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September 16, 2010

VIA OVERNIGHT MAIL

Mr. Jeff Derouen
Executive Director
Public Service Commission
211 Sower Boulevard
P.O. Box 615
Frankfort, KY 40602

Re: 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
KPSC 2010-00061

Dear Mr. Derouen:

Enclosed for filing in the above-captioned case are the original and ten (10) copies of Rebuttal Testimony of Frederick C. Christensen, P. L. (Scot) Ferguson, James W. Hamiter, J. Scott McPhee, and Patricia H. Pellerin on behalf of BellSouth Telecommunications, Inc., d/b/a AT&T Kentucky.

A copy of the affidavit of Frederick C. Christensen is being filed today. The original affidavit will be filed in the near future.

Should you have any questions, please let me know.

Sincerely,

Mary K. Keyer

Enclosures

cc: Parties of Record

850513

CERTIFICATE OF SERVICE – PSC 2010-00061

I hereby certify that a copy of the foregoing was served on the following individuals by mailing a copy thereof, this 16th day of September 2010.

Honorable Douglas F Brent
Attorney at Law
Stoll Keenon Ogden, PLLC
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Overland Park, KS 66251

Mary K. Keyer

COMMONWEALTH OF KENTUCKY

KENTUCKY PUBLIC SERVICE COMMISSION

COUNTY OF MILWAUKEE

STATE OF WISCONSIN

BEFORE ME, the undersigned authority, duly commissioned and qualified in and for the State and County aforesaid, personally came and appeared Frederick C. Christensen, who being by me first duly sworn deposed and said that he is appearing as a witness on behalf of BellSouth Telecommunications, Inc. d/b/a AT&T Kentucky before the Kentucky Public Service Commission in Docket Number 2010-00061, *In the Matter of: Petition for Arbitration of Interconnection Agreement Between BellSouth Telecommunications, Inc. d/b/a AT&T Kentucky and Sprint Spectrum L.P., Nextel West Corp., and NPCR, Inc. d/b/a Nextel Partners,* and Docket Number 2010-00062, *In the Matter of: Petition for Arbitration of Interconnection Agreement Between BellSouth Telecommunications, Inc. d/b/a AT&T Kentucky and Sprint Communications Company, L.P.* and if present before the Commission and duly sworn, his statements would be set forth in the annexed rebuttal testimony consisting of

AT&T KENTUCKY

REBUTTAL TESTIMONY OF FREDERICK C. CHRISTENSEN

BEFORE THE KENTUCKY PUBLIC SERVICE COMMISSION

DOCKET NO. 2010-00061

I. INTRODUCTION

Q. PLEASE STATE YOUR NAME.

A. My name is Frederick C. Christensen. I am the same Frederick C. Christensen who filed Direct Testimony on behalf of AT&T in this matter on August 17, 2010.

Q. WHAT IS THE PURPOSE OF YOUR REBUTTAL TESTIMONY?

A. My Rebuttal Testimony addresses certain assertions made by Sprint witnesses Mr. Burt and Mr. Felton in their Direct Testimonies filed on August 17, 2010. Specifically, I address issues those witnesses raised in regard to DPL Issues II.B.1, II.B.2, IV.F.1, IV.F.2 and IV.G.2.

II. DISCUSSION OF ISSUES

DPL ISSUE II.B.1

Contract Reference: Attachment 3, Section 2.5.4(b)

Q. IN HIS DIRECT TESTIMONY SPRINT WITNESS MR. BURT STATES, "IT IS IMPORTANT TO DECIDE THE ISSUE OF MULTI-USE TRUNKING SEPARATE FROM THE ISSUE OF TRAFFIC RATES BECAUSE IT IS FUNDAMENTALLY A DIFFERENT ISSUE" (BURT DIRECT P. 55 L. 19). DO YOU AGREE WITH MR. BURT?

A. No I do not. The issue of multi-use trunking – specifically, whether Sprint CMRS and Sprint CLEC can commingle their traffic over one trunk for delivery to AT&T - is inextricably intertwined with the question of the rates that AT&T will apply to the traffic arriving on a given trunk group. As noted in my Direct Testimony, it is the combination of (1) the trunk group that a call arrives on at the tandem and (2) the originating and terminating NPA-NXX of that call that determines the appropriate rate AT&T will charge Sprint. Therefore, the two issues are not separate, but are rather two sub-issues that are

separate the Sprint wireless originating traffic from its wireline originating traffic so that AT&T can apply the appropriate rates to the calls that arrive at its tandem from Sprint.

Q. DOES MR. BURT DENY AT&T'S POSITION THAT IT WILL NOT BE ABLE TO ACCURATELY BILL SPRINT IF THE PARTIES ADOPT SPRINT'S PROPOSED LANGUAGE?

A. No he does not. He merely opines that the two issues are unrelated – a position that, as I noted above, is incorrect. Nor, might I add, does he offer an alternative billing solution to the problem posed by Sprint's proposal.

Q. MR. BURT CLAIMS THAT CHANGES IN THE INDUSTRY REQUIRE SPRINT TO CONVERGE ITS TRAFFIC ONTO A SINGLE TRUNK GROUP. HE ALSO CLAIMS THAT, "SERVICES AVAILABLE TODAY ALLOW A USER TO HAVE A SINGLE TELEPHONE NUMBER ASSIGNED TO BOTH A MOBILE AND DESK TELEPHONE. THIS CREATES THE SITUATION WHERE IT MAY NOT BE DETERMINABLE WHETHER A PARTICULAR CALL IS A WIRELINE CALL OR A WIRELESS CALL IN THE HISTORICAL SENSE UNTIL THE

the call between Sprint and AT&T. The originating carrier should, therefore, be able to separate its wireless originations from its wireline originations on to unique trunk groups so that the appropriate compensation schemes can be applied.

Q. MR. BURT FURTHER STATES THAT, "IN ADDITION, THE USER OF SUCH AN INTEGRATED SERVICE HAS THE ABILITY TO SWITCH BETWEEN THE WIRELESS TELEPHONE AND THE DESK TELEPHONE DURING A CONVERSATION. THIS REALITY CREATES THE SITUATION WHERE CARRIERS EXCHANGING TRAFFIC OVER SEGREGATED TRUNKS WILL NOT KNOW WHICH TRUNK TO PLACE THE CALL ON BECAUSE ITS TRUE NATURE IS NOT KNOWN UNTIL THE CALL IS ANSWERED, AND MAY CHANGE MID-CONVERSATION" (BURT DIRECT P. 63 L. 20). HOW DO YOU RESPOND?

A. Mr. Burt's assertion in that regard is a red herring. The question again is how the call was originated, because it is the initial call set-up that determines on which of the AT&T proposed separate trunk groups Sprint should route the call. When a Sprint wireless end

which it was originally routed to AT&T's tandem. That is, the call remains stable from AT&T's perspective.

Again, the issue for AT&T is whether the call, as originally dialed, originated on Sprint's wireless network or Sprint's wireline network. Only Sprint knows for sure on which network the call originated; therefore, only Sprint can segregate the traffic at the originating end so that the appropriate billing rates can be applied by AT&T. In citing the above mid-call transfer scenario, Mr. Burt does not clearly state whether a single trunk group is required by Sprint in order to allow that specific product to function nor does he state that Sprint cannot make the product work if the parties establish two separate trunks groups. He merely claims that, "The very nature of services being provided within the industry and by Sprint ***will*** require the combining of the different

A. No. If I understand Mr. Burt's Testimony, the transfer from the Sprint wireless handset to the Sprint wireline handset, during a stable call, occurs solely within Sprint's network, not AT&T's network. The call as originally dialed remains stable over the dedicated trunk group – whether wireline or wireless – between the parties. Therefore, AT&T's portion of the call does not change, nor does the proper compensation to be applied to the call. If the call originated as a wireless call, and thus was initially delivered to AT&T over a trunk group dedicated to Sprint wireless end user originations, then the call will remain stable on that trunk group until the conversing parties end the call, regardless of any wireless to wireline transfer that may have occurred within the Sprint network. AT&T would bill the wireless rate for the entire call because AT&T has no idea that Sprint's end user changed his or her handset mid-call. Nor would AT&T ever know that

keep arrangement[3] that, in the case of factoring, would allow for a percentage of wireless originations versus a percentage of wireline originations over the combined trunk group rather than relying on actual billing records. Moreover, as explained above, such factors would not properly compensate AT&T based on the manner in which the call is originated.

Q. MR. BURT CLAIMS THAT, "MORE EFFICIENT INTERCONNECTION AND THE RESULTING REDUCTION IN INTERCONNECTION COST DOES SERVE THE PUBLIC INTEREST. IN A COMPETITIVE MARKET, A REDUCTION IN COSTS LEADS TO A REDUCTION IN PRICE, WHICH IS IN THE PUBLIC INTEREST" (BURT P. 64 L. 16). DO YOU AGREE?

A. Under other circumstances, yes. However, I submit that the same is true of accurate billing methodologies. That is, being able to submit an accurate and timely bill for actual services rendered is also in the public interest. AT&T's proposed language would do that

Additionally, the Indiana Commission qualified its ruling when it stated, "However, the Commission is concerned about: identifying and measuring traffic that goes over one trunk; the use of factors; issues associated with phantom traffic; and auditing provisions. We believe the best mechanism for identifying and measuring all the traffic is one in which both parties agree on the type, jurisdiction, and amount or volume of traffic; however, if parties cannot agree, the dispute resolution process in Section 32 of the agreement should be invoked. For example, Section 6.5.2 does not allow for mutual agreement on factors".[6] So while the Indiana Commission reluctantly allowed Sprint to route both its wireless and wireline traffic over a single trunk group, it recognized that there were significant issues to overcome that would possibly result in future disputes between the parties. AT&T is raising those problems now, as opposed to punting them to

in Dockets 6055-MA-100, January 15, 1997, p. 8). As I understand it, that technical infeasibility ruling was based primarily on AT&T's inability to properly bill the calls it would receive over a single trunk group from Sprint.

Q. ON WHAT BASIS DID AT&T CLAIM THAT SPRINT'S TRUNKING ARRANGEMENT WAS TECHNICALLY INFEASIBLE?

A. For the same reason AT&T believes that Sprint's proposed arrangement in this Docket is technically infeasible. AT&T showed in the Wisconsin proceeding that it was unable to differentiate between the traffic types arriving at its tandem on a single trunk group and thus was unable to render accurate bills. In its ruling the Arbitration Panel acknowledged AT&T's position noting that, "Ameritech states that Sprint's multi-jurisdictional trunk group proposal is technically infeasible and renders Ameritech unable to provide accurate

upgrades provide the ability for AT&T, or any carrier, to differentiate between two unique traffic types arriving on a single trunk group.

Q. MR. BURT CLAIMS THAT AT&T, TODAY, COMBINES "CMRS AND CLEC TRAFFIC DESTINED FOR SPRINT CLEC ON CURRENT SPRINT CLEC LOCAL INTERCONNECTION TRUNKS". (BURT DIRECT P. 66, L. 1). CAN YOU EXPLAIN WHY SUCH ROUTING TO SPRINT IS APPROPRIATE?

A. Yes. Mr. Burt is missing the point that the traffic AT&T routes to Sprint CMRS or Sprint CLEC from other CMRS providers and CLECs has been billed appropriately by AT&T at the tandem because the trunk groups arriving at AT&T's tandem from those other providers have been segregated into separate CMRS traffic originations and CLEC originations. That is, AT&T has technology (CMRS vs. CLEC) based tandem trunking arrangements with other CMRS providers and CLECs so that when these other providers

A. As mentioned in my Direct Testimony, I recommend that the Commission reject Sprint's language in its entirety and that the Commission adopt AT&T's proposed language in order to assure that the billing process is as accurate as possible.

Issue IV.F.1

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

Contract Reference: Attachment 7, Section 1.6.3

Q. CAN YOU CLARIFY WHAT THE PARTIES' DISPUTE REGARDING THIS ISSUE REALLY IS?

A. Yes. Prior to November, 2009 Sprint submitted bills to AT&T that were state specific. Subsequent to November, 2009, however, Sprint unilaterally changed the coding in its invoice to eliminate references to specific states. Instead of limiting an invoice to a

California's OCN of 9740 (last four digits). When AT&T received this invoice, it knew that the entire invoice reflected Sprint's billing to AT&T for California only. Since our accounts payable process was originally designed to process invoices on a state specific basis (since rates differ between states), AT&T could easily validate and process the entire invoice in a mechanized manner.

Exhibit FCC-4 to this filing contains excerpts from a Sprint submitted invoice to AT&T subsequent to November, 2009. Although the "Billing Account" field is still a valid field, the information it carries is not the same as it was prior to November, 2009. Note in Exhibit FCC-4 that the "Billing Account" field now reflects Sprint OCN 8712, which is defined in the Local Exchange Routing Guide ("LERG") as Sprint's "Overall" OCN. That is, OCN 8712 is not state specific, but rather reflects an all encompassing

manual processing as it now must sort Sprint's combined bill into state specific categories in order to process the appropriate payment.

Q. IN HIS DIRECT TESTIMONY, SPRINT WITNESS MR. FELTON STATES THAT, "SPRINT'S BILLING SYSTEM IS BASED ON THE SECAB INDUSTRY STANDARD, WHICH DOES NOT IDENTIFY USAGE BY 'BILLED PARTY OCN'. AT&T HAS NO RIGHT TO MANDATE A CHANGE IN SPRINT'S LONG-STANDING, INDUSTRY-STANDARD BILLING SYSTEM" (FELTON P. 91 L. 21). CAN YOU COMMENT ON MR. FELTON'S STATEMENT?

A. Yes. As noted above and in my Direct Testimony, Sprint did include the state specific OCN on the bills it submitted to AT&T prior to November 2009. So despite Mr. Felton's assertions to the contrary, Sprint's billing systems until very recently were fully capable of providing the state specific invoices AT&T requires. Additionally, I would disagree with Mr. Felton that less than one year of invoice submission by Sprint without the

CONTRACT MANDATE TO 'DO IT AT&T'S WAY OR IN THE FUTURE YOU WILL NOT GET PAID'" (FELTON P. 92 L. 3). HOW DO YOU RESPOND?

A. Mr. Felton's assertion is absurd. AT&T has a record of well over 100 years of making timely payments to its vendors and service providers. Additionally, it was Sprint's unilateral change that has made it nearly impossible for AT&T to process Sprint's submitted invoices without significant manual intervention. All AT&T seeks is the restoration of the information Sprint willingly provided prior to November 2009 in order to ensure that Sprint gets paid the correct amount in a timely manner.

Q. IN DISCUSSING THIS ISSUE, MR. FELTON IMPLIES THAT AT&T SEEKS TO "IMPOSE CONTRACT MANDATES UPON COMPETING CARRIERS TO DO SOMETHING A SPECIFIC WAY SIMPLY AND SOLELY BECAUSE AT&T SAYS SO" (FELTON P. 92 L. 7). HOW DO YOU RESPOND?

A. This is simply more posturing. All AT&T seeks is the restoration of the information that

A. No, it is not. In 2002,[7] AT&T (then SBC) introduced a standard process for CLECs to follow when submitting billing disputes to the Local Service Center ("LSC") Billing team. The standard process was developed because, at the time, no two CLECs were submitting billing disputes in the same manner. One CLEC might send a spreadsheet with all of the required information, while another would submit an email or fax with required information missing. In the case of the latter, CLECs experienced delays and, in many cases, denial of their claims because the LSC Billing team did not have enough information to validate the facts. In order to expedite the process for CLECs and to assure that CLECs submitted the required information, we created the Billing Dispute process to which Mr. Felton appears to object.

Q. DID CLECS HAVE INPUT INTO THAT STANDARD PROCESS?

and services provided to CLECs. CLECs actively participate with AT&T during monthly sessions either in person or via conference call. Each participant is free to bring specific issues to the table for adoption by the CUF in order to foster their resolution. In many cases, one issue raised by an individual CLEC is recognized as affecting another CLEC, and all participants can respond accordingly. The CUF participants track the issues, fully discuss the issues and work toward their resolution by involving the appropriate work groups or individuals who can have an impact on the issue. When an issue is adopted by the CUF, both an AT&T and a CLEC issue sponsor are identified. It is the sponsors' responsibility to coordinate efforts to resolve the specific issue for the CLEC and to report on their progress to the CUF at large during subsequent meetings.

Q. WHAT DO YOU RECOMMEND TO THE COMMISSION REGARDING THIS

before a party can institute a change in billing format. The parties' disagreement is not about how much notice the Billing Party must provide before instituting a billing format change; the parties generally agree notice should be provided at least ninety calendar days or three billing cycles before the change goes into effect. Rather, the disagreement concerns other language in Section 1.19.

AT&T objects to Sprint proposed language that leaves it up to the *Billing* Party – the party responsible for sending the notification – to decide whether a particular billing format change will "impact the *Billed* Party's ability to validate and pay the Billing Party's invoices". AT&T also objects to Sprint's proposed language concerning what happens if the Billing Party fails to notify the Billed Party of billing format changes within the agreed notice period and the ensuing calculation of any appropriate late

methodology and provided no technical documentation with regard to that change. It merely sent notification letters[8] that provided little or no system requirement information, but simply told AT&T that certain invoices were being consolidated. Now some ten (10) months later, AT&T is still unable to process Sprint's invoice in the mechanized manner that it had previously been able to use.

Sprint (the billing party) may not have been able to predict that AT&T (the billed party) would struggle to process Sprint's invoice subsequent to Sprint's billing format change because there was no consultation between the parties prior to that change. Only after AT&T was informed and began to process Sprint's newly formatted invoice could the parties fully understand the ramifications the new format would have on the previously mechanized payment process. Clearly, the hard and fast 90-day notification

A. I recommend that the Commission reject Sprint's hard and fast 90-day language and that the Commission instead adopt AT&T's more flexible proposed language.

Issue IV.G.2

"What language should govern recording?"

Contract Reference: Attachment 7, Section 6.1.9.4

Q. PLEASE DESCRIBE THE ISSUE BETWEEN THE PARTIES.

A. This issue relates to language found in Attachment 7, Section 6.1.9.4, which concerns the recorded data that Sprint provides to AT&T when Sprint is the recording party. The parties had agreed that Sprint would provide AT&T with Access Usage Record ("AUR") detail data, but the parties disagreed about whether Sprint must also provide "Billable Message" detail. AT&T proposed that Sprint be required to provide such detail, and

objection to the exception Mr. Felton proposes and believes that the parties have reached agreement on this issue.

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

A. Hopefully the parties can resolve this issue and remove it as a disputed issue for Commission resolution. Short of that, as proposed by both parties, I recommend that the Commission adopt AT&T's proposed language with the addition of the Sprint proposed exception mentioned above. That language is as follows:

> 6.1.9.4 When Sprint is the recording Party, Sprint agrees to provide its recorded **End User Billable Messages** detail **and** AUR detail data to AT&T-9STATE under the same terms and conditions of ***this Section 6.1.9***.

III. CONCLUSION

Sprint California OCN

REMIT TO:

Sprint Comm Co - CA
PO Box 873455
Kansas City MO 64187-3455

SBC B
722 N BROADWAY, FL 10
MC - K03B19
MILWAUKEE WI 53202-0000

BILLING ACCOUNT 8941 09740 ← AT+T California OCN
INVOICE NO 09740090821
BAR
BACR
BILL DATE Aug 23, 2009

DUE DATE Sep 23, 2009
PAGE 1

BILLING INQUIRIES CALL: CABS Department (866) 254-6141

Meet Point Billing

SWITCHED ACCESS SERVICE
FEATURE GROUP D
*****BALANCE DUE INFORMATION*****

TOTAL AMOUNT OF LAST BILL	[redacted]
PAYMENTS APPLIED	[redacted]
TOTAL BALANCE DUE	[redacted]

*****DETAIL OF CURRENT CHARGES*****

LATE PAYMENT CHARGES		[redacted]
USAGE CHARGES		[redacted]
INTERSTATE	[redacted]	

Sprint Overall OCN

REMIT TO:

Sprint Comm Co - Overall
PO Box 873455
Kansas City MO 64187-3455

SBCB
722 N Broadway
Fl 10
MC-K03B19
Milwaukee WI 53202-0000

BILLING ACCOUNT 871209533 ← AT+T Texas OCN
INVOICE NO O9533091115
BAR
BACR
BILL DATE Nov 12, 2009

DUE DATE Dec 13, 2009
PAGE 1

BILLING INQUIRIES CALL: CABS Department (866) 254-6141

Meet Point Billing

SWITCHED ACCESS SERVICE
FEATURE GROUP D
*** * * BALANCE DUE INFORMATION * * ***

TOTAL AMOUNT OF LAST BILL	[redacted]
PAYMENTS APPLIED	[redacted]
ZERO BALANCE DUE	[redacted]

*** * * DETAIL OF CURRENT CHARGES * * ***

LATE PAYMENT CHARGES	[redacted]
OTHER CHARGES AND CREDITS	[redacted]
INTERSTATE	[redacted]
INTRASTATE	

Sprint Comm Co - Overall
PO Box 873455
Kansas City MO 64187-3455

SBCB
722 N Broadway
Fl 10
MC-K03B19
Milwaukee WI 53202-0000

BILLING ACCOUNT 8712O9533
INVOICE NO O9533091115
BILL DATE Nov 12, 2009
PAGE 178

BILLING INQUIRIES CALL: CABS Department (866) 254-6141

*****Detail of Usage Charges For Office AKRNOHIJ1GT*****
*****Meet Point Billing*****
Prior Period Aug 08, 2009 Thru Sep 07, 2009

Intrastate IntraLATA

Rate Category	Miles /Qty	Access Minutes	Rate	BP	Amount
EC - 8712					
Bill Segment - AKRNOHIJ1GT - AKRNOH255GT / ALL / EO-A/T					
End Office					
Local Switching Direct - Originatng Zone: 36					[redacted]
TOTAL FOR End Office:					[redacted]
Local Transport					

Akron, OH

COMMONWEALTH OF KENTUCKY

KENTUCKY PUBLIC SERVICE COMMISSION

COUNTY OF Fulton

STATE OF Georgia

BEFORE ME, the undersigned authority, duly commissioned and qualified in and for the State and County aforesaid, personally came and appeared P. L. (Scott) Ferguson, who being by me first duly sworn deposed and said that he is appearing as a witness on behalf of BellSouth Telecommunications, Inc. d/b/a AT&T Kentucky before the Kentucky Public Service Commission in Docket Number 2010-00061, *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,* and if present before the Commission and duly sworn, his statements would be set forth in the annexed rebuttal testimony consisting of 28 pages and 0 exhibits.

AT&T KENTUCKY

REBUTTAL TESTIMONY OF P.L. (SCOT) FERGUSON

BEFORE THE KENTUCKY PUBLIC SERVICE COMMISSION

CASE NO. 2010-00061

SEPTEMBER 17, 2010

I. INTRODUCTION

Q. ARE YOU THE SAME P.L. (SCOT) FERGUSON WHO PREVIOUSLY FILED TESTIMONY IN THIS CASE?

A. Yes. On August 17, 2010, I filed 59 pages of direct testimony in this case.

Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY?

A. I have reviewed the direct testimony filed in this case on August 17, 2010 by Sprint's witnesses, Mr. James Burt and Mr. Mark Felton with respect to the issues listed on the cover page. My rebuttal testimony addresses a number of misleading and erroneous assertions made by Mr. Burt and Mr. Felton in their testimonies, specifically regarding policy positions at issue in this proceeding.

Q. DO YOU PROVIDE SPECIFIC REBUTTAL TESTIMONY FOR ALL DISPUTED ISSUES THAT YOU ADDRESSED IN YOUR DIRECT TESTMONY?

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

Q. PLEASE RESPOND TO MR. BURT'S CLAIM ON PAGE 32 OF HIS DIRECT TESTIMONY THAT "AT&T BELIEVES IT HAS SOME INHERENT RIGHT TO 'INVESTIGATE' AND THEREBY CONTROL HOW A CLEC CONDUCTS BUSINESS WITH THIRD PARTIES."

A. His statement is an over-dramatization of AT&T's actual position. I explained in my direct testimony beginning on page 2 that AT&T is not opposed to Sprint's proposal, in general, and is willing to negotiate an appropriate amendment to the CLEC ICA if and when Sprint identifies a candidate Affiliate or third-party network manager to perform functions for Sprint CLEC that, at this time, are undefined by Sprint. Sprint has not explained to AT&T how the process would work under the CLEC ICA, and AT&T's primary concern is that there is no guarantee that a CMRS-like process can be – or ever could be – a viable process

Sprint's proposed language for the CLEC ICA. It certainly is not about any desire on AT&T's part to control any aspect of Sprint's relationship with other parties. If anything, Sprint is interjecting itself into AT&T's business to decide with whom AT&T should have a billing relationship – without providing substance to the proposed process.

Q. ARE THERE ANY OTHER CIRCUMSTANCES THAT WOULD BE INCLUDED IN THE TYPE OF INVESTIGATION THAT YOU REFERENCED IN YOUR TESTIMONY AND THAT MR. BURT MISCHARACTERIZES IN HIS TESTIMONY?

A. Yes. Sprint proposes language for a hypothetical situation (which it will not or cannot define) for which AT&T may not have existing procedures for the CLEC environment. Billing other parties under Sprint's CLEC ICA is one area that

Q. IS AT&T CONCERNED ONLY WITH THE POTENTIAL APPLICATION OF SPRINT'S PROPOSAL UNDER A CLEC ICA?

A. Absolutely not. As I stressed in my discussion of the issues in my direct testimony, AT&T is concerned with the result that Sprint's ambiguous and open-ended language would have if other carriers adopt the ICAs that will come out of this arbitration. The open and non-specific language that Sprint proposes for this issue (and others) leaves AT&T at risk since AT&T cannot be certain that other carriers will engage in the same process under this language that Sprint testifies that it will.

Q. MR. BURT ASSERTS AT PAGE 34 THAT "AT&T HAS NOT IDENTIFIED THE CRITERIA IT WOULD UTILIZE" TO QUALIFY AN ENTITY SPRINT WAS CONSIDERING. IS THAT TRUE?

