COMMONWEALTH OF KENTUCKY

BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

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 RANDY G. FARRAR

September 17, 2010

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REBUTTAL TESTIMONY

I. INTRODUCTION

Q. Please state your name, occupation, and business address.

A. My name is Randy G. Farrar. My title is Senior Manager – Interconnection Support for Sprint United Management, the management subsidiary of Sprint Nextel Corporation. My business address is 6450 Sprint Parkway, Overland Park, Kansas 66251.

Q. Did you file Direct Testimony in this proceeding?

A. Yes, I did.

Q. On whose behalf are you testifying?

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

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

A. The purpose of my Rebuttal Testimony is to respond to the Direct Testimonies of Mr. J. Scott McPhee [Issues I.C(1) – I.C(7); III.A.3(1) – III.A.3(3); and III.E(3) – III.E(4)] and Ms. Patricia H. Pellerin [Issues III.A(1) – III.A(3); III.E(1) – III.E(2); III.G; and III.H(1) – III.H(3)], testifying on behalf of BellSouth Telecommunications, Inc. d/b/a AT&T Kentucky ("AT&T").

Q. Do you have any preliminary observations about AT&T's direct testimony?

Yes. Against the backdrop of federal law that had the purpose of ending local telephone company monopolies and promoting competition in local telephone markets[1], AT&T's direct testimony frequently strains to interpret Federal Communications Commission ("FCC") rules and orders in the most restrictive way possible, to limit competition, rather than to promote it. This is particularly true with respect to evolving voice over internet protocol-based services that the FCC has yet to categorize as telecommunications or information services. But the FCC's interconnection rules do not apply a technology test to restrict the services an interconnected carrier may offer, or the traffic that can be exchanged between an interconnected carrier and an ILEC. If AT&T wants a competitive edge over Sprint, it should come from true innovation rather than restricting Sprint's ability to employ new technology.

[1] Michigan Bell Tel. Co. v. Strand, 305 F.3d 580, 582 (6th Cir. 2002).

II. ISSUES

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

Issue I.C – Transit traffic related issues.

Issue I.C(1) – What are the appropriate definitions related to transit traffic service?

Q. Please summarize Sprint's position on this issue.

A. Sprint's transit definitions recognize that Transit Service may be provided under the respective CLEC or CMRS ICA by either party to the other, as well as to a third party.

Q. On page 30, line 6 of his Direct Testimony, Mr. McPhee states: "Unless and until Sprint initiates its own transit service, the ICA should define Third party Traffic to include only AT&T as a transit service provider …." Please comment.

A. This is an obvious example of AT&T imposing competitive restrictions on the service that Sprint may want to offer to a third party carrier. According to AT&T, AT&T and only AT&T will be able to provide transit services under AT&T's proposed language. AT&T, however, never explains why it thinks it has the inherent right to transit third party traffic *to* Sprint yet, at the same time, AT&T can preclude Sprint from sending identical traffic *to* AT&T. A Sprint transit

service provided to a third party serves the policy of enabling that third party's right of indirect interconnection every bit as much as does an AT&T transit service.

Mr. McPhee's testimony does not reflect a commitment that AT&T will amend the ICAs when Sprint "initiates its own transit service." At page 30, line 12 Mr. McPhee says:

> "the parties *may* revise transit-related provisions as appropriate *if the ICA is amended to incorporate Sprint's transit service*." (Emphasis added).

Delaying recognition of Sprint's ability to deliver transit traffic to an undetermined time in the future effectively provides AT&T ultimate control over how quickly any *voluntarily negotiated* amendment may or may not be reached, much less actually implemented. AT&T could very well refuse to reach any *voluntary* amendment, thereby forcing the parties to Dispute Resolution, placing them exactly where we already are today – asking the Commission to include provisions in the ICAs that recognize Sprint can transit third party traffic to AT&T at any time within the term of the ICAs. There is no basis for the Commission to delay recognition of Sprint's right to do so now. Declaration of that right and inclusion of terms in the ICAs to enable that right is a practical building block for Sprint to be able to offer a transit service in the first place. If Sprint wants to provide transit services in direct competition with AT&T, there is no basis for any ICA provisions that forbids or otherwise delays such competition to AT&T.

Issue I.C(2) – Should AT&T be required to provide transit traffic service under the ICAs?

Q. Please summarize Sprint's position on this issue.

A. AT&T should be required to provide Transit Service under the ICAs, consistent with § 251(a) of the Act and 251(c)(2)(A) through (D).

Q. Beginning on page 11, line 6 of his Direct Testimony, Mr. McPhee discusses what he contends is the FCC's position on transiting. Please comment.

A. While Mr. McPhee implies that the FCC has ruled that transit is not a § 251(c)(2) obligation, the reality is that the FCC has not expressly ruled one way or the other. Instead, the FCC has left it up to the state commissions to make that determination, and Kentucky is one of the states that has done so, ruling in an arbitration that AT&T must provide transit service under § 251. I discussed that in my Direct Testimony.

Q. You said that the FCC hasn't "expressly" ruled either way. Has the FCC implicitly ruled that transit is subject to § 251(c)?

A. Yes, it has, and I mention this since AT&T continues to imply that the Kentucky Commission has been preempted. That does not appear to be the case at all, in light of a dispute involving the authority of the Minnesota Commission. In 2002, the FCC ruled that any agreement by an ILEC "that creates an ongoing obligation

pertaining to resale, number portability, dialing parity, access to rights-of-way, reciprocal compensation, interconnection, unbundled network elements, or collocation is an interconnection agreement that must be filed" with the state commission for approval,[2] but that "*only* those agreements that contain an ongoing obligation *relating to section 251(b) or (c)* must be filed under 252(a)(1)."[3] Subsequently, the FCC proposed to fine Qwest $9,000,000 for failing to file certain agreements with the Minnesota Public Utilities Commission and the Arizona Corporation Commission.[4] The Minnesota PUC found that all of the Minnesota agreements were interconnection agreements under the *Qwest Declaratory Ruling,*[5] and the FCC agreed.[6]

One of the agreements that Qwest failed to file with the Minnesota PUC was a transit agreement, and two others were agreements for Qwest to provide call detail records for transit traffic.[7] By agreeing with the Minnesota PUC that these were interconnection agreements under the *Qwest Declaratory Ruling,* the FCC necessarily ruled that they were agreements that contain an ongoing obligation

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[2] *Qwest Communications International Inc. Petition for Declaratory Ruling on the Scope of the Duty to File and Obtain Prior Approval of Negotiated Contractual Arrangements under Section 252(a)(1)*; 17 FCC Rcd. 19337 (FCC 02-276); Memorandum Opinion and Order; released October 4, 2002; at ¶ 8; ("Qwest Declaratory Ruling") (emphasis omitted).

[3] *Qwest Declaratory Ruling,* 17 FCC Rcd. at ¶ 8 n.26 (emphasis omitted).

[4] *In the Matter of Qwest Corporation Apparent Liability for Forfeiture,* File No. EB-03-IH-0263, 19 FCC Rcd. 5169 (FCC 04-57); Notice of Apparent Liability for Forfeiture; released March 12, 2004. ("*Qwest NAL*").

[5] *Qwest NAL* at ¶ 15.

[6] *Id.* at ¶ 39.

[7] If an agreement to provide transit call detail records is an interconnection agreement that must be filed, an agreement to provide transit service obviously must also be such an agreement.

relating to § 251(b) or (c). Because transit is not one of the obligations imposed by § 251(b), it must be subject to § 251(c).

Q. How have the various state commissions decided on the issue of whether transit is a § 251(c)(2) obligation?

A. As discussed beginning on page 15 of my Direct Testimony, at least 18 state commissions have already ruled that transit is an obligation under the Act.

Q. Beginning on page 12, line 12, Mr. McPhee begins a discussion of the FCC's treatment of interconnection and transit. Please comment.

A. Mr. McPhee's discussion of the FCC's treatment of interconnection and transit is incorrect and misleading. On page 12, line 21, Mr. McPhee claims "three ways" in which the FCC supports AT&T's position. In each case, however, Mr. McPhee misreads the FCC's rules.

Q. What is the first way Mr. McPhee misreads the FCC's rules?

A. On page 12, line 21, Mr. McPhee states that "the FCC limits interconnection to the linking of two networks." He then asserts: "Transit service is not physical linkage – rather it is the transport of traffic." This assertion is a *non sequitur*. Nothing in the FCC rules limits "physical linkage" to direct interconnection. Section 251(a)(1) of the Act clearly allows for direct interconnection or indirect interconnection through a transit provider.

Q. What is the second way Mr. McPhee misreads the FCC's rules?

A. On page 13, line 3, Mr. McPhee says that "the FCC states that interconnection is 'for the mutual exchange of traffic.' Fairly read, that means the mutual exchange of traffic between the interconnected carriers. Transit service does not involve the mutual exchange of traffic between the interconnected carriers; rather, it involves the exchange of traffic between one of those carriers … and a third party carrier …."

