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

REBUTTAL TESTIMONY OF JAMES R. BURT

SEPTEMBER 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. Are you the same James R. Burt who submitted Direct Testimony in this matter on August 17, 2010?

A. Yes I am.

Q. What is the purpose of your Rebuttal Testimony?

A. The purpose of my Rebuttal Testimony is to respond to portions of the Testimony of AT&T witnesses Patricia H. Pellerin, J. Scott McPhee, P.L. (Scot) Ferguson, Frederick C. Christensen, and James W. Hamiter. Specifically, I will respond to the testimony of these AT&T witnesses on the following list of disputed issues: I.A(1), I.A(2), I.A(3), I.A(4), I.A(5), I.A(6), I.B(1), I.B(2), I.B(3), I.B(4), I.B(5), II.B(1), II.B(2), III.A.4(1), III.A.4(2), III.A.4(3), III.A.5, III.A.6(1), III.A.6(2), V.B, and V.C.

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. Has the scope of Issue I.A(1) changed?

A. Yes.

Q. What is the new scope of Issue I.A(1)?

A. Unless otherwise resolved before the arbitration hearing, Issue I.A(1) will be presented to the Commission in the following form:

> **Issue I.A(1) What legal sources of the parties' rights and obligations should be set forth in section 1.1 of the CMRS ICA and the definition of "Interconnection" or ("Interconnected") in the CMRS ICA? (Section 1.1 and Part B interconnection definition).**

Q. Why has the scope of Issue I.A(1) been expanded?

A. On Monday, August 16, 2010, the parties filed their respective direct testimony in Georgia. Similar respective direct testimony was filed by the parties in Kentucky on Tuesday, August 17, 2010. Part of Sprint's Georgia testimony regarding Issue I.A (1) served to point out the inconsistency between an AT&T position that the parties' contract section 1.1 should not include any reference to the Federal Communications Commission's ("FCC") Part 20 regulations and the fact that the parties had agreed to the following definition of "Interconnection or Interconnected" which expressly referred to the FCC's Part 20 regulations:

> "**Interconnection or Interconnected**" means as defined at 47 C.F.R. § 20.3 and 51.5.[1]

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[1] 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.

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.

Apparently, upon reading Sprint's Georgia testimony AT&T came to appreciate the obvious inconsistency between *AT&T's stated arbitration position* that "the source of the Parties' rights and obligations in the ICA is Section 251(b) and (c) of the [Act] as implemented by the FCC's Part 51 regulations",[2] and *the parties' negotiated undisputed language* that also expressly relies upon the FCC's Part 20 provisions. Rather than concede its position on Issue I.A(1), on Wednesday, August 18, 2010 AT&T contacted Sprint's attorneys to withdraw its prior agreement and, instead, place the definition of "Interconnection or Interconnected" back in dispute. The essence of the change by AT&T is the additional Issue I.A(1) disputed language regarding the definition of "Interconnection or Interconnected" which will be resolved with the larger issue.

Q. Does the change by AT&T highlight the inconsistency you described in your Direct Testimony?

A. Yes. On page 17 of my Direct Testimony, I pointed out that AT&T's position that there should not be a reference to the FCC's Part 20 regulations was inconsistent with language AT&T had agreed to, i.e., the definition of Interconnection or Interconnected. AT&T's backtracking on previously agreed to language, as stated in the previous question and answer, highlights its inconsistency. Sprint and AT&T

[2] *See, e.g., In the Matter of: Petition for Arbitration of Interconnection Agreement Between BellSouth Telecommunications, Inc. d/b/a AT&T Georgia and Sprint Spectrum L.P., Nextel South Corp. and NPCR, Inc. d/b/a Nextel Partners,* Georgia Public Service Commission ("GA PSC") Docket No, 31691-U and *In the Matter of: Petition for Arbitration of Interconnection Agreement Between BellSouth Telecommunications, Inc. d/b/a AT&T Georgia and Sprint Communications Company L.P.,* GA PSC Docket No, 31692-U, AT&T Position Statement to Issue I.A.(1) in the Parties "Joint Disputed Issued List" filed July 23, 2010.

specifically discussed the language for defining Interconnection and settled on the CMRS ICA definition that, appropriately, specifically included the reference to both C.F.R. §§ 20.3 and 51.5.

Q. Ms. Pellerin references paragraph 1024 in the First Report and Order on page 3 and 4 of her Direct Testimony. Please comment.

A. Paragraph 1024 of the First Report and Order does address the relationship between sections 251 and 252 of the Act and section 332 from which the Part 20 regulations are derived. And, Ms. Pellerin's quotation is accurate. However, Ms. Pellerin is suggesting that the First Report and Order set up an either/or situation resulting in interconnection being governed only by sections 251 and 252. That is not the case. The following comments from Commissioner Chong in her statement accompanying the First Report and Order clearly shows that the FCC's *jurisdiction* to create rules that govern CMRS-LEC interconnection is based upon both sections 251 and 252 and section 332 of the Act.

> "CMRS-LEC Interconnection Issues. In our order, I have supported our decision to allow CMRS-LEC interconnection matters to be governed by the Sections 251/252 provisions, while continuing to acknowledge our continuing jurisdiction pursuant to Section 332 over CMRS-LEC interconnection [**259] matters. In doing so, we have declined to opine on the precise extent of our Section 332 jurisdiction over CMRS-LEC interconnection matters, however. I emphasize that by opting to use the Section 251/252 framework, we are not repealing our Section 332 jurisdiction by implication or rejecting Section 332 as an alternative basis for jurisdiction."[3]

[3] Separate Statement of Commissioner Rachelle B. Chong, Re: In the Matter of implementation of the Local Competition provisions in the Telecommunications Act of 1996, CC Docket No. 96-98; Interconnection between Local Exchange Carriers and Commercial Mobile radio Service Providers, CC Docket No. 95-185; Implementation of Sections 3(n) and 332 of the Communications Act, GN Docket No. 93-252, FCC 96-325, page 4.

Commissioner Quello also stated that the FCC "expressly reserved federal jurisdiction under Section 332."[4]

Further, the United States Court of Appeals for the Eighth Circuit upheld the FCC's rules under Sections 251 and 252 of the Act as applied to CMRS carriers and interconnection between CMRS carriers and LECs because those rules were an exercise of the FCC's jurisdiction under Section 332.

> Because Congress expressly amended section 2(b) to preclude state regulation of entry of and rates charged by Commercial Mobile Radio Service (CMRS) providers, see 47 U.S.C. §§ 152(b) (exempting the provisions of section 332), 332(c)(3)(A), and because section 332(c)(1)(B) gives the FCC the authority to order LECs to interconnect with CMRS carriers, we believe that the Commission has the authority to issue the rules of special concern to the CMRS providers, i.e., 47 C.F.R. §§ 51.701, 51.703, 51.709(b), 51.711(a)(1), 51.715(d), and 51.717, but only as these provisions apply to CMRS providers. Thus, rules 51.701, 51.703, 51.709(b), 51.711(a)(1), 51.715(d), and 51.717 remain in full force and effect with respect to the CMRS providers, and our order of vacation does not apply to them in the CMRS context.[5]

Although the Supreme Court ultimately reversed much of the Eighth Circuit's decision on other grounds, no party appealed the Eighth Circuit's holding that the FCC's CMRS interconnection rules were based upon its authority under Section 332.

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[4] Statement of Commissioner James H. Quello, Re: In the Matter of implementation of the Local Competition provisions in the Telecommunications Act of 1996, CC Docket No. 96-98; Interconnection between Local Exchange Carriers and Commercial Mobile radio Service Providers, CC Docket No. 95-185; Implementation of Sections 3(n) and 332 of the Communications Act, GN Docket No. 93-252, FCC 96-325, page 1.

[5] *Iowa Utilities Board v. FCC*, 120 F.3d 753, 800 n.1 (8th Cir. 1997) (subsequent history omitted).

Q. Did the First Report and Order result in changes to Part 20 rules that make it clear that the FCC considers CMRS-LEC interconnection to be governed by both the FCC's Sections 251 and 252 Part 51 and Section 332 Part 20 regulations?

A. Yes. 47 C.F.R. § 20.11(c) was expressly added as a result of the First Report and Order. It states:

> "(c) Local exchange carriers and commercial mobile radio service providers shall also comply with applicable provisions of part 51 of this chapter."[6] (emphasis added)

Q. Is there anything within the Federal Code of Regulations that indicates the FCC's Part 20 and Part 51 regulations are each premised upon both Sections 251/252 and 332 of the Act?

A. Yes. Within the Code of Federal Regulations, following the respective table of contents for the Part 20 and Part 51 regulations there is an identification of the statutory "Authority" upon which the FCC's regulations in a given Part are based. The "Authority" for the FCC's Part 20 regulations includes "47 U.S.C. … 251-254 … and 332 unless otherwise noted". The "Authority" for the FCC's Part 51 regulations similarly includes "… 47 U.S.C. … 251-54 … 332 … unless otherwise noted."

Q. Please summarize Sprint's position on the inclusion of the reference to Part 20 regulations in section 1.1 of the CMRS ICA.

[6] 47 C.F.R. § 20.11(c).

A. It is Sprint's position that CMRS-LEC interconnection is governed by both Part 51 and Part 20 regulations. It is not one or the other, it is clearly both as evidenced by the interpretation of the First Report and Order by two FCC Commissioners involved in the proceeding, the Eighth Circuit's holding, and the full reading of the rules.

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

A. As previously stated in my Direct Testimony, Section 1 of the ICA defines the Purpose and Scope of the entire ICA. 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 Incumbent Local Exchange Carrier ("ILEC"). Further, notwithstanding AT&T's withdrawal of its prior agreement with respect to the Interconnection definition, the CMRS ICA continues to not only contain undisputed language that expressly refers to provisions of Part 20, but also contains multiple negotiated Issues (both closed and open) that pertain to subject matter for which the only currently existing, applicable FCC rules are contained in Part 20.

Q. Where does Part 20 continue to be referred to by the parties in undisputed language in the CMRS ICA?

A. In the CMRS ICA General Terms and Conditions – Part B Definitions, portions of Part 20 continue to be expressly referred to in the following undisputed definitions:

> **"Commercial Mobile Radio Service(s) (CMRS)"** has the meaning as defined at 47 U.S.C. § 332(d)(1) and 47 C.F.R. § 20.9.