Sprint cannot define (other than to compare it hypothetically to the CMRS provision), when all AT&T wants is something specific to which it can respond. Lacking that, my direct testimony is very clear that AT&T is willing to seek a negotiated resolution to any specific request that Sprint brings to AT&T.

Q. FINALLY, MR. BURT CLAIMS ON PAGE 35 THAT AT&T IS DISCRIMINATORY IN ITS TREATMENT BETWEEN THE CMRS AND CLEC AGREEMENTS ON THIS ISSUE. IS HE CORRECT?

A. No. AT&T has made every effort to agree to language that can be common to both ICAs for all issues – as appropriate – in the negotiation of these ICAs. Sprint has provided nothing to prove that the two ICAs are similarly situated with respect to the issue of Affiliates and network managers. It is unclear that the same language can apply to both ICAs, and, therefore, AT&T cannot be guilty of any

A. I am not clear what Mr. Felton means when he uses the phrases 'current ICA' and 'preceding ICA' but, setting that aside, I discussed in my direct testimony (see page 5) that AT&T proposes language that specifies that Sprint will pay for the work that AT&T performs on either Party's network to conform to the terms and conditions of the Parties' new ICAs. That includes any service ordering or administrative charges. As I stated in my direct testimony, if Sprint issues orders to AT&T to perform network changes, Sprint should pay the appropriate charges for the work.

Q. DO YOU AGREE WITH MR. FELTON'S STATEMENT, AT PAGE 56 OF HIS DIRECT TESTIMONY, THAT "THE PARTIES HAVE BEEN INTERCONNECTED AND EXCHANGING TRAFFIC FOR OVER A DECADE AND NO MAJOR NETWORK RECONFIGURATIONS SHOULD BE NECESSARY FOR THE PARTIES TO CONTINUE THEIR EXISTING RELATIONSHIP?"

however, that AT&T will bear the cost of interconnecting for Sprint's benefit. On the contrary, the Act requires Sprint to compensate AT&T for its interconnection costs, at rates that are cost-based and include a reasonable profit.

Under AT&T's proposed language, the reconfigurations for which Sprint would bear the cost are those that are required to "conform to the terms and conditions contained in this Agreement." By definition, those terms and conditions are in the ICAs either because the Act requires them (and the Commission so found) or because the Parties agreed they were just and reasonable. Thus, Mr. Felton's reference to a reconfiguration "necessitated by an AT&T proposal" is somewhat misleading. What we are really talking about is a reconfiguration necessitated by contract language that the Commission imposes in

limitations as affected by regulatory and court decisions. In my direct testimony, I stated that I did not know Sprint's position on items #2 and #3. Mr. Felton's direct testimony addresses only item #1. Consequently, I still do not know Sprint's position on the other two issues, and I respectfully direct the Commission to my direct testimony for support for AT&T's positions and requested resolutions on those issues.

Q. DID MR. FELTON ADDRESS ANY POINTS IN HIS DIRECT TESTIMONY ON SECTION 1.6.5 THAT YOU DID NOT ADDRESS IN YOUR DIRECT TESTIMONY BUT WISH TO ADDRESS HERE?

A. Yes. On page 66 of his direct testimony, Mr. Felton asserts that "AT&T's language does not recognize the fact that either party may have need to render a bill to the other party." He is correct that AT&T's proposed CMRS-only

resolved in AT&T's favor (and it should be), then other products or services (currently non-existent) that AT&T might buy from Sprint can be addressed at such time by way of amendment to the CMRS ICA.

Beyond this, Mr. Felton does not make any substantive points on the issue that I have not already addressed in my direct testimony or that other AT&T witnesses have not already addressed in their direct testimonies. I respectfully direct the Commission to that testimony.

Q. ON PAGE 67 OF HIS DIRECT TESTIMONY, MR. FELTON RAISES THE ISSUE OF "A *VERY* SUBSTANTIAL SHARED FACILITY DISPUTE FROM THE PARTIES' PAST ICA BASED ON AT&T'S REFUSAL TO PAY AMOUNTS THAT NEXTEL PROPERLY BILLED..." AS SPRINT'S JUSTIFICATION THAT AT&T'S PROPOSED LANGUAGE SHOULD NOT BE ACCEPTED ON THIS ISSUE. WHAT IS WRONG WITH MR. FELTON'S ARGUMENT?

A. The argument, even if true, is not relevant with respect to this issue. As I

Further, Mr. Felton does not substantiate his claim that, for Sprint, "administrative costs of verifying the bills and the likelihood of billing disputes doubles" under AT&T's proposed process. It is my understanding that regardless of the method, the amount of work required of Sprint should be about the same. If a credit is to be rendered, the credit has to be developed and substantiated; if a direct facility bill is to be rendered, the amount of the bill has to be developed. The actual bill process of applying credits versus the issuance of direct facility bills does not result in appreciably more or fewer disputes.

However, it is also my understanding that the credit process does create more administrative costs for AT&T. After validating the facility amount owed to Sprint, AT&T must take the administrative steps of applying credits to

Sprint wants what it wants for no other reason than because it has served Sprint well for so long.

Further, he did not cite (and I do not believe he can) to an obligation on either Party that requires language that states only *undisputed* charges should be paid by the Bill Due Date, or that only *undisputed* charges not paid by the Bill Due Date are subject to Late Payment Charges. I demonstrated in my direct testimony beginning on page 15 why AT&T's definition yields the right results in the context of the actual language of the ICAs. Moreover, this is a reciprocal provision that has been incorporated into a number of ICAs previously approved by this Commission.

Q. PLEASE RESPOND TO MR. FELTON'S STATEMENT THAT "THE BILLING PARTY HAS NO INCENTIVE TO ENSURE THE BILLED

Avoiding breach of those terms should be incentive enough to ensure that the Billing Party appropriately works through Billing Disputes.

DPL ISSUE IV.B(2)

What deposit language should be included in each ICA?

Contract Reference: Att. 7, section 1.8

Q. IN MR. FELTON'S DIRECT TESTIMONY AT PAGE 73, HE STATES THAT "SPRINT HAS PROPOSED LANGUAGE THE RECOGNIZES THE EXISTENCE OF MUTUAL BILLING AND THEREFORE REQUIRES MUTUALITY IN THE DEPOSIT PROVISIONS." IS THERE ANY REGULATORY REQUIREMENT THAT MUTUAL BILLING EQUATES TO MUTUAL DEPOSITS?

A. No. In fact, as I have cited in direct testimony in Kentucky and other states where these Parties are having similar arbitration proceedings, some state commissions[1] have ruled that AT&T and CLECs are not similarly situated and, therefore,

A. As I discussed in my direct testimony, AT&T's language is a proportionate response to the tens of millions of dollars in revenues that AT&T lost – and continues to lose -- to carriers that have run up huge account balances and failed to pay them. Mischaracterizing the language as an "overreaction" to such circumstances is a non-substantive response when there is nothing else for Sprint to offer in support of its own position. Further, as shown in my direct testimony, AT&T's proposed deposit language is specific, detailed and reasonable.

Regarding his "tipping the balance" statement, Mr. Felton is dangerously close to accusing AT&T of discriminatory and predatory practices, without sharing any evidence to support his allegations. That AT&T decidedly bills more to CLECs and CMRS providers than vice versa, coupled with AT&T's proven

history is true, then AT&T's proposed deposit language should not concern Sprint. The Commission should be aware that the Parties previously agreed that no additional deposit would be required of Sprint at the time that these ICAs become effective. However, as I discussed at length in my direct testimony, AT&T is entitled to language that allows it to demand from Sprint or any other carrier adopting these ICAs a deposit when a deposit is warranted to mitigate AT&T's risks.

DPL ISSUE IV.C(1)

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

Contract Reference: Att. 7, section 3.1.1

Q. MR. FELTON STATES ON PAGE 78 OF HIS DIRECT TESTIMONY THAT "BILLING ERRORS MAY NOT BE DETECTABLE IN TWELVE

A. No. Simply because the Parties agreed to a general 24-month limitation on disputes under the ICA does not preclude the possibility that the Parties can agree to – or this Commission can order – a different limitation on a specific type of dispute.[2] Sprint itself has proposed a self-serving 6-month back-billing limitation for Issue IV.A(2) that is significantly shorter than the 24-month general limitation that it is touting for this issue. As I pointed out on page 35 of my direct testimony, Sprint cannot have it both ways.

Q. MR. FELTON ALSO MENTIONS AT PAGE 79 THAT THE AGREED-TO 24-MONTH GENERAL LIMITATION IS "LIKELY SHORTER THAN A GIVEN JURISDICTION'S APPLICABLE STATUTORY LIMITATIONS PERIOD." IS THAT RELEVANT?

A. No. I am not an attorney, but it seems as though Mr. Felton is suggesting that the agreed and approved terms of an ICA somehow could be inconsistent with a

claims is subject to the same level of "staleness". As I discussed in my direct testimony on both the back-billing and the billing dispute issues, Sprint's positions on both of these issues do not square with each other, and each of Sprint's proposed limitations is self-serving. Further, I discussed that this Commission has approved other ICAs with the 12-month limitations on both types of claims.

DPL ISSUE IV.C(2)

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

Contract Reference: Att. 7, section 3.3.1

Q. MR. FELTON STATES ON PAGE 80 OF HIS DIRECT TESTIMONY THAT "TO THE EXTENT AT&T ISSUES IMPROPER BILLS, SPRINT MAINTAINS ITS RIGHT TO USE ITS EXISTING AUTOMATED DISPUTE SYSTEM." WHAT IS AT&T'S RESPONSE?

Finally, AT&T must be concerned that, if Sprint has its way, other carriers adopting these ICAs would not be compelled to use AT&T's form.

Q. PLEASE RESPOND TO MR. FELTON'S CLAIM AT PAGE 80 OF HIS DIRECT TESTIMONY THAT SPRINT WILL INCUR "ADDITIONAL COSTS" IF IT IS REQUIRED TO SUBMIT BILLING DISPUTES USING AT&T'S DISPUTE FORM.

A. I certainly understand his contention because AT&T has the same consideration with using Sprint's dispute form when AT&T files a Billing Dispute with Sprint. However, that is part of the cost of doing business, and AT&T is willing to accept those costs in using Sprint's form when AT&T disputes a Sprint bill. Again, AT&T has worked successfully with other carriers to ensure those carriers use AT&T's form, but AT&T has not been as fortunate with Sprint.

Q. REGARDING MR. FELTON'S REFERENCE TO COSTS, DOES AT&T INCUR ADDITIONAL COSTS BECAUSE OF SPRINT'S REFUSAL TO

sometimes find the missing USOCs in remarks and manually can put them into the proper fields in the system, but more often than not the representative must access the billing account to determine what Sprint is attempting to claim and determine the USOC. Subsequent matches of USOCs and dollar amounts are then populated in the proper fields by AT&T's personnel in order to process the disputes through AT&T's bill validation process. The representatives must replicate this activity across potentially thousands of rows of information. Further, these representatives must break down the billed amounts by month because Sprint combines up to 24 months of monthly charges in one line item. This amount of manual work would not be required of AT&T if Sprint submitted its disputes completely and correctly on the AT&T form.

conveniently neglects to recognize that a large percentage of the disputes filed by Sprint are, in fact, invalid. As I stated earlier in this rebuttal testimony, adapting a system or process is a cost of doing business, and if Sprint truly wants a more efficient resolution to its valid Billing Disputes, it should use the AT&T dispute form.

Q. WASN'T SPRINT PART OF A COLLABORATIVE EFFORT BETWEEN AT&T AND THE CLECS TO REFINE THE BILLING DISPUTE PROCESS?

A. Yes. AT&T's witness Fred Christensen addresses this at length in his rebuttal testimony on Issue IV.F(1). The high-level view is that AT&T originally developed a standard Billing Dispute process in 2002, but, because CLECs submitted disputes by different means and with different levels of accurate

**REMIT PRESUMPTIVELY ERRONEOUS BILLED AMOUNTS…"
PLEASE RESPOND.**

A. I explained in my direct testimony on page 43 that AT&T has lost tens of millions of dollars to carriers that disputed bills without a proper basis and then did not have the money to pay when those disputes were resolved in AT&T's favor. AT&T's proposed language is a reasonable method to assure the funds are available to whichever Party to these ICAs happens to be the Billing Party. It is my understanding from discussions with our billing group that a relatively high percentage of Sprint's Billing Disputes are routinely denied, so it appears that Sprint makes liberal use of the "presumptively erroneous" concept to the detriment of AT&T. These are the kinds of dollar amounts that concern AT&T, and could be avoided if AT&T's proposed language is adopted.

A. Absolutely not, and there is no basis for such a suggestion. AT&T wants access to the money that is rightfully due to AT&T, and AT&T has no access to money that is in an escrow account. It most definitely is in AT&T's or any carrier's best interest to render correct bills. It is ludicrous to suggest that AT&T would do otherwise, particularly for the reasons for which Mr. Felton appears to be basing his premise.

Q. MR. FELTON ALSO SUGGESTS THAT IT IS AT&T'S INTENT TO DISCOURAGE DISPUTES WITH ITS ESCROW LANGUAGE. IS HE CORRECT?

A. No. Again, there is no basis for such a suggestion, and I will remind this Commission that the provision is reciprocal. However, if escrow requirements discourage *frivolous* disputes, AT&T's proposed language will have had its

A. I would say that Mr. Felton has not experienced all of the different methods by which carriers attempt to game the billing and disputing system, and some of those carriers may want to adopt these ICAs. If he was in AT&T's shoes, he would not question why AT&T wants the provisions that it seeks in this arbitration with respect to deposits, escrow, billing disputes and discontinuance of service. The fact is that AT&T is in a position of millions of dollars of risk, and this Commission and others have recognized that by approving previously the language AT&T seeks on all of those positions. The language represents nothing new in telecommunications; it simply represents something new to Sprint.

DPL ISSUE IV.E(1)

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

paid for services provided to the Billed Party. Discontinuance is the appropriate response to such non-payment, and, as I pointed out in my direct testimony, this Commission has approved AT&T's proposed discontinuance language in other ICAs.

Q. MR. FELTON FURTHER SUGGESTS AT PAGE 87 THAT, BECAUSE SPRINT "PROCESSES THOUSANDS OF INVOICES EVERY MONTH," IT IS POSSIBLE THAT THE LOSS OF ONE OF THOSE IN ELECTRONIC TRANSMISSION COULD MEAN VERY HARSH RESULTS. IS THAT REALLY AN ISSUE BETWEEN AT&T AND SPRINT?

A. I do not believe it is, and I doubt that it would be. If such a situation occurred, and if Sprint received a Discontinuance Notice from AT&T, it is beyond my perception how that would result in actual discontinuance. I am sure Mr. Felton would agree with me that our companies are in constant communication with each

Sprint if AT&T's proposed 15-day limitation goes into the ICA. In the event that Sprint's "practice" changes or other carriers adopt these ICAs, AT&T would be protected (as would Sprint, since this is a reciprocal provision).

In any case, and despite Mr. Felton's statement otherwise, Sprint – as the Billed Party – would indeed have 76 days to pay its bill if Sprint's proposed language is adopted (and it should not be). This is simply another example of Sprint wanting something in the ICAs but having no support for its wants.

DPL ISSUE IV.E(2)

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

Contract Reference: Att. 7, sections 2.0 – 2.9

Q. MR. FELTON IMPLIES THROUGHOUT HIS DISCOURSE ON THIS ISSUE (BEGINNING ON PAGE 89 OF HIS DIRECT TESTIMONY) THAT

That action by the repair shop is "most extreme" and "customer-impacting" (to quote Mr. Felton's assessment of AT&T's proposed language), but the repair shop has a right to be paid for its work. It is no different from the right for the Billing Party to be paid for services provided to the Billed Party under an ICA. There is no disputing that disconnection of a non-paying carrier for failure to pay for services received is drastic, but that reason alone is no justification for denying the Billing Party the right to discontinue services for nonpayment. However, that is all of the justification that Sprint is offering. There must be a significant disincentive to not paying a bill, and AT&T's proposed language provides an appropriate resolution.

Q. SHOULD THE BILLING PARTY HAVE COMMISSION APPROVAL BEFORE DISCONTINUING SERVICE TO THE BILLED PARTY, AS

DPL ISSUE V.C(1)

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

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

DPL ISSUE V.C(2)

Should the ICA include language governing company code changes?

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

Q. DOES YOUR REBUTTAL TESTIMONY ADDRESS ISSUES V.C(1) AND V.C(2) TOGETHER?

A. Yes. Mr. Burt addressed them together in his direct testimony because of issue similarities, so I will provide rebuttal testimony in the same manner.

Q. MR. BURT STATES ON PAGE 85 OF HIS DIRECT TESTIMONY THAT "AT&T'S PROPOSED LANGUAGE IS AN ATTEMPT BY AT&T TO

carrier's customer) benefits from the changes being made due to the carrier's actions.

Q. MR. BURT STATES AT PAGE 85 THAT "THE AT&T PROPOSED LANGUAGE APPEARS TO ALWAYS REQUIRE SPRINT TO PAY AT&T...IN THE CONTEXT OF A SPRINT NAME CHANGE OR COMPANY CODE CHANGE," AND SUGGESTS THAT "IT DOESN'T APPEAR THAT SPRINT WOULD BE COMPENSATED..." FOR SIMILAR NAME AND CODE CHANGES. IS THAT CORRECT?

A. Yes. That is exactly what AT&T's proposed language would and would not allow. First, AT&T is not similarly situated to Sprint and other carriers, and it is unlikely that Sprint and other carriers would be subjected to the type of changes to which AT&T is constantly subjected. Therefore, it is unclear that Sprint can establish that it would incur any costs for name changes. Second, I am not aware that Sprint made any proposal that this language should be reciprocal, but I am

Q. DOES THIS CONCLUDE YOUR REBUTTAL TESTIMONY?

A. Yes.

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COMMONWEALTH OF KENTUCKY

KENTUCKY PUBLIC SERVICE COMMISSION

COUNTY OF DALLAS

STATE OF TEXAS

BEFORE ME, the undersigned authority, duly commissioned and qualified in and for the State and County aforesaid, personally came and appeared James W. Hamiter, who being by me first duly sworn deposed and said that he is appearing as a witness on behalf of BellSouth Telecommunications, Inc. d/b/a AT&T Kentucky before the Kentucky Public Service Commission in Docket Number 2010-00061, *In the Matter of: Petition for Arbitration of Interconnection Agreement Between BellSouth Telecommunications, Inc. d/b/a AT&T Kentucky and Sprint Spectrum L.P., Nextel West Corp., and NPCR, Inc. d/b/a Nextel Partners,* and Docket Number 2010-00062, *In the Matter of: Petition for Arbitration of Interconnection Agreement Between BellSouth Telecommunications, Inc. d/b/a AT&T Kentucky and Sprint Communications*

AT&T KENTUCKY

REBUTTAL TESTIMONY OF JAMES W. HAMITER

BEFORE THE KENTUCKY PUBLIC SERVICE COMMISSION

DOCKET NO. 2010-00061

SEPTEMBER 17, 2010

I. INTRODUCTION

Q. PLEASE STATE YOUR NAME.

A. My name is James W. Hamiter.

Q. ARE YOU THE SAME JAMES W. HAMITER WHO FILED DIRECT TESTIMONY IN THIS CASE ON OR ABOUT AUGUST 17, 2010?

A. Yes.

Q. WHAT IS THE PURPOSE OF YOUR REBUTTAL TESTIMONY?

A. I will present testimony in response to the direct testimony of Sprint witnesses Mark G. Felton and James R. Burt on DPL Issues II.C(1), II.C(2), II.C(3), II.D(1), II.D(2), II.F(1), II.F(2), II.F(3), II.F(4), II.G, II.H(1), II.H(2), II.H(3), III.A.4(3) and V.B.

could be due to a temporary condition, or because the trunks Sprint wants to disconnect represent diverse and redundant facilities that, as discussed in my direct testimony, the FCC recommends be maintained.

Where Sprint offers service, it should have 911 trunks. If Sprint discontinues offering service in an area, then Sprint should be allowed to disconnect the 911 trunks in that area.

Q. SPRINT "SURMISES" (FELTON DIRECT AT 10) THAT AT&T'S POSITION IS BASED ON A DESIRE TO MAINTAIN A REVENUE STREAM. IS SPRINT CORRECT?

A. No, and Sprint does not provide any evidence to support its "surmise."

Q. DID AT&T INSINUATE THAT SPRINT INTENDED TO DISCONNECT E911 CIRCUITS NEEDED FOR END USERS TO REACH EMERGENCY SERVICES (FELTON DIRECT AT 10-11)?

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

Q. SPRINT ARGUES (FELTON DIRECT AT 12) THAT ITS LANGUAGE ALLOWS COMMINGLING ONLY WHERE "THE APPROPRIATE [PSAP] IS CAPABLE OF ACCOMMODATING THIS COMMINGLED TRAFFIC." DOES THAT TAKE CARE OF YOUR CONCERNS?

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

Q. SPRINT ASSERTS (FELTON DIRECT AT 12) THAT COMBINING WIRELESS AND WIRELINE IS EFFICIENT AND ECONOMICAL. HOW DO YOU RESPOND?

A. Sprint does not specifically identify or quantify any savings or efficiencies.

DPL ISSUE II.C (3)

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

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

Q. IS THERE A DISPUTE BETWEEN THE PARTIES ABOUT COMBINING 911 AND NON-911 TRAFFIC ON THE SAME TRUNKS?

A. Based on Sprint's testimony (Felton Direct at 14-15), no. The parties seem to agree that 911 trunks should only carry 911 traffic.

Q. WHAT IS THIS ISSUE ABOUT, THEN?

A. In section 1.2 of Attachment 10 of the CLEC ICA, the parties have agreed that AT&T will provide Sprint with access to AT&T's 911 and E911 databases, and will provide 911 and E911 interconnection and routing for the purpose of 911 call

A. No, for the same reasons I discussed in Issue II.C(2). Every reasonable effort should be made to avoid blocked or mishandled E911 calls and the risks I have described can and should be avoided by not commingling E911 traffic. Sprint's proposed language should be rejected.

DPL ISSUE II.D(1)

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

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

Q. SPRINT DESCRIBES AT&T'S 24 DS1 THRESHOLD AS "ARTIFICIAL" (FELTON DIRECT AT 16). IS IT?

A. No. Having a specific threshold is a fair way to create a distributed network

required only in major metropolitan areas, where there is urban sprawl into suburbs, etc.

Sprint appears to recognize the need for additional POIs when certain criteria are met. A trunk threshold, based on traffic load measured over a certain period of time, is an effective and appropriate criterion to use to determine when to add a POI.

Q. IS THERE A REASON TO USE 24 DS1S RATHER THAN SOME OTHER THRESHOLD TO ESTABLISH AN ADDITIONAL POI?

A. As I stated in my direct testimony at page 24, the number of DS1s that AT&T uses as its threshold for adding another POI[1] was the result of an interconnection arbitration conducted before the Public Utilities Commission of Texas. That order established a threshold level that AT&T (then SBC) was and is willing to

should be established when traffic volumes so warrant. 47 C.F.R. § 51.305 does not actually state that a requesting carrier is entitled to limit interconnection to only one POI regardless of traffic volumes. And, as indicated above, Sprint CLEC and Sprint CMRS already have multiple POIs in some LATAs.

Q. DO YOU AGREE WITH SPRINT THAT SPRINT ALONE SHOULD DECIDE WHEN IT IS ECONOMICALLY ADVANTAGEOUS TO ESTABLISH ADDITIONAL POIS (FELTON DIRECT AT 18)?

A. I completely disagree. As I explained in my direct testimony, this issue concerns the reliability of the public switched telephone network ("PSTN"). If Sprint wants to use the PSTN, Sprint has to accept some measure of responsibility for protecting it – even in those cases in which Sprint apparently does not want to take on that responsibility voluntarily.

the tandem where the carrier's single POI is located, AT&T incurs significant costs. When the other party is a new entrant, those volumes are typically smaller than they are when the other party is an established carrier. AT&T simply wants Sprint, when traffic volume warrants, establishing a second POI and paying for the facilities from its switch to that second POI.

DPL ISSUE II.D(2)

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

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

Q. SPRINT CLAIMS THAT AT&T HAS NOT PROVIDED ANY REASON TO HAVE DIFFERENT LANGUAGE IN THE CLEC ICA VERSUS THE CMRS ICA (FELTON DIRECT AT 19). PLEASE RESPOND.

POI on the Sprint CMRS network. Parties are free, of course, to negotiate interconnection terms and conditions without regard for the requirements of section 251(c)(2), and that is what they have done here. And as part of that agreement, the parties have also agreed to share the costs of facilities between their reciprocal CMRS POIs, rather than for each party to be responsible for the facilities on its side of the POI. It is only natural that these very different POI arrangements would yield differences in POI language.

In addition, Sprint has only one remaining substantive objection to the POI language that AT&T proposes for the CLEC ICA, and that objection should be decided on its merits. At the end of the day, in other words, Mr. Felton's assertion about the differences between the CMRS ICA and the CLEC ICA is just

A. AT&T's proposed section 2.6.5 provides: "Sprint is solely responsible, including financially, for the facilities that carry OS/DA, E911, mass Calling and Third Party Trunk Groups." Sprint does not object to that language as it pertains to OS/DA and E911, but does object that AT&T's language "imposes financial responsibility on Sprint for the facilities and trunks associated with mass calling or third-party trunk groups, even if installed for AT&T's benefit or use." (Felton Direct at 20.)

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

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

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

It is Sprint or a third party, not AT&T, that causes traffic to be carried over Third Party Trunk Groups. When a call is originated by a third party and is delivered to a Sprint end user, Sprint can recoup its costs from the originator of the call for its facilities that are used for Third Party traffic. AT&T charges the originator only

for the portion of switching and transport that is on AT&T's network, not for the use of Sprint's network. AT&T is not authorized to charge for the use of Sprint's network, nor does it attempt to do so.

AT&T witness Pellerin discusses in connection with Issue III.E(2) the appropriate allocation of shared facilities costs associated with transit traffic.[2] The same reasons that she presents in that discussion apply here as well.