This is a fallacy too. The FCC rules simply do not support the premise asserted by AT&T. The FCC rules allow for both direct and indirect interconnection between any two carriers. Obviously, traffic is being "mutually exchanged" between the originating and terminating carriers under both a direct and indirect interconnection scenario.

Q. What is the third way Mr. McPhee misreads the FCC's rules?

A. On page 13, line 9, Mr. McPhee states that "the FCC explicitly states that interconnection does not include the transport and termination of traffic. Transit, of course, is the transport of traffic." This is yet another *non sequitur*. While his first sentence is factually correct, it does not support his second sentence. Mr. McPhee does not even attempt to explain how this has anything to do with whether transit is a §251 obligation.

Mr. McPhee also distorts the FCC's definition of transport in the context of interconnection. In fact, "transit" is not "transport" as the term is defined by the FCC.

Q. How does Mr. McPhee distort the FCC's definition of "transport"?

A. Although Mr. McPhee does not point to the specific FCC rule, he is clearly referring to the FCC's definition of interconnection. Specifically, 47 C.F.R. § 51.5 defines "Interconnection" as follows:

> *Interconnection.* Interconnection is the linking of two networks for the mutual exchange of traffic. This term does not include the transport and termination of traffic. (Italics in original.)

In addition, 47 C.F.R. § 20.3 defines "Interconnection" as follows:

> *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. (Italics in original.)

Q. Within the 47 C.F.R. § 51.5 definition of "interconnection," how does the FCC define "transport and termination"?

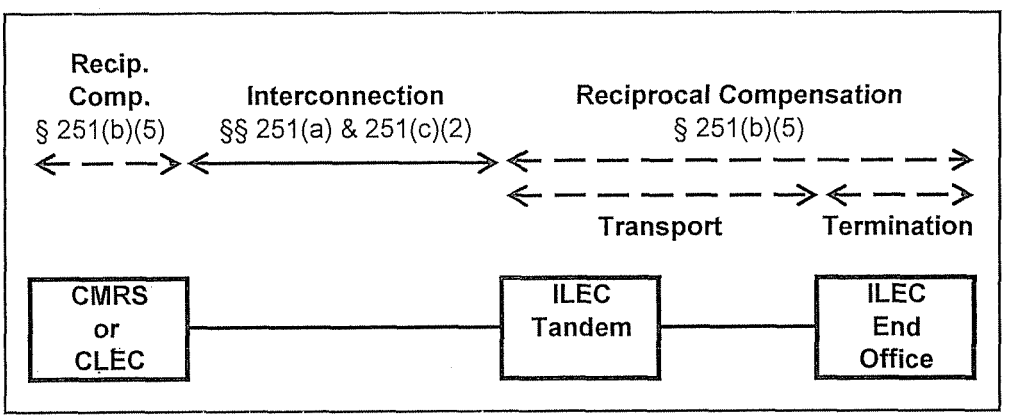
A. The FCC defines "transport and termination" in 47 C.F.R. § 51.701. Specifically, the FCC states:

> (c) *Transport.* For purposes of this subpart, transport is the transmission and any necessary tandem switching of telecommunications traffic subject to section 251(b)(5) of the Act from the interconnection point between the two carriers to the terminating carrier's end office switch that directly serves the called party, or equivalent facility provided by a carrier other than an incumbent LEC.
>
> (d) *Termination.* For purposes of this subpart, termination is the switching of telecommunications traffic at the terminating carrier's end

> office switch, or equivalent facility, and delivery of such traffic to the called party's premises.
>
> (e) *Reciprocal compensation.* For purposes of this subpart, a reciprocal compensation arrangement between two carriers is one in which each of the two carriers receives compensation from the other carrier for the **transport and termination** on each carrier's network facilities of telecommunications traffic that originates on the network facilities of the other carrier. [Emphasis added.]

Thus, the FCC has defined reciprocal compensation as the sum of "transport and termination." Thus, the mutual exchange of traffic between two carriers encompasses both interconnection facilities between the two carriers and reciprocal compensation (transport and termination) for both carriers. The following Diagram 1 illustrates the relationship between interconnection and reciprocal compensation.

Diagram 1
Interconnection and Reciprocal Compensation



When the FCC definition of interconnection states that it "does not include the transport and termination of traffic," the FCC is obviously distinguishing "interconnection" from "reciprocal compensation" (which consists of "transport and termination").

It is clear, then, that Mr. McPhee's statement on page 13, line 10, "Transit, of course, is the transport of traffic," is wrong per the FCC's definition.

Both the Act and FCC rules allow for both direct and indirect interconnection. Contrary to Mr. McPhee's interpretation of the FCC rules, the FCC does not carve out transit from the definition of interconnection.

Q. Is transit a competitive service in Kentucky?

A. No, transit is not a competitive service in Kentucky. First, AT&T is the only ubiquitous provider of transit services in the state, and if AT&T isn't a transit provider, typically only another ILEC is. Often, Sprint must use AT&T for transit or termination services where AT&T is the only service provider. No other transit provider in the state has such an extensive network, nor is capable of providing transit service to every geographic location in the state.

Second, only AT&T has ubiquitous connection to each and every AT&T end office in the state. Generally, competitive transit providers only have connections to AT&T tandems; competitive transit providers do not have direct interconnections to each and every AT&T end office. To terminate traffic to most AT&T end offices, it is not practical to utilize a competitive transit provider, if one even exists

Third, although Sprint directly interconnects with AT&T tandem switches, Sprint could choose to indirectly interconnect through a competitive transit provider. If transit were priced competitively and available to ubiquitously reach all AT&T end offices, Sprint could choose between these competitive options based on economically efficient price signals. However, situation does not exist in Kentucky.

Q. Is it necessary for the Commission to find that the transit traffic market is either competitive or not competitive in order to affirm its own policy judgment on transit service?

A. No. Although the transit market is clearly not competitive, it is not necessary to "prove" that fact in order for the Commission to maintain the long established policy for Kentucky.

Issue I.C(3) – If the answer to (2) is yes, what is the appropriate rate that AT&T should charge for such service?

Q. Please summarize Sprint's position on this issue.

A. Section 251(c)(2)(D) requires Interconnection transmission and routing services to be at rates that are "in accordance with … the requirements of section 252 of this title." The 252(d) pricing standard that has been established by the FCC is Total Element Long-Run Incremental Cost ("TELRIC"). Therefore, transit should be provided at a TELRIC-based rate.

Q. Please discuss Mr. McPhee's Direct Testimony at page 19, on Issue I.C(3).

A. Mr. McPhee's Direct Testimony on Issue I.C(3) is limited to just eight lines. His only testimony is that since transit is not a Section 251(b) or (c) obligation, transit need not be priced at TELRIC.

As discussed in both my Direct and Rebuttal Testimonies, the Commission has already determined that transit is clearly an obligation under both the Act and FCC rules. Thus, transit must be priced at TELRIC.

Issue I.C(4) – If the answer to (2) is yes, should the ICAs require Sprint either to enter into compensation arrangements with third party carriers with which Sprint exchanges traffic that transits AT&T's network pursuant to the transit provisions in the ICA or to indemnify AT&T for the costs it incurs if Sprint does not do so?

Q. Please summarize Sprint's position on this issue.

A. The ICAs should not require Sprint to enter into compensation arrangements with third party carriers or to indemnify AT&T.

Q. On page 20, line 12 of his Direct Testimony, Mr. McPhee states: "When Sprint sends traffic through AT&T to a third party carrier for termination, reciprocal compensation is due to the terminating carrier from the originating carrier. However, the [transit] call may look to the terminating

carrier like a call that was originated by AT&T, thus prompting the terminating third party to seek reciprocal compensation from AT&T – particularly if Sprint has not entered into appropriate compensation arrangements with the third party carrier." Please comment.

A. Mr. McPhee correctly acknowledges the traditional reciprocal compensation regime. But, he follows that with an unsupported "However" sentence intended to require Sprint to indemnify AT&T.

He then concludes by stating that this hypothetical situation will be exacerbated unless Sprint has an "appropriate compensation arrangements with the third party carrier." But, he provides no definition of what is an "appropriate arrangement," nor does he provide any FCC rule supporting such a condition on Sprint. In fact, Mr. McPhee cannot point to any FCC rule supporting this position.

Q. On page 21, line 11 of his Direct Testimony, Mr. McPhee states: "It may be true that federal law does not require Sprint to enter into compensation arrangements with third party carriers to which Sprint sends traffic …." Please comment.

A. Mr. McPhee acknowledges that no FCC rule supports AT&T's position. However, he nevertheless follows this acknowledgement with a lengthy discussion of why the Commission should adopt AT&T's position despite the fact that no FCC rule supports AT&T's position.

It must be noted that nothing in § 251(a)(1) or the FCC rules suggests that an interconnection agreement is necessary in order for two carriers to interconnect and mutually exchange traffic. In fact, for the mutual benefit of their own end-users ILECs, RLECs, CLECs, and CMRS providers routinely exchange traffic amongst themselves without an interconnection agreement in place.