"Major Trading Area" ("MTA") has the meaning as defined in 47 C.F.R. § 24.202(a).

Q. Does the CMRS ICA include any agreed upon language that implements an AT&T-ILEC interconnection right for which the source of that right is in the FCC's Part 20, not Part 51, regulations?

A. Yes. Within the CMRS ICA undisputed Section 2, Term of the Agreement provisions that are contained in the General Terms and Conditions – Part A, the undisputed language of subsection 2.2.1 states:

> 2.2.1 *Either Party ("Noticing Party") may serve the other ("Receiving Party") a notice* to terminate the Agreement or *to request negotiation of a successor agreement* pursuant to the Notices Section ("Notice") at any time within one hundred eighty (180) days prior to the end of the Initial Term or at any time during a Month-to-Month Renewal Period. (Emphasis added).

AT&T does not have any right under the FCC's Part 51 rules to request interconnection with a Sprint CMRS entity. The only source of any AT&T-ILEC right to request interconnection with a CMRS provider is found in the FCC's Part 20 regulations at Rule 20.11(e), which states:

> (e) An incumbent local exchange carrier may request interconnection from a commercial mobile radio service provider and invoke the negotiation and arbitration procedures contained in section 252 of the Act. A commercial radio service provider receiving a request for interconnection must negotiate in good faith and must, if requested, submit to arbitration by the state commission. Once a request for interconnection is made, the interim transport and termination pricing described in §51.715 of this chapter shall apply.

It is Rule 20.11(e) that provides the basis for granting AT&T any right to send a Sprint CMRS entity a request to negotiate a successor agreement. Having agreed to

it on the CMRS side because it was consistent with the law, Sprint voluntarily agreed to a similar provision in the CLEC ICA for the sake of consistency in both agreements regarding the subject matter of termination/re-negotiation.

Q. Is it necessary for this Commission to resolve this issue?

A. Yes. It is important that this Commission resolve this issue. The Commission has the authority and duty to resolve disputed issues between the parties. Including the Part 20 reference as stated by Sprint is an accurate representation of the scope of the ICA. More specifically, Part 20 regulations provide a comparable foundation for impacted sections of the ICA just as Part 51 regulations provide the foundation for sections of the ICA.

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

A. Part 20 and Part 51 are both sources of the parties' rights and obligations within the CMRS ICA, as opposed to only one or the other. The Commission should adopt Sprint's language for the CMRS ICA that includes the Part 20 references in both Section 1.1 and the Sprint proposed Interconnection definition. 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.
>
> "**Interconnection or Interconnected**" means as defined at 47 C.F.R. § 20.3 and 51.5.

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)

Q. On page 78 of Mr. McPhee's Direct Testimony, he states as one reason not to include Sprint's language acknowledging the unsettled state of VoIP traffic is that it "does not provide any contractual guidance for the parties to operate under the ICA." Do you agree with this statement?

A. No. Just the opposite. It is important to recognize the fact that the FCC has not classified VoIP as a telecommunications or information service because it gives this Commission guidance in resolving the VoIP issues. Clearly the FCC has jurisdiction over VoIP and Sprint's proposed language recognizes this fact. Such recognition provides the Commission with the guidance necessary to ensure it doesn't exceed its authority to set rates for the exchange of VoIP traffic.

Q. Would the inclusion of the Sprint proposed language create any conflicts with the interpretation of VoIP related contract terms and conditions?

A. No. The inclusion of Sprint's proposed language recognizing that the FCC has not determined whether VoIP is an information service or a telecommunications service will not create conflicts with how VoIP terms and conditions will be interpreted.

Q. Has AT&T identified specific problems with the inclusion of Sprint's proposed language?

A. No. My interpretation of AT&T's arguments are that it does not think Sprint's language is necessary, not that it creates problems with how the VoIP terms and conditions will be interpreted or implemented.

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. What do you understand AT&T's arguments to be with respect to Issue I.A(3)?

A. It appears based on Mr. McPhee's Direct Testimony on pages 78 and 79, that AT&T has two arguments. First, AT&T is claiming that because Sprint is a wireless carrier, it cannot originate VoIP traffic. Second, AT&T is claiming that Sprint does not have the right to include non-Sprint VoIP traffic for termination to AT&T.

Q. Please address AT&T's first argument – that because Sprint is a wireless carrier, it cannot originate VoIP traffic.

A. AT&T is making an argument that simply is not accurate. AT&T is claiming that it is not possible for a wireless carrier to originate VoIP traffic when the facts prove otherwise. As I stated in Direct Testimony, Sprint has a wireless VoIP service called Airave. This femto cell device is a wireless device that utilizes a VoIP broadband connection from the user's premises to enable real-time two-way voice calls both to and from the Public Switched Telephone Network. Airave is sold, invoiced and serviced by Sprint CMRS, using Sprint's licensed spectrum, Sprint's network, and a customer-provided broadband connection.[7]

Q. Does AT&T's wireless affiliate originate VoIP traffic?

A. AT&T's wireless affiliate advertises a device similar to Sprint's Airave that is also a femto cell VoIP-broadband-dependent device.[8] Assuming such a device has been sold and is in service then, yes, AT&T's wireless affiliate is also originating VoIP traffic.

Q. What is the purpose of the wireless/interconnected VoIP services such as Sprint's Airave?

A. Devices like Sprint's Airave and AT&T's femtocell device provide a means to improve wireless coverage. These devices provide a great solution when cell-tower

[7] *See* http://support.sprint.com/support/device/Sprint/AIRAVE_by_Sprint-dvc1230001prd/?ECID=vanity:airave

[8] *See* http://www.wireless.att.com/learn/why/3gmicrocell/.

coverage is lacking. This is but one example of how the market and technological development are pushing forward to solve real customer issues.

Q. How would AT&T wireless affiliate originated-VoIP traffic be delivered to Sprint CMRS?

A. AT&T's wireless affiliate and Sprint CMRS may be either directly or indirectly interconnected. Therefore, anyplace where AT&T's wireless affiliate and Sprint CMRS may exchange traffic between their networks using AT&T ILEC as the transit provider, AT&T ILEC will be using the interconnection facilities established under the Sprint CMRS ICA to transit AT&T's wireless affiliate's VoIP-originated traffic to Sprint CMRS.

Q. Please address AT&T's second argument that Sprint CMRS does not have a right to send either its own or a Third Party's VoIP-originated traffic to AT&T over the very same interconnection facilities that AT&T apparently believes it is somehow entitled to use to send either its own or a Third Party's VoIP-originated traffic to Sprint CMRS.

A. AT&T believes it has rights that Sprint CMRS does not. AT&T believes it can send any VoIP-originated traffic to Sprint CMRS, but Sprint CMRS cannot send any VoIP-originated traffic to AT&T.

Q. Did AT&T cite a basis for the position it is taking on this issue?

A. No. AT&T did not cite a legal or regulatory basis for its position on this issue. As mentioned in my Direct Testimony, AT&T may be taking this position due to potential differences in intercarrier compensation. As I stated in my Direct Testimony, this is not a rate issue. This is an issue of regulatory parity and symmetry. The open question of compensation for interconnected VoIP traffic applies to any interconnected VoIP traffic whether it is AT&T's VoIP traffic or Sprint CMRS's VoIP traffic. AT&T simply wants a form of interconnection that is asymmetrical and discriminatory.

Q. You use Sprint's Airave service as an example in your testimony. Is it the only service for which Sprint needs VoIP interconnection rights?

A. No. I am using the Airave service as an example of a VoIP service for which Sprint CMRS has the right to send VoIP-originated traffic to AT&T via interconnection facilities established pursuant to the CMRS ICA. Sprint's request is broad in scope and covers all forms of interconnected VoIP service.

Q. Is it technically feasible for Sprint CMRS to deliver VoIP-originated traffic (either its own or a Third Party's) to AT&T ILEC over the same interconnection facilities that AT&T ILEC will use to deliver VoIP-originated traffic (either its own or a Third Party's) to Sprint CMRS?

A. Yes. The nature of the traffic does not affect whether it is technically feasible for either Sprint CMRS or AT&T ILEC to send one another VoIP-originated traffic. AT&T's attempt to prevent Sprint CMRS from sending VoIP-originated traffic to

AT&T is simply another example of AT&T attempting to impose a restriction on Sprint as a wireless provider that is discriminatory on its face with no support whatsoever in the FCC's rules.

Q. Why is it important for the Commission to require AT&T to accept interconnected VoIP service traffic from Sprint on its wireless trunks?

A. The Airave device, although it is a wireless device that also uses the Internet protocol, is just an example of the type of innovation that will continue within the industry. VoIP over wireless trunks is also just an example. This type of innovation, be it a new wireless device like Airave or a new technology like VoIP, will not stop because the market will not allow it to. It will also continue regardless of the eventual terms and conditions of the Sprint CMRS or Sprint CLEC ICAs. What would be a shame is if this Commission made rulings that did not allow for such market and technological innovation and evolution to occur in an efficient manner as Sprint is asking in its CMRS and CLEC ICAs. It is obviously good communications policy to enable innovation rather than hinder it. The answer is not to disallow what Sprint is asking, but rather to require the parties to utilize reasonable means to accommodate the inevitable evolution of market and technological innovation. The alternative being argued by AT&T that Sprint can't do this or can't do that because of its billing systems is an unacceptable outcome from a public interest perspective. Sprint has proposed a reasonable solution to AT&T's concern that is consistent with intercarrier billing methods. The Commission can't allow an outdated and cumbersome intercarrier billing system to

hinder efficient interconnection and traffic exchange that are necessary for the deployment of new and innovated products and services.

Q. How should the Commission resolve this issue?

A. The Commission should recognize AT&T's discriminatory action and not allow it to occur. The Commission should recognize the necessity of what Sprint is asking independent of any potential intercarrier compensation differences and require the parties to adopt Sprint's language as stated below.

> 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. On pages 3-4 of his Direct Testimony, Mr. McPhee states that the parties should add any necessary language to address the exchange of Sprint wholesale customer traffic only after Sprint has a wholesale customer that has its own telephone numbers. Do you agree?

