

EXHIBIT 1

**STATE OF MICHIGAN
BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION**

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In the matter of Petition of Sprint Spectrum)
L.P. for Arbitration pursuant to Section 252(b))
of the Telecommunications Act of 1996 to) Case No. U-17349
establish Interconnection Agreements with)
Michigan Bell Telephone Company d/b/a)
AT&T Michigan)

**AT&T MICHIGAN'S BRIEF
PUBLIC VERSION**

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TABLE OF CONTENTS

	<u>Page</u>
I. PURPOSE AND SCOPE OF THE AGREEMENT (ISSUES 1, 2, 3 AND 4).....	1
I.A. PARTIES' RIGHTS AND OBLIGATIONS UNDER THE AGREEMENT.....	1
ISSUE 1:	1
I.B. SERVICE AND TRAFFIC RELATED DEFINITIONS.....	28
ISSUE 2:	28
ISSUE 3:	32
ISSUE 4:	33
II. ISSUES REGARDING HOW THE PARTIES INTERCONNECT (ISSUES 5, 6, 7, 8, 9, 10, 11, 12, 13, 14 AND 15).....	34
II.A. INTRODUCTION	34
II.B. INTERCONNECTION METHODS	39
ISSUE 5(a):.....	39
ISSUE 5(b):.....	39
II.C. POIs.....	43
ISSUE 6:	43
ISSUE 7:	45
ISSUE 8(a):.....	53
ISSUE 8(b):.....	53
ISSUE 8(c):.....	53
II.D. FACILITIES AND TRUNKING PROVISIONS (NON- COMPENSATION).....	58
ISSUE 9:	58
ISSUE 10:	62
ISSUE 11(a):.....	72
ISSUE 11(b):.....	77
ISSUE 11(c):.....	80
ISSUE 12(a):.....	82
ISSUE 12(b):.....	82
ISSUE 13(a):.....	85
ISSUE 13(b):.....	87
ISSUE 13(c):.....	90
ISSUE 14(a):.....	91

TABLE OF CONTENTS
(Continued)

	<u>Page</u>
ISSUE 14(b):.....	91
ISSUE 15:	97
II.E. INTERCONNECTION FACILITIES PRICING AND COST SHARING (ISSUES 22, 23, 24 AND 25).....	102
ISSUE 22:	102
ISSUE 23:	110
ISSUE 24(a):.....	112
ISSUE 24(b):.....	120
ISSUE 24(c):.....	123
ISSUE 25:	126
III. RATING AND ROUTING ISSUES (ISSUES 16, 17 AND 18).....	133
ISSUE 16:	133
ISSUE 17:	139
ISSUE 17(a):.....	139
ISSUE 17(b):.....	139
ISSUE 18:	144
IV. TRAFFIC COMPENSATION AND RELATED TERMS AND CONDITIONS	147
ISSUE 19:	147
ISSUE 20:	149
ISSUE 21:	163
V. BILL AND PAYMENT ISSUES (ISSUES 26, 27, 28, 29, 30, AND 31).....	167
V.A. DEPOSITS.....	167
ISSUE 26(a):.....	169
ISSUE 26(b):.....	171
ISSUE 26(c):.....	178
ISSUE 26(d):.....	179
ISSUE 26(e):.....	181
ISSUE 26(f):	183
ISSUE 26(g):.....	187
V.B. ESCROW	187
ISSUE 27:	187

TABLE OF CONTENTS
(Continued)

	<u>Page</u>
ISSUE 28:	189
V.C. DISCONNECTION FOR NON-PAYMENT	189
ISSUE 29(a):	189
ISSUE 29(b):	191
ISSUE 29(c):	193
ISSUE 29(d):	197
ISSUE 29(e):	197
ISSUE 30:	199
V.D. BILLING DISPUTES	202
ISSUE 31:	202

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AT&T MICHIGAN'S BRIEF

Michigan Bell Telephone Company ("AT&T Michigan"), by its counsel, respectfully submits its brief supporting resolution of the arbitration issues in favor of AT&T Michigan.

INTRODUCTION

This brief generally tracks the organizational scheme of Sprint's Initial Brief (Exhibit G to Sprint's Petition for Arbitration), with two exceptions: Sprint's Initial Brief addresses Issues 22-25 in Section IV.B. This brief includes no Section IV.B, and discusses Issues 22-25 in Section II.E. With the elimination of Section IV.B, this brief discusses under Section IV the issues Sprint's Initial Brief discusses under Section IV.A.

Our discussion of each issue on the DPL begins with a short statement of AT&T Michigan's position on the issue, at the end of which the AT&T Michigan witness(es) on that issue and the pertinent page numbers of their testimony are identified.

I. PURPOSE AND SCOPE OF THE AGREEMENT (ISSUES 1, 2, 3 AND 4)

I.A. PARTIES' RIGHTS AND OBLIGATIONS UNDER THE AGREEMENT

ISSUE 1: WHAT PROVISIONS SHOULD BE INCLUDED IN THE ICA REGARDING THE EXCHANGE OF TRAFFIC IN IP FORMAT?

AT&T Michigan Position: The parties' interconnection agreement ("ICA") should not provide for IP-to-IP interconnection, for two principal reasons. First, the interconnection requirement in section 251(c)(2) of the Telecommunications Act of 1996 does not apply to IP-to-IP interconnection. The Commission should not address that legal point, however, because the FCC is considering it, and because the second reason for resolving this issue in favor of AT&T Michigan is simple and straightforward and does not require the Commission to anticipate what the FCC will do. That second reason is that AT&T Michigan has no IP network. In other words, it has no IP-capable equipment with which Sprint can interconnect. That indisputable fact rules out any possibility of IP-to-IP interconnection at this time. Sprint wants the Commission to require an affiliate of AT&T Michigan – AT&T Corp. – to permit Sprint to interconnect with that affiliate's IP-capable equipment, but any such requirement would be unlawful, not only because AT&T Corp. is not a party to this proceeding, but also because federal law requires that interconnection be at a point on the ILEC's network – not on an affiliate's network. Since there can be no IP-to-IP interconnection between AT&T Michigan and Sprint, any traffic that Sprint carries on its network in IP format and wishes to deliver to AT&T Michigan must be converted to TDM format before Sprint delivers it to AT&T Michigan's TDM network. In case the circumstances change, AT&T Michigan proposes language that will allow Sprint to propose terms and conditions for IP-to-IP interconnection during the term of the ICA. In a just completed arbitration between Sprint and AT&T Illinois, the Illinois Commerce Commission adopted the language AT&T Michigan proposes here. (Anglin at 3-26.)

1. Introduction

All traffic that AT&T Michigan exchanges with other carriers, including Sprint, is exchanged in Time Division Multiplexing ("TDM") format. Testimony of Bill Anglin ("Anglin") at 3. This is because AT&T Michigan has a TDM network. AT&T Michigan's network includes no equipment that is capable of processing traffic in any other format, including IP (Internet Protocol) format. *Id.*¹ While some companies with which AT&T Michigan exchanges traffic carry traffic in IP format on their networks, those companies must convert any such traffic to TDM before they deliver the traffic to AT&T Michigan. *Id.* at 11.

¹ When carriers exchange voice traffic in Time Division Multiplex ("TDM") format, they send the traffic over dedicated circuits. Anglin at 4. In Internet Protocol ("IP") format, in contrast, the voice signals are divided into packets and each packet is sent over the fastest available route in a packet-switched network. *Id.* The packets are then reassembled into the complete voice message at the receiving end.