Not only does AT&T fail to find a single FCC rule supporting AT&T's position that Sprint should indemnify AT&T, it is simply anticompetitive and counterintuitive to require a competitor to indemnify an incumbent LEC.

Q. Do you agree with Mr. McPhee's suggestion at page 21, line 15, that if Sprint uses AT&T's transit service to indirectly interconnect and exchange traffic with a third party network but does not have a compensation agreement with the third party, it is a "natural consequence" that a third party will seek compensation from AT&T for terminating Sprint-originated traffic?

A. No, it is not a "natural consequence" that a third party either would or should seek compensation from AT&T for Sprint-originated traffic simply because Sprint and the terminating carrier may be exchanging traffic without a compensation agreement.

Q. Why not?

A. It is my understanding that AT&T provides terminating third party carriers with industry standard 110101 records to identify transit traffic that AT&T delivers to

such terminating third party carriers. These records identify the originating carrier if the third party is not otherwise able to identify and measure AT&T transit traffic using its own systems.

Unless AT&T is a party to a compensation arrangement with a terminating third party, there is no basis for a terminating third party to seek payment from AT&T for AT&T identified Sprint-originated traffic. If, however, AT&T has compensation arrangements with third parties to pay for traffic that AT&T does not originate, that is a matter between AT&T and such terminating third-parties.

Sprint is not a party to, and has no control over, such AT&T-third party arrangements. There simply is no reasonable basis for AT&T to be indemnified by Sprint for AT&T's own compensation disputes with third-parties.

Q. On page 23, line 21 of his Direct Testimony, Mr. McPhee claims that a 2002 order in Case No. 2001-261 supports AT&T's position that Sprint must enter into a compensation arrangement with third party carriers. Is that correct?

A. No, this is not correct for at least four reasons. First, this Order, issued in an arbitration between the CLEC affiliate of a rural ILEC and the predecessor of Windstream Kentucky East, confirms Sprint's position that the originating carrier is financially responsible for its originating traffic. Specifically, the Commission stated:

> ... the Commission will not deviate from the well-established principle that each carrier must pay the originating costs of its own traffic.[8]

Second, in that proceeding, the CLEC was willing to compensate ILEC transit provider when the ILEC was acting as a clearinghouse for reciprocal compensation payments between the CLEC and other carriers to whom it transited the CLEC's traffic. According to the Commission:

> South Central states that it would be willing to pay the cost incurred by the tandem switch owner from the terminating carrier if the costs were reasonable and known in advance.[9]

Sprint does not seek to require AT&T to perform such a clearinghouse function.

Third, nothing in the Commission's *South Central Telecom* Order suggests that AT&T has the right to demand a compensation agreement between two other carriers when it is not providing a clearinghouse function for their billing and payment of reciprocal compensation between each other.

Fourth, nothing in the 2002 Order suggests that AT&T has the right to demand indemnity from another carrier.

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[8] *Petition of South Central Telecom LLC for Arbitration of Certain Terms and Conditions of Proposed Agreement with Verizon South Inc. Pursuant to the Communications Act of 1934, as Amended by the Telecommunications Act of 1996*; Kentucky Public Service Commission Case No. 2001-261; Order dated January 15, 2002; at page 16.

[9] *Id.*, at page 18.

Issue I.C(5) – If the answer to (2) is yes, what other terms and conditions related to AT&T transit service, if any, should be included in the ICAs?

Q. Please summarize Sprint's position on this issue.

A. AT&T is entitled to charge for the tandem-switching (and potentially relatively minor facility-related costs) to deliver Sprint-originated traffic to a carrier network that subtends AT&T and terminates Sprint's traffic. Otherwise, such traffic is subject to the same general billing and collection provisions as other categories of exchanged traffic.

Q. On page 25, line 19 of his Direct Testimony, Mr. McPhee states that "... Section 7.0 [of AT&T's proposed language] provides terms for the provision of direct trunking between Sprint and another LEC when the volume of traffic between those carriers reaches a threshold of twenty-four (24) or more trunks. Such a provision is a reasonable limit for transit traffic; once reached, the two carriers should seek direct interconnection between each other." Please comment.

A. Mr. McPhee cannot point to any FCC rule which supports this position. As discussed in detail in Issue III.E(2), every carrier has the choice to deliver its originating traffic either directly or indirectly. It is not reasonable for AT&T to be able to dictate how an originating carrier chooses to deliver its traffic.

It would be anticompetitive for AT&T to be able to dictate a higher cost interconnection arrangement on one of its competitors because of some AT&T-imposed limit on indirect interconnection.

Q. Has AT&T taken the opposite position, *i.e.*, that dedicated trunks should not be required, in another venue as a transit provider?

A. Yes, AT&T has taken the opposite position, *i.e.*, that dedicated trunks should not be required, in a Wisconsin proceeding when AT&T was the transit provider. Specifically, AT&T stated:

> ... whether there ought to be direct trunking between originating providers and terminating providers. AT&T Wisconsin could not agree more. For the same reasons that the Commission should not limit the use of the common trunks or require LEC to LEC network modifications for the transport of transit traffic, the Commission should also decline to require dedicated trunking as a general matter. In short, dedicated trunking 1) is inefficient; 2) is probably preempted; 3) is extremely costly, and 4) is completely unnecessary given the ability of terminating LECs to negotiate and arbitrate interconnection agreements that will address issues of traffic exchange.[10]

Q. Has AT&T's own wireless affiliate, the New Cingular,[11] demonstrated a willingness to consistently abide by AT&T's proposed rule that carriers should directly interconnect "when the volume of traffic between those carriers reaches a threshold of twenty-four (24) or more trunks"?

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[10] *Investigation on the Commission's Own Motion Into the Treatment of Transiting Traffic*; Public Service Commission of Wisconsin Docket No. 5-TI-1068; AT&T Wisconsin Initial Brief on Legal Issues Relating to Transit Traffic; at page 45.

[11] New Cingular Wireless PCS – GA is AT&T's wireless affiliate. It is identified in the LERG as the "AT&T" company, wireless category carrier with assigned OCN 6214. New Cingular may also be known or referred to as AT&T Mobility.

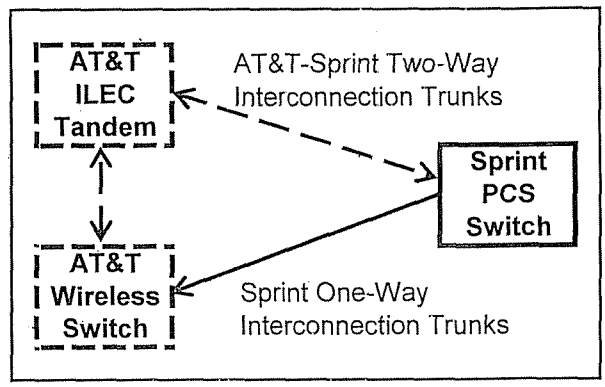
A. No. It is my understanding that AT&T's wireless affiliate does not consistently agree to the establishment of direct connections with Sprint even where there may be sufficient volumes of traffic to warrant such direct connections.

Q. Can you provide any examples?

A. Yes. The chart attached to my Rebuttal Testimony as Confidential Attachment RGF-4 reflects data derived from traffic studies performed in 2009 that demonstrates, among other things, the volumes of New Cingular wireless-originated traffic transited by AT&T to Sprint PCS over interconnection facilities in the states of Florida and Tennessee for a specified 7-day period. During the same time period, however, Sprint PCS had already established 1-way direct connections to New Cingular for the delivery of the majority of Sprint PCS-originated traffic to New Cingular.

As shown in Diagram 2, Sprint has established 1-way direct connections to AT&T wireless switches in Florida and Tennessee. To date, however, AT&T wireless has installed some direct connections in Florida, but has chosen not to reciprocate with any direct connections back to Sprint PCS at all in Tennessee. Obviously, it is patently inconsistent for AT&T as an ILEC to attempt to impose a DS1 threshold upon competing carriers to establish direct connections yet, at the same time, its own affiliates are not held to such standards.

Diagram 2
Interconnection Between AT&T Wireless and Sprint PCS



Q. How does AT&T ILEC's transiting of its AT&T-wireless or AT&T-CLEC affiliates' traffic to Sprint have any economic impact upon Sprint?

A. As I also address in Issue III.E.(2), under AT&T-ILEC's improper view of shared facility costs, AT&T seeks to make Sprint responsible for that portion of an Interconnection Facility that is used by AT&T to transit any third party traffic to Sprint (*including AT&T's own affiliates as third parties*) on the theory that Sprint "causes" such usage by deciding to indirectly interconnect with the third parties.