A. Certainly not. AT&T's suggestion that the parties wait to include appropriate language seems inconsistent with its alternative argument that the arrangement will not work. If it truly won't work - and I will address that argument next - then there

would be no point in deferring whether or not the language should be included at a later date. As to deferring inclusion of the language, Sprint strongly disagrees with AT&T's position that it is contrary to some "general rule" governing ICA language. First, there is no such formal or general rule from Sprint's perspective. Second, it is no secret that AT&T and Sprint are competitive adversaries on multiple levels. In all likelihood, AT&T would continue to resist inclusion of language at a later point in time and the parties would be back before the Commission to resolve the issue. It is a disputed issue that the Commission can and should resolve in this arbitration.

Q. Could negotiation and probable dispute resolution, only after Sprint has a wholesale customer wishing to utilize its own numbering resources, hamper or delay Sprint's ability to implement such a wholesale service?

A. Yes. Negotiations and dispute resolution are likely to take an extended period of time. Any delay could hamper or delay Sprint's ability to implement the desired wholesale service. In fact, it would be problematic and very risky to even offer such a service to wholesale customers if Sprint first needed to negotiate a workable amendment to the ICA as AT&T is suggesting.

Q. Does Sprint actively solicit wholesale customers, and might the wants and needs of current and potential wholesale customers change over time?

A. Yes. Wholesale services provide an important opportunity for Sprint. Sprint is and has been active in the wholesale market for decades. The manner in which wholesale services are provided has changed over time and it can be expected to

change in the future. Sprint is not seeking unnecessary contract terms. Sprint's experience in the wholesale market suggests that the type of flexibility Sprint is seeking is due to anticipation of a need. And, Sprint should not be put in a position of risking its competitive wholesale service success on the absurd chance that its competitor, AT&T, will be any more inclined voluntarily to accept Sprint's language at some point in the future.

Q. On pages 4-5 of his Direct Testimony, Mr. McPhee states it is not even possible to implement a wholesale service whereby Sprint's wholesale customer has its own telephone numbers. Please respond.

A. Mr. McPhee states that AT&T's second reason for not agreeing with Sprint's language is because AT&T would not be able to route traffic to a Sprint wholesale customer via Sprint if that customer has its own telephone numbering resources because Local Exchange Routing Guide ("LERG") routing does not allow for such routing. I disagree with Mr. McPhee. Sprint's switch would be designated in the LERG as either the local tandem or end office serving the customer's affected NPA-NXX number blocks, thus allowing for proper routing.

Q. Please describe how this would work.

A. I mentioned two scenarios above. First, is when Sprint's switch would be designated in the LERG as the local tandem. Under this scenario, Sprint's switch would be designated in the LERG as a local tandem that Sprint's wholesale customer switch subtends. Sprint's wholesale customer would designate Sprint's

local tandem switch in the Business Integrated Rating and Routing Database ("BIRRDS") as the switch to which all calls are to be routed, including AT&T calls. This is consistent with standard industry processes and practices. In the second scenario, Sprint's end office would be where the numbers actually reside. The Sprint wholesale customer could port its numbers to Sprint or it could assign them to Sprint. Sprint's switch is then designated in the LERG as subtending the AT&T tandem switch causing calls to be routed to AT&T's tandem and then on to Sprint's switch. This second scenario has the same routing effect as Sprint acquiring numbers from the North American Numbering Plan Administrator ("NANPA") for assignment to its wholesale cable interconnected VoIP subscribers.

Q. How should the Commission resolve this issue?

A. Sprint asks the Commission to recognize that there is no basis for delaying the inclusion of language addressing Sprint's wholesale needs. Delay could result in lost wholesale business for Sprint. In addition, I have shown that what Sprint is asking is consistent with current industry practices. For these reasons, 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. You mentioned in your Direct Testimony that what Sprint is asking for in its CLEC agreement is already included as undisputed language in the CMRS ICA. Yet, AT&T is suggesting that Sprint's request is somehow different from what the parties agreed to in the CMRS ICA. Please provide your perspective on AT&T's claim.

A. I disagree with Mr. Ferguson's characterization on pages 2-3 of his Direct Testimony of what is included in the CMRS context for two reasons. First, neither the language in the current Sprint-AT&T ICA nor the undisputed language AT&T agreed to in the CMRS ICA being arbitrated gives AT&T the rights it claims it must have in the CLEC ICA being arbitrated. There is no grant of any "review" or "approval" rights to AT&T in the existing Section 4.8 of the current CMRS ICA or in the undisputed Section 1.5 language of the CMRS ICA being arbitrated. Second, AT&T did not approve or disapprove of any Sprint CMRS affiliates or third-party CMRS network managers utilized in the past or currently being utilized.

Rightfully so, it simply was not a part of the process. Even more compelling is the fact that the new Section 1.5 CMRS ICA language (which is identical to the disputed Section 1.5 CLEC language) makes clear that AT&T is *required to add or delete a Sprint Affiliate or Network Manager upon receiving a ten day notice* requesting an amendment to effect such addition or deletion, with no mention of any AT&T review or investigation right:

> 1.5.3 Upon Sprint's providing AT&T9-State a ten-day (10) 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. [Emphasis added].

Once again, AT&T is simply insisting on discriminatory treatment between Sprint as a CMRS provider vs. Sprint as a CLEC with no basis in federal telecommunications policy to do so.

Q. Please describe what could happen if AT&T is given the ability to perform its "due-diligence investigation."

A. If AT&T is given the right to perform what it refers to as its "due-diligence investigation," Sprint will be put in the position of having AT&T approve or disapprove what would ordinarily and rightfully be internal Sprint network decisions. This could have serious negative consequences to Sprint. It is unnerving to think a Sprint competitor could have veto power over such fundamental network issues as "whom" Sprint can/cannot use to build out Sprint's network. In addition, AT&T would be highly motivated to disapprove or delay any approval because of

the fundamental competitive conflict between the parties. Of course, AT&T will say it would not disapprove or delay simply because it is Sprint's competitor. However, wise policy suggests that such conflicts of interest involving internal business-direction decisions of a competitor simply cannot be sanctioned.

Q. On pages 3 and 5, Mr. Ferguson is suggesting that all Sprint has to do is request an appropriate amendment to the ICA once Sprint has identified an affiliate or network manager and AT&T will "negotiate an appropriate amendment". How do you respond?

A. Mr. Ferguson's suggestion is not workable. If a third-party network manager is contemplated by Sprint to perform certain network functions, Sprint would likely seek competitive bids for such a service. AT&T's suggestion puts AT&T right in the middle of such negotiations, effectively giving AT&T the ability to veto any Sprint decision regarding who Sprint uses to build-out, operate or otherwise manage aspects of Sprint's network. Such a situation is untenable. AT&T's suggestion would also impact a decision with respect to an affiliate or desired affiliate. For example, Sprint may be seeking to purchase a company and part of the basis for doing so would be so that new affiliate could perform network management functions for Sprint. AT&T's proposal would either give it veto power over a Sprint decision to purchase the company or negate some or the entire basis for purchasing the company to begin with. Again, neither is acceptable.

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. After reading Mr. McPhee's Direct Testimony on pages 5-7, what do you understand AT&T's concern to be with respect to Issue I.A(6)?

A. My understanding of AT&T's concern is based on what appears to be Mr. McPhee's summary of AT&T's concern on page 7 where he states, "The Commission should direct the Parties to include AT&T's proposed language in the ICAs to ensure that Sprint cannot contend in the future that AT&T has an obligation under the ICAs to provide section 251(c) interconnection, UNEs, resale or collocation in areas of the state where AT&T does not operate as an ILEC." My understanding of this statement is that AT&T is concerned that Sprint will ask or seek to require AT&T to provide collocation space, UNEs or resale outside of AT&T's serving area. Mr. McPhee also identifies interconnection as a concern which I will address separately.

Q. Does Sprint expect, either now or in the future, AT&T to provide collocation space, UNEs or resale outside AT&T's serving area?

A. No. For starters, neither the CMRS ICA nor the CLEC ICA include "resale" provisions. Nor does Sprint expect AT&T, either now or in the future, to provide collocation space or UNEs outside of AT&T's serving area. I did say in my Direct Testimony that Sprint is allowed to utilize collocation space or UNEs Sprint has acquired from AT&T within AT&T's serving area to serve Sprint customers that

may be located outside AT&T's serving area. That is still Sprint's position on how it is allowed to utilize services purchased from AT&T.

Q. Please address the issue of interconnection as it is one of the concerns raised by Mr. McPhee.

A. I do not believe interconnection should be a concern within the context of disputed Issue I.A.(6). Terms and conditions addressing interconnection are addressed by disputed issues under Section II, How the Parties Interconnect.

Q. Does Sprint have proposed language that addresses the concerns raised by Mr. McPhee?

A. Yes. Sprint proposes language that is specific to the concerns raised by Mr. McPhee. While I will not go through a line-by-line analysis of the language proposed by AT&T, Sprint does not accept AT&T's language in part because of the reasons I discussed in my Direct Testimony. Sprint's proposed language for both the CMRS and CLEC ICAs is as follows:

> 1.6 Scope of Obligations
>
> 1.6.1 AT&T-9STATE's obligation under this Agreement with respect to where AT&T is required to provide collocation or UNEs shall apply only to the specific operating area(s) or portion thereof in which AT&T9STATE is then deemed to be the ILEC under the Act.

Q. What is Sprint's recommendation to the Commission on the resolution of this issue?

A. Sprint asks the Commission to reject the language proposed by AT&T because of its far-reaching and unnecessary implications. Instead, Sprint asks the Commission to require the parties to utilize the Sprint proposed language because it specifically addresses AT&T's concerns with respect to collocation and UNEs as expressed by Mr. McPhee in his Direct Testimony. As mentioned above, neither ICA contains "resale" provisions, and interconnection issues are more appropriately addressed within the context of other disputed issues in Section II and agreed upon interconnection language.

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

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

Q. On page 6 of her Direct Testimony, Ms. Pellerin indicates that AT&T is willing to revise its proposed definition of "Authorized Services" in the context of the CMRS ICA. Does AT&T's revised definition resolve the dispute in the CMRS ICA?

A. No. Apparently AT&T recognized that its definition did not address the fact that AT&T is also a service provider. AT&T's suggested revision, however, merely serves to further highlight the one-sidedness of AT&T's thought process. The following are the parties' now competing "Authorized Services" definitions in the CMRS ICA:

> Sprint (for both CMRS and CLEC ICAs): "Authorized Services" means 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.