Regarding mass calling groups, Sprint objects on the ground that its customers do not "cause" mass-calling events. Instead, Sprint argues that the party being called (such as a radio station) causes the event. Sprint has it backwards. The term "mass-calling event" refers to the effect end users have on the PSTN when responding to a media stimulated call-in activity. Without mass calling trunks, end users can flood the PSTN with massive volumes of calls in response to a radio contest or concert announcement. Mass calling trunk groups are installed in order to protect the public switched telephone network against possible harms resulting from mass calling. To the extent those calls are made *by Sprint's customers,* it is Sprint, not AT&T, that should bear the attendant costs. I discuss mass calling as part of Issue II.H.1 as well.

Q. WHAT ABOUT THE REST OF AT&T'S PROPOSAL?

[2] The parties' dispute in Issue III.E(2) relates to the allocation of costs for shared facilities associated with transit traffic in the CMRS ICA. Sprint CLEC's Third Party Trunk Groups may carry both transit traffic and IXC traffic. Although IXC traffic is not a specific consideration in Issue III.E(2), and Issue III.E(2) is specific to the CMRS ICA, the same rationale applies here.

A. Sprint offers no cogent objection to the other AT&T-proposed language encompassed by this issue. This is not surprising. AT&T's language is reasonable.

AT&T's proposed section 2.6.1 provides that "Sprint and **AT&T-9STATE** shall each be responsible for engineering and maintaining the network on its side of the Point of Interconnection." There can be no valid objection to that language; it is the fact that each carrier is responsible, financially and otherwise, for the network on its side of the POI that makes the POI the POI.[3]

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

AT&T proposes, in section 2.6.2.1, that Sprint provide all applicable network information on forms acceptable to AT&T, as set forth in the AT&T CLEC Handbook, which is available on AT&T's CLEC Online website. This language is sensible. When Sprint interconnects with AT&T, AT&T needs certain information from Sprint – SS7 point codes, switch CLLI name, etc.

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[3] *E.g.*, Mem. Op. and Order, *Wisconsin Bell, Inc. v. AT&T Commc'ns*, Case No. 03-C-671-S (W.D. Wis. July 1, 2004) ("[The] designated POI is the financial demarcation point between the parties. Each party must bear the cost of carrying calls originating on its network to the POI . . . ."); *Re Cellco Partnership d/b/a Verizon Wireless*, Docket No. 03-00585, 2006 WL 707481, at *17 (Tenn. Reg. Auth. Jan. 12, 2006) ("[T]he cost for direct connection facilities should be borne by the CMRS provider to the point of interconnection and facilities on the other side of the CMRS provider's point of interconnection should be borne by the [ILEC]").

AT&T asks Sprint to provide this information on a standard form because AT&T interconnects with many carriers, and standardization facilitates the process.

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

AT&T proposes, for section 2.6.2.3, "Either Party may add or remove switches. The Parties shall provide 120 calendar days written Notice to establish such Interconnection; and the terms and conditions of this Attachment will apply to such Interconnection." The addition and removal of switches are major network events and must be highly coordinated in order to provide continuous service when moving end users from one switch to another. I have seen switch conversion projects that were not coordinated and resulted in network outages that could have easily been avoided.

Finally, AT&T proposes section 2.6.4, which is another straightforward provision that Sprint does not accept but to which Sprint has articulated no objection. This provision states: "A Party seeking to change the physical architecture plan shall provide thirty (30) calendar days advance written Notice of such intent. After Notice is served, the normal project planning process described above will be followed for all physical architecture plan changes."

DPL ISSUE II.F(1)

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

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

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

A. AT&T has withdrawn the proposed language to which Sprint objected on the ground that it may have required Sprint to use one-way trunking. However, there does remain in dispute the following language for Sprint CLEC ICA section 2.8.1.1, which AT&T proposes and Sprint has not accepted:

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

Q. WHAT IS AN ASR?

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

Q. WHY DOES IT MATTER WHICH CARRIER ISSUES AN ASR?

A. The carrier that issues the ASR has administrative control for trunk servicing requirements. Thus, AT&T's language gives Sprint administrative control over all two-way trunk groups and for all one-way trunk groups that originate at its

switch and it gives AT&T administrative control for all one-way trunk groups that originate at an AT&T switch.

Q. WHAT IS "ADMINISTRATIVE CONTROL"?

A. The carrier with "Administrative Control" is responsible for initiating action that starts network activity required to design and establish a new trunk group or to initiate the necessary activity to augment an existing trunk group.

Q. WHY IS IT APPROPRIATE FOR AT&T TO TAKE ADMINISTRATIVE CONTROL OVER ONE-WAY TRUNK GROUPS THAT ORIGINATE AT AT&T'S SWITCH?

A. Because the traffic on a one-way trunk group that originates at an AT&T end office switch is typically traffic that AT&T end users originate. Traffic delivered to Sprint from an AT&T tandem switch could originate from an AT&T end user or an end user that belongs to another carrier. AT&T is responsible for the service its end users experience when they call Sprint telephone numbers, as well as to other carriers that send their traffic across the AT&T network. This means AT&T is responsible for ensuring the trunk quantities necessary to deliver traffic to Sprint are present, so that calls are not blocked or lost. Consequently, AT&T should have administrative control over that trunk group.

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

A. Sprint's language does not address the point.

Q. HOW SHOULD THE COMMISSION RESOLVE THIS ISSUE?

A. The Commission should adopt AT&T's proposed language for section 2.8.1.1.

DPL ISSUE II.F(2)

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

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

Q. SPRINT COMPLAINS THAT THERE IS NO JUSTIFICATION FOR DIFFERENCES IN LANGUAGE FOR THE CMRS ICA VERSUS THE CLEC ICA (FELTON DIRECT AT 23). HOW DO YOU RESPOND?

A. As I explained above in connection with Issue II.D(2), there is a perfectly good reason for the differences between the interconnection-related provisions in the two ICAs. Perhaps more important, Sprint's complaint about the differences has no bearing on the resolution of this issue. Indeed, Sprint has indicated that it is agreeable to AT&T's language subject to three conditions – two of which are acceptable to AT&T.

Q. WHAT ARE THOSE CONDITIONS?

A. First, Sprint requests that the language be cleaned up to make clear Sprint may select two-way trunking where technically feasible (as opposed to by the parties' mutual agreement). As indicated above, AT&T agrees to that. Second, Sprint wants the language to reflect that Sprint may choose the location of the POI. AT&T has agreed to this as well. Finally, Sprint wants language to reflect that the cost of Third Party trunk groups will be shared.

Q. WHAT IS AT&T'S POSITION ON THAT LAST POINT?

A. The provision to which Sprint appears to be referring is AT&T's proposed section 2.8.11.1, and in particular the last sentence, which provides:

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

This issue should be resolved based on the same reasoning set forth by Ms. Pellerin in her testimony for Issue III.E(2), which I reference above in my discussion of Issue II.D. Her analysis applies equally here: For traffic that neither originates with nor terminates to an AT&T end user, Sprint, not AT&T, should bear the costs, since Sprint is the cost-causer.

Q. HOW SHOULD THE COMMISSION RESOLVE THIS ISSUE?

A. It should adopt AT&T's proposed language, with the two modifications Sprint sought and AT&T accepted. With respect to section 2.8.11.1, the Commission should adopt AT&T's language for the same reasons set forth by Ms. Pellerin in her discussion of Issue III.E(2).

DPL ISSUE II.F(3)

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

Contract Reference: Attachment 3, section 2.8.6.3

Q. IS THIS STILL AN OPEN ISSUE?

A. No. Based on Sprint's testimony (Felton Direct at 25), Sprint has accepted AT&T's proposed language that requires the parties to use Trunk Group Service Requests to request changes in trunking.

DPL ISSUE II.F(4)

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

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

Q. SPRINT SEEMS TO SUGGEST (FELTON DIRECT AT 26-27) THAT LANGUAGE FOR 800/8YY TOLL FREE SERVICE IS NOT NECESSARY. DO YOU AGREE?

A. No. Inclusion of the language cannot possibly do any harm, and a carrier that would otherwise choose to opt into this ICA but that wants to use AT&T's service might be troubled by the absence of language governing the provision of this service. For that matter, Sprint may change its network architecture during the life of the ICA. Additionally, there may be an instance where Sprint will need the service to ensure proper routing of a call it hands off to AT&T for delivery to an IXC to which Sprint is not directly connected.

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

A. Not really. Sprint says that it "has no conceptual problem with AT&T's proposed language" (Felton Direct at 26). Sprint notes that there are several other issues that touch on some of the terms used in AT&T's proposed language and notes that those are addressed elsewhere. In particular, Sprint points to Issues I.B(2), II.F(2) and III.A.4(2).

Q. HOW SHOULD THE COMMISSION RESOLVE THIS ISSUE?

A. The Commission should adopt AT&T's proposed language and direct the parties to conform the language, to the extent necessary, in light of the Commission's rulings on Issues I.B (2), II.F(2) and III.A.4(2).

DPL ISSUE II.G

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

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

Q. SPRINT OBJECTS THAT AT&T'S 24 TRUNK THRESHOLD IS "ARBITRARY" AND "ARTIFICIAL" (FELTON AT 27.) HOW DO YOU RESPOND?

A. I disagree. The 24 trunk group threshold is recognized and used by many carriers in the industry and is fair and equitable. In my direct testimony I discussed two state commission decisions (Illinois and Texas) that support AT&T's position here. Although the Act and the FCC's rules do not mandate specific DEOT thresholds, the FCC has delegated Section 251/252 implementation to the states and several states have imposed the threshold AT&T proposes here. In fact, as discussed above, AT&T imposes a more stringent threshold of 12 DS0 trunks to trigger a DEOT in its own network.

Q. SPRINT ALSO OBJECTS TO AT&T'S PROPOSED CLEC ICA LANGUAGE BECAUSE IT REQUIRES MUTUAL AGREEMENT BEFORE TWO-WAY TRUNKS CAN BE USED (FELTON DIRECT AT 28). IS THIS STILL AN ISSUE?

A. No. AT&T has withdrawn that position.

Q. DOES SPRINT'S LANGUAGE ADEQUATELY ADDRESS AT&T'S CONCERNS OVER TANDEM EXHAUST, AS SPRINT CLAIMS (FELTON DIRECT AT 28)?

A. No. As I anticipated in my direct testimony, Sprint claims that its proposed language provides for DEOTs. However, if the Commission were to adopt Sprint's language, there would be no DEOT requirement in the agreement. Sprint's language would "require" a DEOT only "subject to Sprint's sole discretion," and only "as it [Sprint] deems necessary" or "to the extent mutually agreed" – which means much the same thing, since there will be no mutual agreement if Sprint does not agree. Accordingly, the Commission should adopt AT&T's proposed DEOT language and reject Sprint's.

Q. SPRINT ARGUES THAT AT&T SHOULD BEAR THE ENTIRE COST OF A DEOT INSTALLED TO RELIEVE TANDEM EXHAUST (FELTON DIRECT AT 28-29). DO YOU AGREE?

A. Certainly not. The exhaust situation is due to the traffic that *Sprint* sends to a particular AT&T end office. Thus Sprint should be responsible for the costs of the DEOT on its side of the POI, as provided for by AT&T's language. AT&T's language further provides that AT&T pays for the facilities from the tandem to the end office.

Q. WHAT ABOUT SPRINT'S ARGUMENT THAT ANOTHER CARRIER MIGHT HAVE CAUSED THE EXHAUST AND THAT SPRINT IS BEING PENALIZED BECAUSE IT IS THE "LAST ONE TO THE PARTY" (FELTON DIRECT AT 29)?

A. That argument makes no sense. Under AT&T's proposed language, the determination whether Sprint must install a DEOT is based solely on the amount

of traffic Sprint is sending through the tandem to a particular AT&T end office; traffic delivered to AT&T by other carriers has nothing to do with it.

DPL ISSUE II.H(1)

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

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

Q. SPRINT SAYS IT WILL ADDRESS MASS CALLING TRUNKS WHEN "IT ACQUIRES A CUSTOMER THAT 'CAUSES' MASS CALLS TO BE INITIATED" (FELTON DIRECT AT 30). IS THAT A REASONABLE APPROACH?

A. No. Sprint already has customers that cause the need for mass calling trunks. Sprint seems to think that the *recipient* of mass calls, and the recipient's carrier, should bear the burden of the costs associated with mass calling trunk groups. But that logic is backwards. Just as with any call that Sprint delivers from its end users to AT&T's network, Sprint should be responsible for calls made by its end users during a mass call event.

Moreover, it is important that carriers *proactively* work together to address mass calling events. Mass calling events can create call blockage and jeopardize the PSTN, including emergency services. In July 1992, such an event caused an overload condition on the AT&T network in Oklahoma that had a significant effect on 911 calling abilities.

AT&T therefore establishes, and asks carriers with which it is interconnected to establish, mass calling trunks, separate from the PSTN, in order to ensure reliability of the network in general and the 911 network in particular.

Mass calling trunks (also referred to as choke trunks or high volume call-in ("HVCI") trunks) limit the number of calls allowed at one time to a particular mass calling number.

Q. DOES SPRINT'S LANGUAGE APPROPRIATELY ADDRESS THIS ISSUE, AS SPRINT MAINTAINS (FELTON DIRECT AT 30)?

A. No. Sprint's language actually includes no meaningful requirement for addressing mass calling trunks. Sprint's proposal states:

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

There are several obvious problems with this language. First, Sprint's proposal does no more than provide that if Sprint becomes aware of a need for HVCI trunks (in Sprint's judgment, of course), Sprint *may* initiate a meeting. It is not *required* to do so. And if it is AT&T that becomes aware of the need and initiates the meeting, Sprint's language would not require Sprint to do anything at all – except negotiate. By the time the meeting Sprint proposes is conducted and the negotiations are complete, the event may have already occurred.

Q. SHOULD AT&T BEAR THE ENTIRE COST OF MASS CALLING TRUNK GROUPS?

A. No, the cost should be shared by all carriers whose end users make calls during mass calling events. Again, Sprint has it backwards, trying to allocate all of the cost to the carrier whose customer receives the calls. It is the end users who originate the mass calls who cause the cost, and those end users' carriers should be responsible for their fair share of the costs. This is consistent with the familiar

"calling party's network pays" concept. To the extent that it is Sprint's customers that make the calls that congest the network, Sprint must accept its fair measure of responsibility for safeguarding the network.

Q. HOW SHOULD THE COMMISSION RESOLVE THIS ISSUE?

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

DPL ISSUE II.H(2)

What is appropriate language to describe the signaling parameters?

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

Q. IS THIS AN OPEN ISSUE?

A. It does not appear to be. With respect to Section 2.3.2.b of the CMRS ICA, Sprint witness Felton testifies (Direct at 31-32) that all but the last three sentences of Section 2.3.2.b of the CMRS ICA are acceptable to Sprint. AT&T is no longer advocating the last three sentences, so there is no longer anything in dispute with respect to the CMRS ICA.

With respect to the CLEC ICA, Mr. Felton testifies (Direct at 33) that Sprint is willing to accept all of AT&T's proposed language on this issue, so the issue is closed as to the CLEC ICA as well.

DPL ISSUE II.H(3)

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

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

Q. SPRINT SAYS THAT SPECIFIC PROVISIONS REGARDING TRUNK PROVISIONING ARE NOT NECESSARY BECAUSE ENGINEERS CAN TYPICALLY WORK TOGETHER TO RESOLVE NETWORK ISSUES (FELTON DIRECT AT 34). HOW DO YOU RESPOND?

A. I find Sprint's reasoning faulty. Sprint itself agrees conceptually about the need for trunk servicing language (Felton Direct at 34). Then Sprint says the network engineers "typically" work things out (Felton Direct at 34). But that is no reason not to address these matters in the ICA. The point of an ICA is to provide specific terms so that the parties, including their engineers, can – hopefully always – works things out. There have been numerous instances in which AT&T has had to seek help from a state commission to get a carrier to engineer its trunks to handle the traffic being exchanged and eliminate blocked calls. Detailed language that addresses trunk servicing will help reduce future disputes.

Frankly, it is troubling that Sprint, while agreeing "conceptually" that trunk servicing language should be in the ICA, will not agree to the specifics on the theory that the parties can work it out later. Now is the time to work it out.

As I explained in my direct testimony, AT&T proposes detailed language in an effort to define all of the possibilities that may be encountered between the two carrier's networks, while Sprint offers only high level language. AT&T's language better defines what is expected of each carrier for its trunking network

and is used in hundreds, if not thousands, of ICAs across the 22 states where AT&T operates as an ILEC.

Q. DOES SPRINT TAKE ISSUE WITH SOME OR ALL OF AT&T'S PROPOSED LANGUAGE?

A. Sprint takes issue with some, but certainly not all, of AT&T's language. To the extent Sprint has not objected to particular language proposed by AT&T, the Commission definitely should adopt that language.

Q. WHAT PROVISIONS IN AT&T'S PROPOSED LANGUAGE FOR THE CLEC ICA DOES SPRINT OBJECT TO?

A. Sprint mentions only two provisions. First, Sprint complains that AT&T's proposed language allows three days to address an overutilization/trunk-blocking scenario but does not address what happens if the parties do not agree about the cause of the blocking and want to have further discussions (Felton Direct at 35). Second, Sprint complains that AT&T's proposed language gives AT&T a unilateral right to issue an ASR to resize Interconnection Trunks and does not grant Sprint the same right (Felton Direct at 35).

Q. LET'S ADDRESS EACH IN TURN. HOW DO YOU RESPOND TO SPRINT'S POINT THAT THE CLEC ICA DOES NOT ADDRESS WHAT HAPPENS IF THE PARTIES DO NOT AGREE ABOUT THE CAUSE OF THE BLOCKING AND WANT TO HAVE FURTHER DISCUSSIONS?

A. I find Sprint's objection ironic. On the one hand, Sprint takes the position that all the detail should be left to the engineers to work out later; on the other hand, its objection here appears to be that there is not enough detail. In addition to that, I am not exactly sure what provision(s) Sprint is critiquing. Sections 3.10.3.1.1 and 3.10.3.1.2 of AT&T's proposed CLEC ICA set a three day deadline to issue an

ASR after receipt of a Trunk Group Service Request ("TGSR") in the event of an overutilization/trunk-blocking scenario. That is the only three day deadline I see in this section of the ICA. But those provisions do not provide for what Sprint is complaining about. In any event, nothing in these provisions prevents the parties from discussing concerns or questions about the cause of an overutilization/trunk-blocking issue. And if the parties cannot reach an agreement, I would expect them to look to the ICA's dispute resolution provisions. Sprint's objections are a red herring.

Q. HOW ABOUT SPRINT'S CLAIM THAT AT&T'S PROPOSED LANGUAGE GIVES AT&T A UNILATERAL RIGHT TO ISSUE AN ASR TO RESIZE INTERCONNECTION TRUNKS, AND DOES NOT GRANT SPRINT THE SAME RIGHT?

A. Sprint's position is without merit. First, Sprint refers to trunk "augmentation[s]," which involve increasing trunk capacity. But the provision to which Sprint apparently refers (but which it did not cite in its testimony) is Section 3.10.3.1.4, which relates to resizing trunk groups due to underutilization – in other words, to decrease trunk capacity.

Moreover, Sprint's accusation that AT&T's language is "patently one-sided" (Felton Direct at 35) is baseless. AT&T's proposed section 3.10.3.2.1.1 provides that if certain trunk groups are underutilized, *either* party may request the issuance of an order to resize them. Section 3.10.3.2.1.2 provides that *either* party may send a TGSR to the other party to trigger changes to the trunk groups based on capacity assessments. AT&T's language further proposes that upon receipt of a TGSR, the receiving party will either issue an ASR to the other party

within twenty business days or, if the receiving party does not agree with the resizing, the parties will schedule a joint planning discussion. The parties will then meet to try to resolve and mutually agree to the disposition of the TGSR. Notwithstanding Sprint's contention, AT&T's language provides ample opportunity for Sprint to evaluate and discuss trunk resizing requests.

It is only in the rare scenario where a carrier such as Sprint has an underutilized trunk group and is uncooperative in downsizing the trunk group to match traffic needs that AT&T would consider invoking its proposed section 3.10.3.1.4, which would allow it to proceed with the resizing absent the carrier's cooperation. Even then, AT&T proposes to give the carrier five more days to schedule a sit-down to discuss the underutilization situation. This is necessary to address those situations in which AT&T has a constrained tandem, and there are other carriers that have ordered augments to their trunk groups that AT&T cannot accommodate until some trunks have been disconnected. This is not a scenario that Sprint would face, given that it is not an ILEC. Thus, the fact that the provision applies only to a request by AT&T to Sprint is perfectly reasonable.

Q. SPRINT NOTES (FELTON DIRECT AT 35) THAT THE DPL THE PARTIES FILED DID NOT INCLUDE SOME CONTRACT LANGUAGE THAT AT&T PROPOSED FOR THE CMRS ICA IN REDLINES TO SPRINT. IS SPRINT CORRECT?

A. Yes. AT&T inadvertently omitted Attachment 3, Sections 4.2, 4.3 and 4.4 to the CMRS ICA, which are still in dispute between the parties. As Mr. Felton notes, these sections were in the redlines AT&T sent to Sprint, and they should have

been included in the DPL filed by the parties. The missing sections will be added to the revised DPL that parties will file prior to the hearing.

Q. WHICH OF THESE PROVISIONS DOES SPRINT OBJECT TO?

A. Sprint identifies only one provision from the omitted sections with which it disagrees. Specifically, Mr. Felton objects (Direct at 36) to the CMRS ICA language regarding trunk resizing performed without Sprint's consent on the same basis that he objects with respect to the CLEC ICA language. AT&T's proposed CMRS ICA language is reasonable and should be adopted for the reasons I identified above in my discussion of the CLEC ICA language.

Sprint does not identify any other specific provisions – omitted or otherwise – with which it disagrees.

Q. SPRINT ALSO COMPLAINS (FELTON DIRECT AT 35) THAT AT&T'S CMRS LANGUAGE DOES NOT ADDRESS OVERUTILIZATION/ BLOCKING SCENARIOS WHILE AT&T'S CLEC ICA LANGUAGE DOES. HOW DO YOU RESPOND?

A. Sprint is incorrect that overutilization/blocking conditions are not addressed in the ICA. If Sprint sees an overutilization/blocking condition on a one-way trunk group that originates at its switch, Sprint can issue an order to increase the number of trunks working in that group since it has administrative control over that trunk group. Likewise, if Sprint sees an overutilization/blocking condition on a two-way trunk group between its switch and an AT&T switch, Sprint can issue an order to augment the trunk group, as Sprint has administrative control on two-way trunk groups as well. While Sprint is not as likely to see an overutilization or a blocking condition on a one-way trunk group that originates at an AT&T switch,

it can happen. Since AT&T has administrative control on this type of trunk group, Sprint can issue a TGSR to AT&T, requesting it augment that trunk group.

Q. SPRINT SAYS THAT ITS PROPOSED LANGUAGE ADDRESSES HOW THE PARTIES WILL UNDERTAKE NETWORK MANAGEMENT (FELTON DIRECT AT 36). DO YOU AGREE?

A. No. As far as I can tell, Sprint has not proposed any language for the CLEC ICA relating to network management. According to the DPL, Sprint relies exclusively on agreed language regarding forecasting and does not believe any additional trunk servicing language is necessary. I am not sure how Sprint can claim this approach is "workable," as Mr. Felton does (Direct at 36).

With respect to the CMRS ICA, the only language Sprint proposes is Section 4.1 related to forecasting. As with the CLEC ICA, it is hard to fathom how Sprint could maintain this limited language is sufficient.

DPL ISSUE III.A.4 (3)

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

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

Q. IS THIS STILL A LIVE DISPUTE?

A. No. AT&T has withdrawn its language.

DPL ISSUE V.B

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

Contract Reference: Att. GT&C Part B Definitions

Q. WHAT IS THE STATUS OF THE DISPUTE ON THIS ISSUE?

A. AT&T has offered two alternative definitions. Sprint's acceptance of either would resolve this issue. In its testimony, Sprint indicated that AT&T's second alternative is acceptable if some additional language is included. Specifically, AT&T's second alternative defines Carrier Identification Code as follows:

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

Sprint proposes the following additional sentence:

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

Q. IS SPRINT'S PROPOSED ADDITIONAL LANGUAGE ACCEPTABLE?

A. No.

Q. WHY NOT?

A. As Sprint itself acknowledges, AT&T's alternative language comports with industry definitions of a CIC. (Burt Direct at 84). That should be sufficient. Moreover, there is nothing ambiguous in AT&T's proposed definition; plainly, an "access purchaser" is a purchaser of access services. Sprint's additional language is unnecessary and Sprint has not provided a valid reason for adding to the accepted industry definition.

Moreover, Sprint's language creates a potential ambiguity that a party to this ICA (including an adopting carrier) might take advantage of to try to avoid access charges. An adopting CLEC might, for example, route interexchange traffic in a way that circumvents a LEC's access tariffs, thereby avoiding possible access charges. Such a CLEC might try to use Sprint's language to challenge its obligations to pay access charges by arguing that it is obtaining access under the ICA. This would inevitably result in billing disputes and/or lawsuits, which the Commission should want to avoid.

Q. HOW SHOULD THE COMMISSION RESOLVE THIS ISSUE?

A. The Commission should adopt AT&T's alternative language without Sprint's additional sentence.

Q. DOES THIS CONCLUDE YOUR REBUTTAL TESTIMONY?

A. Yes.

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COMMONWEALTH OF KENTUCKY

KENTUCKY PUBLIC SERVICE COMMISSION

COUNTY OF CONTRA COSTA

STATE OF CALIFORNIA

BEFORE ME, the undersigned authority, duly commissioned and qualified in and for the State and County aforesaid, personally came and appeared J. Scott McPhee, who being by me first duly sworn deposed and said that he is appearing as a witness on behalf of BellSouth Telecommunications, Inc. d/b/a AT&T Kentucky before the Kentucky Public Service Commission in Docket Number 2010-00061, *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,* and if present before the Commission and duly sworn, his statements would be set forth in the annexed rebuttal testimony consisting of 81 pages and 2 exhibits.