Q. What is wrong with AT&T's view?

A. As demonstrated by the fact scenario I describe above and Confidential Attachment RGF-4 (*i.e.*, even where Sprint establishes direct connection to the AT&T wireless affiliate networks in Florida and Tennessee, the AT&T wireless affiliate continues to send significant volumes of its originated traffic to Sprint via AT&T-ILEC), Sprint is *not* the party that causes AT&T-ILEC to use the Interconnection Facilities between AT&T-ILEC and Sprint to deliver AT&T wireless-originated traffic to Sprint.

Q. Who causes AT&T-ILEC to use the Interconnection Facilities between AT&T-ILEC and Sprint for the delivery of third party originated traffic to Sprint?

A. Both AT&T-ILEC and its originating transit customer, who, in the example described above is the AT&T wireless affiliate. The end result of AT&T's approach to shared facility costs is a corporate welfare scheme that attempts to shift AT&T's cost of its own transit service so that competitors not only subsidize AT&T's transit service but also the AT&T affiliates' indirect exchange of traffic, incenting AT&T's own affiliates to continue to use AT&T's transit service and avoid incurring the cost of installing direct connections.

Issue I.C(6) – Should the ICAs provide for Sprint to act as a transit provider by delivering Third Party-originated traffic to AT&T?

Q. Please summarize Sprint's position on this issue.

A. The ICAs should provide for Sprint to act as a transit provider. It is unreasonable for AT&T to prevent Sprint from providing Transit Service in competition with AT&T.

Q. On page 27, line 10 of Mr. McPhee's Direct Testimony, the question states (and appears to assume) that "Sprint's proposed ICA language ... would ... possibly require AT&T to use Sprint as a transit provider for AT&T

originated traffic." Is this true that Sprint's ICA language would require AT&T to use Sprint as a transit provider?

A. No. Sprint's ICA language does not require AT&T to use Sprint as a transit provider. In fact, Mr. McPhee does not identify language to support that assertion.

In addition, as the only ubiquitous provider of transit service in the state, the need for AT&T to utilize a third party transit provider is likely moot, as AT&T is the only carrier that is probably interconnected with every other carrier in the state. If AT&T is not directly interconnected with a carrier to whom Sprint provides transit service, it probably would be more cost-effective for AT&T to use Sprint's transit service than to establish direct interconnection to deliver small amounts of traffic to such a carrier, but nothing would force AT&T to do so.

Regardless, the intent of Sprint's language is to allow Sprint to act as a transit provider for carriers other than AT&T, *i.e.*, as a direct competitor to AT&T's transit services. While AT&T might not want competitors in the transit market, it is unreasonable for AT&T to try to prevent that competition via the ICA process.

Q. Does the originating carrier determine how its traffic is delivered?

A. Yes. As discussed in detail under Issue III.E(2), as well as described above regarding the AT&T wireless affiliate's continued use of AT&T-ILEC's transit service, it is the originating carrier who decides how to deliver its originating

traffic to the terminating carrier. Nothing in Sprint's proposed ICA language takes that basic decision making process from AT&T.

Issue I.C(7) – Should the CLEC ICA require Sprint either to enter into compensation arrangements with third party carriers with which Sprint exchanges traffic or to indemnify AT&T for the costs it incurs if Sprint does not do so?

Q. Please summarize Sprint's position on this issue.

A. The CLEC ICA should not require Sprint to enter into compensation arrangements with third party carriers or to indemnify AT&T.

Q. Does Mr. McPhee or any AT&T witness explicitly address this issue?

A. No, neither Mr. McPhee nor any other AT&T witness explicitly addresses this issue. Since this issue is essentially the same as Issue I.C(4), I assume AT&T's position is similar.

Issue III – How the Parties Compensate Each Other

Issue III.A – Traffic categories and related compensation rates, terms, and conditions.

Issue III.A(1) – As to each ICA, what categories of exchanged traffic are subject to compensation between the parties?

Q. Please summarize Sprint's position on this issue.

A. Sprint requests that the Commission consider two categories of Interconnection-related traffic, (1) Authorized Service Terminated Traffic (*e.g.*, IntraMTA traffic, InterMTA Traffic, Information Services traffic, and Interconnected VoIP traffic), and (2) Transit Service Traffic (in addition to the category of Jointly Provided Switched Access).

If the Commission decides the typical multi-categories must exist, then Sprint has identified (1) wireless/wireline specific categories, and (2) categories that are neither wireline/wireless centric (Interconnected VoIP, Information Services, Transit).

Q. On page 31, line 22 of her Direct Testimony, Ms. Pellerin attempts to describe Sprint's proposal. Please comment.

A. Ms. Pellerin makes Sprint's proposal appear to be complicated, when, in fact, it is quite simple. Sprint proposes that non-"toll" traffic[12] be treated as Bill and Keep. This is consistent with the current Bill-and-Keep arrangement between Sprint and AT&T [see Issue III.A(2)].

If not Bill-and-Keep, the Commission must select a rate. The Commission's choices include AT&T's current reciprocal compensation rate of $0.0007, or the Commission can establish new TELRIC-based rates, which, according to the AT&T FCC Letter will be less than $0.0007.

Under Sprint's proposal, only transit traffic, which does not originate with or terminate to AT&T's end-users, would fall into another category, "Transit Service Traffic."

Existing "Jointly Provided Switched Access" (*i.e.*, traditional Telephone Toll Service traffic) is subject to existing tariffs and is not subject to pricing changes per this ICA.

Q. What would Ms. Pellerin's proposed pricing categories do to the existing Bill-and-Keep arrangement between Sprint and AT&T?

A. Under Ms. Pellerin's proposal, the existing Bill-and-Keep arrangement between Sprint and AT&T, which has been in place since January 2001, would be eliminated

[12] The short-hand term "toll" meaning "Telephone Toll Service" traffic as defined at 47 U.S.C. § 153.

(except for those instances where Bill-and-Keep may benefit AT&T, such as FX ISP-Bound traffic, for which AT&T wants Bill-and-Keep to stay in place).

Of course, this is AT&T's main objective in this proceeding. As explained in the Direct and Rebuttal Testimonies of Mr. Mark G. Felton, Sprint and AT&T have been operating under a Bill-and-Keep arrangement for many years. Bill-and-Keep is the most efficient method of exchanging traffic between two carriers, as it eliminates all transaction costs such as traffic measurement and monthly billing, remittance, and collection.

Issue III.A(2) – Should the ICAs include the provisions governing rates proposed by Sprint?

Q. Please summarize Sprint's position on this issue.

A. Yes, the ICAs should include the provisions governing rates proposed by Sprint. Sprint's proposed rates will ensure that Sprint CMRS and Sprint CLEC are charged Interconnection services rates that are authorized by the FCC, and non-discriminatory, being priced at: (1) Bill-and-Keep; or (2) the lowest of (a) the reciprocal compensation rate of $0.0007, (b) TELRIC pricing, or (c) any other price that AT&T has offered to another Telecommunications Carrier.

Q. On page 37, line 4 of her Direct Testimony, Ms. Pellerin states that "... AT&T would be forced to determine, and then bill, the lowest rate available among the following four sources ...." Is this correct?

A. No, Ms. Pellerin portrays Sprint's pricing proposal as some sort of "pick and choose." As discussed in Issue III.A(1), above, Sprint proposes a single compensation arrangement for all "Authorized Service Terminated Traffic," which is essentially all non-Telephone Toll Service traffic exchanged between Sprint end-users and AT&T end-users. Preferably, this single compensation arrangement will be a continuation of the Bill-and-Keep arrangement that currently exists between Sprint and AT&T.

If not Bill-and-Keep, the Commission must select a rate. The Commission's choices include AT&T's current reciprocal compensation rate of $0.0007, or the Commission can establish new TELRIC-based rates, which, according to the AT&T FCC Letter will be less than $0.0007.

Issue III.A(3) – What are the appropriate compensation terms and conditions that are common to all types of traffic?

Q. Please summarize Sprint's position on this issue.

A. It is Sprint's position that the parties' *agreed to language (Sections 6.3.1., 6.3.2,, 6.3.3, 6.3.4)*, coupled with Sprint's further proposed usage-related language, which AT&T disputes (Sections 6.3.5 and 6.3.6.1), provides the essential terms to

accurately bill the originating party for usage. If usage data is also used to apportion shared facility costs, these provisions also enable the parties to bill and apportion such shared Facility costs – which is also separately addressed later in my testimony in Issue III.E.

Q. On page 42, line 7 of her Direct Testimony, Ms. Pellerin attempts to describe Sprint's proposal. Please comment.

A. Again, Ms. Pellerin makes Sprint's proposal appear to be complicated, when, in fact, it is very simple. Sprint believes that the proposed language allows each party to appropriately bill for the services it provides. If required, if either party does not agree to the presumed 50/50 sharing factor, that party can perform a traffic study to demonstrate an imbalance in traffic.

III.A.3 – CMRS ICA-specific, InterMTA traffic.

III.A.3(1) – Is mobile-to-land InterMTA traffic subject to tariffed terminating access charges payable by Sprint to AT&T?