AT&T (for CMRS only ICA): "Authorized Services" means those **CMRS** services **that Sprint** provides pursuant to Applicable Law **and those services that AT&T9-State provides pursuant to Applicable Law**. This Agreement is solely for the exchange of Authorized Services traffic between the Parties.

No dispute regarding the following "Applicable Law" definition in both the CMRS and CLEC ICAs: "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.

Rather than imposing the exact same service qualification on each Party, *i.e.*, that a Party's service must be provided "pursuant to Applicable Law", AT&T's language continues to include the additional qualifier that any service provided by Sprint CMRS must be a "CMRS" service. But, AT&T doesn't even broach the subject of what it contends is or is not a "CMRS" service. For example, does AT&T consider transit services provided by Sprint CMRS to be "CMRS" service and, if not, what Applicable Law precludes Sprint CMRS from providing such service? The answer, however, is not found in AT&T's "CMRS service" qualification; it will be governed by the Commission's resolution of the transit Issues that are separately identified for resolution. Accordingly, there is no basis for AT&T's proposed "CMRS service" qualification to be imposed upon Sprint CMRS. The only appropriate restriction is whether or not a Sprint CMRS (and Sprint CLEC in the case of the CLEC ICA) is providing a service that it may provide under the law.

Q. Does Ms. Pellerin offer any compelling reason as to why the "Authorized Service" definition approach used in the CMRS ICA is not equally applicable in the context of the CLEC ICA?

A. No. She merely claims that in the CLEC context the term would be "unnecessarily vague". In the CLEC ICA, rather than use the term "Authorized Services" AT&T changes the definition to "Authorized Services Traffic" that includes numerous specific traffic categories.

Q. On pages 6-7, Ms. Pellerin claims that AT&T's approach in the CLEC definition to specifically identify traffic types will provide certainty and clarity. Do you agree?

A. While it is abundantly clear that AT&T's proposed CLEC ICA Authorized Services Traffic definition is designed with a distinct purpose of restricting the services Sprint CLEC can provide and permitting AT&T to dictate an inappropriate intercarrier compensation construct, AT&T's idea of "certainty" and "clarity" benefits nobody but AT&T. Sprint's definition provides no such restrictions on either party, permitting both parties to exchange traffic derived from any service either party may legally provide.

Q. On page 7, Ms. Pellerin expresses a concern about the potential for a "new traffic category" in the future for which the rating, routing and/or billing are not addressed. Is this a valid concern?

A. No. To the extent AT&T creates a new service that it is legally authorized to provide, Sprint's definition would permit exchange of the traffic derived from that service and Sprint will seek to accommodate AT&T's new service traffic pursuant to rating, routing, and billing mechanics already contained in the ICA. To the extent AT&T shows the existing rating, routing, and billing arrangements in the ICA cannot accommodate its new service traffic, Sprint and AT&T can amend those portions of the agreement or seek regulatory intervention by this Commission. This course of action for any new services traffic introduced by either party is the same under either of the proposed definitions of Authorized Services. Sprint's definition remains superior to AT&T's language in the context of either the CMRS ICA or CLEC ICA because Sprint's language does not restrict any services that the parties can legally provide now or in the future.

Q. On page 8, Ms. Pellerin claims that Sprint's language is "too vague." Do you agree?

A. No. Sprint's Authorized Services definition is straightforward. The definition simply recognizes that the ICA provides the terms and conditions by which both parties will interconnect and exchange traffic derived from the services each party is legally authorized to provide. Sprint's proposed reference to "those services which a Party may lawfully provide pursuant to Applicable Law" is no more vague than AT&T's proposed reference to "those services that AT&T9-State provides pursuant to Applicable Law."

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. Ms. Pellerin claims on page 9 of her testimony that Sprint's traffic terms "intraMTA Traffic", "Exchange Access", "Telephone Exchange Service", and "Telephone Toll Service" are not "grounded in section 251(b)(5)." Is that a valid claim?

A. No. Section 251(b)(5) requires all LECs "to establish reciprocal compensation arrangements for the transport and termination of telecommunications." "Exchange Access", "Telephone Exchange Service", and "Telephone Toll Service" are each statutorily defined telecommunications services and are therefore fully grounded in the Act and Section 251(b)(5). "IntraMTA Traffic" is the term used in the industry to refer to the "telecommunications traffic" that is explicitly defined in 47 CFR § 51.701(b)(1), which is the Part 51 section of the rules that implements Section 251(b)(5) as applied to CMRS providers pursuant to 47 C.F.R. § 20.11(c) . Therefore, "IntraMTA Traffic" is a term that is also fully "grounded in Section 251(b)(5)" – unlike AT&T's proposed CMRS ICA 251(b)(5) definition which, contrary to § 51.701(b)(1), seeks to impose an improper requirement that CMRS traffic be "exchanged directly between the parties" so that AT&T can avoid its obligation to pay reciprocal compensation on 1+ dialed land-to-mobile IntraMTA traffic. That CMRS ICA traffic which is not covered by Section 251(b)(5), *i.e.*, "InterMTA Traffic," is also covered under the 47 CFR Part 20 of the rules. In

summary, each of Sprint's proposed traffic terms is completely consistent with the statute and the rules.

Q. What other reasons does Ms. Pellerin provide for AT&T's insistence on including the term "Section 251(b)(5) Traffic" in the ICA?

A. Only that 251(b)(5) is the "proper term to reflect the parties' rights and obligations regarding reciprocal compensation under the 1996 Act" (Pellerin Direct, page 9).

Q. Is Section 251(b)(5) the only section of the Act that governs the parties' rights and obligations with respect to reciprocal compensation for CMRS-LEC exchanged traffic?

A. No. As explained above, Section 20 of the FCC's rules also govern CMRS-ILEC interconnection. AT&T's insistence on inclusion of its definition for 251(b)(5) traffic is driven by AT&T's desire to limit the amount of traffic that is subject to mutual, reciprocal, reasonable compensation and maximize the amount of traffic subject to its asymmetric, inflated, non-cost-based, access charge compensation scheme by denying the rights and obligations contained in Part 20 of the FCC rules.

Q. Do Sprint's proposed terms, conditions, and rates fully address the compensation rights and obligations of the parties?

A. Yes. Sprint's language fully addresses the mutual compensation rights and obligations of both parties and is fully consistent with both Sections 251 and 332 of the Act and the FCC's rules.

Q. Mr. McPhee addresses this issue with respect to the CLEC ICA. How does he describe "Section 251(b)(5) traffic"?

A. Mr. McPhee states on page 34 of his Direct Testimony that "Section 251(b)(5) traffic originates from an end user and is destined to another end user that is physically located within the same ILEC mandatory local calling scope."

Q. Does Section 251(b)(5) use any of Mr. McPhee's terminology?

A. No. There is no reference to end user physical locations or ILEC mandatory local calling scopes" in Section 251(b)(5).

Q. Do the FCC rules implementing Section 251(b)(5) use any of Mr. PcPhee's terminology?

A. No. With the exception of determining intraMTA for CMRS-LEC traffic, there is no reference whatsoever to end user locations in 47 CFR Subpart H - Reciprocal Compensation for Transport and Termination of Telecommunications Traffic. Nor is there any reference whatsoever to "ILEC mandatory local calling areas."

Q. If neither Section 251(b)(5) of the Act nor the FCC rules implementing Section 251(b)(5) refer to end user physical locations or ILEC mandatory local calling

scope, why does AT&T insist on using that terminology for a definition of 251(b)(5) traffic in the ICA?

A. AT&T is pushing an ILEC-centric approach to minimize the payment of applicable mutual, reciprocal, reasonable compensation and maximize the payment of access charges from Sprint to AT&T.

Q. How should the Commission resolve issue I.B(2)?

A. The Commission should reject inclusion of AT&T's proposal to include the term "Section 251(b)(5) traffic" in the CMRS and CLEC ICAs. Sprint's language provides appropriate statutorily defined terms for the types of traffic to be exchanged and provides rights and obligations of the parties for each traffic type, including the specific and appropriate applicable rating, routing, and billing provisions. Therefore, there is no need for an additional traffic definition, particularly when the definition is designed to deny rights and obligations and to inappropriately apply access charges to traffic to which access charges do not appropriately apply.

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

Q. At pages 13-14 of her testimony, Ms. Pellerin acknowledges that the parties agree to the definition of IXC in the ICA, however, she suggests that a different definition for interexchange carrier should also apply. Do you agree?

A. No. Once again, AT&T is attempting to impose its access tariffs upon traffic to which access charges do not apply. Ms. Pellerin refers to AT&T's switched access tariff definitions and claims (at page 15) that it is "not unusual" for ICAs to reference tariffs. It is important to note, however, that she does not and cannot claim that there is any obligation for Sprint CMRS or CLEC to acquiesce to the inclusion of AT&T's switched access tariff definitions in the ICA.

Q. On pages 14-16, Ms. Pellerin suggests that Sprint CMRS and CLEC become IXCs if they provide a service between exchanges. Please explain the flaws of this assertion.

A. It is useful to understand switched access service and the IXC business. Switched access was established in the era of separate local monopolies and long distance carriers as a component of Telephone Toll Service - before the introduction of today's bundled all-distance services, before the 1996 Telecom Act, before wireless service became commonplace, and before CLECs even existed. Under the switched access regime, customers pre-subscribe to an IXC for their landline long distance calls and pay Telephone Toll Service charges to the IXC for their long distance calls. The LEC on the originating end of the call collects switched access charges from the IXC for providing switched access to the IXC's Telephone Toll Service customer on the originating side of the call, and the LEC on the terminating side of the call collects switched access from the IXC for providing switched access to the customer terminating the call. Switched access rates were intentionally set at levels far above cost and set forth in tariffs with the intention of requiring long distance

service to subsidize local service. Because local and long distance service providers were not competing with each other this scheme did not distort competition since all IXCs were similarly burdened by the excessive access rates.

Today, switched access tariffs remain and continue to apply to Telephone Toll Service, but the 1996 Telecom Act confines application of those tariffs to Telephone Toll Services provided by landline long distance IXCs. The Telecom Act requires mutual, reasonable, cost-based, reciprocal compensation arrangements for traffic exchanged between LECs and for traffic exchanged between CMRS providers and LECs. The access charge regime does not apply to such exchanges of traffic.