Sprint, however, proposes that the ICA include provisions for IP-to-IP interconnection, *i.e.*, provisions that would allow each party to deliver traffic in IP format to the other party, with no conversion to TDM format. AT&T Michigan opposes Sprint's proposed language.

One reason for AT&T Michigan's opposition is that AT&T Michigan disagrees with Sprint's premise that the interconnection requirement in section 251(c)(2) of the Telecommunications Act of 1996 ("1996 Act" or "Act") extends to IP-to-IP interconnection. That disagreement, however, is currently before the Federal Communications Commission ("FCC") (see Anglin at 6), and, as an Arbitration Panel recently concluded in Case No. U-16906, this Commission should not get out in front of the FCC on this issue. Furthermore, there is no need for a decision in this case on whether section 251(c)(2) requires IP-to-IP interconnection, because even if it did, the Commission would still have to reject Sprint's proposed language. This is the second reason for AT&T Michigan's opposition to Sprint's proposal: Sprint cannot establish IP-to-IP interconnection with AT&T Michigan, because under controlling federal law, any interconnection must be at a point on AT&T Michigan's network, and there is no point on AT&T Michigan's network at which an IP-to-IP interconnection can be established because there is no IP equipment on AT&T Michigan's network.

AT&T Michigan recognizes, however, that the FCC may at some point require incumbent local exchange carriers ("ILECs") to provide IP-to-IP interconnection to requesting carriers, and that in the future, AT&T Michigan's network may include IP-capable equipment. In light of that, AT&T Michigan's proposal is not that the parties' ICA be silent on the subject of IP-to-IP interconnection. Rather, AT&T Michigan proposes that the ICA allow either party to propose terms and conditions for IP-to-IP interconnection during the term of the ICA, with recourse to this Commission if the parties fail to reach agreement.

Sprint recently arbitrated the IP-to-IP interconnection issue with AT&T Illinois. In that case, Staff of the Illinois Commerce Commission (“Illinois Commission” or “ICC”) recommended that the ICC reject the IP-to-IP interconnection language Sprint proposed. One reason Staff gave for this recommendation was that Sprint’s language was “inconsistent with the requirements of Section 251 of the Act and the FCC and ICC rules and regulations implementing it.”² As we explain below, the language Sprint proposes here, though different from the language it proposed in Illinois, is contrary to law for the same reasons as the language Sprint proposed there.

The ICC Staff, having rejected Sprint’s unlawful proposal, recommended that the Illinois ICA include a provision that would allow either party to develop language prescribing rates, terms and conditions for IP-to-IP interconnection and to petition the ICC during the term of the ICA to add the language to the ICA.³ That way, the ICC could defer until later a decision on whether the 1996 Act even requires IP-to-IP interconnection – a question that the ICC Staff noted is “an open one at the FCC.”⁴

AT&T Illinois proposed language to implement the Staff’s suggestion, as did Sprint.⁵ Staff endorsed AT&T Illinois’ language; the Administrative Law Judges (“ALJs”) recommended it;⁶ and the ICC adopted AT&T Illinois’ language.⁷

² Staff of the Illinois Commerce Commission’s Initial Brief, Docket No. 12-0550, *SprintCom, Inc. Wireless Co., L.P., NPCR, Inc. d/b/a Nextel Partners and Nextel West Corp.’s Petition for Arbitration Pursuant to Section 252(b) of the Telecommunications Act of 1996, to Establish an Interconnection Agreement with Illinois Bell Telephone Company d/b/a AT&T Illinois* (March 22, 2013) (Anglin Exhibit BA-1) at 32.

³ Arbitration Decision, Docket No. 12-0550, *SprintCom, Inc. Wireless Co., L.P., NPCR, Inc. d/b/a Nextel Partners and Nextel West Corp.’s Petition for Arbitration Pursuant to Section 252(b) of the Telecommunications Act of 1996, to Establish an Interconnection Agreement with Illinois Bell Telephone Company d/b/a AT&T Illinois* (June 26, 2013) (“*Sprint Illinois Arbitration Decision*”) (Anglin Exhibit BA-2) at 33-34.

⁴ *Id.* at 33.

⁵ *Id.* at 34.

Here, AT&T Michigan proposes exactly the same language that the ICC approved – except that references to “AT&T Illinois” have been changed to “AT&T Michigan.

Sprint asserts that AT&T refused to negotiate IP-to-IP interconnection in good faith. Sprint’s Initial Brief (“Sprint Br.”) at 24, 25, 30, 31. That is not true. Apart from the fact that AT&T spent hours negotiating the IP-to-IP interconnection issue with Sprint, AT&T Michigan’s advocacy here of language that the Illinois Commerce Commission just approved⁸ can hardly constitute a failure to negotiate in good faith.⁹

AT&T Michigan’s proposal is this:

3.11.2.2 All traffic that Sprint delivers to AT&T Michigan pursuant to this Agreement will be delivered in TDM format.

3.11.2.2.1 This Agreement does not provide for IP-to-IP interconnection. (See section 3.11.2.2.). AT&T Michigan maintains (and Sprint acknowledges that AT&T Michigan maintains) that the interconnection duties imposed by the 1996 Act do not encompass IP-to-IP interconnection and that the Commission is without

⁶ Illinois arbitrations are conducted by Administrative Law Judges, who perform essentially the same function as an MPSC Arbitration Panel. The ICC Staff files testimony and briefs.

⁷ *Sprint Illinois Arbitration Decision* at 34.

⁸ The ICC, having adopted AT&T’s proposed language in the arbitration, approved the complete interconnection agreement including AT&T’s language concerning IP-to-IP interconnection on August 14, 2013, in ICC Docket No. Docket No. 13-0443. The ICC’s Order approving the ICA is available at <http://www.icc.illinois.gov/docket/files.aspx?no=13-0443&docId=201771>.

⁹ In support of its baseless contention that AT&T failed to negotiate in good faith, Sprint complains of AT&T Michigan’s response to Sprint’s burdensome requests for information relating to IP-to-IP interconnection (*e.g.*, Sprint Br. at 30) – information that Sprint represented it hoped “to use . . . to negotiate and resolve the open IP-Interconnection issue.” *See* Exhibit D, Part 1, to Sprint’s Petition for Arbitration (May 23, 2013, letter from Sprint to AT&T). That representation was patently false, because Sprint knew full well that the parties were at an impasse and were not going to resolve the issue. In reality, Sprint requested the information to try to strengthen its arbitration position, notwithstanding that MPSC Arbitration Rule 705 provides that “there is no right to conduct discovery” in an arbitration. Furthermore, much of the information Sprint requested concerned the network of AT&T Corp., which is not a party to this proceeding, rather than of AT&T Michigan. And to the limited extent that the requests did ask about AT&T Michigan’s network, AT&T Michigan provided the information. *See* Exhibit D, Part 2, to Sprint’s Petition for Arbitration (AT&T’s June 4, 2013, response to Sprint’s requests). Good faith requires no more. The only information that the good faith negotiation requirement in the 1996 Act requires a negotiating party to provide is “information necessary to reach agreement,” including, under certain circumstances, information about that party’s network (not its affiliate’s network). 47 C.F.R. § 51.301(c)(8).

authority to establish terms for IP-to-IP interconnection. Sprint maintains (and AT&T Michigan acknowledges that Sprint maintains) that the interconnection duties imposed by the 1996 Act encompass IP-to-IP interconnection and that the Commission has authority to establish terms for IP-to-IP interconnection. The Parties have included the following section 3.11.2.2.2 in this Agreement based upon, and conditioned on Commission recognition of, their agreement that inclusion of section 3.11.2.2.2 in the Agreement neither waives nor in any way derogates from either Party's position as set forth in this section 3.11.2.2.1.