NAME

SWORN TO AND SUBSCRIBED BEFORE ME
THIS 13th DAY OF SEPTEMBER, 2010

Notary Public

My Commission Expires: APRIL 23RD 2013

MUKESH P. PATEL
COMM. # 1842122
NOTARY PUBLIC-CALIFORNIA
CONTRA COSTA COUNTY
MY COMM. EXP. APR. 23, 2013

AT&T KENTUCKY

REBUTTAL TESTIMONY OF J. SCOTT McPHEE

BEFORE THE KENTUCKY PUBLIC SERVICE COMMISSION

DOCKET NO. 2010-00061

SEPTEMBER 17, 2010

ISSUES

I.A(2), I.A.(3), I.A(4),
I.A(6), I.B(2), I.B(4), I.B(5)
I.C(1), I.C(2), I.C(3),
I.C(4), I.C(5), I.C(6),
III.A.1(3), III.A.1(4),
III.A.1(5), III.A.2,
III.A.3(1), III.A.3(2),
III.A.3(3), III.A.4(1),
III.A.4(2), III.A.5,
III.A.6(1), III.A.6(2),
III.E(3), III.E(4), III.F

I. INTRODUCTION

Q. ARE YOU THE SAME J. SCOTT MCPHEE WHO FILED DIRECT TESTIMONY IN THIS CASE ON BEHALF OF AT&T?

A. Yes.

Q. WHAT IS THE PURPOSE OF YOUR REBUTTAL TESTIMONY?

A. I will address and respond to various points made by Sprint witnesses James Burt ("Burt Direct"), Mark Felton ("Felton Direct") and Randy Farrar ("Farrar Direct") as they pertain to DPL Issues I.A(2), I.A.(3), I.A(4), I.A(6), I.B(2), I.B(4), I.B(5) I.C(1), I.C(2), I.C(3), I.C(4), I.C(5), I.C(6), III.A.1(3), III.A.1(4), III.A.1(5), III.A.2, III.A.3(1), III.A.3(2), III.A.3(3), III.A.4(1), III.A.4(2), III.A.5, III.A.6(1), III.A.6(2), III.E(3), III.E(4) and III.F.

Q. IN WHAT ORDER WILL YOU ADDRESS THESE ISSUES?

A. In the same order as in my direct testimony. That is not a strictly alpha-numeric order; rather, it is a sequence that lends itself to an orderly development of the discussion.

II. DISCUSSION OF ISSUES

DPL ISSUE I.A(4)

Should Sprint be permitted to use the ICAs to exchange traffic associated with jointly provided Authorized Services to a subscriber through Sprint wholesale arrangements with a third party provider that does not use NPA-NXXs obtained by Sprint?

Contract Reference: GTC Part A, Section 1.4

Q. SPRINT WITNESS BURT IDENTIFIES THREE SCENARIOS IN WHICH AN ENTITY MAY HAVE ITS OWN NANPA NUMBERING, YET WANT TO USE ANOTHER CARRIER, SUCH AS SPRINT, ON A WHOLESALE BASIS, FOR PURPOSES OF EXCHANGING TRAFFIC (BURT DIRECT AT 28 - 29). ARE YOU AWARE OF ANY INSTANCE IN WHICH SUCH AN ARRANGEMENT IS ACTUALLY IN PLACE?

A. No, I am not, and even Mr. Burt does not indicate that he is either. All of this is evidently hypothetical. And although Mr. Burt mentions three examples, the first and third are actually the same – the first concerning VoIP providers in general and the third making the same point with respect to a particular VoIP provider, SBC IP Communications. Mr. Burt's second example is not an example at all – it is merely a speculation that some carrier might want to do what Mr. Burt hypothesizes.

Q. DOES SPRINT'S PROPOSED LANGUAGE INCLUDE TERMS AND CONDITIONS FOR HOW THE PARTIES WOULD EXCHANGE TRAFFIC WITH VOIP PROVIDERS WHO MAY HAVE OBTAINED THEIR OWN NANPA NUMBERS?

A. No, it does not – and Mr. Burt's testimony says nothing to remedy that shortcoming. Rather, he merely indicates (Direct at 29) that he is "unaware" of any technical limitations on a VoIP service provider's ability to *obtain its own telephone numbers* from NANPA. But the issue here is not how the third party is going to obtain telephone numbers from NANPA; rather, it is *how will that traffic be exchanged between AT&T and Sprint*. As I discussed in my direct testimony, AT&T routes telephone numbers according to their assignment in the Local Exchange Routing Guide ("LERG"). Sprint proposes to exchange with AT&T traffic with telephone numbers that the LERG assigns to third parties, but provides no explanation how the Parties would accomplish that.

Q. MR. BURT CLAIMS THAT AT&T EXCHANGES TRAFFIC FOR WHOLESALE CUSTOMERS THAT HAVE THEIR OWN NANPA NUMBERS. IS THIS TRUE?

A. No. Contrary to Mr. Burt's example (Direct at 28-29), SBC IP Communications, Inc. does not exchange its traffic over AT&T's incumbent network -- and neither does any other AT&T affiliate.[1]

Q. REGARDING SPRINT'S OTHER EXAMPLE, "ANOTHER TELECOMMUNICATIONS CARRIER THAT HAS ACQUIRED ITS OWN TELEPHONE NUMBERS, BUT FOR WHATEVER REASON WISHES TO UTILIZE A WHOLESALE INTERCONNECTION PROVIDER SUCH AS SPRINT" (BURT DIRECT AT 29), ARE YOU AWARE OF SUCH A SITUATION?

A. No, and Sprint has not identified one. If such a situation were to arise, it would be reasonable to incorporate *specific* terms and conditions in the ICA in order to ensure such traffic is properly routed, tracked and billed for intercarrier compensation purposes. Sprint has not done that.

Q. HOW SHOULD THE COMMISSION RESOLVE THIS ISSUE?

A. Given the lack of any clarity in Sprint's proposal, on top of the conjectural nature of the traffic Sprint is seeking to address, Sprint's proposed language should be rejected. If Sprint does at some point actually anticipate providing such a service (recall that Sprint not only does not provide the service at this time, but actually states in its proposed language that it does not even anticipate providing such a service), it would be appropriate for the Parties to amend the ICA to address this unique scenario, including

[1] In researching Mr. Burt's assertion, I did not find any NANPA number assignments for an entity named "SBC IP Communications, Inc." in the Local Exchange Routing Guide. I did, however, find another entity, SBC Internet Services, Inc. with its own NPA-NXXs. AT&T does not exchange traffic with SBC Internet Services, Inc.

incorporating complete terms for the routing and billing of this traffic exchanged between the Parties.

DPL ISSUE I.A(6)

Should the ICAs contain AT&T's proposed Scope of Obligations language?

Contract Reference: GTC Part A, Section 1.6

Q. IN HIS DISCUSSION OF THIS ISSUE, MR. BURT STATES (DIRECT AT 37) THAT AT&T IS ATTEMPTING TO LIMIT SPRINT TO SERVING ONLY CUSTOMERS WITHIN AT&T'S ILEC GEOGRAPHIC SERVING TERRITORY. IS THIS TRUE?

A. No. As I stated in my direct testimony, the purpose of the proposed language in GTC Part A, section 1.6, is to delineate the extent of AT&T's ILEC obligations to Sprint under the ICA, not to limit where or how Sprint provides service for its customers.

Q. IF AT&T'S PROPOSED LANGUAGE IS ADOPTED, WILL SPRINT BE ABLE TO SERVE CUSTOMERS THAT ARE LOCATED IN AREAS BEYOND AT&T'S ILEC TERRITORY?

A. Yes. The Parties have purposefully accounted for this possibility in CLEC Attachment 3, section 7 – "Out of Exchange." Section 7.1.1 provides "'Out of Exchange LEC (OE-LEC)' means a CLEC that is providing Telecommunications Services in a non-AT&T ILEC territory in a given LATA and requests Interconnection with AT&T that includes the exchange of traffic in such LATA or an adjacent LATA pursuant to an FCC approved or court ordered InterLATA boundary waiver." Clearly, the ICA addresses a scenario in which Sprint may serve end users that are not located within AT&T's incumbent territory.

Q. DOES THE ICA PROVIDE COMPLETE TERMS AND CONDITIONS TO GOVERN THAT SCENARIO?

A. No – because the Parties have agreed that that is unnecessary as matters now stand. The ICA does, however, explicitly address how the Parties will arrive at appropriate terms and conditions if that becomes necessary. Specifically, the Parties have agreed on the following language in Attachment 3 section 7.2.1:

> As of the Effective Date of this Agreement, AT&T-9STATE offers a generic Interconnection agreement that includes an Out of Exchange Traffic attachment. Sprint objected to the inclusion of such an attachment in this Agreement, and AT&T-9STATE agreed to the exclusion based upon (i) the fact that Sprint is directly connected with AT&T-9STATE in every LATA in which Sprint operates and from which AT&T-9STATE receives or to which AT&T-9STATE originates Out of Exchange Traffic; and (ii) the Parties' acknowledge that Interconnection and intercarrier compensation for Out of Exchange Traffic are subject to the terms and conditions of this Agreement that govern Interconnection and intercarrier compensation for other traffic. If condition (i) ceases to be true at any time during the term of this Agreement, Sprint will promptly so inform AT&T-9STATE and the Parties will negotiate in good faith an Out of Exchange Traffic amendment to this Agreement, using as the starting point for negotiation AT&T-9STATE's then current generic Out of Exchange Traffic attachment. If the Parties do not agree on an amendment within forty-five (45) days after the commencement of such negotiations, either Party may bring the issue before the Commission pursuant to Section 14 of the General Terms and Conditions, Resolution of Disputes.

Q. MR. BURT STATES (DIRECT AT 37) THAT AT&T'S PROPOSED LANGUAGE IN GTC PART A SECTION 1.6 CONTRADICTS UNE AND COLLOCATION TERMS IN THE ICA. IS THIS ACCURATE?

A. No. Mr. Burt simply makes the assertion without identifying a single instance in which section 1.6 contradicts or is inconsistent with any UNE or collocation provision in the ICA – because there is no such instance. Section 1.6 makes clear that the terms and conditions for – and AT&T's obligation to provide – UNEs and collocation are limited to where AT&T is operating as an ILEC in the state. Contrary to Mr. Burt's assertions, not only is there no "contradictory" language, but instead, Attachment 4 – Collocation

provides for a limitation that Collocation is available only from the AT&T ILEC: "This Attachment sets forth the terms and conditions pursuant to which the applicable AT&T-owned Incumbent Local Exchange Carrier (ILEC) will provide Physical and Virtual Collocation pursuant to 47 U.S.C. § 251(c)(6)." Section 1.1. As the AT&T ILEC does not operate outside of its own incumbent territory, it follows that Collocation is only available from the company within AT&T's incumbent territory.

The real issue here is not contradiction but the risk of omission: Without AT&T's proposed language limiting the scope of AT&T's ILEC obligation, Sprint can take advantage of the uncertainty it apparently seeks in order to attempt to have AT&T provide products and services to Sprint in areas where AT&T has no ILEC obligation to do so. That is plainly inappropriate.

DPL ISSUE I.C(2)

Should AT&T be required to provide transit traffic service under the ICAs?

Contract Reference: Attachment 3

Q. YOU ADDRESSED THIS ISSUE AT LENGTH IN YOUR DIRECT TESTIMONY (AT 8-20). BEFORE YOU RESPOND TO SPRINT'S TESTIMONY, PLEASE SUMMARIZE AT&T'S POSITION.

A. This issue turns on whether section 251(c)(2) of the 1996 Act does or does not require AT&T to provide transit service. If it does not, there is no lawful basis for requiring AT&T to provide transit service pursuant to a section 251/252 ICA or at cost-based rates. As I demonstrated in my direct testimony, section 251(c)(2) does not impose a transiting requirement. The FCC has repeatedly refused to find a transit requirement in the 1996 Act, and the FCC's treatment of interconnection under section 251(c)(2), both in its rules

and in the discussion in its *Local Competition Order,* make clear that interconnection under section 251(c)(2) does not encompass transit service.

Q. IN HIS DISCUSSION OF THIS ISSUE, SPRINT WITNESS FARRAR FOCUSES ON INDIRECT INTERCONNECTION UNDER SECTION 251(a) OF THE 1996 ACT (FARRAR DIRECT AT 12-13). CAN A DETERMINATION THAT AT&T MUST PROVIDE TRANSIT SERVICE PURSUANT TO THE ICAS BE BASED ON SECTION 251(a)?

A. As Mr. Farrar correctly states, section 251(a) provides that each carrier has the duty to interconnect directly or indirectly with other carriers. Mr. Farrar infers from this that the originating carrier has the right to choose whether to deliver its traffic directly or indirectly to the terminating carrier. That inference is perhaps not as clear and certain as Mr. Farrar suggests – but I will go along with it for the sake of discussion. In other words, I will agree that under section 251(a), if Carrier X tells Carrier Y that X is going to deliver its traffic to Y indirectly – *i.e.*, through a provider of transit service – Y cannot insist that X deliver its traffic directly (though Y can insist on delivering its traffic to X directly). But Mr. Farrar then makes a further inference, namely, that because Y must accept X's decision to deliver its traffic indirectly, AT&T must have a duty to transit X's traffic. That inference simply does not follow. The fact that Congress gave X the right – *as between X and Y* – to deliver its traffic indirectly to Y does not mean that Congress also gave X the right to demand that AT&T (or any other provider of transit service) must transit X's traffic to Y.

Q. BUT ISN'T MR. FARRAR RIGHT WHEN HE CONTENDS THAT CARRIER X'S RIGHT TO INTERCONNECT INDIRECTLY WITH CARRIER Y WOULD BE MEANINGLESS IF AT&T IS NOT REQUIRED TO PROVIDE TRANSIT SERVICE?

A. No, he is not. As the Commission is aware, and as I discussed in my direct testimony, there are other providers of transit service. Most important, though, Carrier X's right – *vis-a-vis Carrier Y* – to send its traffic to Y through an intermediary cannot properly be read to impose a statutory duty on AT&T to be that intermediary. The only rights and obligations that section 251(a) speaks to are the rights and obligations of the carriers that are interconnecting (directly or indirectly). Even if section 251(a) says that Carrier Y cannot demand that Carrier X send its traffic directly to Carrier Y (as I am agreeing with Mr. Farrar it does say for purposes of this discussion), that is as far as it goes – it does not give Carrier X any rights *vis-a-vis* AT&T.

Q. WHAT IF THE COMMISSION DISAGREES AND CONCLUDES THAT SECTION 251(a) SOMEHOW REQUIRES AT&T TO PROVIDE TRANSIT SERVICE?

A. That still would not entitle Sprint to terms and conditions for transit service in a section 251/252 ICA. As I explained in my Direct Testimony (at 17, lines 3-20), duties imposed by section 251(a) are not subject to negotiation and arbitration under the 1996 Act.

Q. IS IT TRUE, AS MR. FARRAR ASSERTS, THAT AT&T HAS BEEN PROVIDING TRANSIT SERVICE TO SPRINT UNDER THE PARTIES' EXISTING ICA?

A. Yes, and it is also true that that makes no difference. As a business decision, in the past, BellSouth agreed to provide transit under the ICA – perhaps in exchange for a concession from Sprint. That makes no difference now. The Commission needs to decide whether

the 1996 Act imposes a transit duty, and the provisions in the Parties' old ICA and BellSouth's past business decisions shed no light on that question.

Q. YOU SAY THAT THE ISSUE TURNS ON WHETHER SECTION 251(c)(2) IMPOSES A TRANSIT REQUIREMENT. DOES MR. FARRAR SAY ANYTHING ABOUT SECTION 251(c)(2).

A. A bit. Mr. Farrar says nothing about the discussion in the *Local Competition Order* of the definition of "interconnection" as that term is used in section 251(c)(2) – a discussion that strongly supports AT&T's position. *See* my direct testimony at 12 – 15. Mr. Farrar also ignores the fact that the FCC has repeatedly declined to find a transiting requirement in section 251(c)(2). Mr. Farrar does say, however, that section 251(c)(2) requires interconnection "for the transmission and routing of telephone exchange service and exchange access," and asserts that that necessarily includes transmission and routing of third party traffic. Farrar Direct at 10 – 11.

Q. IS THAT CORRECT?

A. No, it is just an unsupported assertion, with no basis in the language of section 251(c)(2). Section 251(c)(2) does require interconnection "for the transmission and routing of telephone exchange service and exchange access," but it does not say whose telephone exchange service and exchange access. If anything, the telephone exchange service and exchange access to which the statute refers would naturally be understood to mean the traffic of the interconnected carriers – not traffic between one of those carriers and a third party. Furthermore, if section 251(c)(2) encompassed a duty to transit traffic, one can only wonder why the FCC has been unwilling to find such a duty in the statute. And, again, the FCC has made it absolutely clear that the *only* duty imposed by section

251(c)(2) is the duty to establish the physical connection, and that section 251(c)(2) does *not* encompass a duty to transport traffic.

Q. MR. FARRAR POINTS OUT (DIRECT AT 15) THAT THE COMMISSION HAS PREVIOUSLY REQUIRED AT&T TO PROVIDE TRANSIT SERVICE AT TELRIC RATES. WHY SHOULDN'T THE COMMISSION ADHERE TO THOSE PRECEDENTS?

A. In the earlier of the two decisions Mr. Farrar cites, from 2006, the Commission relied in significant part on the fact that it "has previously required third-party transiting by the ILEC based on efficient network use."[2] In the later decision, again relied in significant part on the fact that "[t]he Commission has previously found that AT&T Kentucky is obligated to deliver transit traffic when AT&T Kentucky maintains sufficient interconnecting facilities between each of the carriers."[3] It is time for the Commission to give this issue a fresh look, rather than repeatedly relying on its earlier determinations.

AT&T respectfully submits that "efficient network use" is not an adequate rationale for imposing a transit requirement; the Commission should answer head-on the question whether section 251(c)(2) requires transit. Another rationale that the Commission has offered – "Transiting traffic . . . is essential to the provision of service to rural Kentucky"[4] – is questionable. There is certainly no evidence to support such a conclusion in this docket, and the competitive market for the provision of transit service casts serious doubt on whether mandatory ILEC-provided transit service is necessary. At

[2] Farrar Direct at 15, quoting March 14, 2006 decision in Case No. 2004-00044.
[3] *Id.*, quoting June 22, 2010 decision in Case No. 2006-00448.
[4] *Id.*, quoting 2006 decision.

a bare minimum, transit service should be required – if at all – only in those rural areas where the Commission concludes it is needed.

Q. MR. FARRAR STATES THAT MANY OTHER STATE COMMISSIONS HAVE DECIDED THAT ILECS ARE OBLIGATED TO PROVIDE TRANSIT SERVICE. IS THAT CORRECT?

A. Not as many as Mr. Farrar would have the Commission believe, but yes, a number of state commissions have ruled that ILECs are required to provide transit service under the 1996 Act. This Commission, though, should do as the Public Utility Commission of Oregon did when Sprint cited all the same decisions to that Commission. In a 2008 arbitration, Sprint argued, as it does here, that transit is required by the 1996 Act and must therefore be provided at TELRIC rates. Mr. Farrar was Sprint's witness on the issue, and Sprint's argument read very much like Mr. Farrar's testimony here – including the citation to the same state commission decisions Mr. Farrar cites to here.[5] The Oregon Commission was unpersuaded. It stated:

> After reviewing the relevant case law, the Arbitrator found that the FCC has clarified that direct interconnection facilities must be provided at TELRIC rates, but there has been no such clarification about the services necessary for indirect interconnection. The most recent case law "seems to contradict the conclusion that TELRIC is the appropriate rate for transit services." . . . .
>
> The Arbitrator took great pains in examining the law and making a close call, noting "[a]though the precedent cited above does not provide a clear resolution to this issue, I find particularly relevant the FCC's statement that any duty 'under section 251(a)(1) of the Act to provide transit service would not require that service to be priced at TELRIC.'" Notwithstanding the fact that the FCC Order was issued by the Common Carrier Bureau, it

[5] There is one exception: In Oregon, Sprint did not cite the Colorado decision Mr. Farrar cites here. As I note below, that decision is irrelevant. I have attached the pertinent excerpt from Sprint's Oregon brief as **Exhibit JSM-1**.

did so with the full authority of the FCC. The Bureau decision stands as unreversed case law some six years later. The Arbitrator's findings on this issue are therefore affirmed.[6]

The Bureau decision on which the Oregon Commission relied is still good law today, two years later.

Q. NONETHELESS, MR. FARRAR CITES 18 STATE COMMISSION DECISIONS THAT HE SAYS RULE THAT ILECS MUST PROVIDE TRANSIT SERVICE (FARRAR DIRECT AT 15-18). HOW CAN SO MANY STATE COMMISSIONS HAVE BEEN WRONG?

A. In the first place, the Commission should not accept Mr. Farrar's citations uncritically. I will not address all the decisions Mr. Farrar cites and will leave that to the lawyers, but I will say that generally many of the cases on which Sprint relies offer little if any meaningful support for Sprint's position.

At least three of the states whose decisions Mr. Farrar cites (Alabama, Florida and Massachusetts) actually support AT&T's position here; a number of Mr. Farrar's cases are entirely irrelevant; and a number of them are entitled to little or no weight because they reflect little or no real analysis. In addition, in a decision that Mr. Farrar does not cite, the Florida Commission ruled that section 251(c)(2) does *not* require transit to be provided at TELRIC.[7]

In light of these considerations, it is not surprising that the Oregon Commission, in the case I discussed earlier, ruled against Sprint on the transit issue even after considering the authorities Sprint relies on here.

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[6] **Exhibit JSM-2** to this testimony is an excerpt from the Oregon Commission's decision.

[7] Final Order Regarding Petition for Arbitration, Docket No. 04-130-TP, *Joint petition by NewSouth Commn'cs Corp., et al. for arbitration of certain issues arising in negotiation of interconnection agreement with BellSouth Telecommunications, Inc.* (Fla. Pub. Serv. Comm'n Oct 11, 2005), at 52.

Q. STILL, THOUGH, A NUMBER OF STATE COMMISSIONS HAVE IMPOSED A TRANSIT REQUIREMENT. IF THE LAW IS ON AT&T'S SIDE OF THIS ISSUE, HOW DO YOU EXPLAIN THAT?

A. I am not a lawyer, but my layman's view is that especially in the first few years after the 1996 Act was enacted, state commissions evidently believed that they were serving the pro-competitive goals of the 1996 Act by requiring ILECs to provide transit service, with little or no regard for whether there really was a basis for such a requirement in the 1996 Act. This was obviously true of the Alabama and Michigan cases cited by Sprint. This type of regulatory approach was ultimately significantly narrowed by the FCC, responding to direction from the Supreme Court.[8]

DPL ISSUE I.C(3)

If the answer to (2) is yes, what is the appropriate rate that AT&T should charge for such service?

Q. IN YOUR DIRECT TESTIMONY (AT 20), YOU EXPLAINED THAT BECAUSE NEITHER SECTION 251(b) NOR SECTION 251(c) OF THE 1996 ACT IMPOSES A TRANSIT OBLIGATION, TRANSIT RATES ARE NOT SUBJECT TO A TELRIC-BASED PRICING METHODOLOGY, BUT SHOULD INSTEAD BE ESTABLISHED THROUGH COMMERCIAL NEGOTIATIONS. DOES MR. FARRAR'S TESTIMONY PERSUASIVELY CONTEND OTHERWISE?

A. No. Mr. Farrar spends several pages (Direct at 20-22) demonstrating that TELRIC rates would apply if transit were required by section 251(c)(2) – but that discussion is irrelevant, because there is no such requirement.

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[8] In the TRRO, ¶ 2, the FCC explained it imposed "unbundling obligations only in those situations where . . . carriers genuinely are impaired without access to particular network elements and where unbundling does not frustrate sustainable, facilities-based competition. This approach satisfies the guidance of courts to weigh the costs of unbundling, and ensures that our rules provide the right incentives for both incumbent and competitive LECs to invest rationally in the telecommunications market in the way that best allows for innovation and sustainable competition."

Q. WHAT IF THE COMMISSION WERE TO FIND THAT A DUTY TO PROVIDE TRANSIT SERVICE IS IMPLICIT IN THE INTERCONNECTION REQUIREMENT OF SECTION 251(a)(1)? WOULD IT FOLLOW THAT TRANSIT MUST BE PROVIDED AT TELRIC-BASED RATES?

A. No. TELRIC-based pricing applies only to those products and services an ILEC must provide under section 251(c) – not to the requirements that section 251(a) imposes on carriers in general.

Q. IF THE COMMISSION DECIDES THAT THE PARTIES' ICA MUST INCLUDE A RATE FOR TRANSIT SERVICE, WHAT RATE DOES AT&T PROPOSE?

A. AT&T proposes that the Parties retain the current rate, which appears in their existing ICAs.

Q. YOU SAY THAT MR. FARRAR CONTENDS TRANSIT SHOULD BE PRICED AT TELRIC-BASED RATES, CORRECT?

A. Yes.

Q. WHAT DOES MR. FARRAR SAY THAT RATE IS?

A. He doesn't. Mr. Farrar offers four "benchmark" rates for the Commission to consider in the absence of a cost study on which to base a TELRIC-based rate." (Farrar Direct at 23–30.) One of those four "benchmarks" is AT&T's current reciprocal compensation rate ($0.0007 per minute of use). In the end, Mr. Farrar proposes that the Commission cut that rate in half to yield a transit rate of $0.00035, which he proposes the Commission impose until such time as a new TELRIC-based rate is established.

Q. ON WHAT BASIS DOES MR. FARRAR SUGGEST THAT THE $0.0007 RECIPROCAL COMPENSATION RATE IS A SOUND STARTING POINT FOR DETERMINING A COST-BASED TRANSIT RATE?

A. Mr. Farrar recognizes that the $0.0007 reciprocal compensation rate is "not necessarily cost-based," but speculates that AT&T would not have agreed to that rate if it did not at

least recover AT&T's costs. (Farrar Direct at 27.) Mr. Farrar candidly acknowledges that he does not know this, but is merely assuming it. (*Id.*)

Q. IS IT REASONABLE TO ASSUME, AS MR. FARRAR DOES, THAT THE $0.0007 RATE RECOVERS AT&T'S TRANSPORT AND TERMINATION COSTS?