Q. Besides retail Telephone Toll Service, what other services do IXCs provide?

A. IXCs often carry traffic of other retail Telephone Toll Service providers on a wholesale basis. For example, AT&T's IXC affiliate often carries the Telephone Toll Service traffic of independent LECs and is compensated by the retail Telephone Toll Service provider for wholesale carriage of the retail Telephone Toll Service provider's traffic. It is worth noting that while AT&T suggests that Sprint CMRS and CLEC should be considered interexchange carriers so that AT&T can impose its switched access charges on them for any traffic that may cross an exchange boundary, AT&T avoids suggesting that it should pay wholesale IXC fees to Sprint for carrying AT&T-customer-originated traffic that AT&T hands to Sprint if the traffic crosses an exchange boundary. For example, when AT&T hands off a

call to Sprint CMRS in Louisville over interconnection facilities pursuant to the ICA and Sprint CMRS carries that call to a Sprint wireless customer in Los Angeles, AT&T does not intend to pay Sprint wholesale IXC fees for carrying AT&T's call between these distant exchanges. In other words, AT&T uses a very selective characterization of Sprint as an IXC. It wants Sprint to be considered an IXC for purposes of inappropriately applying its switched access tariff, but does not wish Sprint to be considered an IXC if it would mean AT&T has to pay Sprint for carrying its calls across exchange boundaries. In any event, the ICA correctly defines the term IXC and AT&T's access tariff does not apply.

Q. Has AT&T made arguments consistent with Sprint's arguments regarding telephone toll service?

A. Yes. The "old" AT&T did argue that an interexchange service is not necessarily a toll service. A toll service, by definition, includes a separate charge.[9] Such definitions can't simply be ignored.

Q. Would AT&T's wireless and CLEC affiliates voluntarily acquiesce to AT&T's interexchange carrier construct and pay switched access charges to Sprint in the same manner AT&T suggests Sprint pay AT&T?

A. I don't know. But, since AT&T wireless and CLEC affiliates did not participate as parties to the ICA negotiations, are not parties to this arbitration, and are not parties to the ICA, AT&T has effectively shielded its wireless and CLEC affiliates from

[9] *In the Matter of Petition of WorldCom, Inc. et al Pursuant to Section 252(e)(5) of the Communications Act for Preemption of the Jurisdiction of the Virginia State Corporation Commission Regarding Interconnection Disputes with Verizon Virginia Inc., and for Expedited Arbitration,* Memorandum Opinion and Order, 17 FCC Rcd 27039 , (rel. July 17, 2002), ¶. 290.

the very treatment AT&T wishes to impose on Sprint CMRS and CLEC. The Commission should reject such asymmetry and correctly confine the definition of Switched Access to the IXC definition in the ICA.

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. On pages 92-95 of his testimony, Mr. McPhee claims that the Commission should adopt its definitions of interMTA and intraMTA traffic in the CMRS ICA based on AT&T's assertion that AT&T's methodology for distinguishing the traffic is more accurate. Do you agree?

A. No. As fully explained in Sprint witness Farrar's direct and rebuttal testimony, AT&T's methodology is flawed.

Q. At pages 93-94 of his testimony, Mr. McPhee cites paragraph 1044 of the FCC's First Report and Order and suggests that distinguishing inter/intraMTA traffic based on cell-sites is the "primary" methodology endorsed by the FCC. Is that an accurate characterization of paragraph 1044?

A. No. Paragraph 1044 does not use the word "primary" in describing the cell-site methodology, rather it poses the cell-site method and the POI method as alternatives. If the FCC wished to adopt a single or primary method, it likely would have codified the methodology in its rules. It did not; therefore this Commission is free to determine an appropriate methodology.

Q. On page 94, Mr. McPhee claims that Sprint is attempting to reduce its intercarrier compensation obligations for interMTA traffic. Is payment of switched access rates for CMRS-LEC interMTA traffic an "obligation"?

A. No. As explained fully in my testimony and the testimony of Sprint witness Farrar, there is no law or regulation requiring the payment of tariffed switched access rates for interMTA traffic. AT&T is simply attempting to unduly enrich itself by applying switched access rates to traffic for which there is no obligation to pay switched access rates.

Q. How should the Commission resolve this issue?

A. The Commission should adopt Sprint's definitions for IntraMTA Traffic and InterMTA Traffic. As explained in my Direct Testimony, Sprint's proposed definitions are based on known and fixed network points for both parties, provide for ease of administration for both parties, and are consistent with FCC guidance.

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. At pages 95-96 of his testimony, Mr. McPhee describes the handling and compensation for a "typical" land-to-mobile call from Atlanta to a wireless customer in Dallas, Texas. Please comment.

A. Essentially, Mr. McPhee suggests Sprint CMRS should pay AT&T originating switched access charges for calls AT&T hands to Sprint CMRS in Atlanta and Sprint CMRS carries to Dallas based on the premise that AT&T gets paid originating access if it handed an Atlanta-to-Dallas call to an AT&T customer's presubscribed IXC. The premise is fundamentally flawed.

First of all, when AT&T hands such a call to the AT&T customer's presubscribed IXC, both AT&T and the IXC have a direct business relationship with the AT&T customer and the IXC imposes charges on the caller for that call. When Sprint CMRS carries that call, although AT&T still has a direct business relationship with the caller for that call, Sprint CMRS has *no* business relationship *at all* with the AT&T customer that originated the call, nor does Sprint CMRS impose any charges on AT&T's customer for carrying that call. If AT&T wanted to fairly invoke the IXC construct in total, rather than as a means to unduly enrich itself through the improper imposition of switched access charges, it would acknowledge that Sprint CMRS should be charging AT&T for wholesale carriage of AT&T customer-originated long distance call that was provided to the AT&T customer via the customer's AT&T provided service. But, that is not at all AT&T's proposed construct. Instead, AT&T's construct is designed to: a) require Sprint CMRS to bear the entire cost of carrying the call to Dallas; 2) require Sprint CMRS to pay

AT&T's switched access charges with no means of recovering those switched access charges from an originating caller that is not a Sprint CMRS "customer" in any sense of the word: and 3) ensure that Sprint CMRS receives no compensation from AT&T for terminating an AT&T customer-originated call. The Commission should reject AT&T's preposterous construct.

Q. At page 96, lines 22-23 of his testimony, Mr. McPhee claims that Sprint CMRS is "acting as an interexchange carrier" for traffic originated by a Sprint CMRS customer that Sprint transports across "*LATA boundaries*", and therefore Sprint CMRS must terminate this traffic using Feature Group Access service. Please comment.

A. As an initial observation, it must be stated that absolutely nowhere does Mr. McPhee provide any explanation as to how, when, or under what FCC authority a *LATA* boundary is ever applied in the context of a CMRS-ILEC call exchanged over interconnection facilities. Once again, AT&T is attempting to foist the switched access charge regime onto CMRS-LEC traffic exchange. Because this issue of the inapplicability of access charges to this traffic has been addressed several times throughout Sprint's testimony, there is no need to repeat all of the arguments here, so I will only briefly address Mr. McPhee's bald assertion that Sprint must route interMTA traffic over "Feature Group Access service." Because there is no obligation to pay access charges for this traffic, there is likewise no obligation to route the traffic over Feature Group Access. Sprint CMRS and AT&T both route interMTA traffic over interconnection facilities. Sprint CMRS is not

"acting as an interexchange carrier" simply because it provides all-distance wireless services that happen to cross LATA boundaries. LATAs are a landline construct that do not apply to CMRS services.

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

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)?

Q. Has AT&T recognized that combining multi-jurisdictional traffic on the same trunk groups is technically feasible?

A. Yes. In an arbitration proceeding before the Georgia Public Service Commission in 2001, AT&T (then BellSouth) correctly recognized and agreed with Sprint that it is technically feasible to combine multi-jurisdictional traffic on the same trunk groups.[10] This fact is key to the resolution of this issue because Sprint is simply asking for the right to combine such traffic. Sprint is not, within the context of this

[10] Docket No. 12444-U, Order dated June 1, 2001, at page 4 (Issue 9).

issue, asking the Commission to determine the compensation for each type of traffic over a multi-jurisdictional trunk.

Q. Is AT&T refusing to accept multi-jurisdictional trunking?

A. No. Mr. Christensen's Direct Testimony on page 5 states that he "believes the parties can come to an agreement regarding this issue." This suggests that AT&T is not against multi-jurisdictional traffic, but rather it is concerned about how it will be done.

Q. Does Mr. Christensen express AT&T's concerns with Sprint's proposal regarding multi-jurisdictional trunking?

A. Yes. On pages 4-5, Mr. Christensen has identified two concerns. First, AT&T is concerned that Sprint will attempt to take multi-jurisdictional trunking to multi-carrier trunking. Second, AT&T is concerned Sprint may seek to "shop" the parties' current network architecture in the Southeastern region to other AT&T regions.

Q. How do you respond to AT&T's first concern that Sprint will attempt to take multi-jurisdictional trunking to multi-carrier trunking?

A. Mr. Christensen does not provide any insight into what the concern really is, so I'm assuming he is referring to multi-jurisdictional trunking when Sprint is also a transit provider of other carriers' traffic. Sprint's right to be a transit provider is addressed in Issue I.C(6) by Sprint witness Mr. Randy Farrar. I am also assuming that the

concern is related to AT&T's ability to bill third-party traffic that transits Sprint's network and terminates to AT&T over multi-jurisdictional trunks. This should not be a concern to AT&T because third-party traffic will be handled in the same manner as it is handled when AT&T is the transit provider -- the transit provider will provide the terminating carrier with the appropriate records that enable the terminating carrier to identify the originating third-party carrier and bill the third-party carrier appropriately.

Q. How do you respond to AT&T's second concern that Sprint may seek to "shop" the parties' current network architecture in the Southeastern region to other AT&T regions?

A. I have two responses to AT&T's second concern that Sprint may seek to "shop" the parties' current network architecture in the Southeastern region to other AT&T regions. First, AT&T is making an assumption that Sprint "may" do something in the future in different states, and that has no relevance to the issue being disputed in this arbitration. Second, if Sprint were to "shop" the current network architecture used in the Southeastern AT&T region to another AT&T region, adoption of that usage would be an issue to be decided in the AT&T region within which Sprint were making such an attempt. Neither has relevance in this arbitration.

Q. You mentioned in your Direct Testimony that AT&T sends multi-jurisdictional traffic to Sprint because Sprint generally interconnects at

AT&T's tandems. Do Sprint CMRS and AT&T already utilize multi-jurisdictional trunking?