3.11.2.2.2 After the Effective Date, Sprint may propose to AT&T Michigan that the Parties amend the Agreement to provide for IP-to-IP interconnection (and/or to permit Sprint to deliver traffic to AT&T Michigan in IP format rather than in TDM format). If, after Sprint makes such a proposal, the parties do not agree on an amendment, or that there shall be no amendment, Sprint may seek resolution of the matter by invoking Dispute Resolution pursuant to Section 12 of the General Terms and Conditions, and the Commission shall be the forum for any Formal Dispute Resolution. AT&T Michigan may contend in any Formal Dispute Resolution proceeding that the interconnection duties imposed by the 1996 Act, including but not limited to section 251(c)(2) thereof, do not govern IP-to-IP interconnection and that the Commission is without authority to establish terms and conditions for IP-to-IP interconnection for inclusion in a section 251/252 interconnection agreement. Sprint, does not agree with that contention and does not waive its right to oppose that contention, but acknowledges that AT&T Michigan has not waived its right to assert such a contention, either by agreeing to this Section 3.11.2.2.2 or by any other action or inaction.

The Commission should approve that language and reject Sprint's proposal. There is no basis for including any IP-to-IP interconnection terms in the ICA (let alone the unlawful terms proposed by Sprint) unless section 251(c)(2) of the 1996 Act applies to IP-to-IP interconnection, and the question whether it does is pending at the FCC. Neither the FCC nor this Commission nor any federal court has ever decided that question. As we explain at the end of our discussion

of Issue 1, the answer to the question is no – section 251(c)(2) does not require ILECs to provide IP-to-IP interconnection. We defer that point to the end because there is no reason for the Commission to decide the question in this case since it must reject Sprint’s proposal in any event on other grounds.

This Commission has already recognized that it should not decide IP-to-IP interconnection issues until the FCC decides whether section 251(c)(2) requires IP-to-IP interconnection. In Case No. U-16906, the Commission arbitrated ICAs between AT&T Michigan and a group of competitive local exchange carriers (“CLECs”). One issue in the case was whether the ICAs should include a certain CLEC-proposed provision relating to IP-to-IP interconnection. The Arbitration Panel ruled it should not, reasoning:

[T]he bottom line is that the language that is being proposed by the CLECs is based on an issue that is still pending at the FCC and is awaiting a legal determination to be made in regards to whether IP-to-IP interconnection falls within Section 251/252. Until the FCC takes action on that issue, the Panel believes that other arguments being made by both parties cannot be taken up at this time. It would not be fruitful to accept the proposed language of the CLECs on an issue that is still pending at the FCC. . . . The CLECs’ argument appears to be premature, and until the FCC makes a ruling/determination, the Panel recommends that the CLEC’s language should not be adopted¹⁰

That logic applies equally here. In fact, it applies even more forcefully here, because Sprint’s language, unlike the language the CLECs proposed in Case No. U-16906, could not be

¹⁰ Notice of Decision of Arbitration Panel, Case No. 16906, *In the matter of the petition of ACD TELECOM, INC., ARIALINK TELECOM, LLC, CYNERGYCOMM.NET, INC., DAYSTARR LLC, LUCRE, INC, MICHIGAN ACCESS, INC., OSIRUS COMMUNICATIONS, INC., SUPERIOR SPECTRUM TEL. AND DATA, LLC, TC3 TELECOM, INC. and TELNET WORLDWIDE, INC. for arbitration of interconnection rates, terms, conditions, and related arrangements with MICHIGAN BELL TEL. CO. d/b/a AT&T MICHIGAN* (Jan. 9. 2012) (“*ACD Telecom Arbitration DAP*”), at 25-26.

adopted even if the 1996 Act did require IP-to-IP interconnection.¹¹ As we demonstrate below, this is so for two reasons:

First, any interconnection Sprint establishes with AT&T Michigan must, under the FCC's Rules, be at a point on AT&T Michigan's network. AT&T Michigan's network includes no IP-capable equipment, however, so no IP-to-IP interconnection can be established on AT&T Michigan's network. Sprint recognizes this, and proposes to establish IP-to-IP interconnections on the network of AT&T Corp., which is an entirely separate company from AT&T Michigan and which is not a party to this proceeding. That proposal is directly contrary to the FCC's Rules. As we explain below, the AT&T Corp. equipment with which Sprint proposes to interconnect is not even in Michigan. It is in Philadelphia, Pennsylvania.

Second, Sprint asserts, in connection with other issues, that it must interconnect with AT&T Michigan at a point in every LATA in AT&T Michigan's service territory in which Sprint provides service. Under Sprint's proposal, however, Sprint would not interconnect with AT&T Michigan in every LATA in AT&T Michigan's service territory. In fact, Sprint would not interconnect with AT&T anywhere in Michigan.

Sprint asserts that if the Commission does not decide the 251(c)(2) question, it will be failing to carry out its responsibility under section 252 and that "Sprint would then have the ability to go directly to the FCC for resolution" under 47 U.S.C. § 252(e)(5)." Sprint Br. at 37. That is false. The Commission's responsibility as arbitrator is to resolve disagreements about contract language, not to decide every legal question a party asks. The Commission will discharge its responsibility under the 1996 Act by adopting AT&T Michigan's proposed

¹¹ Sprint attempts to distinguish Case No. U-16906 on the ground that it presented a different IP-to-IP interconnection issue than this case. Sprint Br. at 40-42. But nothing Sprint says detracts from the force – or the applicability to this case – of the Panel's prudent conclusion quoted above.

language. A decision not to resolve the issues in the way Sprint proposes is not a failure to carry out the Commission's responsibility.¹²

2. There is no disagreement about the Commission's jurisdiction to arbitrate Issue 1.

Sprint suggests that AT&T Michigan disputes the Commission's authority to arbitrate Issue 1 (Sprint Br. at 35); argues that the Commission does have that authority (*id.*); and peppers its brief with rhetoric designed to appeal to the Commission's sense of responsibility to Michigan consumers (*e.g., id.* at 29-30). The Commission should disregard these red herrings.

AT&T Michigan does not dispute the Commission's authority to choose between the competing language that is the subject of Issue 1. To be sure, AT&T Michigan maintains that the 1996 Act does not require IP-to-IP interconnection. But AT&T Michigan recognizes that the Commission has authority to decide whether that is correct. AT&T Illinois did not challenge the ICC's authority to arbitrate the IP-to-IP interconnection issue in Illinois, and Sprint knows that AT&T does not question the Commission's authority to resolve Issue 1 here. On the contrary, AT&T Michigan has joined Sprint in presenting Issue 1 to the Commission. Sprint's pretense to the contrary is an attempt to give the impression that AT&T Michigan's position is an affront to the Commission's authority. It is not.¹³

¹² Sprint made the same argument based on section 252(e)(5) to the ICC before the ICC rejected Sprint's IP-to-IP interconnection proposal without deciding whether section 251(c)(2) requires IP-to-IP interconnection. That was nearly two months ago, and Sprint has not asked the FCC to step in for the ICC under section 252(e)(5). Sprint knows that if it did, the FCC would reject its request, because the ICC obviously did fulfill its responsibility as arbitrator.