A. Absolutely not. As the Commission is no doubt aware, the $0.0007 rate was promulgated by the FCC in its *ISP Remand Order*. Recognizing that CLECs were manipulating the reciprocal compensation system (*i.e.*, engaging in "arbitrage") by generating huge volumes of terminations to ISP customers – terminations for which the CLECs charged ILECs reciprocal compensation – the FCC sought to mitigate the problem by, among other things, subjecting reciprocal compensation rates for ISP-bound traffic to a series of reductions pursuant to a schedule under which the current rate is $0.0007. In each state, an ILEC could take advantage of the reduced reciprocal compensation rates for the huge volumes of ISP-bound traffic on which it paid reciprocal compensation by agreeing to charge the same rate for reciprocal compensation-eligible traffic that it terminated. Thus, if an ILEC, in any given state, was originating more reciprocal compensation eligible traffic (including ISP-bound traffic) than it was terminating, the ILEC would rationally agree to exchange all traffic at the low, non-cost based $0.0007 rate. Thus, the fact that an ILEC chose to exchange traffic at this rate absolutely does not imply that the rate allows the ILEC to recover its costs; far more likely, it means that the ILEC sought to reduce its net reciprocal compensation payments by obtaining a low (possibly even below-cost) rate.

Q. WHAT CONCLUSION DOES THAT LEAD TO?

A. Sprint's proposed $0.00035 transit rate is a non-starter, because there is no basis for Sprint's contention that it would cover AT&T's costs.

Q. WHAT IS ANOTHER OF THE BENCHMARKS MR. FARRAR MENTIONS?

A. Mr. Farrar suggests (Direct at 24-25) that a cost-based transit rate could be constructed by adding the cost of UNE tandem switching to the cost of UNE common transport.

Q. IS THAT A REASONABLE APPROACH?

A. No, transit should in all instances be a market-based solution. However, if the Commission is going to impose an interim TELRIC-based transit rate, as Sprint proposes, then Mr. Farrar's approach would still be incorrect. First, Mr. Farrar's calculations result in an adding error; his calculation on page 25, line 7, totaling a rate of $0.0005662 actually results in a rate of $0.0005673. Even correcting Mr. Farrar's math, his rate is still wrong, as he neglects to incorporate *all* of the UNE rate elements for tandem switching and common transport in his calculations. The missing elements are "Tandem Trunk Port – Shared, Per MOU" (for which two are required) of $0.0002416; and Common Transport, per MOU, per mile of $0.0000030. The final input Mr. Farrar neglected to include is the average airline miles per call, which in Kentucky, is 32.95 miles.

When applying the appropriate rate elements to Mr. Farrar's approach to construct a cost-based rate, the calculated rate is more than double what Mr. Farrar has represented: $0.0015227 per MOU for local transit traffic only [$0.0001940 + ($0.0002416 * 2) + ($0.0000030 * 32.95) + $0.0007466 = $0.0015227].

Q. IS THERE ANY JUSTIFICATION FOR USING ONLY ONE HALF OF THE "COMMON TRANSPORT – FACILITIES TERMINATION PER MOU" RATE ELEMENT, AS MR. FARRAR DESCRIBES ON PAGE 25?

A. No. Sprint's proposal to only allow for one half of the facility termination rate makes no sense; both terminations are at the tandem wire center and are required. Furthermore, using only half of a rate element for a cost-based rate is inappropriate simply because the exercise here is to calculate ordered UNE rate elements, which are based on Commission-approved inputs used to develop those rates.

Q. WHAT IS MR. FARRAR'S THIRD BENCHMARK?

A. Mr. Farrar suggests (Direct at 25-26) that a reasonable benchmark would be the lowest transit rate AT&T charges Sprint in any state. According to Mr. Farrar, "transit costs should not vary significantly between the various AT&T states," (*id.* at 24), so rates from other states should be a good proxy.

Q. YOU SAY MR. FARRAR STATES THAT THE *LOWEST* RATE AT&T CHARGES IN ANY STATE WOULD BE A REASONABLE BENCHMARK?

A. Yes.

Q. WHAT EXPLANATION DOES HE GIVE FOR ADVOCATING THE LOWEST, RATHER THAN THE HIGHEST RATE IN ANY STATE WHERE THE RATE WAS SET IN A COST PROCEEDING?

A. He doesn't, and there is no good explanation, but Mr. Farrar's reason is obvious: Sprint wants the lowest possible rate.

Q. OTHER THAN THAT, IS IT REASONABLE TO USE OTHER STATES' RATES TO SET RATES FOR KENTUCKY?

A. No – for several reasons. In the first place, the very rates that Mr. Farrar displays in his testimony show that there is a considerable variance from state to state, contrary to Mr.

Farrar's speculation. Mr. Farrar states that the three rates he displays (at 26, Table 1) are AT&T's three lowest rates, so if Mr. Farrar's speculation that rates should be relatively constant from state to state were correct, one would expect these three rates – clustered at the bottom – to be quite close. In fact, however, the second lowest rate is about 50% higher than the lowest, and the third lowest is more than double the lowest. That alone, without even considering the higher rates in other AT&T states, refutes Mr. Farrar's speculation.

Second, the notion of basing a Kentucky rate on rates in other states is counter to the core precept that TELRIC rates are state-specific rates established on a state-by-state basis by individual state commissions.

Third, I cannot help but notice that of the three states with the low transit rates that Mr. Farrar touts, none is in the former BellSouth territory. I am not a cost expert, and I venture no opinion on the significance of that observation. I cannot help but wonder, though whether transit rates are for some appropriate reason higher in the former BellSouth region, so that California, Michigan and Texas are not good proxies for Kentucky.

Q. WHAT IS MR. FARRAR'S FOURTH BENCHMARK?

A. Mr. Farrar cites (Direct at 28-29) to an AT&T letter that he contends supports a transit rate of "$.00017 per minute, plus some small increment for the Interconnection facility piece between the AT&T switch and the terminating network."

Q, IS THAT A PLAUSIBLE BENCHMARK?

A. No. I cannot imagine the Commission establishing a rate based on a letter. Apart from that, the letter on which Mr. Farrar relies assumed the use of next generation soft switches. Soft switches have very low switching cost, so the letter writer's bottom line in the hypothetical network of the future was very low end office switching costs. In reality, however, AT&T (the ILEC) has NO operational soft switches in this state or in any of the other 21 AT&T ILEC states. Thus, the letter in question does not represent AT&T's forward looking switching costs. AT&T does not regard soft switches as forward looking, and has no plan to incorporate them into its ILEC network in the future.

Q. WHAT IS YOUR CONCLUSION ABOUT THE TRANSIT RATE AT&T SHOULD CHARGE SPRINT?

A. The rate is not properly subject to determination in this section 251/252 arbitration proceeding, but should instead be commercially negotiated. If the Commission concludes otherwise, it should direct the Parties to include in their new ICAs a rate of $0.0015227. This, along with the Tandem Interconnection Charge ("TIC"), is the same transit rate that is in the Parties' current ICAs and it is the rate that results from a correct application of Sprint's second "benchmark" approach.

DPL ISSUE I.C(4)

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

Q. DOES MR. FARRAR CORRECTLY UNDERSTAND THIS ISSUE?

A. It appears he does not. Mr. Farrar summarizes AT&T's position as follows: "As I understand AT&T's position, if the Commission requires AT&T to provide Transit Service, Sprint should be required to enter into compensation arrangements with Third Party carriers *and* to indemnify AT&T against any costs it might incur." Farrar Direct at 31. That is not AT&T's position. As I hope I made clear in my testimony, AT&T's position – as reflected in AT&T's proposed language – is that Sprint should *either* enter compensation arrangements with third party carriers to which it sends traffic through AT&T *or* indemnify AT&T for costs it incurs as a result of Sprint's election not to do so.

Q. MR. FARRAR STATES (DIRECT AT 32) THAT THROUGHOUT THE 22 AT&T ILEC STATES, THERE MAY BE HUNDREDS OF CARRIERS WITH WHICH SPRINT ROUTINELY EXCHANGES TRAFFIC WITHOUT BENEFIT OF AN INTERCONNECTION AGREEMENT, AND THAT IT WOULD BE BURDENSOME FOR SPRINT TO ENTER INTO AGREEMENTS WITH ALL THOSE CARRIERS. IS THAT A GOOD REASON FOR REJECTING AT&T'S PROPOSED LANGUAGE?

A. First, I would note that Mr. Farrar's reference to "interconnection agreements" in this context is somewhat misleading. AT&T does not contemplate that Sprint and the third party carriers would enter into *interconnection agreements* of the sort we are arbitrating here; rather, we are talking about potentially much more simple compensation arrangements. More to the point, though, the answer to the question is no, Sprint's view that it might be burdensome to enter into compensation arrangements with all the carriers with which it exchanges traffic is not a good reason to reject AT&T's language, because AT&T's language leaves the decision to Sprint. AT&T's point is simply that it should not be exposed to any loss as a result of Sprint's decision not to enter into compensation

arrangements with third parties. If Sprint believes it would be too burdensome to enter into compensation arrangements with carriers with which it exchanges only small volumes of traffic, and that the risk of loss to AT&T resulting from Sprint not entering into such arrangements is modest, Sprint might rationally decide not to enter into the arrangements, but instead to take the risk that it may have to indemnify AT&T for some loss.

Q. MR. FARRAR SUGGESTS (DIRECT AT 32-33) THAT AT&T MAY BE A PARTY TO AGREEMENTS WITH SOME RURAL LECS ("RLECS") THAT REQUIRE AT&T TO PAY THOSE RLECS FOR TERMINATING TRAFFIC THAT AT&T TRANSITS TO THEM, AND THEN ARGUES THAT IF THAT IS THE CASE, SPRINT SHOULD NOT HAVE TO INDEMNIFY AT&T AGAINST ITS PAYMENT OBLIGATIONS TO THOSE RLECS. IS THAT A VALID CONCERN?

A. No – it is a red herring. AT&T's proposed language only requires Sprint to indemnify AT&T against losses resulting from Sprint's failure to enter into compensation arrangements with third parties to which it transits traffic through AT&T – not against losses resulting from a contractual obligation that AT&T may have (if any) to those third party carriers.

DPL ISSUE I.C(5)

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

Q. IN YOUR DIRECT TESTIMONY ON THIS ISSUE, YOU STATED THAT SPRINT'S POSITION STATEMENT ON THE DPL DID NOT SUGGEST THAT THERE IS ANYTHING WRONG WITH AT&T'S PROPOSED LANGUAGE. DID SPRINT'S TESTIMONY CRITIQUE AT&T'S LANGUAGE?

A. Not at all. In Mr. Farrar's short discussion of this issue (Direct at 34-35), he offers no criticism of any provision proposed by AT&T. Indeed, the *only* reason he offers for

rejecting AT&T's language is his characterization that the language was "non-negotiated" (*id.* at 35, line 4).

Q. IS THAT A VALID REASON FOR REJECTING AT&T'S LANGUAGE?

A. No. For reasons that I have explained at length, AT&T believes that transit service is not required by section 251 and so is not a proper subject for interconnection agreement negotiations or arbitration under the 1996 Act. There is some legal authority, however, to the effect that if parties negotiate a subject that is not encompassed by section 251, that subject becomes eligible for arbitration. In order to avoid making transit service subject to arbitration pursuant to that legal authority, AT&T had no choice but to decline to negotiate the subject unless and until Sprint agreed not to argue that by negotiating transit, AT&T made it subject to arbitration. Although I have not been involved in the negotiations, I am informed that AT&T tried to arrive at an agreement to that effect with Sprint, and that Sprint – at least as of the date of this testimony – has not accepted AT&T's proposal. Under these circumstances, it would be unfair for the Commission to penalize AT&T for not negotiating an issue AT&T believes it is not required to negotiate – especially where AT&T made a responsible effort to find a way to discuss the matter with Sprint without waiving its position.

Q. IS THERE ANOTHER REASON THAT THE COMMISSION SHOULD CONSIDER AT&T'S PROPOSED LANGUAGE?

A. Yes. If the Commission requires the ICA to include transit language, the 1996 Act requires that that language be just, reasonable and nondiscriminatory. If the Commission were to disregard AT&T's proposed language, the result could be unjust, unreasonable or discriminatory language (or the absence of language). In that event, the Commission

could not properly approve the language under section 252(e) of the 1996 Act when the Parties submit an ICA conforming to the Commission's arbitration decision, and the language would also be vulnerable on appeal. To ensure that it achieves a lawful result, the Commission needs to consider AT&T's language.

Q. HOW SHOULD THE COMMISSION RESOLVE THIS ISSUE?

A. As I explained in my direct testimony, if the Commission is going to require AT&T to provide transit service pursuant to the ICA, the language that AT&T has proposed is essential, and Sprint has not shown otherwise. AT&T's proposed language should be adopted, and Sprint's language should be rejected for the reasons I set forth in my direct testimony.

DPL 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?

Contract Reference: Attachment 3, [Sections 2.8.4(a) (CLEC), 2.5.4(a) (CMRS)]; 4.2, 4.3

Q. DOES MR. FARRAR HAVE A CORRECT UNDERSTANDING OF AT&T'S POSITION ON THIS ISSUE?

A. No. Mr. Farrar asserts (Direct at 36), "AT&T is simply unilaterally declaring that no Sprint entity can provide wholesale Interconnection Transit Service." That is not the case. As I believe I made clear in my direct testimony, AT&T does not foreclose the possibility that Sprint CLEC might provide transit service. Indeed, AT&T has proposed language that cares for that possibility. *See* McPhee Direct at 28 – 29. The problem with Sprint's proposed language as it relates to the CLEC ICA is that it merely reserves the right for Sprint to become a transit provider in the future (Sprint concedes it does not

provide transit service now), and states that Sprint can provide transit service upon 90 days' notice to AT&T – with no explanation of how that would work. A far more reasonable approach is to provide for the Parties to amend the Sprint CLEC ICA by including appropriate terms governing Sprint's provision of transit service when and if Sprint CLEC actually decides to provide such service. This is what AT&T's proposed language provides for.

Q. CAN AT&T OFFER THE SAME LANGUAGE FOR THE SPRINT CMRS ICA?

A. No. The CMRS ICA is for the exchange of CMRS traffic only, that is, traffic that either originates or terminates on a wireless network.

DPL ISSUE I.C(1)

What are the appropriate definitions related to transit traffic service?

Contract Reference: GTC Part B Definitions

Q. WHAT IS YOUR RESPONSE TO MR. FARRAR'S CONTENTION (DIRECT AT 6) THAT THE COMMISSION SHOULD DISREGARD AT&T'S PROPOSED TRANSIT DEFINITIONS BECAUSE AT&T DECLINED TO NEGOTIATE THEM?

A. I strongly disagree, for the reasons I discussed above in connection with Issue I.C(5).

Q. MR. FARRAR'S FIRST, AND PRINCIPAL, OBJECTION TO AT&T'S PROPOSED DEFINITIONS IS THAT THEY CONTEMPLATE ONLY AT&T, AND NOT SPRINT, AS A PROVIDER OF TRANSIT SERVICE. IS THAT CORRECT?

A. Yes, and appropriately so, for the reasons I have discussed in connection with Issue I.C(6). When and if Sprint CLEC actually seeks to provide transit service and the Parties modify the ICA accordingly, one modification would be to the definitions.

Q. MR. FARRAR COMPLAINS (DIRECT AT 6) THAT AT&T'S LANGAUGE CAN BE INTERPRETED TO "ELIMINATE AT&T'S PAYMENT RESPONSIBILITIES FOR [CERTAIN] AT&T WHOLESALE INTERCONNECTION CUSTOMER TRAFFIC." IS THAT COMPLAINT WELL-FOUNDED?

A. No, because AT&T has no such payment responsibility – the traffic in question is not transit traffic. Transit traffic originates on a third party network and is tandem-switched through AT&T's network to reach the terminating carrier. The traffic to which Mr. Farrar is referring in contrast, terminates with an AT&T local switch port, and thus is not transit traffic.

Q. IS IT TRUE, THOUGH, THAT AT&T'S LANGUAGE, TAKEN AS A WHOLE, ALSO EXCLUDES THESE CALLS FROM RECIPROCAL COMPENSATION, SO THAT THE NET EFFECT IS THAT AT&T PAYS SPRINT NOTHING FOR TERMINATING THE CALLS?

A. Yes, that is true – and it is also the correct result, as AT&T witness Ms. Pellerin explains in her testimony on Issue III.A.1(2). Note that, as Ms. Pellerin explains, this does not mean Sprint is not compensated for terminating these calls. Sprint is entitled to receive compensation – reciprocal compensation, assuming the call is local (for CLEC) or intraMTA (for CMRS) – from the CLEC whose customer originated the call.

Q. MR. FARRAR INDICATES, THOUGH (DIRECT AT 7) THAT THESE CALLS APPEAR TO SPRINT AS IF THEY ORIGINATED WITH AT&T. HOW CAN SPRINT BILL THE ORIGINATING CARRIER IF IT DOES NOT KNOW WHO THE ORIGINATING CARRIER IS?

A. I have looked into that, and I am informed that AT&T makes available to Sprint usage data that would enable Sprint to bill those originating carriers.

Q. HOW SHOULD THE COMMISSION RESOLVE THIS ISSUE?

A. By adopting AT&T's proposed definitions of "Third Party Traffic" and rejecting Sprint's proposed definitions of "Third Party Traffic," "Transit Service" and "Transit Service Traffic," for the reasons I set forth in my direct testimony and here.

DPL ISSUE I.B.(2)

(a) Should the term "Section 251(b)(5) Traffic" be a defined term in either ICA and, if so, (b) what constitutes Section 251(b)(5) Traffic for (i) the CMRS ICA and (ii) the CLEC ICA?

Contract Reference: GTC – Part B – Definitions

Q. WHAT PART OF THIS ISSUE ARE YOU ADDRESSING?

A. As in AT&T's direct testimony, Ms. Pellerin addresses parts (a) and (b)(1), and I address (b)(ii) – the definition of "Section 251(b)(5) Traffic" for the CLEC ICA, assuming that such a definition is to be included. Unavoidably, however, in light of Sprint's testimony on this issue, I will touch on part (a) as well.

Q. IN YOUR DIRECT TESTIMONY, YOU INDICATED THAT SPRINT HAD IDENTIFIED NOTHING WRONG WITH AT&T'S PROPOSED DEFINITION OF "SECTION 251(b)(5) TRAFFIC" FOR THE CLEC ICA – OTHER THAN THE FACT THAT SPRINT WANTS NO DEFINITION AT ALL. DOES SPRINT'S DIRECT TESTIMONY IDENTIFY ANY FLAWS IN AT&T'S DEFINITION?

A. No. I explained the basis for AT&T's definition in my direct testimony. Sprint witness Burt discusses this issue in his direct testimony, at 44-45, and he does not disagree with anything in AT&T's definition for the CLEC traffic; all he says is that the inclusion of a definition would "create unnecessary complexity" (Direct at 44).

Q. WOULD IT?

A. No, not at all. In contrast to Sprint's proposed use of the term "Authorized Service" traffic, which Ms. Pellerin discusses, AT&T's definition of Section 251(b)(5) traffic is straightforward – Section 251(b)(5) traffic originates from an end user and is destined to another end user that is physically located within the same ILEC mandatory local calling scope. Just as important, that definition is consistent with the FCC's approach in its Order on Remand and Report and Order, *In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, Intercarrier Compensation for ISP-Bound Traffic*, FCC 01-131, CC Docket Nos. 96-98, 99-68 (rel. April 27, 2001) ("*ISP Remand Order*"), which was remanded but not vacated in *WorldCom, Inc. v. FCC*, 288 F.3d 429 (D.C. Cir. 2002).

Q. MR. BURT ASSERTS (DIRECT AT 44) THAT AT&T IS PROPOSING "A COMPENSATION ARRANGEMENT INCONSISTENT WITH THE FCC RULES IMPLEMENTING SECTION 251(b)(5)." IS THAT CORRECT?

A. No, it is not. For that matter, Mr. Burt does not say *which* "FCC rules" Sprint believes AT&T's definition contradicts, so I cannot provide a specific response to his assertion, other than to reaffirm that AT&T's definition is consistent with rulings by the FCC that have characterized traffic as either being within the scope of Section 251(b)(5), or as being beyond the scope of Section 251(b)(5). For example, the FCC clarified that dial up traffic bound for ISPs is not Section 251(b)(5) traffic.[9]

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[9] *See ISP Remand Order.* Yet the FCC also ruled that, in certain circumstances, ISP-bound traffic is subject to compensation in the same manner as Section 251(b)(5) traffic. *See* discussion of the FCC Compensation Plan elsewhere in my testimony regarding the application of rates to the termination of ISP-bound traffic.

Q. IS THE DEFINED TERM "251(b)(5) TRAFFIC" TYPICALLY INCLUDED IN ICAS TO WHICH AT&T IS A PARTY?

A. Yes. Since the FCC, in its *ISP Remand Order*, removed the potentially ambiguous term "local" from its reciprocal compensation rule, AT&T has advocated use of the more precise term "Section 251(b)(5) Traffic." To the best of my knowledge, the term is included in the vast majority of ICAs that AT&T has entered since 2001.

DPL ISSUE III.A.1(3)

What are the appropriate compensation rates, terms and conditions (including factoring and audits) that should be included in the CLEC ICA for traffic subject to reciprocal compensation?

Contract Reference: Attachment 3, Sections 6.1-6.1.7, 6.2.2-6.2.2.2, 6.8.1, 6.8.2, 6.8.4
Pricing Sheet – All Traffic, (AT&T CLEC)

Q. DOES SPRINT'S WITNESS ON THIS ISSUE EXPLAIN WHY SPRINT'S PROPOSED LANGUAGE SHOULD BE ADOPTED?

A. No. Mr. Felton testifies on this issue (Direct at 41-43), and he says nothing whatsoever about why Sprint's language should be adopted. Instead, he takes five baseless potshots at AT&T's proposed language, and in effect asks the Commission to adopt Sprint's language by default.

Q. PUTTING ASIDE FOR A MOMENT THE MERITS OF AT&T'S LANGUAGE, WHAT IS WRONG WITH SPRINT'S LANGUAGE?

A. As I explained in my direct testimony, Sprint's language is vague and incomplete; it provides insufficient direction on how the Parties should apply rates, terms and conditions to traffic subject to reciprocal compensation. Mr. Felton does not explain why this minimalist language is sufficient or appropriate.

Q. IN YOUR DIRECT TESTIMONY, YOU EXPLAINED WHY THE VARIOUS AT&T-PROPOSED PROVISIONS ENCOMPASSED BY THIS ISSUE SHOULD BE INCLUDED IN THE ICA. DOES MR. FELTON CRITIQUE ALL THE PROVISIONS YOU DISCUSSED?

A. No. In my direct testimony, I explained in detail the importance of CPN, and of providing a mechanism for dealing with missing CPN, which is the subject of AT&T's proposed sections 6.1.1 and 6.1.3. Mr. Felton offers no comment that has any bearing on those provisions. Nor does he critique or otherwise comment on AT&T's proposed sections 6.1.5, 6.1.6 or 6.1.7., 6.8.1 or 6.8.2. Mr. Felton offers only isolated criticisms of other aspects of AT&T's language – and those criticisms are unfounded.

Q. WHAT IS MR. FELTON'S FIRST CRITICISM OF AT&T'S LANGUAGE?

A. He states (Direct at 42) that AT&T's proposed language includes audit provisions that conflict with another, undisputed, section in the GTC portion of the ICA.

Q. IS THAT CORRECT?

A. No. Mr. Felton does not identify the audit language in Attachment 3 that he claims is inconsistent with language in the GTC. This is not surprising, because the AT&T-proposed language that is the subject of this issue includes no audit language.

Q. WHAT IS MR. FELTON'S NEXT CRITICISM?

A. He asserts that AT&T's proposed language in Attachment 3 is inconsistent with its proposed Attachment 7 billing dispute language. I do not believe there is any such inconsistency – and I can be no more specific than that, because Mr. Felton does not bother to say what the supposed inconsistency is. It is highly unlikely that there is any such inconsistency, however, because the billing dispute provisions in Attachment 7 pertain to matters *other than* intercarrier compensation, while the billing dispute

provisions in Attachment 3 (namely, AT&T's proposed section 6.8.4) concern *only* intercarrier compensation disputes. There may be *differences* between the billing dispute mechanisms that apply to intercarrier compensation and other matters, but appropriate differences are not *inconsistencies*.

Q. WHAT IS MR. FELTON'S NEXT COMPLAINT – AND YOUR RESPONSE?

A. Mr. Felton states that AT&T's proposed section 6.1.2 duplicates language in section 6.3.4 on which the Parties have agreed. If the provision has been agreed in section 6.3.4, I would of course concur that there is no need to duplicate it in section 6.1.2. This is a housekeeping matter, though – not a reason to reject AT&T's proposed language in general.

Q. NEXT?

A. Mr. Felton states that Sprint is adamantly opposed to the AT&T language that would require Sprint to enter into compensation arrangements with third parties with which Sprint exchanges traffic. That language should be included in the ICA for the reasons I discussed in connection with Issue I.C(4), which concerns precisely this disagreement.

Q. WHAT IS MR. FELTON'S FINAL CRITICISM OF THE AT&T-PROPOSED LANGUAGE THAT IS THE SUBJECT OF THIS ISSUE?

A. Mr. Felton objects to the multiple tandem access language in AT&T's proposed section 6.2.2 and subparts.

Q. IS THAT A VALID CRITICISM?

A. No. It is perfectly appropriate for AT&T to apply a multiple tandem access charge when Sprint traffic is routed through more than one tandem on AT&T's network, in order to recover the costs AT&T incurs when traffic is routed in that fashion; indeed, it would be

improper for AT&T not to recover these costs. Mr. Felton asserts that AT&T's recovery of these costs defeats the purpose of allowing Sprint to maintain a single POI, but that is a red herring. Regardless whether Sprint is entitled to a single POI architecture (which is the subject of Issue II.D, addressed by AT&T witness Hamiter), Sprint has no right to route, for free, traffic that enters AT&T's network at one tandem, and then must be routed through other tandems before termination at an AT&T end office.