A. Yes. The Sprint CMRS interconnection trunks are already multi-jurisdictional in nature. The existing ICA utilizes an interMTA factor to account for traffic for which AT&T has historically billed Sprint inter- or intrastate access charges.

Q. How should the Commission decide this issue?

A. Sprint asks the Commission to require AT&T to receive traffic from Sprint over its interconnection trunks in the same manner in which AT&T sends Sprint traffic. Sprint asks the Commission to require the parties to utilize the more efficient form of interconnection requested by Sprint and require the parties to adopt 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 bold and 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 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. What is AT&T's primary objection to allowing Sprint to combine wireless and wireline traffic on the same trunk group?

A. AT&T's primary objection is that it claims it cannot bill the traffic terminated to it accurately because the local calling scope is different for wireline and wireless traffic. See Christensen Direct Testimony, at page 6. Sprint is aware of this concern and has included language to accommodate AT&T's concern. The intent of this language is to ensure that Sprint can identify the traffic such that it can be billed appropriately. The entire section is provided below. The bold and italicized language is intended to address AT&T's concern.

> 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.***

Q. Mr. Christensen references a high level network diagram in his Direct Testimony on page 6 that he also includes as Exhibit FCC-1. Does the diagram accurately show how Sprint will route multi-use traffic to AT&T?

A. Not exactly. The difference may not be of much consequence, but for the record, I would like to clarify how Sprint would route multi-use traffic to AT&T. This would result in a change to Mr. Christensen's top diagram. Rather than Sprint's MSC and Sprint's CLEC switch being connected together and then connected to Sprint's POI at the AT&T Tandem Building, the Sprint MSC and CLEC switch would be connected in series and then only one of them would be connected to Sprint POI at the AT&T Tandem Building.

Q. Do you understand the trunk segregation issue discussed by Mr. Christensen on pages 6-9 of his testimony?

A. Yes. AT&T states that it rates traffic for a particular trunk group based on a determination of whether the traffic is subject to reciprocal compensation or access. The local calling area is used for wireline traffic and the MTA is used for wireless traffic. Calls within the local calling area or within the MTA are subject to reciprocal compensation. AT&T uses separate trunk groups for wireline and wireless traffic. In other words, AT&T differentiates the wireless traffic from wireline traffic based on the trunk group. Once AT&T knows whether the traffic is wireless or wireline, it is able to bill the traffic as a wireline or wireless call.

Q. Is there a way to distinguish between wireless and wireline traffic using industry standard information, rather than placing it on separate trunks?

A. Yes. There is a CCSS7 or CCS signaling parameter that identifies a call as either wireline or wireless.[11] This parameter is called the Originating Line Indicator ("OLI"). The originating switch of a call populates this field with information necessary to distinguish between wireless and wireline calls. Wireless calls have two designations, 461 or 462. Any call with the OLI parameter populated with 461 or 462 will be a wireless originated call.

Q. Have the parties agreed to use SS7 signaling?

A. Yes. In fact, it is a requirement where technically feasible.

Q. Is there a requirement to populate the OLI parameter you discussed above that will enable AT&T to identify wireless traffic?

A. Yes. In the CLEC ICA, the parties each appear to propose the following language found in Attachment 3 Network Interconnection within Sprint's proposed Section 3.5 (for both CMRS and CLEC) and within AT&T's proposed CLEC Section 3.7.

> "All CCS signaling parameters will be provided, including automatic number identification ("ANI"), originating line information ("OLI") calling company category, charge number, etc."

Sprint does not know why AT&T is apparently unwilling to accept the same language in the CMRS ICA.

[11] CCSS7 refers to the Common Channel Signaling System Number 7 protocol defined by the International Telecommunications Union. The CCSS7, CCS or simply SS7 protocol is used for call set-up purposes within the Public Switched Telephone Network, or PSTN.

Q. Do you know if AT&T uses the CCS signaling for billing purposes?

A. I don't know for certain whether AT&T uses the CCS signaling for billing purposes. I do know that it can be used because prior to the spin off of Sprint's local telephone division, CCS signaling was being used by Sprint's local telephone division for billing purposes.

Q. Does the fact that Sprint will provide AT&T with the necessary information to distinguish wireless calls from wireline calls on every call sent to AT&T via the CCS signaling information, dictate to AT&T that it must use it?

A. No. Sprint is providing AT&T with the means by which AT&T can distinguish between wireless and wireline traffic as AT&T states is necessary to bill for traffic correctly, but Sprint is not dictating to AT&T that it must use the information.

Q. If AT&T chooses to not use the information provided by Sprint on every call, what alternative is available to AT&T?

A. If AT&T chooses not to use the information provided by Sprint, then Sprint would be willing to provide AT&T with appropriate factors to distinguish the traffic. Like all factors, the factors provided in this instance could be audited by AT&T to ensure their accuracy.

Q. Are factors commonly used in carrier-to-carrier billing?

A. Yes. Carriers commonly use factors when billing each other. In fact, the contract being negotiated by the parties utilizes factors. Factors are also used for billing of terminating switched access to estimate the amount of interstate versus intrastate minutes of use.

Q. On page 11-12, Mr. Christensen is trying to rationalize how combined wireless and wireline traffic AT&T sends Sprint over local interconnection trunks is different than what Sprint is wanting to do in the reverse direction, i.e., from Sprint to AT&T. Is his explanation a valid basis for not allowing Sprint to use the interconnection trunks in the same way AT&T uses them?

A. No. On page 11, lines 12-13, Mr. Christensen admits that AT&T the ILEC sends both wireless and wireline traffic to Sprint over the very same local interconnection trunks Sprint is seeking to use in the same manner, but in the reverse direction. However, he then goes on to try to rationalize that Sprint's use is different because the wireless traffic sent by AT&T is not AT&T the ILEC's traffic, but rather traffic of its wireless affiliate, AT&T Mobility. In other words it is AT&T affiliate "transit" traffic. Call it what you want – transit or multi-use –, but, in fact, it is the exact same concept. Regardless of whom the traffic belongs to, AT&T combines wireless and wireline traffic on the same trunk groups. Sprint is simply seeking to do the same thing in reverse.

Q. Please explain what you mean when you say the AT&T and Sprint uses are not different.

A. Mr. Christensen says it is acceptable for AT&T to send wireless and wireline traffic over the same trunks because some of the traffic is AT&T ILEC's traffic and some is AT&T Mobility's traffic. Sprint agrees with and accepts AT&T's argument because that is how the system has worked since 1996. What Sprint is seeking is an acknowledgment and implementation of Sprint's right to do exactly the same thing as AT&T. For example, if Sprint CLEC sends Sprint CMRS wireless traffic over wireline trunks it is not Sprint CLEC traffic; rather it is Sprint CMRS traffic, i.e., transit traffic. Conversely, if Sprint CMRS sends Sprint CLEC wireline traffic over wireless trunks it is not Sprint CMRS traffic; it is instead Sprint CLEC traffic, *i.e.*, transit traffic.

Q. Your explanation dovetails with another disputed issue, I.C(6), which is whether Sprint has the right to be a transit provider, is that correct?

A. Yes. Mr. Randy Farrar is Sprint's witness for Issue I.C(6) related to Sprint's right to be a transit provider, so I will not delve into Mr. Farrar's arguments within my testimony. That said, the issues are related and illustrate AT&T's attempt to restrict Sprint's right to establish an efficient and acceptable form of interconnection that is consistent with Sprint's network evolution, *i.e.*, combining different types of traffic over combined trunks so as to take full advantage of Sprint's switching platform capabilities. Sprint does not have a need or requirement to maintain separate networks in an environment where the lines between wireline and wireless, telecommunications and information services are converging.

Q. Given the admitted fact that AT&T sends both wireless and wireline traffic to Sprint over combined trunks, does Sprint bill for traffic it receives over the combined use trunks from AT&T?

A. Yes. Just like AT&T, Sprint has the same need, desire and right to bill for traffic delivered to it.

Q. Mr. Christensen's Direct Testimony on page 6 suggests that Sprint's request for a more efficient form of interconnection is not more efficient. How do you respond?

A. Mr. Christensen gives lip service to the principle that combined trunks are more efficient. However, what he is really attempting to do is argue that the principle should be ignored as to anyone except AT&T. He turns Sprint's desire for more efficient interconnection into an issue of a less convenient form of interconnection from AT&T's perspective and because it is less convenient, he claims it is not efficient. Mr. Christensen really can't comment on whether combined trunking is more or less efficient from Sprint's perspective other than from his high-level agreement that it is more efficient in principle. It is up to Sprint to determine for itself what the best form of interconnection is. Sprint has determined that combined trunking is beneficial and that is what Sprint is asking it be allowed to implement.

Q. How should the Commission decide this issue?

A. Sprint asks the Commission to look at this issue from Sprint's perspective, mindful of the pro-competitive purposes of the Act itself. All Sprint is asking is that it be

allowed to exercise its rights in the same manner as AT&T is exercising its rights. There is no rule or law that I am aware of that gives AT&T unique rights over those of Sprint on this issue. I would also ask the Commission to look at the bigger picture of the issue and not base its decision on whether there is a decade-old billing system solution readily available to address the point to which services and network capabilities have evolved. There is no basis in the FCC's rules or the law to permit AT&T's billing-system "tail" to wag the rest of the industry's efficiently evolving network "dog". That said, I ask the Commission to recognize that Sprint does have a billing solution and that Sprint's proposed language would not allow Sprint to combine traffic until that solution is in place.

Finally, I ask that the Commission support Sprint's request to combine traffic as requested, that the decision provide the opportunity to Sprint of showing how it can work without any AT&T veto power over implementation, because I can assure you AT&T will deny, delay and foot drag to keep Sprint from doing this. Sprint believes that its proposed language is adequate to implement its desire to combine traffic and asks the Commission to require the parties to adopt Sprint's language as stated below. The specific portion of Section 2.5.4 that pertains to the "multi-use" issue is the bold 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. At page 72 of his testimony, Mr. McPhee describes Sprint's proposed language as "minimal, vague, and somewhat circular." Do you agree?

A. No. First of all, it appears that Mr. McPhee is not accurately quoting Sprint's actual proposed language. He references "Attachment 3, section 6.9." However, Sprint's language for this issue is found in Sections 6.1.4 and 7.1.2. and is shown below for convenience:

> 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.