¹³ The *SNET* decision on which Sprint relies in this connection (Sprint Br. at 39-40) is irrelevant, as are the Michigan statutes that Sprint contends authorize the Commission to implement IP-to-IP interconnection (*id.* at 39-40). All the *SNET* decision stands for is the proposition that the FCC's silence on an issue does not necessarily prohibit a state commission from deciding the issue. But AT&T Michigan does not contend, and the Panel in Case No. U-16906 did not hold, that the fact that the FCC has not decided whether section 251(c)(2) requires IP-to-IP interconnection deprives the Commission of authority to decide whether section 251(c)(2) requires IP-to-IP interconnection. Rather, the point is that the Commission *should not* decide that question under circumstances, such as those here, where (a) the FCC is considering the question, and (b) the answer to the question makes no difference because Sprint's proposal must be rejected regardless. Similarly, the authority provided by the Michigan statutes

3. Sprint's IP-to-IP interconnection proposal is contrary to law because it would require interconnection at points that are not on AT&T Michigan's network.

a. The law is clear that any interconnection with AT&T Michigan must be on AT&T Michigan's network.

Section 251(c)(2)(B) of the 1996 Act provides that interconnection is to be "at any technically feasible point *within the [incumbent] carrier's network.*" (Emphasis added.) Accordingly, the FCC, in its initial set of rules implementing the 1996 Act, noted that section 251(c)(2) gives competing carriers the right to deliver traffic terminating on an incumbent LEC's network at any technically feasible point "*on that network*" (*Local Competition Order*,¹⁴ ¶ 209 (emphasis added), and promulgated 47 C.F.R. § 51.305(a)(2), which requires interconnection "at any technically feasible point *within the incumbent LEC's network*, including, at a minimum," six enumerated locations within that network. (Emphasis added.)

Sprint acknowledges that any interconnection it establishes must be on AT&T Michigan's network. Indeed, in Issue 6 in this arbitration, Sprint proposes the following for General Terms and Conditions ("GT&C") section 2.89:

"Point of Interconnection" ("POI") means a point *on the AT&T MICHIGAN network . . .* where the Interconnection Facilities connect *with the AT&T MICHIGAN network* (Emphasis added)

Thus, there is no debate about the applicable law: *IF* IP-to-IP interconnection were required, the interconnection would have to be at points on AT&T Michigan's network.

b. There is no point on AT&T Michigan's network at which an IP-to-IP interconnection can be established.

Sprint cites is neither here nor there, because the parties' disagreement in Issue 1 is not about the Commission's authority – and Sprint does not contend (and cannot contend) that those Michigan statutes require IP-to-IP interconnection.

¹⁴ First Report and Order, FCC 96-325, In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, CC Docket No. 96-98, 11 FCC Rcd. 15499 (rel. Aug. 8, 1996) ("*Local Competition Order*") (subsequent history omitted).

Sprint argues that IP-to-IP interconnection affords great benefits and that AT&T Michigan plans to transition to an all-IP network. AT&T Michigan will not debate those points, because it makes no difference how wonderful IP networks of the future may be, or how much more efficient IP-to-IP interconnection of the future might turn out to be than the TDM-to-TDM interconnection of today. For even if section 251(c)(2) of the 1996 Act required AT&T Michigan to provide IP-to-IP interconnection when it is technically feasible, there is, as of today, no point on AT&T Michigan's network at which Sprint could establish IP-to-IP interconnection. To be sure, there may be such a point in the future, and that is one reason that AT&T Michigan's proposed language, which provides a mechanism for incorporating IP-to-IP interconnection language into the ICA later, should be adopted. But there can be no IP-to-IP interconnection with AT&T Michigan now.

(1). It is undisputed that AT&T Michigan itself has no IP equipment on its network.

As AT&T Michigan witness Bill Anglin explains, AT&T Michigan "does not have IP-capable equipment with which Sprint could interconnect even if section 251(c)(2) did require incumbent carriers with IP networks to provide interconnection with those networks." Anglin at 4. That is because "AT&T Michigan's network is a TDM network. AT&T Michigan's network simply does not include IP-capable equipment with which Sprint could interconnect any IP-capable equipment that it might own or operate." *Id.* at 11.

AT&T Michigan does have wholesale customers that carry traffic in IP format, but AT&T Michigan does not have IP-to-IP interconnection with any of those customers; rather, those carriers convert their IP traffic to TDM before they deliver the traffic to AT&T Michigan. *Id.* That is exactly what AT&T Michigan is proposing here.

Similarly, AT&T Michigan has retail U-verse customers who originate and receive calls in IP format, but the VoIP (Voice over Internet Protocol) calls that those customers make and receive are not carried on an AT&T Michigan IP network, because there is no such network. Rather, they are carried over the IP network owned by AT&T Michigan's affiliate, AT&T Corp., which performs the IP-to-TDM conversion. *Id.* at 11-12.

In short, AT&T Michigan witness Anglin testifies "without reservation that there is no point on AT&T Michigan's network at which Sprint could establish IP-to-IP interconnection." Anglin at 14.¹⁵

(2). AT&T Corp.'s network is not AT&T Michigan's network.

Sprint does not dispute that it is AT&T Corp., rather than AT&T Michigan, that owns the equipment with which Sprint proposes to interconnect.¹⁶ Sprint, contends, however, that it should be permitted to establish IP-to-IP interconnection at the AT&T Corp. softswitch that is used in the provision of service to AT&T Michigan U-verse customers. That contention is contrary to law. The AT&T Corp. softswitch belongs to AT&T Corp., not AT&T Michigan, and it is not part of AT&T Michigan's network. AT&T Michigan cannot lawfully be required to provide interconnection at a softswitch that it does not own and that is not part of its network. Indeed, AT&T Michigan could not provide interconnection at the AT&T Corp. softswitch even if it were erroneously ordered to do so, because it is not AT&T Michigan's switch. And AT&T Corp., which does own the softswitch, is not a party to this proceeding; will not be a party to the

¹⁵ Mr. Anglin provides additional detail on why IP-to-IP interconnection cannot be established at certain points in AT&T Michigan's network. Anglin at 12-13. Sprint does not contend otherwise.

¹⁶ On the contrary, Sprint concedes this fact. *See, e.g.*, Sprint Br. at 27; *see also, e.g.*, Sprint's proposed GT&C section 3.11.2.2.2.

ICA that emerges from this proceeding; and therefore cannot be required to do anything in this proceeding.¹⁷

Sprint engages in all sorts of linguistic gymnastics to try to convince the Commission to deem AT&T Corp. switches AT&T Michigan switches. The Commission should not be misled; the indisputable *facts* trump Sprint's word play. Sprint also pretends there is legal authority for its unlawful proposal, but that simply is not so.

(a). Pertinent facts.

Sprint proposes to establish what it calls "IP Interconnection" at "a Softswitch (or an applicable network edge router associated with such Softswitch) that is, or is deemed to be, part of the AT&T MICHIGAN network." Sprint proposed Att. 2, section 2.1.9.¹⁸ In particular, Sprint contemplates interconnection at "each Softswitch to which" twelve identified AT&T Michigan tandem switches "are connected." Sprint proposed Att. 2, section 2.1.9.3.2.

Those twelve AT&T Michigan tandem switches are connected to a single softswitch. That softswitch is owned by AT&T Corp., not AT&T Michigan. Anglin at 15. *In fact, the softswitch is not even in Michigan. It is in Philadelphia. Id.* at 15-16.¹⁹ There are no "applicable network edge router[s]" in Michigan associated with that softswitch. *Id.* at 16. Moreover, AT&T Michigan owns no network routers; any network router associated with *any* AT&T Corp. softswitch is owned by AT&T Corp. *Id.*

¹⁷ One way of thinking of Sprint's proposal is that Sprint is actually proposing to establish IP-to-IP interconnection *with AT&T Corp.* If that is what Sprint wants, Sprint should approach AT&T Corp. In this brief, however, we approach the issue with the understanding that Sprint is asserting its right to interconnect with AT&T Michigan – but at a point that is not on AT&T Michigan's network.