Q. WHAT IS YOUR CONCLUSION ON THIS ISSUE?

A. The Commission should reject Sprint's inadequate language, which Sprint has made no real attempt to justify. The Commission should approve AT&T's proposed language – all of which (with the possible exception of assertedly duplicative section 6.1.2) Mr. Felton either did not take issue with at all or else critiqued on grounds that do not withstand scrutiny.

DPL *ISSUE III.A.2*

What compensation rates, terms and conditions should be included in the ICAs related to compensation for ISP-Bound traffic exchanged between the parties?

Contract Reference: Attachment 3, Pricing Sheet (Sprint)

Attachment 3, Section 6.1.2 (AT&T CMRS)

Attachment 3, Sections 6.3 – 6.3.3.1, 6.8.3, 6.26 – 6.26.1, Pricing Sheet – All Traffic (AT&T CLEC)

Q. DOES SPRINT'S DIRECT TESTIMONY PROVIDE ANY SUPPORT FOR ITS PROPOSED LANGUAGE UNDER THIS ISSUE?

A. No, not at all. Sprint's language consists only of a reference to the Attachment 3 Pricing Sheet, where it references a rate for an "Information Services Rate" and an "Interconnected VoIP Rate." Sprint witness Felton discusses this issue (Direct at 48-49),

but says literally nothing in support of Sprint's language; instead, he offers two criticisms of AT&T's language, neither of which holds water, as I will explain.[10]

Q. AS YOU NOTED, SPRINT PROPOSES AN "INFORMATION SERVICES RATE" AND A RATE (NAMELY, BILL AND KEEP) FOR INTERCONNECTED VOIP. WILL YOU BE DISCUSSING THE VOIP RATE HERE?

A. No. I cover that under Issue III.A.6(1). My discussion here will focus on the proper treatment of ISP-Bound traffic, which is what Sprint purports to address with its "Information Services Rate."

Q. HAS THE FCC EVER ADDRESSED OR ESTABLISHED AN "INFORMATION SERVICES RATE"?

A. No. The FCC has established a rate for ISP-Bound traffic, which is a subset of Information Services, but not for Information Services in general.

Q. HAVE THE PARTIES AGREED ON A DEFINITION FOR "ISP-BOUND TRAFFIC"?

A. Yes. GTC Part B defines "ISP-Bound Traffic" as "that *subset of Information Services traffic*, that is destined for an Internet Service Provider in accordance with the FCC's Order on Remand and Report and Order ..." (emphasis added). This recognition that not all Information Services Traffic is ISP-Bound Traffic confirms that Sprint is using a misnomer when it calls its .0007 rate an "Information Services Rate."

Q. WHAT RATE DID THE FCC ESTABLISH FOR ISP-BOUND TRAFFIC?

A. As I discussed in my direct testimony, the *ISP Remand Order* established an interim compensation plan for the treatment of "ISP-bound traffic." AT&T's proposed terms and

[10] In addition to the two criticisms of AT&T's language, Mr. Felton also registers an objection concerning Multiple Tandem Switching. Felton Direct at 49, lines 2-5. That, though, is the subject of Issue I.A.1(3), not this issue.

conditions conform to the FCC's *ISP Remand Order*, and also include language acknowledging the FCC's intent to address intercarrier compensation for ISP traffic in the future, including provisions to transition to any new pricing scheme the FCC may introduce. Under the rate plan that the FCC established in the *ISP Remand Order*, the rate for ISP-Bound Traffic is $0.0007 per minute of use (assuming, as is the case here, that the ILEC has offered to exchange Section 251(b)(5) traffic, as well as ISP-Bound Traffic, at that rate).

Q. MR. FELTON (AT P. 48) POINTS TO AT&T'S PROPOSED CMRS LANGUAGE LIMITING ISP-BOUND TRAFFIC TO THE MOBILE-TO-LAND DIRECTION, AND STATES THERE IS NO BASIS IN THE FCC'S RULES FOR SUCH A "CONDITION." WHAT IS THE BASIS FOR AT&T'S PROPOSED LANGUAGE?

A. It is not AT&T's intent to prohibit the Sprint wireless entities from serving ISP customers of their own, though AT&T is unaware of any CMRS service to ISPs. Rather, it is AT&T's intent – consistent with its position that all CMRS traffic (*i.e.*, all traffic exchanged under the CMRS ICA) must either originate or terminate on a wireless network – to make clear that Sprint CMRS may not act as a transit provider for traffic that originates on AT&T's network and that is bound for an ISP that is a customer of a third party carrier. AT&T is willing to modify its language to make this clear. The provision in question is section 6.1.2 in the CMRS ICA. Currently, the provision reads as follows; the italicized language imposes the prohibition to which Sprint objects:

> The Parties agree that ISP-bound traffic between them *in the mobile-to-land direction* shall be treated as Telecommunications traffic for purposes of this Agreement, and compensation for such traffic shall be based on the jurisdictional end points of the call. Accordingly, no additional or separate measurement or tracking of ISP-bound traffic shall be necessary.

> *The Parties agree there is and shall be no ISP traffic exchanged between them in the land-to-mobile direction under this Agreement.*

As modified by the deletion of the first italicized phrase and a change to the last sentence, AT&T's modified language for this provision would read as follows:

> The Parties agree that ISP-bound traffic between them shall be treated as Telecommunications traffic for purposes of this Agreement, and compensation for such traffic shall be based on the jurisdictional end points of the call. Accordingly, no additional or separate measurement or tracking of ISP-bound traffic shall be necessary. The Parties agree there is and shall be no ISP traffic exchanged between them in the land-to-mobile direction under this Agreement other than traffic that Sprint terminates to its own wireless ISP customer.

With this language, Sprint is free to serve ISP customers, but not to transit ISP-bound traffic that originates on AT&T's network to third party carriers that serve ISPs. The Commission should approve AT&T's proposed language as modified.

Q. MR. FELTON ALSO CONTENDS (DIRECT AT 48-49) THAT THE LANGUAGE IN AT&T'S PROPOSED SECTION 6.1.2 FOR THE CMRS ICA THAT CALLS FOR ISP-BOUND TRAFFIC TO BE JURISDICTIONALIZED IS FLAWED, BECAUSE ISP-BOUND TRAFFIC CANNOT BE JURISDICTIONALIZED. IS THAT CORRECT?

A. No. The ISP-bound traffic that the FCC addressed in its *ISP Remand Order* was limited to traffic within a local exchange, *i.e.*, traffic that, based on the endpoints of the call, would be subject to reciprocal compensation. Indeed, the problem that the FCC was addressing in that order was, as the FCC repeatedly stated, a reciprocal compensation problem.[11] Thus, the rate plan for ISP-Bound Traffic that is currently in effect, and

[11] *E.g., ISP Remand* Order, ¶ 13 ("As a result of this determination ['that section 251(b)(5) reciprocal compensation obligations "apply only to traffic that originates and terminates within a local area" as defined by state commissions'], the question arose whether reciprocal compensation obligations apply to the delivery of calls from one LEC's end-user customer to an ISP in the same local calling area that is served by a competing LEC.]").

pursuant to which the compensation rate for ISP-Bound Traffic is $0.0007 is limited to traffic that originates with an ISP's customer in a given local exchange area and that is delivered to the ISP in that same local exchange area. It is not only possible, but absolutely necessary, to jurisdictionalize ISP-bound traffic in accordance with the location of the calling party and the ISP in order to determine whether the call is "local," and therefore subject to the $0.0007 rate, or not, and therefore subject to applicable intrastate or interstate access charges.

DPL ISSUE III.A.1(4)

Should the ICAs provide for conversion to a bill and keep arrangement for traffic that is otherwise subject to reciprocal compensation but is roughly balanced?

Contract Reference: Attachment 3, section 6.3.7.

DPL ISSUE III.A.1(5)

If so, what terms and conditions should govern the conversion of such traffic to bill and keep?

Contract Reference: Attachment 3, sections 6.3.7 – 6.3.7.10 (AT&T CMRS)
Attachment 3, sections 6.6 – 6.6.11 (AT&T CLEC)

Q. HOW IS YOUR REBUTTAL ISSUE ON THESE ISSUES ORGANIZED?

A. As in my direct testimony, I will first address the question whether the ICAs should provide for the possibility of a bill and keep arrangement for Section 251(b)(5) Traffic, and will then address the separate question of what language should be included in the

ICAs if the Commission decides, over AT&T's objection, that the ICAs should allow for bill and keep.

Q. WHAT JUSTIFICATION DOES SPRINT'S TESTIMONY GIVE FOR SPRINT'S POSITION THAT THE ICAS SHOULD ALLOW FOR BILL AND KEEP?

A. Virtually none. In my direct testimony, I demonstrated that (i) AT&T is entitled, as a matter of law, to recover the costs it incurs for transporting and terminating Sprint's traffic; (ii) while bill and keep is permissible if (and only if) traffic is roughly balanced (or the Parties agree otherwise), nothing in the 1996 Act or the FCC's rules suggests that bill and keep is a favored alternative to payment; (iii) the FCC recognized as early as 1996, when it promulgated its reciprocal compensation rules, that bill and keep is economically inefficient because it distorts carriers' incentives; (iv) experience since 1996 has shown that bill and keep does in fact encourage arbitrage; and (v) AT&T (which after all is half of the equation) realizes almost no administrative savings from bill and keep.

Compared with AT&T's detailed demonstration that bill and keep is a bad idea, all Sprint has said is that bill and keep is permitted (while recognizing that it is in no instance mandated); that bill and keep eliminates transaction costs; and that AT&T in one instance – FX traffic – advocates bill and keep. Felton Direct at 43-44.

Q. LET'S ADDRESS THOSE POINTS ONE BY ONE. MR. FELTON IS CORRECT THAT BILL AND KEEP IS PERMISSIBLE, ISN'T HE?

A. Yes, the Commission *could* impose bill and keep *if* it finds that the reciprocal–compensation eligible traffic the Parties are exchanging is roughly balanced and is

expected to remain so. That does not mean it would be wise to do so, however, and I believe I have demonstrated that it would not be.

Q. HOW DO YOU RESPOND TO MR. FELTON'S ASSERTION THAT BILL AND KEEP WOULD ELIMINATE TRANSACTION COSTS?

A. At this point, that is just words. As I stated in my direct testimony, if Sprint wants to persuade the Commission that bill and keep is a good idea notwithstanding that it creates a real risk of arbitrage – a risk that the FCC recognized and that has been proven in actual practice – then Sprint should show that the cost savings it touts would exceed the difference in payments under a paying reciprocal compensation arrangement.

Indeed, Sprint practically admits that this is the test. Mr. Felton states, "Frequently, the cost of undertaking such billing-related tasks exceeds the amounts billed. In such cases both Parties are clearly better off under a bill and keep arrangement." Felton Direct at 44, lines 1-3. If Sprint wants bill and keep, Sprint should show that this is one of those cases. And again, the question is not just whether Sprint would be "clearly better off under a bill and keep arrangement" – Sprint might well be because AT&T generally terminates more Sprint traffic than Sprint terminates AT&T traffic (which is why Sprint really wants bill and keep). The Commission must also consider whether AT&T would be better off – even though I have testified there are virtually no administrative savings from bill and keep.

Q. FINALLY, WHAT ABOUT MR. FELTON'S COMMENT THAT AT&T PROPOSES BILL AND KEEP WHEN IT SUITS AT&T'S PURPOSES?

A. That is incorrect. What Mr. Felton is referring to is Issue III.A.5, concerning FX traffic. As I have explained in my testimony on that issue, Sprint should actually be paying

AT&T access charges on that traffic; bill and keep is a compromise. If Sprint would rather pay access charges on FX traffic than to exchange it on a bill and keep basis, that is fine with AT&T.

Q, HOW SHOULD THE COMMISSION RESOLVE ISSUE III.A.1(4)?

A. AT&T has given the Commission powerful reasons for including no bill and keep language in the ICAs. In summary, AT&T has an unqualified right to recover its transport and termination costs – the FCC has recognized that – and that means that there should not be bill and keep unless it is quite clear that AT&T's savings in administrative costs would exceed the amount that AT&T would lose in forfeited reciprocal compensation payments (net of AT&T's payments to Sprint). It is far from clear that that is the case, and I am confident that Sprint will not be able to prove otherwise in its rebuttal testimony.[12] Add to that the fact that bill and keep is, as the FCC expressly recognized, uneconomic, and the conclusion is inescapable: The Parties should pay each other reciprocal compensation on traffic that is subject to reciprocal compensation, and the ICAs should not provide for a bill and keep alternative.

[12] Note in this regard that if Sprint does undertake to show that Section 251(b)(5) traffic is roughly balanced, it must exclude FX traffic (which is the subject of Issue III.A.5, below) from its calculations, because FX traffic is not subject to reciprocal compensation. Sprint witness Burt acknowledges that the Parties' current ICA excludes FX traffic from reciprocal compensation (Burt Direct at 75), so any current traffic numbers should not count FX traffic as Section 251(b)(5) traffic. Also, FX traffic should not be subject to reciprocal compensation under the new CLEC ICA. *See* discussion of Issue III.A.5.

Q. ON THE QUESTION OF WHICH PARTIES' LANGUAGE SHOULD BE ADOPTED IF THE ICAS ARE GOING TO PROVIDE FOR BILL AND KEEP, YOUR DIRECT TESTIMONY IDENTIFIED THREE DEFECTS IN SPRINT'S LANGUAGE, ONE OF WHICH WAS THAT SPRINT'S LANGUAGE FALSELY RECITES THAT THE PARTIES ACKNOWLEDGE THEIR TRAFFIC IS IN BALANCE AS OF THE EFFECTIVE DATE OF THE ICA. (MCPHEE DIRECT AT 58, 63-64). HOW DOES MR. FELTON JUSTIFY THAT ASPECT OF SPRINT'S LANGUAGE?

A. Astoundingly, Mr. Felton's rationale is that "AT&T has not provided any evidence to demonstrate the exchange of traffic is not roughly balanced." Felton Direct at 45.

Q. WHY DO YOU SAY THAT IS ASTOUNDING?

A. Because Sprint's position that AT&T should have to prove that traffic is not roughly balanced is preposterous. Under 47 C.F.R. § 51.713(b), the Commission may impose bill and keep *only* if it "determines that the amount of telecommunications traffic from one network to the other is roughly balanced with the amount of telecommunications traffic flowing in the opposite direction and is expected to remain so." Sprint proposes, however, that instead of making such a determination, the Commission just assume traffic is roughly balanced because AT&T has not proven otherwise. I do not believe the Commission can take that proposal seriously.

Q. MR. FELTON NOTES, THOUGH, THAT THE PARTIES ARE EXCHANGING TRAFFIC ON A BILL AND KEEP BASIS TODAY. IS THAT TRUE?

A. Yes, but if Mr. Felton is offering that as an excuse for Sprint's untenable suggestion that AT&T be required to prove that traffic is out of balance in order to avoid bill and keep – and I cannot tell from his testimony whether he is – the excuse is disingenuous. As the Commission is aware, the Parties are exchanging traffic on a bill and keep basis today

only because BellSouth agreed, over nine years ago to do so – not because their traffic is in balance or because any Commission determination occurred.

Q. THE SECOND FAILING YOU IDENTIFIED IN SPRINT'S BILL AND KEEP LANGUAGE IS THAT IT WOULD TREAT TRAFFIC AS IN BALANCE IF THE IMBALANCE IS NO WORSE THAN 60%/40%, RATHER THAN THE 55%/45% THAT IS WIDELY RECOGNIZED AS THE THRESHOLD. WHAT DOES MR. FELTON SAY ABOUT THAT DIFFERENCE BETWEEN THE PARTIES' PROPOSALS?

A. Nothing. This is a telling omission, because AT&T emphasized this aspect of the issue on the DPL – which Mr. Felton acknowledges he read (Direct at 45-46). It is easy to understand why Sprint would rather play down this part of the issue. Its 60/40 proposal is indefensible.

Q. THE THIRD FAILING YOU IDENTIFIED IN SPRINT'S LANGUAGE IS THAT IT MAKES NO PROVISION FOR DISCONTINUING BILL AND KEEP – EVEN IF THE PARTIES' TRAFFIC IS OUT OF BALANCE ACCORDING TO SPRINT'S UNREASONABLE 60/40 THRESHOLD. WHAT DOES MR. FELTON SAY ABOUT THAT?

A. Mr. Felton admits that Sprint's language makes no provision for discontinuing bill and keep (Direct at 46), but he offers no justification for the omission. All he says is that Sprint will entertain language to provide for conversion away from bill and keep when AT&T demonstrates that traffic is not roughly balanced. The notion that AT&T would first demonstrate that traffic is not roughly balanced and only then would Sprint "entertain" language providing for a conversion away from bill and keep is patently unreasonable.

Q. DOES MR. FELTON OFFER ANY CRITICISM OF AT&T'S PROPOSED BILL AND KEEP LANGUAGE?

A. No, he does not. His discussion of the competing language proposals is limited to his very weak attempts to justify Sprint's language. Mr. Felton briefly summarizes AT&T's proposed language (Direct at 45-46), but he does not comment on it.

Q. HOW SHOULD THE COMMISSION RESOLVE ISSUE III.A.1(5)?

A. The Commission should not reach Issue III.A.1(5), because it should rule, for all the reasons I have discussed, that there will be no bill and keep language in the ICAs. If the Commission does reach the issue, however, it should adopt AT&T's language.

DPL ISSUE III.A.5

Should the CLEC ICA include AT&T's proposed provisions governing FX traffic?

Contract Reference: Attachment 3, Sections 6.4.2 – 6.4.2.4.3.1 (AT&T CLEC)

Q. IN YOUR DIRECT TESTIMONY, YOU EXPLAINED THAT FX TRAFFIC IS NOT SUBJECT TO RECIPROCAL COMPENSATION BECAUSE EVEN THOUGH IT APPEARS "LOCAL" BASED ON THE CALLING PARTY'S AND CALLED PARTY'S NUMBERS, IT ACTUALLY IS NOT LOCAL. DOES SPRINT ADDRESS THIS POINT IN ITS DIRECT TESTIMONY?

A. Yes. Mr. Burt acknowledges that FX service allows for customers to have a local appearance in one exchange while being physically located in another exchange. He states (Direct at 73-74), "End Users are generally businesses that want the appearance of being in a given location when they are actually located somewhere else or want their customers to be able to make a locally dialed call *rather than a toll call*." Thus, Sprint seems to recognize that FX calls are *interexchange* calls instead of *intraexchange*, or "local," calls. Yet, Sprint seeks to treat this traffic as if it were Section 251(b)(5) Traffic, which it is clearly not.

Q. HOW DO YOU RESPOND TO MR. BURT'S DISCUSSION OF THE TREATMENT OF FX TRAFFIC IN THE PARTIES' CURRENT ICA (BURT DIRECT AT 74-75)?

A. Mr. Burt correctly states that under the current ICA, FX traffic is subject to access charges. He contends that that is improper, but asserts that the current treatment is "the extreme opposite treatment that AT&T is asking for" here – as if that somehow discredited AT&T's position. It does not. The fact of the matter is that an FX call should be subject to access charges – payable by the terminating carrier to the originating carrier – when it originates in one local exchange area and terminates in another. Thus, the current ICA treats FX traffic as it should be treated. AT&T is proposing bill and keep as a compromise, however.

Two additional points are noteworthy in this regard. First, Sprint urges the Commission to attach great weight to what the current ICA says when Sprint wants to continue the current practice – bill and keep on Section 251(b)(5) traffic, for example – but does not hesitate to argue that the current ICA is misguided when that suits Sprint's purpose, as it does on this issue.

Second, Mr. Burt's suggestion that AT&T's bill and keep proposal for FX traffic cannot be squared with AT&T's opposition to bill and keep on Section 251(b)(5) traffic is misguided. Again, AT&T is offering bill and keep for FX traffic only as a compromise; AT&T candidly acknowledges that the "correct" treatment of FX traffic is access charges. If Sprint is troubled by the offer, AT&T will be happy to accept access charges on FX traffic that Sprint terminates.

Q. DOES SPRINT PROVIDE ANY SUPPORT FOR SUBJECTING FX TRAFFIC TO RECIPROCAL COMPENSATION?

A. None whatsoever. Without providing any justification or support for why it should be so, Mr. Burt merely states (Direct at 75) that "Sprint CLEC prefers that FX traffic be treated as non-FX traffic, i.e., based on the calling and called party telephone numbers."

Q. WHAT ABOUT MR. BURT'S ASSERTION (DIRECT AT 73) THAT THERE IS NO NEED FOR AT&T'S PROPOSED LANGUAGE BECAUSE "FX TRAFFIC CAN BE HANDLED TODAY BASED ON THE CALLING AND CALLED PARTY NUMBERS"?

A. It is quite true that FX traffic can be handled based on the calling and called party numbers. The whole point, though, is that FX traffic is *mis*handled when that is done. The traffic is in reality interexchange traffic, but the calling and called party numbers indicate it is intraexchange – that is what makes it foreign exchange service.

Q. SPRINT ALSO CONTENDS THERE IS NOT ENOUGH FX TRAFFIC TO WARRANT THE "SPECIAL TREATMENT" PROPOSED BY AT&T (BURT DIRECT AT 75). DO YOU DISAGREE?

A. AT&T is not proposing "special treatment" – FX traffic simply is not subject to reciprocal compensation, and AT&T is proposing that it be treated accordingly. Furthermore, since, as Mr. Burt says, the Parties' current ICA subjects FX traffic to access charges rather than reciprocal compensation, systems should already be in place for tracking FX traffic. In addition, the ICA should not improperly subject FX traffic to reciprocal compensation because traffic volumes that Sprint suggests are now "minimal" (Burt Direct at 75) may increase, and because the CLEC ICA may be adopted by carriers that terminate large volumes of traffic to their FX customers.

Q. IS MR. BURT CORRECT THAT AT&T IS PROPOSING AN "OVERLY BURDENSOME" SYSTEM FOR TRACKING AND REPORTING FX TRAFFIC (DIRECT AT 75)?

A. No. AT&T's language simply provides that the terminating carrier will work to identify and provide either summary data or some other agreed-upon method, such as an "FX factor" or percentage, in order to eliminate calls to FX customers from reciprocal compensation. This should not be unduly burdensome for Sprint because under the current ICA, Sprint should already be tracking the FX traffic. Furthermore, while Mr. Burt opposes tracking and segregating FX traffic, Mr. Burt proposes exactly the same concept for VoIP traffic (Direct at 78).

Q. DOES AT&T SEEK TO APPLY BILL AND KEEP TO FX ISP-BOUND TRAFFIC IN ORDER TO AVOID PAYING THE FCC ISP RATE ON THIS TRAFFIC, AS MR. BURT ASSERTS (DIRECT AT 76)?

A. No. As I have explained, the FCC rate for ISP bound traffic applies only to traffic that originates and terminates within the same local calling area. FX ISP-bound traffic, like other FX traffic, is interexchange traffic subject to switched access charges.

Q. HOW SHOULD THE COMMISSION RESOLVE THIS ISSUE?

A. There can be no serious question but that FX traffic is not subject to reciprocal compensation. By rights, FX traffic should be subject to access charges, payable by the carrier that terminates traffic to its FX customer in a local exchange area other than the one from which the call originated. As a compromise, however, AT&T has proposed that FX traffic be exchanged on a bill and keep basis. AT&T remains willing to stand by that compromise offer, and urges the Commission to adopt it. Whether the Commission does so or instead directs the Parties to pay access charges on the interexchange FX traffic

they terminate, the traffic must be separately tracked and reported, so the Commission should approve AT&T's proposed language to that effect.

DPL ISSUE III.A.4(1)

What compensation rates, terms and conditions should be included in the CLEC ICA related to compensation for wireline Switched Access Service Traffic?

Contract Reference: Attachment 3, Sections 6.1.4, 7.1.2 (Sprint)

Attachment 3, Sections 6.4.1, 6.9, 6.11, 6.23-6.24.1 (AT&T CLEC)

Q. HAS SPRINT PROVIDED ANY TESTIMONY SUPPORTING ITS PROPOSED LANGUAGE?

A. No. Mr. Burt provides what is nominal testimony on this issue (Direct at 67-69), but his testimony centers on appropriate treatment of VoIP traffic, which is actually the subject of Issue III.A.6(1), which is where I address it. Rather than justifying Sprint's proposed language on the present issue – III.A.4(1) – Mr. Burt merely asserts (Direct at 67) that AT&T's proposed language is "unnecessary, inaccurate and written in a manner designed to expand the application of access charges." But aside from making an incorrect assertion regarding VoIP traffic, Mr. Burt does not purport to identify any specific defect in AT&T's language. In contrast, my direct testimony explained the merits of AT&T's language, and also showed that Sprint's language is too vague.

Q. MR. BURT CONTENDS (DIRECT AT 68) THAT COMPENSATION IS NOT BASED SOLELY ON THE ENDPOINTS OF THE CALL, BUT ALSO UPON THE "UNDERLYING SERVICE." HOW DO YOU RESPOND?

A. The Parties disagree about the extent to which that is true. For example, Sprint would disregard the endpoints of the call when determining the compensation applicable to FX traffic (Issue III.A.5). Similarly, AT&T maintains that the endpoints of the call determine the compensation applicable to VoIP traffic, while Sprint contends that VoIP traffic should be subject to no compensation at all (Issues III.A.6(1) and (2)). More important, though, Mr. Burt fails utterly to explain what his contention has to do with the disputed language that is the subject of *this* Issue III.A.4(1). The disputed language at issue here does not say or imply that the endpoints of a call are the sole determinant of compensation. For example:

Mr. Burt suggests that AT&T's language would somehow yield an incorrect treatment of ISP-bound traffic, which he notes is subject to the FCC ISP compensation regime (Direct at 67-68), but AT&T's proposed language specifically cares for that. Similarly, compensation for VoIP traffic and FX traffic are the subject of other issues.