Q. Please summarize Sprint's position on this issue.

A. Mobile-to-land InterMTA traffic is not subject to tariffed terminating access charges payable by Sprint to AT&T. The only FCC rule applicable to interMTA traffic exchanged between the Parties, whether mobile-to-land or land-to-mobile, is 47 C.F.R. § 20.11. Pursuant to this rule, such traffic is subject to reasonable

terminating compensation, but the rule does not make this traffic automatically subject to AT&T's access tariffs.

Q. On page 97, line 24 of his Direct Testimony, Mr. McPhee states: "Under established industry practice, wireless carriers pay terminating access charges to LECs on mobile-to-land InterMTA calls transported on wireless networks. This is fully consistent with settled notions of when a LEC is entitled to a terminating access charge." Please comment.

A. While Mr. McPhee's first sentence is factually correct, Mr. McPhee cannot point to a single FCC rule to mandate this practice. As I discussed extensively in my Direct Testimony, there is no such rule. In addition, as I also discussed, in other states AT&T's wireless affiliate has actually taken Sprint's position on this issue.

Q. On Page 98, line 2 of his Direct Testimony, Mr. McPhee follows the previous statement with the following: "The interexchange carrier's customer is making the call, and the interexchange carrier is receiving all the end user revenue for the call. ... The wireless company is thus obtaining 'access' from the LEC to complete its (the wireless company's) call, and therefore the LEC is entitled to receive compensation from the wireless company to reimburse the LEC for its costs in completing the call." Please comment.

A. This is yet another *non sequitur*. He begins by speaking about interexchange carriers ("IXCs"), but then includes wireless companies as if they are one and the same. Wireless companies are not IXCs. IXCs are required by FCC rules to pay

switched access charges to LECs. There are no such rules which apply to wireless carriers.

Q. On page 98, line 12 of his Direct Testimony, Mr. McPhee relies on Paragraph 1036 of the FCC's Local Competition Order to justify billing access charges to a wireless company. Is this reasonable?

A. No. Paragraph 1036 of the FCC's Local Competition Order explicitly refers to IXCs. Once again, wireless companies are not IXCs, and the cited provision is not determinative.

Q. On page 99, line 14 of his Direct Testimony, Mr. McPhee states: "If Sprint CMRS does not supply JIP, AT&T will use the next best available information. This may be the Originating Location Routing Number ('OLRN'), the CPN, or any other mutually agreed indicator of the originating cell site or Mobile Telephone Service Office ('MTSO')." Please comment.

A. As discussed extensively in my Direct Testimony, the JIP often does not provide the correct location of the originating cell site of a wireless call. I also noted that AT&T's wireless affiliate has acknowledged this issue in Oklahoma.

However, AT&T's alternatives to using JIP are even less accurate than JIP. The OLRN does not identify the originating cell site, so it suffers the same deficiencies as using the JIP. The use of the CPN (Calling Party's Number) is even worse. A customer with a wireless telephone number from anywhere else in the U.S., such as

New York, can be traveling in Frankfort, KY and place a call to a Frankfort AT&T customer. This would obviously be an IntraMTA call. Yet AT&T would treat this call as originating from New York and consider it an InterMTA call.

Q. **On page 99, line 18, Mr. McPhee states that "if Sprint CMRS has what it believes to be a more accurate way of identifying the originating location than JIP (or OLRN or CPN), it is welcome to discuss that with AT&T so the parties may agree to use another indictor." Please comment.**

A. This statement is curious. As I discussed in my Direct Testimony, Sprint has developed a traffic study methodology which identifies the proper location of the originating cell site.

Perhaps Mr. McPhee is unaware of the discussions between Sprint and AT&T, but Sprint has been discussing the use of Sprint's traffic study methodology with AT&T since at least the fall of 2008. In November 2009, Sprint provided AT&T detailed traffic studies for two AT&T states (CA and TX) using the exact methodology described in my Direct Testimony. In June 2010, Sprint provided AT&T with the results of the Sprint traffic study methodology for all twenty-two AT&T states. I have personally been a participant in several of those discussions. Sprint has repeatedly pointed out the potential deficiencies of using JIP, and has identified specific examples of how the AT&T JIP methodology provides the incorrect jurisdiction.

Despite this evidence, AT&T has continuously refused, without explanation, to accept Sprint's methodology and insists on using its JIP methodology, although AT&T itself has acknowledged the JIP deficiencies in Oklahoma (as discussed in my Direct Testimony). This issue (i.e., AT&T's attempt to use JIP to identify interMTA traffic rather than Sprint cell-site-based information) is subject to arbitration before the Commission solely because of AT&T's refusal to publicly acknowledge the very deficiency with using JIP that is advocated by its own wireless affiliate.

III.A.3(2) – Which party should pay usage charges to the other on land-to-mobile InterMTA traffic and at what rate?

Q. Please summarize Sprint's position on this issue.

A. Sprint CMRS, as a wireless carrier, is entitled to receive compensation for land-to-mobile InterMTA traffic. The rules are clear. As discussed above, 47 C.F.R. § 20.11(a)(1) explicitly states that a LEC must pay compensation to a wireless carrier for LEC-originated traffic. Contrary to AT&T's claim, Sprint is not acting as an IXC. Sprint CMRS is exchanging traffic directly with AT&T, and Sprint CMRS is not itself an IXC.

Q. On page 100, line 23 of his Direct Testimony, Mr. McPhee states: "... AT&T is entitled to originating access charges from Sprint at AT&T's tariffed rates, just as AT&T is entitled to originating access charges on any other long

distance call. Paragraph 1043 of the FCC's *Local Competition Order* states that 'most traffic between LECs and CMRS providers is not subject to interstate access charges unless it is carried by an IXC, *with the exception of certain interstate interexchange service provided by CMRS carriers, such as some "roaming" traffic* that transits the incumbent LECs' switching facilities ....'" [Italics in original testimony.] Mr. McPhee concludes by stating: "Thus, where the wireless carrier is providing an interexchange service to its customers, the originating landline carrier is due access charges." Please comment.

A. Mr. McPhee's "conclusion" is yet another *non sequitur* – nothing in the FCC's paragraph 1043 supports his "conclusion." In addition, as already discussed, wireless carriers such as Sprint CMRS are not IXCs.

Q. Has AT&T made just the opposite argument in other venues?

A. Yes. When another ILEC used Mr. McPhee's argument against AT&T's wireless subsidiary in a proceeding before this Commission, AT&T made the opposite argument, one completely contrary to Mr. McPhee's testimony in this proceeding. In that Kentucky proceeding, AT&T's witness, testifying on behalf of Cingular Wireless, the predecessor company to AT&T's wireless affiliate AT&T Mobility, and testifying on behalf of other "Wireless Carriers," including Sprint PCS, stated:

> A. ... From this language [*Local Competition Order*, paragraph 1043 and footnote 2485], [the ILEC witness] has derived his conclusion that if a Wireless Carrier "carries traffic from one MTA to another," then the Wireless Carrier owes terminating or originating access charges, as the case may be, to an RLEC.

Q. Is [the ILEC witness'] testimony supported by FCC regulations[?]

A. No. The language that [the ILEC witness] has quoted has not made its way into FCC regulations. No FCC regulation governs the exchange of interMTA traffic between an RLEC and a Wireless Carrier. No FCC regulation states that if a Wireless Carrier "carries traffic from one MTA to another," then it owes compensation to an RLEC. No FCC regulation states that compensation for interMTA traffic shall be based on access rates. [The ILEC witness'] interpretation finds no support in FCC regulations.

Q. Does [the ILEC witness] leave out an important part of the FCC's discussion of this issue?

A. Yes. At the end of paragraph 1043 the FCC concludes that "new transport and termination rules should be applied to LECs and CMRS providers so that CMRS providers continue not to pay interstate access charges for traffic that currently is not subject to such charges, and are assessed such charges for traffic that is currently subject to interstate access charges." Prior to 1996, a CMRS provider was not subject to access charges simply because it carried a call across an MTA boundary, nor have the RLECs tried to argue otherwise. In context, paragraph 1043 says only that access charges assessed on [a] CMRS provider prior to 1996 would continue after 1996.

Q. Don't you indicate in your direct testimony that it is typical in RLEC/CMRS interconnection agreements for the parties to agree that compensation for interMTA traffic will be based on RLEC access charges?

A. Yes, but such an agreement is not based on FCC regulations, or anything in the Telecommunications Act. Rather, such an agreement has been based upon a business accommodation made by all parties in an attempt to avoid lengthy and protracted litigation. The FCC has failed to tell us how, or even if, compensation should be paid for interMTA traffic, so Wireless Carriers and RLECs have fashioned a methodology based on business considerations, not regulations.

Q. Do you agree with [the ILEC witness] that interMTA compensation liability, to the extent it exists, should apply to both origination and termination of calls?