¹⁸ Sprint's language capitalizes, but does not define, "Softswitch." Based on context and the general understanding of the word "softswitch" within the industry, Sprint plainly means a switch that, unlike AT&T Michigan's switches, is IP-capable. See Anglin at 15.

¹⁹ AT&T Corp. owns two softswitches – one in Philadelphia, Pennsylvania and one in Richardson, Texas. Anglin at 16.

AT&T Corp. and AT&T Michigan are entirely different companies. As AT&T Michigan witness Sherri Bazan testifies²⁰:

Corporate Structure

- Michigan Bell Telephone Company d/b/a AT&T Michigan is a wholly owned subsidiary of AT&T Teleholdings, Inc. a/k/a AT&T Midwest, which is a wholly-owned subsidiary of AT&T Inc.
- AT&T Corp. is a wholly-owned subsidiary of AT&T Inc.

Incorporation and Place of Business

- AT&T Michigan is incorporated in Michigan and has its principal place of business at 444 Michigan Avenue, Detroit, MI 48226.
- AT&T Corp. is incorporated in New York and has its principal place of business at One AT&T Way, Bedminster, NJ 07921.

Officers

- The President of AT&T Michigan is Jim Murray.
- The President and Chief Executive Officer of AT&T Corp. is Andrew M. Geisse.
- The Treasurer of AT&T Michigan is Jonathan P. King.
- The Chief Financial Officer and Treasurer of AT&T Corp. is George B. Goeke.
- The Secretary of AT&T Michigan is April J. Rodewald.
- The Secretary of AT&T Corp. is Wayne A. Wirtz.

Employees

- As of August 1, 2013, AT&T Michigan had 4,871 employees.
- As of that same date, AT&T Corp. had a total of 5,883 employees.
- No employee of AT&T Michigan is also an employee of AT&T Corp.

As the first two bullet points above show – and this becomes significant when we discuss Sprint’s flawed legal authority below – neither AT&T Corp. nor AT&T Michigan is a subsidiary

²⁰ Testimony of Sherri Bazan at 1-3.

of the other. If one sees a corporate family tree as akin to a human family tree, AT&T Corp. is an aunt of AT&T Michigan.

The history of AT&T Corp.'s ownership of the IP equipment is illuminating. The product that is now called AT&T U-verse evolved from what was originally called Project Lightspeed. Anglin at 18. The mission of Project Lightspeed, which got underway at SBC in 2004 (before SBC merged with AT&T), was to offer the most complete, flexible bundle of high quality communications solution in the market, including integrated IP voice, high-speed Internet access, and video. *Id.*

These products were to be offered by the SBC ILECs. *Id.* SBC already had an internet affiliate, however – called SBCIS (SBC Internet Services) – and there was no reason for the ILECs to build an IP network that mirrored SBCIS's network. On the contrary, that would have been wasteful. Thus, it made financial sense for SBCIS to provide its internet services to the ILECs for their use in providing the entire suite of Lightspeed services to their end-user customers. Accordingly, that is what was done. *Id.*

After the merger of SBC with AT&T, SBCIS became ATTIS. And in 2011, the affiliate that owned the IP assets was changed to AT&T Corp. Consequently, AT&T Michigan (and the other AT&T ILECs) now contract with AT&T Corp. for the High Speed Internet Service and the VoIP Service that are used to furnish U-verse services to the ILEC customers that subscribe to U-verse. AT&T Corp. and AT&T Michigan are parties to a written contract pursuant to which AT&T Corp. provides those services to AT&T Michigan. That contract is called the Mutual Service Asset Agreement, which includes an Informational Supplement that sets forth the terms and conditions on which AT&T Corp. (previously, SBCIS) provides the services to AT&T Michigan. *Id.* at 18-19.

The reasons that AT&T Corp., rather than AT&T Michigan, owns the IP backbone network thus have nothing to do with AT&T Michigan trying to “hide equipment in its affiliate” (Sprint Br. at 43) or avoiding section 251 requirements, as Sprint falsely claims. Anglin at 19.

(b). Sprint’s linguistic ploy

Sprint repeatedly characterizes the AT&T Michigan/AT&T Corp. relationship in ways that are designed to give the impression that AT&T Corp’s equipment should be treated as if it were AT&T Michigan’s equipment. For example, Sprint asserts:

- “AT&T [Michigan] and AT&T Corp. together operate an IP network.” Sprint Br. at 27.
- AT&T Corp’s softswitch “has effectively been incorporated with AT&T Michigan’s ILEC network.” *Id.*
- “AT&T [Michigan] and its affiliate, AT&T Corp., together operate an integrated IP-TDM network.” *Id.* at 28.
- “This is a jointly operated IP network.” *Id.*

This may (or may not) be good lawyering, but it is entitled to no weight, because it is not fact and it is not law. It is mere self-serving characterization. Indeed, Sprint has used some very different language to characterize the same facts. In the recent Illinois arbitration, Sprint witness Burt vehemently argued that AT&T Illinois and AT&T Corp. were interconnected, and that Sprint should therefore be allowed to interconnect with AT&T Corp. as well. He stated, “AT&T has IP interconnection with another entity, albeit an affiliate, AT&T Corp.”²¹ Then, referring to a diagram, he stated, “This is IP interconnection between AT&T the ILEC and AT&T Corp.” Sprint made the same point in its Brief on Exceptions, stating, “[I]t is also important to note that

²¹ Supplemental Verified Written Statement of James Burt, ICC Docket No. 12-0550 (Feb. 2, 2013), at 13, lines 272-273; 289-290. (Exhibit BA-4).

AT&T ILEC and AT&T Corp. interconnect in IP. . . . AT&T ILEC has an interconnection point on the AT&T Corp. network.”²²

That characterization – that AT&T Michigan and AT&T Corp. are interconnected – reflects the on the ground reality,²³ and is very different from Sprint’s characterization that the two companies “together operate an IP network” or that AT&T Corp’s softswitch “has effectively been incorporated with AT&T Michigan’s ILEC network.” By the same token, Sprint and AT&T Michigan are interconnected, but Sprint would never say that it and AT&T Michigan together operate a network just because AT&T Michigan needs to be connected to Sprint in order to deliver calls from Sprint’s customers to its own customers. There is a Sprint network and an AT&T Michigan network, and the two are connected for the provision of certain services. Likewise, there is an AT&T Corp. network and an AT&T Michigan network, and the two are connected for the provision of certain services. Sprint’s talk of an integrated AT&T Corp./AT&T Michigan network is pure rhetoric that the Commission should disregard.

Sprint’s self-serving mischaracterizations carry over to Sprint’s proposed contract language. Sprint proposes to establish IP-to-IP interconnection at “[a]ny Softswitch (or network edge router associated with such Softswitch) that is or has been used by AT&T Michigan to provide Telephone Exchange or Exchange Access services.”²⁴ But AT&T Michigan does not – contrary to Sprint’s proposed contract language – use AT&T Corp.’s IP equipment to provide Telephone Exchange or Exchange Access service. Rather, AT&T Michigan purchases High Speed Internet Service and VoIP Service from AT&T Corp. and pays AT&T Corp. for providing

²² Sprint’s Brief on Exceptions, ICC Docket No. 12-0550, at 53-54. (Exhibit BA-5.)

