCC jurisdiction.[29]

Q. Has AT&T addressed the FCC's statements on VoIP jurisdiction?

A. Yes. AT&T has generally agreed with Sprint in its advocacy with the FCC. For example, in a 2008 ex parte AT&T urged the FCC "to formally extend the preemptive effect of the *Vonage Order* to fixed-location VoIP services.[30]

Q. Has the FCC determined what intercarrier compensation applies to Interconnected VoIP traffic?

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[29] *See In the Matter of Vonage Holdings Corporation Petition for Declaratory Ruling Concerning an Order of the Minnesota Public Utilities Commission*, FCC WC Docket No. 03-211, Memorandum Opinion and Order, 19 FCC Rcd 22404, 22424, ¶32, Released November 12, 2004.

[30] AT&T Letter to Marlene Dortch, *Developing a Unified Intercarrier Compensation Regime,* CC Docket No. 01-92, July 17, 2008, page 2.

A. No. The FCC has not determined the appropriate intercarrier compensation for interconnected VoIP traffic or whether any compensation is due.[31] The issue has been before the FCC on numerous occasions, but the FCC has yet to address the issue – even though the FCC has addressed other issues relative to interconnected VoIP such as USF contributions, 911 requirements, etc.

Q. Is there any federal authority of which the Commission should be aware that access charges are inapplicable to VoIP?

A. Yes. The United States District Court for the District of Columbia (where the FCC sits) recently found that access charges are inapplicable to VoIP traffic.[32]

Q. Does this Commission have jurisdictional authority to establish a rate for the exchange of interconnected VoIP traffic?

A. No. The FCC has stated that Interconnected VoIP traffic is interstate and subject to FCC jurisdiction. It would be inappropriate for this Commission to determine a rate for such traffic until the FCC either determines any rate is applicable and, if so, the rate or rate methodology applicable to such traffic.

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[31] *See, e.g., In the Matter of Time Warner Cable Request for Declaratory Ruling that Competitive Local Exchange Carriers may Obtain Interconnection Under Section 251 or the Communications Act of 1934, as Amended, to Provide Wholesale Telecommunications Services to VoIP Providers*, FCC WC Docket No. 06-55, Memorandum Opinion and Order, 22 FCC Rcd 3513, 3523 Released March 1, 2007, ¶ 17 ("Certain commenters ask us to reach other issues, including the application of section 251(b)(5) and the classification of VoIP services. We do not find it appropriate or necessary here to resolve the complex issues surrounding the interpretation of Title II more generally or the subsections of section 251 more specifically that the Commission is currently addressing elsewhere on more comprehensive records...We do not, however, prejudge the Commission's determination of what compensation is appropriate, or any other issues pending in the Intercarrier Compensation docket.") (citations omitted).

[32] *See PAETEC Communs. v. CommPartners, LLC*, 2010 U.S. Dist. LEXIS 51926 (D.D.C. 2010)

Q. How should this Commission decide this issue?

A. The Commission should adopt Sprint's position and determine that Interconnected VoIP traffic should be exchanged at Bill and Keep until such time as the FCC determines otherwise. Sprint asks the Commission to adopt Sprint's language in Attachment 3 Pricing Sheet that states:

> Interconnected VoIP Rate: Bill & Keep until otherwise determined by the FCC.

Issue III.A.6 (2) Should AT&T's language governing Other Telecomm. Traffic, including Interconnected VoIP traffic, be included in the CLEC ICA? (CLEC Section 6.4, 6.4.3- 6.4.5 and 6.23.1)

Q. Please describe Issue III.A.6 (2).

A. Issue III.A.6 (2) encompasses the interconnected VoIP compensation issue as previously discussed in Issue III.A.6 (1) as well as compensation for ISP and Internet traffic excluding ISP-Bound Traffic, but in the context of the CLEC ICA as opposed to the CMRS ICA. AT&T wants to categorize ISP and Internet traffic other than ISP-Bound Traffic as "Other Telecommunications Traffic" and subject these forms of traffic to compensation terms found elsewhere in the Agreement as specified by AT&T. AT&T's position with respect to Interconnected VoIP traffic is that access charges should apply if the End Users are physically located in different local calling areas. As previously stated, Sprint's position is that the FCC

has not determined what or whether compensation is due for interconnected VoIP traffic and it would be inappropriate to determine such in this proceeding.

Q. Is the Interconnected VoIP compensation issue the same as issue III.A.6 (1)?

A. Yes. The Interconnected VoIP compensation issue, from Sprint's perspective, is the same whether the traffic is exchanged over CMRS or CLEC Interconnection Facilities. I will not repeat Sprint's rationale for its position here, but will state that Sprint's arguments for Interconnected VoIP compensation pursuant to the CLEC ICA are the same as for the CMRS ICA.

Q. What is Sprint CLEC's position with respect to the compensation for ISP and Internet traffic that may meet or fall under the category of traffic that AT&T identifies as "Other Telecommunications Traffic" (i.e., FX Traffic, Optional EAS Traffic, IntraLATA Toll Traffic or 800/888/877/8YY traffic)?