Perhaps Sprint's language is not as long-winded as AT&T's language, but it is clear and sufficient for the matters it addresses, namely: 1) ensuring that neither Sprint nor AT&T will misrepresent switched access traffic as traffic subject to reciprocal compensation; and 2) indicating that parties may take different positions on how to

determine end points for jurisdictionalizing traffic. Sprint's approach is premised upon the party's existing ICA which has served its purpose well for almost ten years. Further, the additional terms applicable to traffic delivered over interconnection facilities for which switched access charges may actually apply, *i.e.* traditional Telephone Toll Service traffic, is the specific subject of the following issue, *i.e.*, Issue III.A.4(2). The proposed AT&T language that is disputed by Sprint in Issue III.A.4(1) is not traceable to the parties' existing ICA. Instead, it appears to be yet another attempt by AT&T to load-up the ICA with unnecessary catch-all provisions that AT&T may attempt to rely upon to convert anything it can into switched access traffic to the extent traffic does not fall into some AT&T pre-defined bucket for treatment as traffic that is not switched-access traffic.

Q. On page 71, Mr. McPhee claims AT&T's proposed language is "clear and concise as to which traffic falls under switched access compensation, and what traffic does not." Please comment.

A. AT&T's language contains AT&T's term "Section 251(b)(5) Traffic". As discussed above, AT&T's proposed "Section 251(b)(5) Traffic" is in dispute. By default, AT&T's language would also appear to apply the switched access regime to VoIP traffic, which is not appropriate. So, while AT&T may choose to characterize its language as "clear" or "concise", Sprint can't agree to language that references or implicates other disputed matters. Such language has no place in either ICA and should be rejected by the Commission.

Issue III.A4(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. Mr. McPhee discusses this issue at pages 73-76 of his testimony and suggests that intercarrier compensation is based upon the location of the calling and called parties. Please comment.

A. It is important to note that neither Section 251(b)(5) of the 1996 Telecom Act, nor the FCC's rules refer to end points of calls for LEC-LEC traffic exchange. The end points of a call are used for traffic subject to switched access charges to determine whether intrastate or interstate access charges apply. However, before considering end points to a call, the type of intercarrier compensation to be applied is based on the service that gave rise to the traffic in the first place. For example, traffic caused by dial-up calls to the internet is subject to the ISP-bound compensation mechanism; traffic caused by the provision of wireless service is subject to the reciprocal compensation rules in Section 251(b)(5) and general mutual, reasonable compensation principles as implemented through the FCC's Part 20 Rules; compensation, if any, for traffic caused by the provision of VoIP services has yet to be determined by the FCC; traffic caused by the provision of Telephone Exchange Service is subject to Section 251(b)(5) reciprocal compensation; and traffic caused by the provision of Telephone Toll Service is subject to switched access charges. The end points are therefore secondary in determining intercarrier compensation.

Q. At page 74 of his testimony, Mr. McPhee suggests that intercarrier compensation should be determined without regard to the retail service that gives rise to the traffic. Please comment.

A. If AT&T really believed that the retail service is irrelevant to the determination of intercarrier compensation, then AT&T would pay access charges on dial-up internet calls that are carried across exchange boundaries and AT&T's wireless affiliate would pay access charges on wireless calls that originate and terminate in different exchanges. Since retail customers ultimately bear the costs of intercarrier compensation, the intercarrier compensation which applies should reflect the retail service that gives rise to the inter-carrier traffic.

Q. On page 75, Mr. McPhee expresses concern about not being compensated for bundled local/long distance services. Please comment.

A. Since AT&T is likely the industry leader in offering landline bundled local/long distance services, it seems AT&T and its customers would benefit by excluding these bundled service offerings from being subjected to switched access charges. To the extent AT&T insists on subjecting landline long distance service to switched access charges when offered as a bundle with local service, Sprint is amenable to using AT&T's mandatory local calling area as the basis for delineating CLEC/AT&T Exchange Service traffic subject to reciprocal compensation and CLEC/AT&T Telephone Toll Service traffic subject to switched access charges.

Q. Also on page 75, Mr. McPhee expresses concern that Sprint's language does not address Primary Toll Carrier arrangements. Please comment.

A. Sprint's language covers the exchange of Telephone Toll Service and I'm not aware of any reason why this Telephone Toll Service traffic requires any different or specialized treatment from other Telephone Toll Service traffic that the parties may exchange. Sprint is not a party to AT&T's Primary Toll Carrier arrangements, and the existence of such arrangements has not been cause for any special mention in the existing Sprint-AT&T ICA for the past ten years.

Q. On page 75-76, Mr. McPhee claims that the ICA must include terms regarding the exchange of records for 8XX traffic. Please comment.

A. Sprint witness Felton addresses the issue of appropriate record exchanges in issue IV.G.2.

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

A. The Commission should adopt Sprint's proposed language:

> (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. Could you find any AT&T direct testimony on Issue III.A.4(3)?

A. No. However, this issue is addressed in other parts of my testimony regarding multi-jurisdiction and multi-use trunking. Feature group access should not be required as efficient network design and deployment allow for integrated trunking arrangements. AT&T's insistence on requiring Sprint to purchase feature group access is likely tied to the matter of intercarrier compensation and Sprint has

indicated that it is willing to pay the appropriate compensation for its traffic. As a result, Sprint should not be required to purchase feature group access for the exchange of traffic.

Issue III.A5. Should the CLEC ICA include AT&T's proposed provisions governing FX traffic? (CLEC)

Q. Does Mr. McPhee characterize Sprint's position on the treatment of FX traffic accurately?

A. Not completely. Mr. McPhee discusses this issue at pages 65-70 of his testimony and indicates that Sprint wants FX traffic to be treated as 251(b)(5) traffic because Sprint did not provide alternative language. In my Direct Testimony, I stated that Sprint's position is that compensation for FX traffic be treated like all other traffic, i.e., based on the originating and terminating telephone number.

Q. Do you dispute Mr. McPhee's discussion as to how CLECs typically provide FX service on pages 66-67 of his Direct Testimony?

A. While I can't speak for all CLECs, Mr. McPhee's explanation appears to be mostly accurate because regardless of how an FX service is configured, the functionality is the same as stated by Mr. McPhee on lines 7-10 of page 67. That said, CLEC networks are designed differently than ILEC networks due, in part, to the fact that the CLEC network switches typically cover a much larger geographic area. Consequently, a single CLEC switch generally serves an area covering multiple

ILEC central office switches. Mr. McPhee states that CLECs reassign telephone numbers to a switch that is different from what he refers to as the "home" switch. Again, I can't speak for other CLECs, but Sprint would not reassign a number to a switch not covering the area served from the switch to which the numbers were originally assigned. Instead, a number residing in one area can serve another area because the CLEC or the customer has configured what I refer to as a long loop from the CLEC switch to the customer location. The number remains associated with the switch to which it was originally assigned. The other distinction I make is that Mr. McPhee states that CLECs take an assigned NPA-NXX code and deploy it in another switch miles away. First, FX services are generally provided on a more granular level than an entire 10,000 number NPA-NXX code. Certainly customers may want multiple telephone numbers, but generally not 10,000.

Q. Could Mr. McPhee's description of how he understands that CLECs provision FX service relate to how dial-up ISP service is provided?

A. Yes it could. It seems that part of the basis for AT&T's position that all FX traffic be subject to bill and keep is because some dial-up ISP bound service is provided via FX service. In those cases there may be large blocks of numbers.

Q. Is your statement regarding what you think AT&T's concern is with FX traffic supported by Mr. McPhee's on pages 68-69 where he discusses consequences if calls made to subscribers to a CLEC's FX-like service and on page 69 where he discussed how CLECs use FX services?

A. Yes. It appears AT&T is concerned about a CLEC's ability to generate artificially high intercarrier reciprocal compensation revenues from AT&T without having to charge the CLEC subscriber for the benefits of the FX service. This concern is consistent with the high volumes generated by dial-up ISP traffic. However, Mr. McPhee's comment about not having to charge the CLEC subscriber is misleading. As I have described the manner in which a CLEC provides service, via a long loop provided by the subscriber or the CLEC, there is a cost for the loop that must be paid by the subscriber or the CLEC and passed on to the subscriber. That cost may be less expensive than the manner in which AT&T provides its FX service, but that's what competition is about.

Q. If AT&T's concern is dial-up ISP service or ISP-bound traffic, hasn't the FCC addressed such traffic?

A. Yes. As I stated in my Direct Testimony on page 77, the FCC has specifically addressed this traffic and determined a rate of $0.0007 per minute of use.

Q. If the FCC has determined a specific rate for ISP-bound traffic, can this Commission order the parties to use a different rate, such as bill and keep, as suggested by AT&T?

A. While I am not an attorney, I believe it could do so if the parties agreed. The FCC clearly has jurisdiction over this traffic and as a result it established a rate. ILECs such as AT&T argued vehemently that the FCC do so. However, I do believe that the parties could voluntarily agree to a different rate for the traffic such as bill and

keep, and Sprint would be willing to consider that if AT&T would consider bill and keep for other forms of traffic, as opposed to simply where bill and keep is beneficial for AT&T.

Q. On page 68, lines 7-9, Mr. McPhee states that FX service is functionally equivalent to an intraLATA access call. Doesn't that suggest it not be subject to bill and keep?

A. Yes. Generally, AT&T wants to bill access charges for toll calls and reciprocal compensation for local calls. I believe AT&T's departure as it relates to FX service is only because it will benefit from not having to pay reciprocal compensation or even $0.0007 per minute of use for ISP-bound traffic. I'm assuming that AT&T has weighed the benefits of this approach against any loss of access revenue compared to billing for FX service based on the originating and terminating telephone number.

Q. Finally, Mr. McPhee states on page 70 that FX traffic is a distinct category of traffic subject to a different compensation mechanism than other categories of traffic. Do you agree with this statement?

A. No. While Mr. McPhee states that FX traffic is a distinct category of traffic subject to a different compensation mechanism than other categories of traffic, he does not cite a source for his claim. I am not aware of any basis for claiming that regular FX traffic is in a distinct category or class.