²³ The AT&T Michigan/AT&T Corp. interconnection is not an IP interconnection. It cannot be, because AT&T Michigan has no IP equipment. Rather, the interconnection is at the TDM level; AT&T Corp. converts any traffic that it hands off to AT&T Michigan from IP to TDM before the hand-off. Anglin at 11-12, 20.

²⁴ See Sprint’s proposed GT&C section 3.11.2.2.2.3.

those services. To be sure, *AT&T Corp.* uses the AT&T Corp IP network, including the AT&T Corp. softswitches, to furnish those services to AT&T Michigan – but that is a far cry from Sprint’s mistaken notion that AT&T Michigan itself uses that equipment.²⁵

(c). Applicable law

Sprint contends that its request to establish interconnection at points on AT&T Corp.’s network is supported by “well-established federal law” and by a “controlling case on this issue.” Sprint Br. at 43. If that were true, Sprint would not have buried its discussion of the supposedly controlling law at the tail end of its discussion of Issue 1. In fact, there is no legal support for Sprint’s unlawful proposal to interconnect with AT&T Michigan at a point on AT&T Corp.’s network.²⁶

Sprint’s supposedly controlling case, *Ass’n of Communications Enterprises v. FCC*, 235 F.3d 662 (D.C. Cir.) (amended Jan. 18, 2001) (“*ASCENT*”), is irrelevant. That case had to do with resale, not interconnection, and, unlike this case, involved an ILEC’s “*wholly owned affiliate providing telecommunications services with equipment originally owned by its ILEC parent, to customers previously served by its ILEC parent, marketed under the name of its ILEC parent.*” 235 F.3d. at 668. Here, AT&T Corp. is not a wholly owned subsidiary of AT&T Michigan; the IP equipment that AT&T Corp. uses to provide IP services was never owned by AT&T Michigan; and AT&T Michigan’s customers have not been somehow transferred to AT&T Corp.

²⁵ When a Sprint customer calls an AT&T Michigan customer, Sprint would not say that it uses AT&T Michigan’s end office switch to terminate the call

²⁶ As we have noted, Sprint could be understood as proposing interconnection with AT&T Corp. Such a proposal cannot, of course, be entertained in this proceeding, to which AT&T Corp. is not a party, or for an ICA with AT&T Michigan.

Indeed, it was undisputed in *ASCENT* that the ILEC transferred its own assets to its wholly-owned affiliate for the purpose of avoiding a section 251 obligation. *Id.* at 665. Here, in contrast, there was no transfer of ILEC assets to an affiliate; rather, an affiliate (which was not owned by the ILEC) always owned the IP-capable equipment – and the undisputed evidence establishes that the reason for the AT&T Michigan /AT&T Corp. U-verse arrangement was *not* to avoid a section 251 obligation, but rather was that it made financial sense to leave the IP assets where they were, with an affiliate.²⁷

ASCENT differs from this case in another critically important way. The underlying question in that case was whether the ILEC’s wholly-owned data affiliate was a “successor or assign” of the ILEC. This issue arose because the duties imposed by section 251(c) of the 1996 Act are imposed on ILECs, and “ILEC” is defined in section 251(h)(1)(B)(ii) of the 1996 Act to include any company that is a “successor or assign” of a company that was an incumbent local exchange carrier when the 1996 Act was enacted. In *ASCENT*, the data affiliate was a “successor or assign” of the ILEC, because it had been set up by the ILEC and the ILEC had transferred its assets and services to the affiliate. From this it followed that the data affiliate was subject to the duties imposed by section 251(c), including the section 251(c)(4) resale duty, because the data affiliate was, for purposes of section 251, an “ILEC” as defined in section 251(h)(1)(B)(ii). Here, in contrast, there can be no contention that AT&T Corp. is a successor or assign of AT&T Michigan and so should be treated as an ILEC under that provision.

²⁷ The D.C. Circuit in *ASCENT* overturned an FCC decision that allowed the merged Ameritech/SBC to avoid the section 251(c)(4) resale obligation as it applied to certain advanced telecommunications services by providing those services through a subsidiary. The D.C. Circuit’s stated concern was that under the FCC’s logic, any ILEC could “set up a similar affiliate and thereby avoid § 251(c)’s resale obligations.” 235 F.3d at 665 (emphasis added). Again, AT&T Michigan did not set up AT&T Corp. or transfer assets to AT&T Corp.

Finally, this case and *ASCENT* differ in another crucial respect: In this case, Sprint is asking the Commission to require something that is directly contrary to the FCC's Rules, namely, to allow Sprint to interconnect with AT&T Michigan at points that are not on AT&T Michigan's network. *ASCENT*, in contrast, did not involve the imposition of a requirement that violated an FCC Rule or any law.

The FCC's *Verizon 271 Order* that Sprint cites on this issue (Sprint Br. at 44) does not support Sprint's position either. Rather, it corroborates the points we have just made. First, the one sentence of the *ASCENT* decision that the FCC cited in the *Verizon 271 Order* is the sentence that stated, "the Act's structure renders implausible the notion that a *wholly owned affiliate providing services with equipment originally owned by its ILEC parent, to customers previously served by its ILEC parent*, marketed under the name of its ILEC parent, should be presumed to be exempted from the duties of that ILEC parent."²⁸ Again, that is not this case.

Perhaps more important, the proposition for which Sprint cites that FCC Order is incorrect and would not help Sprint here in any event. That proposition is that "data affiliates of incumbent LECs are subject to all obligations of section 251(c) of the Act."²⁹ That proposition considerably overstates the holding in *ASCENT*. As we have seen, the court's holding in *ASCENT* was limited to *wholly owned data affiliates that provide services with equipment originally owned by their ILEC parent, to customers previously served by its ILEC parents*. Furthermore, if Sprint's proposition were correct and applied here, the result would be that *AT&T Corp.* would be required to provide interconnection to Sprint pursuant to section 251(c)(2) of the 1996 Act, and to negotiate terms for interconnection with Sprint pursuant to section

²⁸ *In the Matter of Application of Verizon NY Inc., et al. for Authorization to Provide In-Region InterLATA Servs. in CT.*, 16 FCC Rcd. 14147 (2001) ("*Verizon 271 Order*") at ¶ 28 n. 69.

²⁹ Sprint Br. at 44, citing *Verizon 271 Order*.

251(c)(1). If Sprint believes that is the case, it should communicate its request for interconnection to AT&T Corp.

In short, even if the law entitled Sprint to IP-to-IP interconnection with an ILEC with IP equipment with which Sprint could interconnect, AT&T Michigan has no such equipment, so there can be no such interconnection “at [a] technically feasible point within the incumbent LEC’s network,” as 47 C.F.R. § 51.305(a)(2) requires.

4. Sprint’s IP-to-IP interconnection proposal is contrary to Sprint’s own position that it must interconnect at a point in every LATA in which it provides service.