A. No. As I have pointed out, nothing in the FCC regulations requires such a result. Moreover, the entire thrust of the Telecommunications Act and FCC regulations is that the calling (originating) party's service provider should pay the called (terminating) party's provider for termination of traffic. The Act and FCC regulations are not premised upon the terminating party's provider paying anything. Yet, [the ILEC witness] would have the CMRS provider pay access charges to the RLECs when the CMRS Providers terminate RLEC-originated, interMTA traffic. This is wrong.[13]

I am in complete concurrence with the AT&T wireless position as stated above in the Kentucky CMRS-RLEC proceeding.

[13] *Petition of Ballard Rural Telephone Cooperative Corporation, Inc. for Arbitration of Certain Terms and Conditions of Proposed Interconnection Agreement With American Cellular f/k/a ACC Kentucky License LLC, Pursuant to the Communications Act of 1934, as Amended by the Telecommunications Act of 1996, Kentucky Public Service Commission Case No. 2006-00215, et al*; Rebuttal Testimony of William H. Brown on Behalf of Cingular Wireless and on Behalf of the Wireless Carriers; dated October 6, 2006, corrected to October 9, 2006, at page 28.

III.A.3(3) – What is the appropriate factor to represent land-to-mobile InterMTA traffic?

Q. Please summarize Sprint's position on this issue.

A. Subject to a traffic study to validate the amount of land-to-mobile traffic generated by AT&T and its customers, Sprint proposes a 2% land-to-mobile terminating InterMTA Factor to derive the minutes of use ("MOU") upon which Sprint CMRS would charge AT&T for AT&T originated landline-to-mobile InterMTA traffic if such traffic is not subject to a Bill and Keep arrangement, as Sprint proposes it should be.

Q. Does Mr. McPhee or any other AT&T witness provide testimony on Issue III.A.3(3)?

A. No, neither Mr. McPhee nor any other AT&T witness provides testimony on Issue III.A.3(3). However, as I understand AT&T's position, AT&T *expects Sprint to pay AT&T when Sprint terminates AT&T-originated InterMTA traffic*, and that the InterMTA factor should be based on the JIP. AT&T proposes a default InterMTA factor of 6% "in the absence of an auditable Sprint traffic study."

I discuss in my Direct Testimony, under ***no*** circumstances is it appropriate for AT&T to charge Sprint CMRS ***anything*** for ***AT&T-originated*** landline-to-mobile InterMTA traffic. Further, any valid traffic study of AT&T-originated land-to-

mobile traffic must recognize the actual terminating cell site location, as discussed above. The JIP does not always identify the terminating jurisdiction.

III.E – Shared Facility Costs.

III.E(1) – How should Facility Costs be apportioned between the Parties under the CMRS ICA?

Q. Please summarize Sprint CMRS's position on this issue.

A. Facility Costs should be apportioned based upon the parties' respective proportionate use (as measured in minutes of use) of the Facility to provide service to its respective customers. In addition, AT&T should bill Sprint only for a portion of the interconnection facility, by applying a credit for AT&T's portion.

Q. On page 71, line 19 of her Direct Testimony, Ms. Pellerin states: "AT&T contends that it is responsible for recurring facilities costs associated with calls from its end users to Sprint's end users; costs associated with calls originated by Sprint's end users and by third party carriers are Sprint's responsibility." Do you agree?

A. No. I do agree with part of her statement, that AT&T is responsible for AT&T-originated traffic and Sprint is responsible for Sprint-originated traffic. However, her contention that Sprint is responsible for third party-originated traffic is wrong.

It is noteworthy that Ms. Pellerin cannot quote a single FCC rule to support her assertion.

Ms. Pellerin's assertion that somehow Sprint is responsible for third party-originated traffic is contrary to the FCC's Calling Party's Network Pays ("CPNP") principle, which AT&T itself has supported in other venues, as I discussed at length in my Direct Testimony.

Q. On page 73, line 9 of her Direct Testimony, Ms. Pellerin states: "AT&T will provide Sprint with a quarterly percentage to represent AT&T's use of the facilities. AT&T will bill Sprint for the entire cost of the facilities, and Sprint can apply AT&T's percentage to bill AT&T." Please comment.

A. As discussed in my Direct Testimony, and as discussed in detail in Mr. Mark G. Felton's Direct and Rebuttal Testimonies, it appears that AT&T is willing to share the cost of interconnection facilities. However, AT&T's definition of an interconnection facility amounts to little more than a few feet of cross-connect. Under AT&T's definition, the entire interconnection facility between the AT&T network and the Sprint network is Sprint's financial responsibility, even though both AT&T's and Sprint's originating traffic will utilize that interconnection facility.

Q. On page 77, line 21 of her Direct Testimony, Ms. Pellerin states: "Sprint's billing proposal would require AT&T to modify its billing system just for

Sprint. When Sprint leases facilities from AT&T, Sprint's language provides that AT&T would have to adjust its facilities bills to reflect a credit to Sprint .... There is no reason to change the billing process the parties currently use." What, in fact, is "the billing process the parties currently use"?

A. As discussed in the testimony of Mr. Mark G. Felton, the method described does not represent "the billing process the parties currently use." Currently, Sprint CMRS does not bill AT&T for its portion of the interconnection facility. Rather, on a quarterly basis, the parties jointly determine the a credit for AT&T's portion; AT&T then applies that credit to Sprint's bill.

III.E(2) – Should traffic that originates with a Third Party and that is transited by one Party (the transiting Party) to the other Party (the terminating Party) be attributed to the transiting Party or the terminating Party for purposes of calculating the proportionate use of facilities under the CMRS ICA?

Q. Please summarize Sprint's position on this issue.

A. Third party-originated traffic that the transiting party (AT&T) delivers to the terminating party is the transiting party's (AT&T's) traffic for purposes of calculating the proportionate use of facilities. In this instance, the third party is the transiting party's (AT&T's) wholesale Interconnection customer, and AT&T and the third party each jointly causes the transiting party's use of the facility. The same terms would apply reciprocally if Sprint were the transiting party.

Q. On page 79, line 20, Ms. Pellerin states, "A call that originates with a third party and that AT&T transits to Sprint should be attributed to Sprint ... because ... Sprint is the cause of that usage." Is this correct?

A. No. As discussed throughout my Direct and Rebuttal testimonies, this is contrary to the FCC's longstanding "Calling Party's Network Pays" principle, a principle AT&T has supported in other venues.

As the originating carrier, the third party controls how it delivers its traffic to Sprint. AT&T as the transit provider and the third party as AT&T's transit customer, not Sprint, cause the usage of AT&T's transit service and the facilities over which transit traffic is delivered by AT&T to Sprint. This is illustrated by the situation I discussed earlier, where New Cingular uses AT&T's transit service to deliver most of its traffic to Sprint, although Sprint has established direct interconnection to deliver its traffic to New Cingular.

AT&T is paid a transit fee by the third party to deliver the traffic to Sprint, from which AT&T should be compensated for its facility cost. However, recovering both a transit fee from the originating carrier and, at the same time, improperly apportioning facility usage to the terminating carrier results in AT&T "double-recovering" its costs on this transit traffic.

Q. On page 79, line 23, Ms. Pellerin states, "AT&T has no stake in the [transit] call, because neither the calling party nor the called party is AT&T's customer." Is this correct?

A. No. It is obvious that AT&T has a stake in the transit call – AT&T is being paid a transit fee by the originating carrier to deliver the call to the terminating carrier. It is reasonable that the rate that AT&T charges for that transit function should recover all of AT&T's switching and transmission costs, as well as a "reasonable profit" consistent with the FCC's pricing rules, specifically 47 C.F.R § 51.505. The transit rate that AT&T proposes certainly would cover those costs, as would each of the alternative transit rates proposed by Sprint.

In addition, when AT&T functions as a transit provider, the originating carrier is, in fact, the carrier customer of AT&T. Not all of AT&T's customers are "end-users." AT&T has many "carrier customers." AT&T's own wireless and CLEC affiliates are among them.

Q. On page 80, line 1, Ms. Pellerin states that "the reason that AT&T must transit the call is that Sprint has elected not to directly interconnect with the third party; it is for this reason that Sprint is the cause of the usage." Is this correct?

A. No. The choice of indirect or direct interconnection lies with the originating carrier, not the terminating carrier. Under § 251(a)(1) of the Act, any carrier may choose to

interconnect either directly or indirectly with any other carrier. Specifically, § 251(a)(1) states,

> **Each telecommunications carrier** has the duty to interconnect directly or indirectly with the facilities and equipment of other telecommunications carriers. (Emphasis added.)

The FCC, in 47 C.F.R. § 51.5, further defines interconnection as follows:

> *Interconnection* is the linking of two networks **for the mutual exchange of traffic**. (Emphasis added.)

Note that this obligation applies to ***each*** carrier. In other words, it is Carrier A's duty to interconnect and exchange traffic with Carrier B, and it is Carrier B's duty to interconnect and exchange traffic with Carrier A. Either carrier may choose to deliver its originating traffic directly to the other carrier, or indirectly through a third party transit provider such as AT&T. Carrier A need not choose the same method as does Carrier B. In other words, Carrier A can choose to deliver its originating traffic directly to Carrier B, while Carrier B can choose to deliver its originating traffic indirectly through a transit provider to Carrier A.