Q. WHAT ABOUT MR. BURT'S ASSERTION (DIRECT AT 68) THAT "AT&T'S LANGUAGE APPEARS TO REQUIRE SPRINT TO INSTALL ACCESS TRUNKS PER ACCESS TARIFFS (SEE AT&T 6.23.1) EVEN FOR TRAFFIC FOR WHICH ACCESS CHARGES DO NOT APPLY"?

A. It would be helpful if Mr. Burt had identified what sort of non-access traffic he thinks it "appears" AT&T's language requires access trunks for. Since he does not, all I can say is that if the Commission looks at AT&T's proposed section 6.23.1, the Commission will see that on its face, the language calls for access trunks only for traffic that is subject to access charges – and in subsections 6.23.1.1 through 6.23.1.4, it excludes certain traffic from that requirement. Given that Mr. Burt does not explain what he is talking about, I

imagine that his concern may actually reflect a disagreement about what traffic is or is not subject to access charges – interexchange VoIP traffic, for example. If that is the case, this piece of the disagreement will take care of itself when the Commission resolves the separate dispute about the applicability of access charges.

Q. HOW SHOULD THE COMMISSION RESOLVE THIS ISSUE?

A. As with so many other issues, Sprint's approach to this one in its testimony is to say nothing about the merits of its own language; criticize bits and pieces of AT&T's language (generally with no sound basis – and often in general terms that make it almost impossible to pin down the criticism); and expect the Commission to adopt Sprint's language by default. The Commission should reject this approach. Here, AT&T is proposing clear, complete and reasonable terms for wireline switched access, and the Commission should adopt those terms.

DPL ISSUE III.A.4(2)

What compensation rates, terms and conditions should be included in the CLEC ICA related to compensation for wireline Telephone Toll Service (i.e., intraLATA toll) traffic?

Contract Reference: Attachment 3, Sections 7.3.5-7.3.5.5 (Sprint)

Attachment 3, Sections 6.7-6.7.1, 6.16- 6.16.2, 6.17, 6.19- 6.19.2, 6.22, – 6.22.3, 6.18-6.18.1.2 (AT&T CLEC)

Q. YOU EXPRESSED CONCERN IN YOUR DIRECT TESTIMONY ABOUT HOW THE PARTIES COULD IMPLEMENT THE LANGUAGE SPRINT PROPOSES ON THIS ISSUE. DOES SPRINT'S TESTIMONY ALLEVIATE THAT CONCERN?

A. No. As I discussed, if the Parties were to bill based upon Sprint's proposal, charges would apply only when the originating carrier billed its retail customer a toll charge. The

terminating carrier would not always know if intraLATA access charges were applicable, and so would be at the mercy of the other carrier to determine appropriate charges. Sprint has not proposed any terms or conditions to determine how such billings would take place, and Mr. Burt's testimony on the issue provides no guidance.

Q. MR. BURT PURPORTS (DIRECT AT 69) TO NOT UNDERSTAND WHY AT&T'S LANGUAGE FOR TELEPHONE TOLL SERVICE REFERENCES "LOCAL CALLING AREA." CAN YOU EXPLAIN?

A. Yes. As with other types of traffic, AT&T proposes that the location of the end users of the call determine jurisdiction. An intraLATA toll call is a call between an AT&T end user and a Sprint end user in the same LATA but in a *different local or mandatory local calling area.* Therefore, it is entirely appropriate to provide, in Attachment 3, section 6.16.1, that Telephone Toll Service is defined "where one of the locations [of one of the end users] lies outside of the mandatory local calling areas as defined by the Commission...." AT&T's proposed language addressing the definition and treatment of Telephone Toll Service appropriately relies upon the location of the end users of the call, and not on the "underlying service" to determine compensation.

Q. IS IT APPROPRIATE TO INCLUDE LANGUAGE ADDRESSING DATABASE QUERIES IN ATTACHMENT 3, SECTION 6.22.2?

A. Yes. Although 8YY database queries are a tariffed offering, as Mr. Burt notes (Direct at 70), AT&T appropriately includes language to address compensation for 8YY database queries as they may be applicable. If Sprint routes a non-queried 8YY call to AT&T, AT&T must perform the query to identify how to route the call. In this situation, Sprint bears the cost of the query AT&T performed on Sprint's behalf. AT&T's reference to

this charge is appropriate as it provides clear terms under which such a charge may apply through the course of exchanging traffic under the ICA.

DPL ISSUE I.A(2)

Should either ICA state that the FCC has not determined whether VoIP is telecommunication service or information service?

Contract Reference: GTC Part A, Section 1.3

Q. DOES SPRINT'S TESTIMONY JUSTIFY THE INCLUSION OF SPRINT'S PROPOSED LANGUAGE STATING "THE FCC HAS YET TO DETERMINE WHETHER INTERCONNECTED VOIP SERVICE IS TELECOMMUNICATIONS SERVICE OR INFORMATION SERVICE"?

A. No. Mr. Burt implies this language is necessary as some sort of "placeholder" in the event the FCC provides guidance in the future concerning compensation for VoIP traffic. Burt Direct at 21. As I discuss under Issue III.A.6(1), however, the FCC has provided guidance that parties can rely upon existing law for determining appropriate compensation for this traffic.

The reason for excluding Sprint's proposed language is simple and straightforward: The language is a mere free-floating declaration that provides absolutely no guidance on how the Parties are to operate under the ICA. The Commission need not even evaluate the accuracy of the declaration because it makes no difference. The purpose of contract language is to govern the Parties' dealings with each other. Sprint's proposed language governs nothing.

DPL ISSUE I.A(3)

Should the CMRS ICA permit Sprint to send Interconnected VoIP traffic to AT&T?

Contract Reference: GTC Part A, CMRS Section 1.1

Q. IN YOUR DIRECT TESTIMONY ON THIS ISSUE, YOU STATED THAT AT&T'S CONCERN IS THAT SPRINT CMRS SHOULD NOT BE PERMITTED TO AGGREGATE VOIP TRAFFIC THAT ORIGINATES ON LANDLINE NETWORKS AND DELIVER THAT TRAFFIC TO AT&T. DOES SPRINT'S TESTIMONY SPEAK TO THAT CONCERN?

A. Yes, in this instance it does. Sprint witness Burt discusses this issue (Direct at 21-27), and he makes clear that Sprint's real interest is in ensuring that it can deliver *Sprint CMRS-originated* (not third party-originated) VoIP traffic to AT&T. Mr. Burt, in his first Q&A on this issue, complains that under AT&T's proposed language, "Sprint CMRS will not be allowed to send any *Sprint CMRS originated Interconnected VoIP traffic* to AT&T," and asserts that AT&T fails to explain "why *Sprint CMRS cannot originate* Interconnected VoIP traffic." (Emphases added.) Then (at 23), Mr. Burt talks about a Sprint device – Airave – that he contends meets the FCC criteria for Interconnected VoIP. Whether Airave does or does not meet those criteria is unclear. The important point for present purposes, though, is that Mr. Burt describes Airave traffic as Sprint CMRS-originated Interconnected VoIP traffic.

Q. IS AT&T WILLING TO ACCOMMODATE SPRINT CMRS'S DESIRE TO DELIVER SPRINT CMRS-ORIGINATED INTERCONNECTED VOIP TRAFFIC TO AT&T?

A. Yes. As I indicated in my direct testimony, AT&T's concern has to do with the possibility of Sprint aggregating and delivering landline-originated VoIP. Now that AT&T understands Sprint's principal aim, AT&T is willing to change its proposed

language for GTC section 1.3 in the CMRS ICA. The AT&T-proposed language that Sprint found objectionable read as follows:

> This Agreement may be used by AT&T to exchange Interconnected VoIP Service traffic to Sprint.

AT&T now instead proposes this:

> This Agreement may be used by AT&T to exchange Interconnected VoIP traffic to Sprint CMRS and by Sprint CMRS to exchange Sprint CMRS-originated VoIP traffic to AT&T.

Q. DOESN'T SPRINT INDICATE, THOUGH, THAT IT WANTS TO RESERVE THE RIGHT TO DELIVER THIRD PARTY-ORIGINATED INTERCONNECTED VOIP TRAFFIC TO AT&T?

A. Yes, that does appear to be Sprint's secondary concern. Mr. Burt states (Direct at 23): "It is Sprint's position that there is nothing under federal law that prevents . . . Sprint CMRS from offering a wholesale Interconnection Transit Service. Although Sprint CMRS does not offer such service today, if it so chose, it could offer such a service to such a carrier, including a . . . .customer that originates Interconnected VoIP traffic."

Q. YOUR RESPONSE?

A. I have explained, in connection with Issue I.C(6), why the Commission should reject Sprint's proposed language that would provide for Sprint CLEC and Sprint CMRS to become transit providers in the future. As to Sprint CLEC, there is no need for such a placeholder, and the particular language that Sprint proposes is unreasonable, for reasons I previously explained. As to Sprint CMRS, all of that is true and, in addition, Sprint CMRS can properly exchange only CMRS traffic (*i.e.*, traffic that originates or terminates on a wireless network), and so cannot properly become an aggregator of landline-originated traffic. Accordingly, AT&T proposed language for Issue I.C(6) – for

the CLEC ICA but not the CMRS ICA – that provides a process for developing appropriate contract language *when and if* Sprint CLEC actually wants to become a transit provider.

As speculative as Sprint's transit proposal is in general (*i.e.*, in connection with Issue I.C(6)), it is all the more so here, where Sprint is imagining the possibility not just that it might become a transit provider, but that it might become a provider of transit service to landline VoIP providers. There is no reason for the Commission to indulge this hypothesis at this point. The Commission should adopt AT&T's revised language, which plainly addresses the real concern here.

DPL ISSUE III.A.6(1)

What compensation rates, terms and conditions for Interconnected VoIP traffic should be included in the CMRS ICA?

Contract Reference: Attachment 3, Pricing Sheet (Sprint)
Attachment 3 Sections 6.4, 6.4.3 – 6.4.5, 6.23.1 (AT&T CLEC)
Attachment 3, Section 6.1.3 (AT&T CMRS)

DPL ISSUE III.A.6(2)

Should AT&T's language governing Other Telecomm. Traffic, including Interconnected VoIP traffic, be included in the CLEC ICA?

Contract Reference: Attachment 3, Pricing Sheet (Sprint)
Attachment 3 Sections 6.4, 6.4.3 – 6.4.5, 6.23.1 (AT&T CLEC)

Q. WHAT IS THE RELATIONSHIP BETWEEN ISSUES III.A.6(1) AND III.A.6(2).

A. That is one point on which I agree with Mr. Burt. Issue III.A.6(1) concerns compensation for Interconnected VoIP traffic for the CMRS ICA. Issue III.A.6(2) concerns that same issue for the CLEC ICA, but also encompasses compensation for

other forms of telecommunications traffic as it relates to that ICA. *See* Burt Direct at 78, 81.

Q. DO YOU ALSO AGREE WITH MR. BURT (DIRECT AT 82) THAT THE INTERCONNECTED VOIP COMPENSATION ISSUE PRESENTS THE SAME FUNDAMENTAL QUESTION FOR BOTH THE CLEC AND THE CMRS ICAS?

A. Yes.

Q. DO YOU AGREE WITH MR. BURT THAT AT&T'S POSITION ON III.A.6(1) – WHERE AT&T PROPOSES COMPENSATION TERMS FOR INTERCONNECTED VOIP FOR THE CMRS ICA – IS INCONSISTENT WITH AT&T'S POSITION ON ISSUE I.A(3), WHERE AT&T CONTENDS SPRINT CMRS SHOULD NOT BE ALLOWED TO SEND VOIP TRAFFIC TO AT&T?

A. No. Even under AT&T's former proposal for Issue I.A(3), the CMRS ICA needed language governing compensation for VoIP traffic that AT&T would deliver to Sprint. And now that AT&T has modified its position on Issue I.A(3) to allow Sprint CMRS to deliver Sprint CMRS-originated VoIP traffic to AT&T, I am sure Sprint would agree there is no inconsistency.

Q. MR. BURT CONTENDS (DIRECT AT 80) THAT THIS COMMISSION HAS NO AUTHORITY TO DETERMINE AN APPROPRIATE RATE FOR INTERCONNECTED VOIP TRAFFIC. DO YOU AGREE?

A. No, I do not. Mr. Burt's contention is untenable in light of the FCC's direction to the Public Utility of Texas to arbitrate precisely this issue.[13] With the FCC having unequivocally declared that state commissions should address the VoIP compensation

[13] *See* McPhee Direct at 82, discussing the FCC's decision in *Petition of UTEX Commc'ns Corp., Pursuant to Section 252(e)(5) of the Communications Act, for Preemption of the Jurisdiction of the Public Utility Comm. of Texas Regarding Interconnection Disputes with AT&T Texas*, WC Docket No. 09-134, 24 FCC Rcd. 12573 (Oct. 9, 2009).

issue when it is presented in arbitration, I do not see how Mr. Burt can contend that the Commission must wait for the FCC.

Q. APART FROM THOSE PRECEDENTS, ARE THERE OTHER REASONS THAT SPRINT IS WRONG?

A. Yes. In the first place, Sprint's assertion that the Commission is without jurisdiction to establish a rate for VoIP traffic is disingenuous, because Sprint itself is asking the Commission to set a rate – zero. If the Commission truly had no jurisdiction to decide this issue, that would mean the issue would remain unresolved, with *no* compensation provision in the ICA, not Sprint's proposed bill and keep language, and with the Parties destined to litigate the issue once they start operating under the new ICA.

Because the Parties have agreed to address Interconnected VoIP traffic and the Parties have negotiated compensation terms for that Interconnected VoIP traffic, it is not only appropriate, but necessary for the Commission to arbitrate those terms. This is consistent with section 252(b)(2) of the Act, which provides that "the carrier or any other party to the negotiation may petition a State commission to arbitrate any open issues."

Q. SPRINT PROPOSES BILL AND KEEP FOR VOIP TRAFFIC UNTIL SUCH TIME AS THE FCC DETERMINES A SPECIFIC COMPENSATION MECHANISM FOR VOIP TRAFFIC. ARE THERE OTHER CATEGORIES OF TRAFFIC, EITHER HISTORICALLY OR CURRENTLY, WHERE THE FCC HAS DIRECTED USE OF BILL AND KEEP AS A "PLACEHOLDER" UNTIL SPECIFIC COMPENSATION IS DETERMINED?

A. No, not to my knowledge. Nor am I aware of any authority in either the 1996 Act or in the FCC's rules implementing the 1996 Act for such a placeholder.

Q. HAS SPRINT PROVIDED ANY JUSTIFICATION FOR USING BILL AND KEEP FOR VOIP TRAFFIC?

A. No. Mr. Burt simply states (Direct at 78) that, because the FCC has not determined "the regulatory classification and proper compensation for VoIP traffic," the traffic is not subject to compensation as is non-VoIP traffic. In other words, Sprint is saying that because there is not a specific rule applying a specific rate for VoIP traffic, the Parties should not compensate each other for the exchange of this traffic. That is obviously not what the FCC had in mind when it directed the Texas commission to arbitrate the VoIP compensation issue.

Q. IS AT&T'S PROPOSED ICA LANGUAGE ADDRESSING COMPENSATION FOR VOIP TRAFFIC CONSISTENT WITH EXISTING INTERCARRIER COMPENSATION RULES?

A. Yes. AT&T's language provides that an Interconnected VoIP call that originates and terminates in the same local calling area is subject to reciprocal compensation just as a traditional call. Similarly, an interexchange Interconnected VoIP call is subject to access charges.

Q. MR. BURT CITES (DIRECT AT 80) TO A CERTAIN DISTRICT COURT DECISION REGARDING APPLICATION OF ACCESS CHARGES TO VOIP TRAFFIC. SHOULD THE COMMISSION CONSIDER THAT ORDER?

A. No. I will leave it for the lawyers to address in the briefs the decision Mr. Burt is referring to, *PAETEC Commn'cs v. Comm.Partners, LLC,* 2010 U.S. Dist. LEXIS 51926 (D.D.C 2010). For now, suffice it to say that the *PAETEC* decision, in addition to not being binding here, is poorly reasoned and wrong. Indeed, in a recent arbitration decision in another state, the Kansas Corporation Commission ("KCC") expressly rejected

PAETEC and resolved the VoIP compensation issue – exactly the same issue presented here – in AT&T's favor.[14]

Q. WHAT IS YOUR CONCLUSION ON THE QUESTION OF VOIP COMPENSATION?

A. First, the Commission should – indeed, it must – decide how the Parties will compensate each other for VoIP traffic. The Commission clearly has authority to do so, and Sprint's argument to the contrary is not only mistaken, but also disingenuous, because Sprint is proposing that the Commission impose bill and keep – which would require the Commission to address the issue. There is simply no basis for Sprint's bill and keep proposal. The purported basis is that the FCC has not yet established special rules for VoIP traffic, but when all is said and done, that is no basis at all. Inasmuch as the FCC has not established special compensation rules for VoIP traffic, it should be subject to the same compensation principles as other traffic – reciprocal compensation if within a local exchange area and intrastate or interstate access charges otherwise. That is what AT&T proposes, and that should be the resolution of Issue II.A.6(1) and of that portion of Issue II.A.6(2) that relates to compensation for VoIP traffic.

Q. WHAT OTHER QUESTIONS ARE PRESENTED BY ISSUE II.A.6(2)?

A. As Mr. Burt correctly states (Direct at 82), that issue also nominally encompasses ISP-Bound and FX traffic, but those issues are addressed elsewhere. The only open item that

[14] Order Adopting Arbitrator's Determination of Unresolved Interconnection Agreement Issues Between AT&T and Global Crossing, Docket No. 10-SWBT-419-ARB, *Petition of Southwestern Bell Tel. Co. d/b/a AT&T Kansas for Compulsory Arbitration of Unresolved Issues With Global Crossing Local Services, Inc. for an Interconnection Agreement Pursuant to Sections 251 and 252 of the Federal Telecommunications Act of 1996* (Kan. Corp. Comm'n Aug. 13, 2010), at 4-10.

remains is AT&T's proposed language in Attachment 3 section 6.4.4, which Mr. Burt addresses at page 82 of his direct testimony.

Q. WHAT DOES MR. BURT SAY ABOUT THAT PROVISION?

A. He asserts it is unnecessary to address 8YY traffic because the toll-free service provider is responsible for any charges to the local exchange carriers.

Q. IS THAT A VALID OBJECTION TO AT&T'S PROPOSED LANGUAGE?

A. No, because either AT&T or Sprint may be the toll-free service provider. AT&T's proposed language in section 6.4.4 is appropriate because it specifically identifies various types of traffic destined to ISPs or the internet that are not contemplated under the Parties' definition of ISP-Bound Traffic. Compensation for these other forms of internet traffic therefore differs from the rate for ISP-bound traffic. 8YY traffic that is destined to an ISP or the internet is included here, as such traffic is subject to appropriate access charges. Mr. Burt makes the erroneous assumption that neither AT&T nor Sprint can be the 8YY service provider; AT&T's language contemplates just such a scenario in section 6.4.4 and 6.4.5, and imposes appropriate compensation responsibilities on the terminating carrier.

DPL ISSUE III.E(3)

How should Facility Costs be apportioned between the Parties under the CLEC ICA?

Contract Reference: Attachment 3 Sections 2.5.3 (Sprint)

Alternative Section 2.8.6.1.5 (AT&T CLEC)

Q. WHAT ARE THE PARTIES' POSITIONS ON THIS ISSUE?

A. Sprint proposes that the Parties use a "Proportionate Use Factor" (PUF) to apportion the costs associated with interconnection facilities that they use for the exchange of traffic. AT&T proposes ICA language under which each Party is financially responsible for the facilities on its side of the Point of Interconnection ("POI").

Q. IS AT&T ATTEMPTING TO CHARGE SPRINT FOR TRAFFIC ORIGINATED ON AT&T'S NETWORK IN VIOLATION OF 47 C.F.R. § 703(b), AS MR. FARRAR STATES ON PAGE 92 OF HIS DIRECT TESTIMONY?

A. No – Mr. Farrar is confusing apples and oranges (or is trying to confuse the Commission). The cost of facilities is one thing, and usage charges for the exchange of traffic are another thing. What we are talking about here is which party is financially responsible for the installation and maintenance of the facilities. Once the Parties have agreed on the location of a POI, then each carrier is responsible for all facilities on its side of that POI. Therefore, there are no costs to "pass" to the other Party. The rule that Mr. Farrar cites is the FCC's reciprocal compensation rule, which prohibits a LEC from charging reciprocal compensation for traffic that originates on its network. That rule has nothing to do with who is financially responsible for the facilities themselves.

Q. HOW DO YOU RESPOND TO MR. FARRAR'S POINT THAT WHAT IT IS PROPOSING FOR THE CLEC ICA IS THE SAME SYSTEM THE PARTIES HAVE USED FOR THEIR CMRS INTERCONNECTIONS?

A. AT&T witness Pellerin discusses this. Simply put, though, the interconnection arrangement that has traditionally been used for CMRS interconnections does not comply with the interconnection requirements of the 1996 Act. Those requirements call for the point of interconnection to be within the ILEC's network. In the CMRS world, however,

the CMRS provider establishes a POI on the ILEC's network, and the ILEC establishes a POI on the CMRS provider's network. As part of this arrangement, the Parties share financial responsibility for the shared facilities in proportion to the traffic each causes to be placed on those facilities. Parties have arrived at this arrangement voluntarily – and it is perfectly permissible for them to do so – but the arrangement, as I indicated, does not comply with section 251(c)(2) of the 1996 Act. It is ironic, to say the least, that Sprint is trying to force into the CLEC ICA in a section 252 arbitration what has until now been a voluntary CMRS arrangement that does not comply with the substantive requirements of section 251(c). If the Commission were called upon to apply the interconnection rules identically to both ICAs, the result would be that the only POIs for the CMRS interconnections would be those that Sprint CMRS would establish on AT&T's network – no more mirroring AT&T POIs on the Sprint CMRS network – and Sprint would bear the cost of the facilities on its side of the POI under both contracts.

DPL ISSUE III.E(4)

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

Contract Reference: Attachment 3 Sections 2.5.3 (Sprint)
Alternative Section 2.8.6.1.5 (AT&T CLEC)

Q. HOW SHOULD THE COMMISSION RESOLVE THIS ISSUE?

A. The Commission should not reach this issue, because there should be no proportionate use facilities charges in the CLEC ICA, as I just discussed in connection with Issue III.E(3).

Q. WHAT IF THE COMMISSION DISAGREES AND CONCLUDES THAT THE PARTIES TO THE CLEC ICA SHOULD SHARE THE COSTS OF INTERCONNECTION FACILITIES IN PROPORTION TO THEIR USE OF THE FACILITIES? IN THAT SCENARIO, TO WHICH PARTY – AS BETWEEN AT&T AND SPRINT CLEC – SHOULD THIRD PARTY-ORIGINATED TRAFFIC THAT AT&T TRANSITS TO SPRINT CLEC BE ATTRIBUTED?

A. To Sprint CLEC, for the same reasons that Ms. Pellerin has discussed in connection with Issue III.E(2) for the CMRS ICA, and that I discussed in my direct testimony on this issue.

Q. MR. FARRAR OFFERS THREE CONTENTIONS TO THE CONTRARY (DIRECT AT 95). THE FIRST IS WHAT HE REFERS TO AS THE "FCC'S CALLING PARTY PAYS POLICY," AND THAT "SPRINT CLEC DOES NOT 'CAUSE' THE CALL TO OCCUR. IS THAT CORRECT?

A. It is correct that Sprint does not cause the call to occur. Neither, of course, does AT&T, so the "calling party pays" argument leads nowhere. Given that it is actually the third party carrier's customer that causes the call, the question for present purposes becomes: *As between AT&T and Sprint CLEC*, which party is the causer of the cost incurred to carry the call over the facility between AT&T's switch and Sprint CLEC's switch. Plainly, Sprint is. AT&T is a mere middleman – no AT&T end user is even involved in the call. As between AT&T and Sprint, it is Sprint that causes the call to pass over that facility, because Sprint could avoid that use of the facility by interconnecting directly with the originating carrier. And it is Sprint's end user customer that is involved in the call, not AT&T's. Thus, the first point Mr. Farrar raises supports AT&T's position, not Sprint's.

Q. MR. FARRAR'S NEXT POINT (AT 95) IS THAT AT&T IS ALREADY BEING COMPENSATED FOR ITS TRANSIT TRAFFIC COSTS BY THE ORIGINATING CARRIER. IS THAT TRUE?

A. No. It is true that AT&T charges the originating carrier for transiting the call, but those charges do not cover facilities costs. 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. Thus, contrary to Mr. Farrar's assertion, AT&T is not already made whole by the originating carrier. AT&T will be made whole – if at all – only via the shared facility factor, which (if the CLEC ICA includes such a factor, which it should not) will properly attribute that cost to Sprint.

Q. MR. FARRAR'S THIRD POINT (AT 95) IS THAT UNDER AT&T'S APPROACH, AT&T "WILL ESSENTIALLY BE COMPENSATED TWICE." TRUE?

A. Actually, of course this is just another way of making the point I just refuted. There is no double-recovery.

DPL ISSUE III.F

What provisions governing Meet Point Billing are appropriate for the CLEC ICA?

Contract Reference: Attachment 3, Section 7.3.6-7.3.6.5 (Sprint)

Attachment 3 Sections 6.23, 6.25, 6.25.2 – 6.25.6 (AT&T CLEC)

Q. ON WHAT BASIS DOES SPRINT OBJECT TO AT&T'S PROPOSED LANGUAGE ON THIS ISSUE?

A. Interestingly enough, Sprint does not offer even the slightest criticism of AT&T's language. *All* Sprint says (Felton Direct at 56-58) is that the Parties have been operating without problems under the language in the current ICA, so that there is no reason to make a change.

Q. ARE THERE GOOD REASONS TO CHANGE THE CURRENT LANGUAGE?

A. Yes. The most obvious reason is that AT&T's proposed language conforms with current industry standards, a fact that Sprint does not dispute. In addition, the Parties have already agreed, in Attachment 3, section 6.25, to conform to guidelines provided in the Multiple Exchange Carrier Access Billing ("MECAB") document, which has been updated since the inception of the Parties' current ICA. Having agreed to follow industry guidelines, Sprint cannot reasonably refuse to update outdated language to conform with industry guidelines.