Sprint witness Felton, testifying on Issue 7, states “Sprint is only required to maintain one POI in each LATA where it provides service.” Direct Testimony of Mark G. Felton on behalf of Sprint Spectrum L.P.) (“Felton”) at 15. Mr. Felton makes the same point in his discussion of Issue 8 when he states, “Title 47, Section 51.305 of the Code of Federal Regulations describes the Interconnection obligations of incumbent LECs such as AT&T. The FCC has interpreted this rule to mean that a requesting carrier need only establish one POI per LATA.” *Id.* at 21. Sprint made the same point in a prior case in this Commission, where it argued that “it is only required to establish one POI per LATA.”³⁰

Sprint’s proposal for IP-to-IP interconnection is directly at odds with its own “one POI per LATA” principle. Sprint makes no bones about that. In Attachment 2, section 2.2.1, the parties have agreed on language that provides that:

[T]he location of the POI(s) will be as follows:

³⁰ Order, Case No. U-15534, *In the matter of the petition of Sprint Communications Co. for arbitration pursuant to Section 252(b) of the Telecommunications Act of 1996 to establish an interconnection agreement with CenturyTel Midwest – Michigan, Inc.* (July 1, 2008), at 10.

2.2.1.1 The Parties will interconnect their network facilities at a minimum of one Sprint designated POI on AT&T MICHIGAN's network where the parties exchange traffic.

However, Sprint proposes to insert the words "*Except where the Parties utilize IP Interconnection*" at the beginning of section 2.2.1, so that the "one POI per LATA" would not apply if IP-to-IP interconnection were established.

Moreover, given the facts, there would not be a POI *in any LATA* in Michigan if Sprint's proposal were adopted. Since the AT&T Corp. softswitch to which AT&T Michigan's tandems connect is in Philadelphia, Sprint is, in effect, proposing that the Commission require the establishment of a point of interconnection in Philadelphia – with no POI whatsoever in Michigan once (under Sprint's view of the world) the parties are exchanging all traffic in IP format. AT&T Michigan would then bear the cost of transporting all of Sprint's calls from Philadelphia to Michigan. It is precisely in order to avoid imposing such costs on the ILEC that the interconnecting carrier is not given free rein to decide at how many points it will interconnect.³¹

5. Section 251(c)(2) of the 1996 Act does not require IP-to-IP interconnection.

The Commission should steer clear of the question whether the interconnection requirement in section 251(c)(2) of the 1996 Act comprises IP-to-IP interconnection, because (a) there is no need to answer that question in order to resolve Issue 1 and (b) the Commission would be ill-advised to decide the question before the FCC does.

³¹ See, e.g., Order, Case No. U-15534, *In the matter of the petition of Sprint Communications Co. for arbitration pursuant to Section 252(b) of the Telecommunications Act of 1996 to establish an interconnection agreement with CenturyTel Midwest – Michigan, Inc.* (July 1, 2008), at 10.

That said, section 251(c)(2) does not require IP-to-IP interconnection.³² Congress added section 251 to Title II of the Communications Act in order to promote competition in various markets for Title II “telecommunications services.” To that end, section 251(a)-(c) gives “telecommunications carriers” various rights with respect to other “telecommunications carriers” in general and “local exchange carriers” and “incumbent local exchange carriers” in particular. By their terms, those provisions are inapplicable *either* when the party seeking to interconnect *or* when the party from whom interconnection is sought is not itself a “telecommunications carrier.”

For all relevant purposes, the term “telecommunications carrier” is synonymous with “common carrier”³³ and is defined as “any provider of telecommunications services.” 47 U.S.C. § 153(51). The Act further specifies that any “telecommunications carrier shall be treated as a common carrier under this [Act] *only to the extent that it is engaged in providing telecommunications services.*” *Id.* (emphasis added). As the FCC has long observed, moreover, the statutory categories “telecommunications service[s]” and “information service[s]” are mutually exclusive.³⁴ Thus, the Commission may not invoke any provision of section 251 to require X to interconnect with Y if Y is providing an information service, let alone when *both X and Y* are offering such services, as in most or all cases of IP-to-IP interconnection.

Section 251(c)(2) requires *incumbent LECs* “to provide, for the facilities and equipment of any *requesting telecommunications carrier*, interconnection with the local exchange carrier’s

³² Sprint begins its discussion of this issue by misquoting section 251(c)(2). Sprint states: “Section 251(c)(2) obligates AT&T to provide ‘the facilities and equipment’ for interconnection with its network.” Sprint Br. at 35. That is wrong. Section 251(c)(2) does not require the ILEC to provide any facilities or equipment. What it requires is that the ILEC “provide, *for the facilities and equipment of any requesting telecommunications carrier*, interconnection with the local exchange carrier’s network.” 47 U.S.C. §251(c)(2) (emphasis added).

³³ See, e.g., *Virgin Islands Tel. Corp. v. FCC*, 198 F.3d 921, 926-27 (D.C. Cir. 1999).

³⁴ 47 U.S.C. § 153(51); see Report to Congress, 13 FCC Rcd at 11522-23, at ¶ 43; see also Declaratory Ruling and Notice of Proposed Rulemaking, *Inquiry Concerning High-Speed Access to the Internet Over Cable and Other Facilities*, 17 FCC Rcd 4798, 4823-24 ¶ 41 (2002), *aff’d*, *Nat’l Cable & Telecomms. Ass’n v. Brand X Internet Servs.*, 545 U.S. 967 (2005).

network” “for the transmission and routing of telephone exchange service and exchange access.” 47 U.S.C. § 251(c)(2), (c)(2)(A) (emphasis added). That provision is inapplicable to IP-to-IP interconnection for at least three reasons. The first two relate to the status of the requesting party, while the third relates to the status of the party against whom section 251(c)(2) would be invoked.

First, VoIP providers – as well as providers of other IP-based information services – are not “telecommunications carriers.” They therefore may not invoke interconnection rights under section 251(c)(2). Second, section 251(c)(2) is unavailable to VoIP providers because, even if they were “telecommunications carriers,” they would not be invoking this provision in order to provide the local services identified in section 251(c)(2)(A): “telephone exchange service and exchange access.” As the FCC found in its *Vonage Order*, VoIP is an indivisibly interstate, *interexchange*-type service.³⁵ And as the FCC concluded in 1996, “[a] telecommunications carrier seeking interconnection only for interexchange services is not within th[e] scope of the statutory language” and is therefore not entitled to seek interconnection under section 251(c)(2).³⁶ That is the correct – and indeed the only permissible – reading of the statutory text, which requires that the “request[.]” to interconnect be *for the purpose* of “the transmission and routing of telephone exchange service and exchange access.” In other words, the requesting carrier must be “offering” those services and not merely receiving them in order to satisfy the statutory criteria for interconnection.

³⁵ See Memorandum Opinion and Order, *Vonage Holdings Corporation Petition for a Declaratory Ruling Concerning an Order of the Minnesota Public Utilities Commission*, 19 FCC Rcd 22404, 22415-16, 22423-24 ¶¶ 20, 31 (2004) (“*Vonage Order*”), *aff’d*, *Minn. PUC v. FCC*, 483 F.3d 570 (8th Cir. 2007).

³⁶ See *Local Competition Order* at ¶ 191.

Third, the *other* IP network, against which interconnection rights would be invoked, would not qualify as an “ILEC” subject to section 251(c)(2) – or, for that matter, to *any* of the ILEC-specific obligations under section 251(c). Instead, it would be an IP-based *broadband information services provider* to which section 251(c) is simply inapplicable.

The term “incumbent local exchange carrier” means a “local exchange carrier” that either (1) falls within a defined list of companies operating in 1996 or (2) is a successor or assign of those companies. 47 U.S.C. § 251(h)(1). The term does not include any entity that offers broadband Internet and managed IP services, which did not exist in the consumer market in 1996, by means of new fiber-based, packet-switched networks, which also did not exist in that market in 1996.