For example, as previously explained, in Florida and Tennessee, Sprint PCS delivers its originating traffic to the AT&T wireless affiliate via direct one-way trunks, while the AT&T wireless affiliate has chosen to continue to deliver significant amounts of its originating traffic to Sprint PCS indirectly via an AT&T tandem. Sprint PCS is not demanding that the AT&T wireless affiliate install and deliver its originated traffic to Sprint PCS over a direct connection, and AT&T should not make such a demand on Sprint.

To take AT&T's argument to logical conclusion would illustrate its absurdity.: If Sprint PCS had the right to dictate to AT&T's wireless affiliate how the AT&T wireless affiliate delivers its originating traffic to Sprint PCS, Sprint PCS could choose to receive AT&T affiliate wireless traffic via a microwave path that completely eliminates altogether any ILEC involvement in Sprint's business. Sprint simply does not have any right to dictate how the AT&T wireless affiliate, or any other third party, may choose to deliver its traffic to Sprint, and it is inappropriate to apportion to Sprint any interconnection facility costs associated with the decision of either an AT&T affiliate or any other third party to send its originated traffic to Sprint via AT&T's transit service.

Q. On page 80, line 5, Ms. Pellerin states that "the originating carrier does not compensate AT&T for transporting the call to Sprint from the last point of switching on the AT&T network." Please comment.

A. This statement is generally incorrect. As discussed under Issue III.E(3), and shown in Diagram 3, the originating carrier compensates the transit provider to deliver the call to the terminating carrier. This includes the cost of the transit provider's share of the interconnection facility it shares with the terminating carrier.

Generally, two LECs share the financial responsibility for the shared interconnection facility between themselves through some sort of meet-point billing or other cost-sharing arrangement. It is normal, and appropriate, for a transit

provider to include the cost of that shared interconnection facility in its transit rate. As part of my previous work experience, I was responsible for the development of the TELRIC-based rate for transit service performed by an ILEC. That rate included the cost of that shared interconnection facility.

The only case in which Ms. Pellerin's statement is correct is when the terminating carrier owns or is financially responsible for 100% of that interconnection facility (even though two parties share its use). While this is sometimes the case between ILECs such as AT&T and CMRS providers, this is not the norm between two LECs.

Q. On page 80, line 10, Ms. Pellerin claims the FCC's TSR Wireless Order and Texcom Order are consistent with AT&T's position. Is this correct?

A. No. As discussed under Issue III.E(3), AT&T and its originating transit carrier customer, not Sprint, are the cost causers of transit traffic.

Ms. Pellerin's interpretation is wrong. The *Texcom* quotes do not even pertain to the facilities at issue. *Texcom* simply states that the terminating carrier can bill the originating carrier for reciprocal compensation. I totally agree. But, that has absolutely nothing to do with the cost of interconnection facilities, as shown in Diagram 1. This is yet another example, as discussed in detail in Issue I.C(2), of AT&T confusing the concepts of "interconnection" and "reciprocal compensation." As already discussed, "interconnection" and "reciprocal compensation" are two

different concepts which deal with completely different portions of the carriers' networks.

III.E(3) – How should Facility Costs be apportioned between the Parties under the CLEC ICA?

Q. Please summarize Sprint's position on this issue.

A. This Issue is the same as Issue III.E.(1), except in the context of the CLEC ICA, and there is no rational basis for this Issue to be decided any differently. Facility Costs should be apportioned based upon the parties' respective proportionate use of the Facility to provide service to its respective customers.

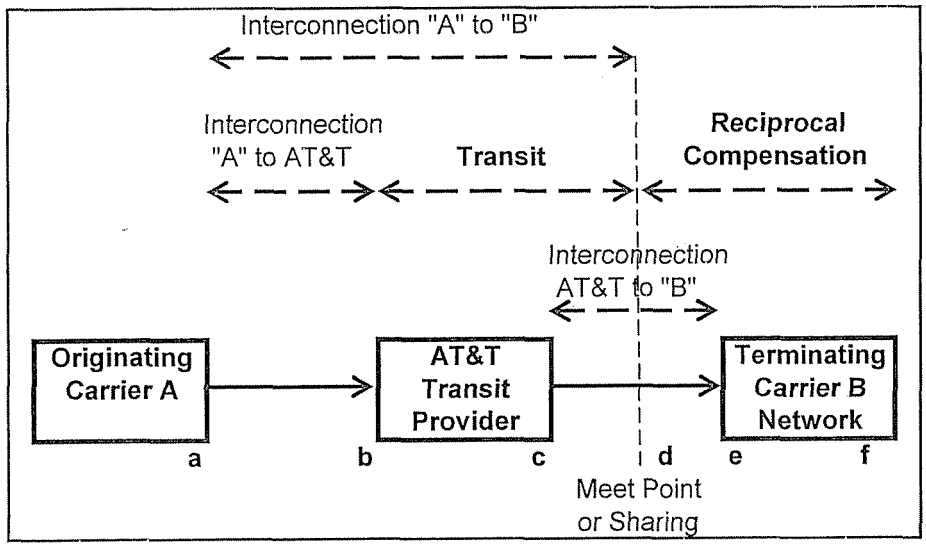
Q. On page 87, line 17 of his Direct Testimony, Mr. McPhee states: "... Sprint is simply trying to gain a double-recovery of the costs associated with deploying its network. First, Sprint recovers its costs by charging a PUF based upon traffic imbalances between it and AT&T, and second, it charges reciprocal compensation rates that separately recover the transport and termination of traffic from AT&T to Sprint." Is this correct?

A. No, this is not correct. As discussed earlier under Issue I.C(2), and depicted in Diagram 1, Mr. McPhee is confusing the concepts of "interconnection" and "reciprocal compensation." As already discussed, "interconnection" and "reciprocal compensation" are different concepts per the FCC rules.

Q. How does Sprint's proposal not involve double recovery of Sprint's costs?

A. As illustrated in Diagram 3, Sprint's proposal does not involve double recovery of Sprint's costs.

Diagram 3
Transit vs. Reciprocal Compensation



In Diagram 3, Originating Carrier A chooses to interconnect with Carrier B indirectly using AT&T as the transit provider. The "reciprocal compensation" due from Carrier A to Carrier B is the cost of Carrier B's network, represented from "Point d" to "Point f." As the Transit provider, AT&T is entitled to bill Carrier A for its transit costs, represented from "Point b" to "Point d." If Sprint is Carrier B, there is no overlap or double recovery of costs by Sprint.

Note that the interconnection facility from "Point a" to "Point b" is subject to the terms and conditions of an ICA between Carrier A and AT&T; similarly, the interconnection facility from "Point c" to "Point e" between AT&T and Carrier B is

subject to an ICA. If the Sprint-AT&T ICA calls for a sharing of the cost of the interconnection facility from "Point c" to "Point e," AT&T is entitled to recover its share of that cost from Carrier A through AT&T's transit charge. (Note that AT&T generally seeks to require Terminating Carrier B to pay for the entire cost of the "interconnection facility," "Point c" to "Point e," as it is attempting to do in this arbitration. To the extent that AT&T is successful in this effort, its cost is $0.)

The point is that "interconnection" and "reciprocal compensation" concern different portions of the telecommunications network. Sprint's proposal does not result in any double recovery of Sprint's costs.

III.E(4) – Should traffic that originates with a Third Party and that is transited by one Party (the transiting Party) to the other Party (the terminating Party) be attributed to the transiting Party or the terminating Party for purposes of calculating the proportionate use of facilities under the CLEC ICA?

Q. Please summarize Sprint's position on this issue.

A. Similar to the above situation between the CMRS Issue III. E. (1) and CLEC Issue III.E.(3), this CLEC Issue III.E.(4) is the same as the CMRS Issue III.E.(2), and there is no rational basis for this Issue to be decided any differently.

Q. On page 88, line 12, Mr. McPhee states: "Contrary to Sprint's proposed language, AT&T does not recover for facilities through its transit service per

minute of use charges. AT&T's transit service charges are usage-based charges for switching and transport that do not account for the cost of the underlying facilities." Please discuss.

A. Mr. McPhee's answer seems to make an artificial distinction between "facilities" and "transport from AT&T to the terminating carrier." By "the cost of underlying facilities," he may be referring to the non-recurring costs. Regardless, as discussed above under Issue III.E(3), and referring to Diagram 3, Carrier A is paying AT&T a transit charge to deliver its originating traffic from "Point b" to "Point d." AT&T is recovering this cost from the originating Carrier A. It is AT&T who seeks to recover this cost from both originating Carrier A and Sprint (terminating Carrier B).