Q. Has this Commission addressed intercarrier compensation for FX traffic?

A. Yes. This Commission addressed FX traffic in a 2000 arbitration between Level 3 Communications and BellSouth.[12] The Commission found that FX and virtual NXX services should be considered local traffic when the FX or virtual NXX customer is physically located within the same LATA as the calling area with which the telephone number is associated. In other words, intraLATA FX traffic was to be treated as local traffic and subject to reciprocal compensation.

Q. Has the FCC addressed intercarrier compensation for FX traffic?

A. Yes. While the disputes between the parties were different, the decision reached by the FCC is consistent with Sprint's position on Issue III.A(5) that intercarrier compensation for FX traffic should be based on the dialed digits, i.e., the originating and terminating NPA-NXX codes. The dispute between the parties before the FCC was whether access charges (as argued by the ILEC) or reciprocal compensation (as argued by WorldCom, Cox and the former AT&T) applied.[13]

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

A. As stated in my Direct Testimony, Sprint requests that the Commission adopt Sprint's position, which would eliminate the need for the proposed AT&T

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[12] *In the Matter of: The Petition of Level 3 Communications, LLC for Arbitration with BellSouth Telecommunications, Inc. Pursuant to Section 252(b) of the Communications Act of 1934, as Amended by the Telecommunications Act of 1996*, Before the Public Service Commission of the Commonwealth of Kentucky, Case No. 2000-404, Order dated March 14, 2001, pages 7-8.

[13] *In the Matter of Petition of WorldCom,Inc. et al Pursuant to Section 252(e)(5) of the Communications Act for Preemption of the Jurisdiction of the Virginia State Corporation Commission Regarding Interconnection Disputes with Verizon Virginia Inc., and for Expedited Arbitration,* Before the Federal Communications Commission, DA 02-1731, Released July 17, 2002, p. 286-303.

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 should be charged at the same rate as any other CLEC/AT&T Telephone Exchange Service or Telephone Toll Service traffic, based on dialed digits, and the parties' ISP-Bound Traffic 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)

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. Mr. McPhee suggests on page 80 of his Direct Testimony that lacking a determination by the FCC that VoIP be treated differently than other traffic, it is appropriate to apply current intercarrier compensation terms and conditions to VoIP traffic. How do you respond?

A. I disagree. In fact, because the FCC has not decided whether VoIP traffic is a telecommunications service or an information service it cannot be subjected to the telecommunications service access regime.

Q. If it were so obvious, as suggested by Mr. McPhee, that interconnected VoIP traffic were subject to access charges, wouldn't the FCC have come to that conclusion given the numerous times it was asked the question?

A. If it were so obvious to the FCC that access charges applied under existing rules or should apply for whatever reason, it seems the FCC would have made that decision. However, it did not. It is clear that access charges do not apply because the FCC has been given so many opportunities going back almost a decade, but it has repeatedly and obviously avoided categorizing interconnected VoIP traffic as telecommunications traffic or applying access charges to this traffic.

Q. On page 81, Mr. McPhee cites to the FCC's WC Docket No. 09-134 as a basis for access charges obviously applying to VoIP traffic. Is Mr. McPhee mischaracterizing what the FCC said?

A. In my opinion, yes he is. Certainly the FCC's order in the referenced docket sent the issue back to the Texas PUC and said it could apply existing law to resolve the issue. However, there is no existing law that access charges apply to interconnected VoIP traffic. Access charges apply to telecommunications traffic and it has not been determined that interconnected VoIP traffic is telecommunications traffic.

Q. Mr. McPhee states on page 82 that VoIP traffic "falls squarely" under 47 C.F.R. § 69.5(b) rules. Do you agree?

A. No. Again, this rule applies to telecommunications traffic and interconnected VoIP has not been determined to be telecommunications traffic.

Q. On page 83, Mr. McPhee also tries to characterize the FCC's *Time Warner Cable* Order as a basis for access charges applying to VoIP traffic. Do you agree?

A. No. *The Time Warner Cable* Order was about whether a carrier providing wholesale services to VoIP providers had the right under § 251 to interconnect with ILECs. Rural ILECs in South Carolina and Nebraska had refused to interconnect with Sprint and MCI, two carriers that had developed desirable wholesale platforms for cable providers that wanted to offer voice service. The refusal was a way to slow competitive entry from Time Warner Cable. That company went to the FCC, which determined that telecommunications carriers providing wholesale service to cable providers are entitled to interconnect with ILECs for the exchange of traffic that is generated as a result.[14] The fundamental issue in dispute was whether the wholesale service being provided by Sprint and MCI to Time Warner Cable was sufficient to entitle Sprint and MCI to demand interconnection under the Act. The FCC said that it was. The FCC's decision had no impact on either the regulatory classification of interconnected VoIP service or the compensation that applies to interconnected VoIP service.

[14] *In the Matter of Time Warner Cable Request for Declaratory Ruling that Competitive Local Exchange Carriers May Obtain Interconnection Under Section 251 of the Communications Act of 1934, as Amended, to Provide Wholesale Telecommunications Services to VoIP Providers*, 22 FCC Rcd. 3513 (March 1, 2007)

Q. Does the *Time Warner Cable* Order specifically say that the FCC was not deciding the regulatory classification of VoIP or the compensation that applies to VoIP service?

A. Yes. The FCC said the following with respect to the classification of VoIP service:

> "We further conclude that the statutory classification of the end-user service and the classification of VoIP specifically, is not dispositive of the wholesale carrier's rights under section 251."[15]

In other words, the regulatory classification of VoIP has nothing to do with the real decision being made in the docket, which was whether a carrier such as Sprint was offering its wholesale interconnection services in a manner that qualified it to interconnect with ILECs.

Q. How does the FCC address the VoIP compensation issue in the Time Warner Cable Order?

A. The FCC addressed the compensation issue as follows:

> "We do not, however, prejudge the Commission's determination of what compensation is appropriate, or any other issues pending the Intercarrier Compensation docket."[16]

In other words and contrary to what Mr. McPhee suggests, even though the FCC determined that carriers such as Sprint that were providing wholesale interconnection services to Time Warner Cable as telecommunications carriers, it

[15] *Id.* ¶ 9.

[16] *Id.* ¶ 17.

expressly has not determined what intercarrier compensation applies to the interconnected VoIP service.

Q. Mr. McPhee uses the same two cites as you just used to support AT&T's position that access charges apply to VoIP. How do you respond?

A. Of course, Mr. McPhee is going to argue in support of AT&T's position, but my interpretation correctly separates the issues that were decided in the Time Warner Cable Order and those issues that were not decided in the order, and those issues that had no bearing on the fundamental issue in the Time Warner Cable proceeding which was wholesale interconnection rights.

Q. On pages 84-85, Mr. McPhee points to billing issues as a basis for requiring VoIP to be treated like telecommunications traffic. Can his concern be addressed?

A. Yes. Sprint can identify all of its IP-originated traffic and adjust or dispute AT&T access invoices appropriately. Of course, AT&T would have the opportunity to audit Sprint's records to verify their accuracy. Alternatively, as is done with other forms of traffic, Sprint could provide AT&T with a factor it could use to adjust its bills to Sprint. Of course, AT&T must similarly identify interconnected VoIP traffic that it sends to Sprint, so that Sprint can correctly bill for it.

Q. Has AT&T itself argued that VoIP traffic is an information service as opposed to a telecommunications service?

A. Yes. AT&T's U-Verse Declaratory Ruling Petition in Wisconsin PSC Docket No. 6720-DR-101 squarely addressed the regulatory classification of Interconnected VoIP traffic. There AT&T contended that its U-Verse voice service is an information service "free from state regulation under the long-standing policy of preemption of state regulation of such services implemented by the ...FCC."[17] AT&T stated that its U-Verse Voice Service is exempt from state regulation because it is an information service under federal law, and separately also qualifies for the preemption of state regulation under the principles announced in the FCC's Vonage Order, 19 FCC Rcd 22404. To support its preemption arguments that U-Verse Voice is an information service, AT&T cited to the Commission's Final Decision in the MCI Arbitration, Docket No. 5-MA-138 and a federal court case, *Southwestern Bell Tel., L.P. v Missouri Public Service Commission,* 461 F. Supp. 2d 1055, 1073 (E.D. Mo. 2006), *aff'd,* 530 F.3d 676 (8th Cir. 2008), *cert. denied,* 129 S.Ct. 971 (2009) and acknowledged that in both of those cases, it was determined that access charges do not apply to VoIP services. See AT&T U-Verse Brief, pp. 12-15. Despite arguing loudly that U-Verse Voice service is an interstate service exempt from traditional state telephone company regulation, AT&T claims that intrastate access charges do apply to IP-PSTN service. AT&T U-Verse Brief, p. 13, f.n. 41, p. 15, f.n. 47. The Commission ultimately decided to hold the docket in abeyance until September 20, 2010.

[17] *In the Matter of Petition of AT&T Wisc. For Declaratory Ruling that Its "U-Verse Voice" Service is Subject to Exclusive Federal Jurisdiction,* Wisconsin Public Service Commission, Docket No. 6720-DR-101, Initial Post Hearing Brief of AT&T Wisconsin, ("AT&T U-Verse Brief"), p. 1.

Q. How should this Commission decide these issues?

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

Q. Has Sprint considered the AT&T alternatives mentioned in Mr. Hamiter's Direct Testimony at page 46?

A. Yes. As I mentioned in my Direct Testimony, Sprint was willing to accept AT&T's Alternative #2 with the addition of Sprint's clarifying language. As I understand, AT&T was not willing to accept Sprint's compromise proposal.

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. Does the AT&T proposed language provide Sprint any cost recovery when AT&T changes its corporate name?

A. No. AT&T's proposed charges for both Issues V.C(1) and V.C.(2) as discussed on pages 53-55 of Mr. Ferguson's Direct Testimony does not provide Sprint the same opportunity to recover its internal record keeping costs when AT&T changes its name or in the event AT&T were to change any company designation that Sprint would have to implement internally. It appears that AT&T is now attempting to pass along to Sprint's its internal costs of doing business that it cannot pass along to Sprint based on the current ICA or the previous ICA. And, it believes it can do so in a unilateral manner.

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 Issues V.C.(1) and V.C.(2) for the reasons stated. If the Commission determines that any charges are appropriate, Sprint asks that these charges be based on incremental cost of performing the work and ensure that the language be written

in a manner to allow Sprint to recover its costs in the event AT&T were to make the same or similar changes impacting Sprint.

Q. Does this conclude your Rebuttal Testimony?

A. Yes.