In addition, once an *existing* “ILEC” (or the affiliate of such an ILEC) stops offering “LEC” services within a given area, it will no longer be an “ILEC” subject to section 251(c)(2). The statutory definition of “ILEC” requires “that the entity *be* a ‘local exchange carrier’” and “remain[] a ‘local exchange carrier’” during the period in which any ILEC-specific regulation is applied. *CAF Order* at ¶ 1386 & n.2524 (emphasis added). Put differently, the entity must, in the FCC’s words, be a “live LEC” in order to qualify as an ILEC. *WorldCom, Inc. v. FCC*, 246 F.3d 690, 694 (D.C. Cir. 2001). But a “local exchange carrier” is defined as “any person that is engaged in the provision of telephone exchange service or exchange access.” 47 U.S.C. § 153(32). For the reasons just discussed, VoIP falls outside those categories. And providers that offer information services (including VoIP) but not these legacy services are not LECs and therefore do not fall within the subset of LECs designated as “ILECs.” Finally, that hurdle cannot be avoided by invoking section 251(h)(2), entitled “treatment of comparable carriers as

incumbents,” because that provision, too, authorizes such treatment only for “a local exchange carrier (or class or category thereof).” *Id.* § 251(h)(2) (capitalization altered).

None of this is changed by the FCC’s stated expectation that carriers would negotiate in good faith in response to requests for IP-to-IP interconnection.³⁷ In the very Order in which the FCC expressed that expectation – and note that the FCC merely expressed an expectation; it did not, contrary to Sprint’s assertion (Sprint Br. at 36), “direct” carriers to do anything – the FCC clearly stated that it was uncertain whether legal authority for a good faith negotiation requirement for IP-to-IP interconnection was to be found in section 251(a) of the 1996 Act, section 251(c)(2) of the 1996 Act, “other provisions” of the 1996 Act; section 706 of the 1996 Act; or the FCC’s “ancillary authority under Title I.”³⁸ Thus, the FCC’s statement that it expected carriers to negotiate IP-to-IP interconnection does not imply that section 251(c)(2) of the 1996 Act requires IP-to-IP interconnection, or that IP-to-IP interconnection is a proper subject for an interconnection agreement.

Sprint’s statement that “Two state commissions have decided that IP interconnection is within the scope of section 251” (Sprint at 38) is false. Neither of the commission decisions to which Sprint refers has decided that IP interconnection is within the scope of section 251. For that matter, neither decision remotely supports Sprint’s position. The Puerto Rico commission’s discussion of IP-to-IP interconnection does not mention section 251, let alone hold that it encompasses IP interconnection. Furthermore, no question was presented in the Puerto Rico arbitration that is presented here. In that case, the requesting carrier (“Liberty”) proposed contract language that provided for IP-to-IP interconnection “upon mutual agreement of the

³⁷ See Sprint Br. at 36-37 (quoting Report and Order and Further Notice of Proposed Rulemaking, *Connect America Fund et al.*, WC Docket No. 10-90 et al., FCC 11-161 at para. 1404 (rel. Nov. 18, 2011) (“CAF Order”).

³⁸ *CAF Order* at ¶ 1351; see also *id.* at ¶¶ 1352-1358.

parties,” with recourse to the state commission if the parties failed to agree. As the commission explained, the ILEC, Puerto Rico Telephone Company (“PRTC”) “agrees that the ICA should provide for IP-to-IP interconnection upon mutual agreement of the Parties. PRTC does not agree with the remainder of Liberty’s proposal for two reasons. First, PRTC argues that the inconclusive nature of the FCC’s review of this issue means that the Board cannot enforce IP-to-IP interconnection. Second, PRTC argues that Liberty’s proposal is inappropriately one-sided, because, under Liberty’s proposal, only Liberty can make a request for IP-to-IP interconnection, and only Liberty can pursue other remedies should negotiation fail.” *Id.* Thus, the disagreement did not concern whether the ILEC had a duty to provide IP-to-IP interconnection. *See also id.* at 15 (“Liberty’s request is narrow in scope – seeking only to ensure Liberty’s right to seek review of negotiations that have reached an impasse. Liberty does not seek to compel IP-to-IP interconnection. Rather, Liberty merely seeks a means to reach a decision regarding IP-to-IP interconnection under the specific factual circumstances to be presented to the tribunal in which Liberty seeks review”). The Puerto Rico decision thus sheds no light on the disagreement presented here.

The Ohio order to which Sprint cites, like the Puerto Rico decision and contrary to Sprint’s representation, does *not* hold that section 251(c)(2) requires IP-to-IP interconnection or even (at least in the pages to which Sprint cites) mention section 251. *See* Exhibit JRB-1.4 at 4-6. Notably, the proposed rule that the Ohio commission adopted that relates to section 251(c)(2) interconnection (Rule 4901:1-7-06(A)(4)) (*Id.* at 9) does not say anything that suggests ILECs must provide IP-to-IP interconnection pursuant to section 251(c)(2).

6. Conclusion

The Commission should reject Sprint’s proposed IP-to-IP interconnection proposal. Sprint’s language is unlawful even if section 251(c)(2) of the 1996 Act extends to IP-to-IP

interconnection, because it would require AT&T Michigan to provide interconnection with Sprint at a point that is not on AT&T Michigan's network. In addition, Sprint's IP-to-IP interconnection proposal is contrary to Sprint's stated view that it is required to establish a point of interconnection in each LATA in which AT&T Michigan provides service.

The Commission should adopt the language proposed by AT&T Michigan, which provides for the ICA to be amended to accommodate IP-to-IP interconnection later, as appropriate. The Illinois Commerce Commission's adoption of this language strongly supports this result. Sprint argues that it would be inefficient for Sprint to have to maintain TDM-to-TDM interconnections, but it is now a given that Sprint is going to have to maintain TDM-to-TDM interconnections in Illinois for the indefinite future. It makes good sense for Sprint to be on the same footing in Michigan. That way, when and if Sprint proposes IP-to-IP interconnection language for Illinois (presumably, not before the FCC rules on whether ILECs are required to provide such interconnection), Sprint can propose the same language for Michigan.

I.B. SERVICE AND TRAFFIC RELATED DEFINITIONS

ISSUE 2: WHAT IS THE APPROPRIATE DEFINITION OF "INTRAMTA TRAFFIC"?

AT&T Michigan Position: The Commission should adopt AT&T Michigan's proposed definition of "IntraMTA Traffic," which appropriately refers to traffic exchanged between the parties' end users. AT&T Michigan's proposed definition, which was recently approved by the Illinois Commerce Commission, is consistent with the agreed purpose of the definition, which is to include all IntraMTA calls that are subject to reciprocal compensation requirements. Sprint's proposed definition, on the other hand, is unduly vague and could be interpreted to include traffic which is not subject to the reciprocal compensation requirements. (Pellerin at 140-147.)

As defined by the FCC, "MTA" stands for "Major Trading Area," a geographic area established by the FCC for purposes of Commercial Mobile Radio Service ("CMRS")

receiving a second notice. Sprint's proposal to string out the 59 days a carrier would have to pay its bills under AT&T Michigan's proposal to 89 days (by extending the initial 15-day period to 45 days) is unreasonable and should be rejected.

V.D. BILLING DISPUTES

ISSUE 31: SHOULD THE ICA REQUIRE THE DISPUTING PARTY TO USE THE BILLING PARTY'S PREFERRED FORM IN ORDER TO DISPUTE A BILL?

This issue has been resolved.

Dated: August 16, 2013

Respectfully submitted,

By: / Mark R. Ortlieb

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