Q. On page 88, line 19 of his Direct Testimony, Mr. McPhee states: "... as explained by Ms. Pellerin, Sprint is the cost-causer of the transit traffic sent by third parties and should bear any responsibility for the facility if the Commission adopts Sprint's proposed PUF concept; if Sprint was interconnected directly with those third parties, then the traffic would not transit AT&T's network to Sprint." Please discuss.

A. I have already addressed this issue under Issue III.E(2) per a similar comment by Ms. Pellerin. To summarize, it is well established telecommunications policy, per the FCC's Calling Party's Network Pays principle, that the originating party is the cost causer. AT&T itself has supported the CPNP principle in other venues. Further, it is the originating party that determines how its traffic is delivered to the

terminating carrier. Mr. McPhee's statement completely turns the well-established CPNP principle upside-down.

III.G – Sprint's Pricing Sheet

III.G – Should Sprint's proposed pricing sheet language be included in the ICA?

Q. Please summarize Sprint's position on this issue.

A. Yes, Sprint's language identifies rates that currently (1) are unknown or to be determined ("TBD"), (2) should be a known or calculable amount, or (3) should have a stated traffic factor. Sprint's offered negotiated Conversation MOU Usage Rates are appropriate to serve as Interim Rates until unknown or TBD rates are determined.

Q. On page 84, line 12 of her Direct Testimony, Ms. Pellerin attempts to describe Sprint's pricing sheet. Please comment.

A. Ms. Pellerin makes Sprint's pricing sheet appear to be complicated, when, in fact, it is quite simple. As discussed in Issue III.A(1) and (2), Sprint proposes a simple system in which all traffic is exchanged under a single arrangement, preferably the current Bill-and-Keep arrangement between Sprint and AT&T. If not Bill-and-Keep, the Commission must select a rate. The Commission's choices include AT&T's current reciprocal compensation rate of $0.0007, or the Commission can

establish new TELRIC-based rates, which, according to the AT&T FCC Letter, will be less than $0.0007.

Under Sprint's proposal, only transit traffic which does not originate with AT&T's end-users would fall into another category, "Transit Service Traffic." The Transit Service Traffic rate should be either an interim rate of $.00035 (*i.e.*, ½ of $.0007), or a new TELRIC-based rate that should, according to the AT&T FCC Letter, be less than $.00035.

Existing "Jointly Provided Switched Access" (*i.e.*, traditional Telephone Toll Service traffic between Sprint CLEC customers and AT&T customers and services that each jointly provide to IXCs) is subject to existing tariffs and is not subject to pricing changes per this ICA.

Q. On page 84, line 17 of her Direct Testimony, Ms. Pellerin states: "Instead, Sprint proposes it be allowed to pay the lowest of various alternative rates, the majority of which are reflected as 'TBD,' 'None at this time,' or 'Unknown at this time.'" Please comment.

A. As already discussed, Ms. Pellerin incorrectly portrays Sprint's pricing proposal as some sort of "pick and choose." In fact, Sprint proposes a single compensation arrangement for all non-Telephone Toll Service traffic between Sprint end-users and AT&T end users. The reason that many of Sprint's proposed prices are shown on the proposed price sheet as "TBD," "None at this time," or "Unknown at this

time," is for the simple reason that the Sprint-AT&T negotiations did not progress far enough to establish specific pricing proposals.

III.H – Facility Pricing

III.H(1) – Should Sprint be entitled to obtain from AT&T at cost-based (TELRIC) rates under the ICAs facilities between Sprint's switch and the POI?

Q. Please summarize Sprint's position on this issue.

A. Yes, Sprint should be entitled to obtain Interconnection Facilities between Sprint's network and AT&T's network at cost-based (TELRIC) rates. Consistent with the majority of federal Circuit Court of Appeals decisions, the facilities between a Sprint switch and a POI that link the Parties' respective networks are the 47 U.S.C. § 252(c)(2) Interconnection Facilities that, pursuant to 47 U.S.C. § 251(d)(1), are subject to the TELRIC pricing standard.

Q. On page 86, line 5 of her Direct Testimony, Ms. Pellerin states: "... the transport facilities between Sprint's switch location and the parties' POI are 'entrance facilities,' which are not subject to TELRIC-based pricing." Please comment.

A. This a constant theme throughout AT&T's testimony, which is addressed in my Direct Testimony, and in the Direct and Rebuttal Testimonies of Mr. Mark G.

Felton. As discussed above under Issue III.E(1), AT&T's definition of an "interconnection facility" is limited to little more than a few feet of cross-connect.

III.H(2) – Should Sprint's proposed language governing "Interconnection Facilities / Arrangements Rates and Charges" be included in the ICA?

Q. Please summarize Sprint's position on this issue.

A. Sprint's proposed language governing "Interconnection Facilities / Arrangements Rates and Charges" will ensure that Sprint CMRS and Sprint CLEC are charged Interconnection services rates that are the lower of: a) TELRIC pricing; or b) any lower than TELRIC pricing that AT&T has offered another Telecommunications Carrier.

Q. On page 86, line 2 of her Direct Testimony, Ms. Pellerin attempts to describe Sprint's proposed pricing for interconnection facilities. Please comment.

A. Here is yet another example of Ms. Pellerin presenting Sprint's facility pricing proposal as being complicated, when, in fact, it is quite simple. Ms. Pellerin incorrectly portrays Sprint's pricing proposal as some sort of "pick and choose." In fact, Sprint proposes that facilities be priced at TELRIC. If an even lower rate has been made available to another carrier, Sprint expects that lower rate instead of TELRIC.

III.H(3) – Should AT&T's proposed language governing Interconnection pricing be included in the ICAs?

Q. Please summarize Sprint's position on this issue.

A. AT&T's proposed language governing Interconnection pricing should not be included in the ICAs. AT&T's pricing is contrary to the Act's Interconnection pricing standards. AT&T's refusal to offer TELRIC pricing to CMRS carriers and its CLEC pricing are based on an attempt to divide Interconnection Facilities into two pieces, an "Entrance Facility" and "Interconnection Facility," in order to limit its TELRIC-pricing obligations.

Q. Please summarize Ms. Pellerin's Direct Testimony on this issue.

A. Ms. Pellerin's testimony on this issue repeats the constant theme throughout AT&T's testimony, which is addressed in my Direct Testimony, and in the Direct and Rebuttal Testimonies of Mr. Mark G. Felton. As discussed above under Issue III.E(1), AT&T's definition of an "interconnection facility" is limited to little more than a few feet of cross-connect, while three out of four federal appellate courts have held that the "interconnection facility" that AT&T must provide at TELRIC pricing extends from Sprint's switch to the POI.

IV. SUMMARY AND CONCLUSION

Q. Please Summarize your Rebuttal Testimony.

A. The purpose of the Act is to promote competition and to prevent incumbent LECs from imposing onerous interconnection-related terms and conditions upon its competitors. Yet, this is exactly what AT&T is attempting to do in this arbitration. AT&T either cannot cite any FCC rules to support its positions, or mischaracterizes the rules in such a manner as to completely thwart the pro-competitive intent of the Act.

AT&T's position is that if a Sprint end-user calls AT&T, Sprint pays (which is appropriate per the FCC's Calling Party's Network Pays principle); however, if an AT&T end-user calls Sprint, Sprint also pays (*e.g.*, AT&T land-to-mobile originated InterMTA calls); and, if Sprint and AT&T share an interconnection facility, Sprint also pays (via commercial rate "entrance facility" rates, and the apportioning of third party originated transit costs to Sprint).

Sprint requests that the Commission accept Sprint's position on each Issue as follows:

Issue I.C – Transit traffic related Issues: AT&T is required to provide Transit Service at TELRIC-based prices. A reasonable interim rate is $0.00035.

Issue III.A – Traffic categories and related compensation rates, terms, and conditions: All Interconnection-related traffic should be exchanged between

Sprint and AT&T upon terms and conditions that are mutually equitable and reasonable. All rates should be TELRIC-based.

Issue III.A.3 – CMRS ICA-specific, InterMTA traffic: InterMTA traffic is not subject to switched access charges. All InterMTA traffic should be exchanged between Sprint and AT&T upon terms and conditions that are mutually equitable and reasonable. Traffic factors should be based upon traffic studies which accurately identify the physical location of the wireless end user.

Issue III.E – Shared Facility Costs: Interconnection facility costs should be shared between Sprint and AT&T based upon each party's proportionate usage. Transit traffic should be assigned to the party being compensated for that traffic by a third party originating carrier.

Issue III.G – Sprint Pricing Sheet: Sprint's Pricing Sheet should be adopted.

Issue III.H – Facility Pricing: Interconnection Facility prices should be TELRIC-based for the entire portion of the network that links a Sprint switch to an AT&T switch, rather than special access pricing applied to a "transport entrance facility" and TELRIC pricing only applied to what amounts to a cross-connect between such "transport entrance facility" and an AT&T switch.

Q. Does this conclude your Rebuttal Testimony?

A. Yes, it does.

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ATTACHMENT RGF-4