A. ISP-Bound traffic and FX traffic are addressed elsewhere in my testimony. As for Optional EAS Traffic and IntraLATA Toll Traffic there is no reason why it is not treated like any other traffic, based upon dialed digits. As for 800/888,877/8YY traffic, it involves a toll-free service provider that is responsible for any charges to the originating and terminating local exchange carrier and, therefore, does not give rise to charges between Sprint CLEC and AT&T. No need exists for AT&T's additional category language with regard to the subject of Interconnected VoIP traffic.

Q. How should the Commission resolve Issue III.A.6 (2)?

A. The Commission should adopt Sprint CLEC's language as provided in Attachment 3 Pricing Sheet that states:

> Interconnected VoIP Rate: Bill & Keep until otherwise determined by the FCC.

Issue V.B. What is the appropriate definition of "Carrier Identification Code?" (CLEC)

Q. Please describe Issue V.B.

A. Issue V.B. encompasses a disagreement between the Parties regarding the appropriate definition of the term Carrier Identification Code.

Q. Has Sprint been able to consider any further either of the alternative language AT&T proposed in the Joint DPL for this Issue?

A. Yes. Sprint is willing to (and has conveyed the same to AT&T) accept AT&T's proposed language identified as Alternative #2 in the Joint DPL with the addition of an important clarifying statement. Below is AT&T's Alternative #2 language and Sprint's addition, with Sprint's addition underlined.

> 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. <u>For the purpose of clarity, the phrase "access purchaser" as referred to in this definition does not include either Party as a purchaser of Interconnection Services under this Agreement.</u>

Q. Why is Sprint willing to accept AT&T's Alternative #2 with the Sprint addition?

A. The language in AT&T's Alternative #2 definition is comparable to the definition of CIC found in industry documents. The industry definitions and AT&T's definition focus on the CIC code as a means of identifying an "access purchaser" or a purchaser of access services contained in the Part 69 regulations. Sprint's additional clarifying statement is intended to differentiate an "access purchaser" under Part 69 from Sprint CLEC, who is seeking an ICA with AT&T pursuant to the Part 51 regulations.

Q. Has AT&T accepted Sprint CLEC's alternative language?

A. As of August 16, 2010, AT&T advised that it cannot agree to the additional sentence that Sprint CLEC has proposed to AT&T's Alternative #2 CIC definition, but has not provided any reason for its rejection of Sprint CLEC's proposed compromise.

Q. How does Sprint propose the Commission resolve Issue V.B?

A. Sprint CLEC recommends the Commission adopt Sprint CLEC's offered compromise, which consists of accepting AT&T's Alternative #2 CIC definition with the added Sprint CLEC clarifying sentence, as follows:

> 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. <u>For the purpose of clarity, the phrase "access purchaser" as referred to in this definition does not include either Party as a purchaser of Interconnection Services under this Agreement.</u>

Issue V.C (1) Should the ICA include language governing changes to corporate name and/or d/b/a? (CLEC and CMRS)

Issue V.C (2) Should the ICA include language governing company code changes? (CLEC and CMRS)

Q. Please describe Issues V.C (1) and V.C (2).

A. Issues V.C. (1) and V.C. (2) are similar, so I will address them together rather than separately. AT&T's proposed language is an attempt by AT&T to inappropriately shift its internal record keeping expenses to Sprint.

Q. Is the language proposed one-sided such that it is to AT&T's benefit, comparable to many other disputed issues in this arbitration proceeding?

A. Yes. Self-serving language seems to be a common theme throughout AT&T's positions. The AT&T proposed language appears to always require Sprint to pay AT&T for AT&T's recordkeeping in the context of a Sprint name change or company code change. However, if comparable name or code changes were undertaken by AT&T, it doesn't appear that Sprint would be compensated for its internal recordkeeping expenses.

Q. Would you anticipate AT&T incurring any incremental costs to complete its internal recordkeeping?

A. I seriously doubt that AT&T would incur any incremental costs to complete its internal record keeping. In all likelihood, AT&T would utilize in-place employees to perform these functions as a normal course of their work load.

Q. Are AT&T's suggested charges justified?

A. I am not aware of AT&T presenting any form of cost study to justify the recordkeeping costs it would like to pass along to Sprint.

Q. Does AT&T's attempt to charge Sprint what appears to be a complete record order charge seem appropriate, given the activity addressed by Issue V.C (1) or V.C (2) does not appear to constitute a "new" service?

A. No. AT&T is suggesting Sprint pay for what appears to be just for record keeping which requires considerably less effort on the part of AT&T as compared to an order for new service.

Q. How does Sprint propose the Commission address Issue V.C (1) and V.C (2)?

A. Sprint asks the Commission to reject AT&T's proposed language for both Issue V.C. (1) and V.C. (2) for the reasons stated.

Q. Does this conclude your Direct Testimony?

A. **Yes.**

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

VERIFICATION

STATE OF KANSAS)
) ss.
COUNTY OF JOHNSON)

I, James R. Burt, being first duly sworn on oath, state I am Director for Policy for Sprint Nextel Corporation and that I have prepared the foregoing direct testimony which is true and correct to the best of my knowledge, information and belief.

Respectfully submitted,

James R. Burt

Subscribed and sworn to before me
this 12th day of August, 2010.

Notary Public

NOTARY PUBLIC - State of Kansas
Shelly L Green
My Appt. Expires 12/26/2011