DPL ISSUE I.B(4)

What are the appropriate definitions of InterMTA and IntraMTA traffic for the CMRS ICA?

Contract Reference: GTCs Part B Definitions

Q. WHICH PARTY'S PROPOSED DEFINITIONS FOR INTERMTA AND INTRAMTA MORE ACCURATELY REFLECT THE GEOGRAPHIC BOUNDARIES OF A GIVEN MTA?

A. AT&T's proposed language provides for a more accurate determination of whether a call exchanged between Sprint CMRS and AT&T is intraMTA or interMTA. Though the Parties agree that the term InterMTA Traffic refers to calls that originate in one MTA and terminate in a different MTA, AT&T proposes that the cell site to which the mobile end user is connected at the beginning of the call should serve to determine the MTA where the call originates (for mobile-to-land traffic) or terminates (for land-to-mobile) traffic. Sprint proposes that the determination of MTA associated with the mobile end user be based on the geographic location of the POI between the Parties.

Q. WHY IS SPRINT'S PROPOSED USE OF THE POI LOCATION A POORER INDICATOR OF THE CMRS END USER'S LOCATION THAN A CELL SITE?

A. Because the POI is "closer in" the network than the cell site. By this I mean that, per the terms of the ICA,[15] Sprint may only have one POI per LATA. That would mean, because there are 4 LATAS covering the state, and therefore as few as 4 POIs for the state, then there would only be four CMRS "end user locations" within the state. Furthermore, each POI likely supports numerous cell sites, regardless of whether or not those cell sites are within the same MTA as the POI. Each cell site is inarguably located "further out" in the network, and obviously closer to the true location of the CMRS end user making or receiving a call. Sprint's proposed language would inappropriately aggregate calls from numerous cell sites to just the location of the one POI for all those cell sites, potentially altering the MTA determination so that some interMTA calls would be misidentified as intraMTA calls.

Q. DOES MR. BURT ACKNOWLEDGE THAT THE FCC SUPPORTS USE OF CELL SITES FOR DETERMINING THE LOCATION OF A CMRS END USER?

A. Yes, he grudgingly acknowledges (Direct at 48) that "the FCC allows the initial cell site to be used to determine the location of a mobile end user at the beginning of a call." But he completely ignores the fact that it is the FCC's preferred method for identifying such calls. In fact, the FCC concluded that "the location of the initial cell cite when a call

[15] CMRS Attachment 3, section 2.3.2: "The Parties will establish reciprocal connectivity to at least one AT&T 9-STATE Tandem selected by Sprint within each LATA that Sprint provides service."

begins *shall be used as the determinant* of the geographic location of the mobile customer."[16]

Q. MR. BURT, ON PAGE 48, STATES THAT SPRINT'S PROPOSAL FOR USING THE POI AS THE LOCATION OF THE CMRS END USER IS "ABSOLUTELY" CONSISTENT WITH FCC GUIDANCE. DO YOU AGREE?

A. No, I do not. Although the FCC certainly acknowledged the potential difficulty "to determine, in real time, which cell site a mobile customer is connected to,"[17] it still prescribed cell site data, even when gathered via traffic studies and samples, as preferable to any other means to identify the location of a CMRS end user. Only after concluding that cell site data is appropriate did the FCC indicate that the POI could be used as an alternative to determine the location of the mobile caller or called party.[18]

Q. MR. BURT ASSERTS (AT 49) THAT THERE IS "NO NEED FOR THE PARTIES TO EXPEND COST AND EFFORT ON COMPLEX, NON-PRODUCTIVE TRAFFIC STUDIES" IN ORDER TO DETERMINE THE LOCATION OF CMRS END USERS AT THE BEGINNING OF A CALL. DOES SPRINT CMRS POSSESS INFORMATION WHICH WOULD BE HELPFUL IN DETERMINING WHETHER MOBILE-TO-LAND CALLS ARE INTRAMTA OR INTERMTA?

A. Though that question is better asked of Sprint, based upon a filing in another proceeding by Sprint Communications Company L.P., I believe that Sprint may possess and actively monitor such information for internal purposes.

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16 *Local Competition Order*, paragraph 1044 (emphasis added).

17 *Id.*, paragraph 1044.

18 *Id.*, paragraph 1044.

Q. ON WHAT DO YOU BASE THIS BELIEF?

A. In 2008, Sprint Communications Company L.P. ("Sprint") filed a complaint in Kentucky against Brandenburg Telephone Company, alleging that Brandenburg was improperly billing Sprint for CMRS traffic terminated to Brandenburg.[19] In that proceeding, Sprint witness Julie A. Walker provided testimony that describes the dispute over assigning jurisdiction to traveling wireless calls: "In the1990's, Sprint began noticing discrepancies between the jurisdictional split (interstate vs. intrastate minutes) as reflected on LEC bills as compared to *what Sprint was measuring internally.*"[20] (Emphasis added). That strongly suggests that Sprint is able to determine the originating jurisdiction for its mobile-to-land traffic based upon internal measurements.

Q. IS THERE ANY OTHER INDICATION THAT SPRINT TRACKS CELL SITE INFORMATION FOR CMRS CALLS?

A. Yes. Sprint witness Farrar, on page 52 of his Direct Testimony, states "Sprint has conducted detailed traffic studies which accurately determine the physical cell-site origination point of each wireless call." As Sprint is *already collecting* this information for its own purposes, it is plainly disingenuous to claim that collecting it to properly jurisdictionalize CMRS traffic, as AT&T proposes, is somehow "non-productive."

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[19] *Complaint of Sprint Communications Company LP Against Brandenburg Telephone Company and Request for Expedited Relief.* Kentucky Public Service Commission Case No. 2008-00135.

[20] Direct Testimony of Julie A. Walker On Behalf of Sprint Communications Company L.P., Public Version, in *Complaint of Sprint Communications Company LP Against Brandenburg Telephone Company and Request for Expedited Relief.* Kentucky Public Service Commission Case No. 2008-00135. July 21, 2009.

Q. WHAT SHOULD THE COMMISSION DO?

A. The Commission should approve AT&T's proposed definitions for InterMTA and IntraMTA traffic as they conform to the FCC's conclusion that the location of mobile end users is best determined by the location of the initial cell site when a call begins.

DPL ISSUE I.B(5)

Should the CMRS ICA include AT&T's proposed definitions of "Originating Landline to CMRS Switched Access Traffic" and "Terminating InterMTA Traffic"?

Contract Reference: GTCs Part B Definitions

Q. MR. BURT (AT 50) ATTACKS AT&T'S PROPOSED DEFINITIONS AS HAVING NO BASIS "IN LAW OR THE INTERCONNECTION RULES, OR SOUND PUBLIC POLICY." IS THAT A VALID CRITICISM?

A. No, it is not. In fact, I do not believe that Mr. Burt even believes that there is anything so untoward about AT&T's definitions. What Sprint really objects to – and this is the subject of other issues – is the compensation arrangements that AT&T proposes for Originating Landline to CMRS Switched Access Traffic and Terminating InterMTA Traffic.

Q. PLEASE EXPLAIN.

A, AT&T's proposed definitions indisputably identify discrete types of InterMTA traffic that AT&T and Sprint CMRS will exchange. Mr. Burt does not deny that these specific traffic types exist. Nor does he actually have any quarrel with the way AT&T has defined these terms; if he does, he certainly has not said what it is. Rather, Mr. Burt's concern, and the focus of his testimony on this issue, is the compensation that applies to

InterMTA traffic. I will discuss compensation for InterMTA traffic under Issues III.A.3(1) and III.A.3(2).

Q. WHY SHOULD AT&T'S PROPOSED DEFINITIONS BE ADOPTED.

A. Because the definitions are accurate and because these categories of traffic need to be defined so that they can be made subject to the appropriate compensation. As I will discuss under Issues III.A.3(1) and III.A.3(2), land-to-mobile calls and mobile-to-land calls that cross MTA boundaries are subject to applicable switched access charges. AT&T proposes the above definitions in order to specifically determine what types of calls are exchanged between AT&T and Sprint CMRS. By trying to preclude definitions describing legitimate types of traffic exchanged between the Parties from the ICA, Sprint CMRS is seeking to insert vagueness into the ICA where none should exist in an attempt to avoid its obligations under the switched access regime. In the land-to-mobile direction, the lack of clear terms acknowledging that locally-dialed mobile traffic may be terminated beyond the local MTA would allow Sprint CMRS to 1) receive reciprocal compensation for that locally-dialed land-to-mobile calls (to which Sprint is plainly not entitled); and 2) relieve Sprint CMRS from its obligation to pay AT&T originating switched access on that interMTA call.

Similarly, without clear terms defining InterMTA traffic in the mobile-to-land direction, Sprint CMRS would simply pass *all* Sprint CMRS-carried traffic – both local and interexchange – over the local interconnection trunks, and would thus bypass the switched access charges that properly apply to those calls.

DPL ISSUE III.A.3(1)

Is mobile-to-land InterMTA traffic subject to tariffed terminating access charges payable by Sprint to AT&T?

Contract Reference: Attachment 3, Sections 6.4-6.4.4, Pricing Sheet (Sprint CMRS)

Sections 6.4 - 6.6.3 Pricing Sheet 4,5, GTC - Part B definitions (AT&T CMRS)

Q. SPRINT WITNESS FARRAR STATES (DIRECT AT 50) THAT "AT&T CANNOT CITE ANY EXISTING FCC RULE FOR SUPPORT" OF ITS PROPOSED APPLICATION OF SWITCHED ACCESS FOR INTERMTA TRAFFIC. IS THAT CORRECT?

A. No, it is not. The ultimate source of Sprint's obligation to pay access charges on mobile-to-land interMTA traffic is 47 C.F.R. § 69.5(b), which provides, "Carrier's carrier charges shall be computed and assessed upon all interexchange carriers that use local exchange switching facilities for the provision of interstate or foreign telecommunications services."[21] "Interexchange carrier" is not a defined term, but "interexchange" is; it simply means "services or facilities provided as an integral part of interstate or foreign telecommunications that is not described as 'access service' for purposes of this part."[22] "Access service," in turn, means "services and facilities provided for the origination or termination of any interstate or foreign telecommunication."[23] When Sprint CMRS carries an interstate interMTA call that originates on its network over an exchange (*e.g.*, MTA for CMRS traffic) boundary and then hands the call off to AT&T for termination to AT&T's end-user customer, AT&T is providing "access service" (because it is providing service for the termination of an interstate telecommunication) and Sprint is acting as an

[21] Access charges are the subject of Part 69 of the FCC's rules.
[22] 47 C.F.R. § 69.2(s).
[23] 47 C.F.R. § 69.2(b).

interexchange carrier for purposes of Rule 69.5, because it has used AT&T's local exchange switching facilities for the provision of an interstate communication. For an *intra*state interMTA call, the same principles apply, but pursuant to state law.

There is clear FCC guidance that switched access charges apply to this type of intercarrier traffic. As I discussed in my direct testimony, the FCC's *Local Competition Order* addresses how calls are jurisdictionalized (local, intrastate, interstate) and the intercarrier compensation charges that apply to each category. Paragraph 1036 (emphasis added) addresses application of reciprocal compensation for intraMTA traffic: "[T]raffic to or from a CMRS network that originates and terminates within the same MTA is subject to transport and termination rates under section 251(b)(5), *rather than interstate and intrastate access charges*" – obviously signaling that if the call does not originate and terminate within the same MTA, it is subject to interstate and intrastate access charges. With regard to the rating of mobile traffic, the FCC stated, "[T]he geographic locations of the calling party and the called party determine whether a particular call should be compensated under transport and termination rates established by one state or another, or under interstate or intrastate access charges."[24] And the FCC also stated, "[T]o the extent that a cellular operator does provide interexchange service through switching facilities provided by a telephone company, its obligation to pay carrier's carrier (*i.e.*, access) charges is defined by § 69.5 of our rules."[25] Consistent with this FCC conclusion in its initial order implementing the 1996 Act, Sprint must pay AT&T

[24] *Local Competition Order*, paragraph 1044 (emphasis added).
[25] *Id.*, paragraph 1043, n. 2485.

access charges – carriers' carrier charges – when it acts as an interexchange carrier (by transporting a call from one exchange/MTA to another) and then hands the call off to AT&T for termination to AT&T's local customer.

Q. MR. FARRAR MAKES THE FOLLOWING POINT (DIRECT AT 56): "GENERALLY, SPRINT-ORIGINATED TRAFFIC IS DELIVERED TO AT&T OVER IXC TRUNKS. THEREFORE, THE PERCENT OF INTERMTA TRAFFIC DELIVERED OVER LOCAL INTERCONNECTION TRUNKS IS VERY SMALL." WHAT BEARING DOES THAT HAVE ON THE RESOLUTION OF THIS ISSUE?

A. I believe it supports AT&T's position. Access charges are paid on the traffic that is delivered over IXC trunks – and I take it from Mr. Farrar's testimony that Sprint is not proposing to change that. If traffic that is in all pertinent respects identical to the traffic that is delivered over IXC trunks happens to be delivered over local interconnection trunks, it should be subject to the same compensation, whether or not the volume is modest.

Q. WHAT IF MR. FARRAR WERE TO SAY THAT THE TRAFFIC IS NOT IN ALL PERTINENT REPECTS IDENTICAL, BECAUSE THE TRAFFIC THAT IS DELIVERED OVER IXC TRUNKS IS DELIVERED BY AN IXC RATHER THAN BY SPRINT?

A. I would say that Mr. Farrar is relying on a distinction that does not exist. As I indicated above, the FCC's Part 69 Rules, which govern access charges, do not define "interexchange carrier." Based on the FCC's definition of "interexchange," however – not to mention the FCC's discussion of CMRS providers' liability for access charges in the *Local Competition Order* – a carrier that provides services, other than access services, as an integral part of interstate or foreign telecommunications is an interexchange carrier

for purposes of access charges. And that includes Sprint in the case of the calls at issue here.

Q. MR. FARRAR CONTENDS (DIRECT AT 52) THAT THE ONLY FCC RULE THAT "EXPLICITY APPLIES TO THIS TRAFFIC" IS 47 C.F. R. § 20.11(b), WHICH HE THEN GOES ON TO DISCUSS. IS MR. FARRAR CORRECT THAT RULE 20.11(b) IS THE ONLY FCC RULE THAT APPLIES HERE?

A. No. In the first place, Rule 20.11(b) does not apply here. As Ms. Pellerin has explained in her discussion of Issue I.A(1), the FCC's Part 20 Rules should play no role in the Commission's resolution of the issues in this arbitration. Under the 1996 Act, the FCC rules that the Commission is supposed to look to are the rules the FCC promulgated to implement the 1996 Act (the Part 51 Rules) – not the Part 20 Rules, which the FCC promulgated under its authority to regulate CMRS service.

Q. AND YET, YOU RELY ON THE FCC'S PART 69 ACCESS RULES, DON'T YOU?

A. Actually, no. What I said was that the *ultimate source* of Sprint's obligation to pay access charges is the Part 69 Rules. What AT&T is relying on for the proposition that the interconnection agreement should require Sprint to pay those Part 69 access charges is the 1996 Act itself, and the FCC pronouncements about jurisdictionalizing traffic in its *Local Competition Order* implementing the 1996 Act.

Q. WHEN YOU SAY AT&T IS RELYING ON THE 1996 ACT ITSELF, WHAT PROVISION IN THE ACT ARE YOU REFERRING TO?

A. Section 251(g), which provides that the switched access regime continues to apply as it did before the advent of local competition:

> **Continued Enforcement of Exchange Access and Interconnection Requirements**: On and after the date of enactment of the Telecommunications Act of 1996, each local exchange carrier, to the

> extent that it provides wireline services, shall provide exchange access, information access, and exchange services for such access to interexchange carriers and information service providers in accordance with the same equal access and nondiscriminatory interconnection restrictions and obligations (including receipt of compensation) that apply to such carrier on the date immediately preceding the date of enactment of the Telecommunications Act of 1996 under any court order, consent decree, or regulation, order, or policy of the Commission, until such restrictions and obligations are explicitly superseded by regulations prescribed by the Commission after such date of enactment. During the period beginning on such date of enactment and until such restrictions and obligations are so superseded, such restrictions and obligations shall be enforceable in the same manner as regulations of the Commission.

Q, EVEN THOUGH AT&T MAINTAINS THAT FCC RULE 20.11(b) DOES NOT APPLY HERE, CAN YOU ASSUME FOR THE SAKE OF DISCUSSION THAT IT DOES.

A. Yes, I can make that assumption just for the sake of argument.

Q. ASSSUMING THAT RULE 20.11(b) DOES APPLY, THEN, IS MR. FARRAR CORRECT THAT IT IS THE ONLY FCC RULE THAT "EXPLICITY APPLIES TO" MOBILE-TO-LAND INTERMTA TRAFFIC?

A. Absolutely not. The rule makes no reference to interMTA traffic at all, so it certainly does not "explicitly apply" here. Furthermore, nothing in the rule remotely suggests that it somehow overrides the principles of intercarrier compensation I have discussed. On the contrary, Rule 20.11(b) was promulgated by the FCC in 1994, two years before the 1996 Act was even enacted. And in its 1996 *Local Competition Order*, the FCC, while taking care to clarify that it was not saying that its other sources of authority to regulate CMRS interconnection had been repealed, made very clear that the 1996 Act had taken the ascendancy:

> [W]e may apply sections 251 and 252 to LEC-CMRS interconnection. By opting to proceed under sections 251 and 252, we are not finding that section 332 jurisdiction over [CMRS] interconnection has been repealed by implication, or rejecting it as an alternative basis for interconnection.

> . . . . We . . . believe that sections 251 and 252 will foster regulatory parity in that these provisions establish a uniform regulatory scheme governing interconnection between incumbent LECs and all requesting carriers, including CMRS providers. Thus, we believe that sections 251 and 252 will facilitate consistent resolution of interconnection issues for CMRS providers and other carriers requesting interconnection.[26]

When Mr. Farrar says that Rule 20.11(b) is uniquely applicable here, he is advocating a view that is diametrically opposed to the FCC's view. The only sense in which Rule 20.11 is uniquely explicit is that it has to do with CMRS interconnection, so what Mr. Farrar is saying is that the Commission should apply the one special rule that pertains to CMRS interconnection. The FCC's aim, in sharp contrast, was to ensure a "consistent resolution of interconnection issues for CMRS providers and other carriers requesting interconnection." As applied here, that means that the usual principles governing access charges – the principles set forth in the FCC's Part 69 Rules and preserved by section 251(g) of the 1996 Act – should be given effect in the CMRS ICA.

Q. IF THE COMMISSION DID TAKE RULE 20.11(B) INTO ACCOUNT, HOW WOULD THAT AFFECT THE RESOLUTION OF THIS ISSUE?

A. I do not believe it would. As Mr. Farrar mentions, the rule states "Local exchange carriers and commercial mobile radio service providers shall comply with principles of mutual compensation." Currently, the principles of mutual compensation contemplate the reciprocal compensation regime for local, intra-exchange – or as used for wireless – intraMTA traffic, and the switched access regime for interexchange – or in the case of wireless traffic – InterMTA traffic. Mr. Farrar is making an unsupported and incorrect

[26] *Id.*, paragraphs 1023-24.

assumption that the phrase "mutual compensation" as used in this rule means the same as "local compensation."

Q. HOW SHOULD THE COMMISSION RESOLVE ISSUE III.A.3(1)?

A. It should rule that mobile-to-land interMTA traffic is subject to terminating access charges payable by Sprint to AT&T.

Q. YOU DISCUSSED AT&T'S PROPOSED USE OF JURISDICTION INFORMATION PARAMETER (JIP) DATA TO DETERMINE THE LOCATION OF A CMRS END USER AT THE BEGINNING OF A CALL. MR. FARRAR ARGUES THAT JIP SHOULD NOT BE USED BECAUSE OF THE POTENTIAL FOR SOME INACCURACY. DOES AT&T'S PROPOSED LANGUAGE TAKE MR. FARRAR'S CONCERN INTO ACCOUNT?

A. Yes. As I described in my direct testimony, in the absence of complete transparency from Sprint CMRS regarding the actual location of its wireless customers at the beginning of a call, AT&T must rely upon the best information available to it, which is JIP; if Sprint CMRS does not supply JIP, AT&T will use the next best available information. If Sprint provides information that is more accurate than JIP, AT&T, after validating as accurate, will be happy to use that information.

Q. IS JIP THE BEST CURRENT METHOD FOR JURISDICTIONALIZING WIRELESS CALLS?

A. Yes, at least in the absence of more detailed information, such as actual cell site data. Sprint's testimony in the Brandenburg Kentucky case acknowledged, using a Kentucky example, that JIP data may not always accurately identify the jurisdiction of a particular

call.[27] Yet, Sprint still urged use of JIP in that proceeding, stating JIP "is the industry-recommended solution for carriers to fix their traveling wireless jurisdiction flaws."[28]

AT&T agrees that JIP is the best currently available method for applying wireless call jurisdiction, at least in the absence of specific cell site data (which AT&T does not have access to, and which Sprint CMRS has not provided). The FCC has directed that carriers may use "traffic studies and samples" to calculate compensation, and JIP studies can be adjusted for any outlier data to contemplate the instances where JIP does not match the wireless end user's location, assuming the wireless carrier provides the information necessary to make such adjustments.

Q. MR. FARRAR ASSERTS (DIRECT AT 66) THAT SPRINT DID NOT USE JIP TO DETERMINE APPROPRIATE BILLING IN THE KENTUCKY PROCEEDING. DID SPRINT IN FACT REPRESENT IN THAT PROCEEDING THAT JIP WAS USED AND WAS APPROPRIATE?

A. Yes. Although I cannot know what data Sprint used in its internal operations, Sprint definitely advocated that Brandenburg use JIP for purposes of jurisdictionalizing CMRS calls. If anything, Mr. Farrar is mincing words; even if Sprint has some other data that is "similar to the JIP"[29] but isn't JIP, Sprint clearly advocated the use of JIP. Sprint's witness Ms. Walker advocates use of JIP in her Direct Testimony:

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[27] Direct Testimony of Julie A. Walker On Behalf of Sprint Communications Company L.P., Public Version, in *Complaint of Sprint Communications Company LP Against Brandenburg Telephone Company and Request for Expedited Relief.* Kentucky Public Service Commission Case No. 2008-00135. July 21, 2009. ("Sprint Walker Brandenburg Direct Testimony")

[28] *Id.* at 30.

[29] Farrar Direct at 64.

Q. Does Sprint transmit call detail information that would allow Brandenburg to determine the originating jurisdiction for a wireless-originated call?
A. Yes. The Alliance for Telecommunications Industry Solutions ("ATIS") Network Interconnection Interoperability Forum ("NIIF"), has adopted an industry standard that the Jurisdictional Information Parameter ("JIP") be populated by wireless carriers with the NPA-NXX that represents the location of the wireless switch, where technically feasible. Sprint's wireless networks do populate the JIP field pursuant to this industry standard. If Brandenburg were to look at the JIP field it would be able to identify where the call was made from, which it cannot do by looking at the calling party number."[30]

The Kentucky Commission was persuaded by Sprint's advocacy. In its Order dated November 6, 2009, the Commission concluded "that the use of Sprint's JIP field and the [Percentage of Interstate Use] is the most accurate method by which to assign the jurisdiction of a wireless call."[31]

Q. MR. FARRAR ATTEMPTS TO DISCREDIT THE KENTUCKY PROCEEDING AS IRRELEVANT TO THIS PROCEEDING (DIRECT AT 67). DO YOU AGREE?

A. No. The portions of the Kentucky proceeding I have discussed, as well as the overall issue of determining the appropriate location of a CMRS end user at the beginning of a call, are plainly relevant to how the Parties to this proceeding should determine the location of CMRS end users. The specific data that Sprint advocated for use by Brandenburg – JIP – is exactly what Sprint CMRS opposes here. The fact that the Kentucky dispute involved billing of interstate versus intrastate traffic, rather than billing

[30] Sprint Walker Brandenburg Direct Testimony at 16 (footnote omitted).
[31] Order at 11, *Complaint of Sprint Communications Company LP Against Brandenburg Telephone Company and Request for Expedited Relief.* Kentucky Public Service Commission Case No. 2008-00135, November 6, 2009.

for interMTA traffic, has no bearing on viability and legitimacy of using JIP data to identify the location of the CMRS end user at the beginning of a call.

Q. MR. FARRAR DESCRIBES IN DETAIL (DIRECT AT 57-62) A SPRINT TRAFFIC STUDY THAT YIELDS CERTAIN (CONFIDENTIAL) "SPRINT-ORIGINATED MOBILE-TO-LAND INTERMTA FACTORS." WHAT DOES THAT STUDY DEMONSTRATE THAT IS RELEVANT TO THE ISSUES THE COMMISSION MUST DECIDE?

A. I have no idea. One would assume that the ICA calls for a recitation of such factors, and that the Parties disagree about what the factors should be. That is not the case, however. There is a disagreement about what the land-to-mobile factor should be (Issue III.A.3(3)), but I am aware of no debate about a mobile-to-land factor, and so am puzzled by Mr. Farrar's extended discussion.

DPL ISSUE III.A.3(2)

Which party should pay usage charges to the other on land-to-mobile InterMTA traffic and at what rate?

Contract Reference: Attachment 3, Sections 6.4-6.4.4, Pricing Sheet (Sprint CMRS)

Sections 6.4 - 6.6.3 Pricing Sheet 4,5, GTC - Part B definitions (AT&T CMRS)

DPL ISSUE III.A.3(3)

What is the appropriate factor to represent land-to-mobile InterMTA traffic?

Contract Reference: Pricing Sheet 4, 5 (AT&T CMRS)

Q. DO YOU HAVE AN OVERARCHING RESPONSE TO SPRINT'S POSITION ON ISSUE III.A.3(2)?

A. Yes. Sprint's position that AT&T should pay Sprint for terminating interMTA land-to-mobile calls is nonsensical. These calls indisputably are not subject to reciprocal compensation, because they are interMTA. And AT&T cannot conceivably be obliged to

pay access charges on the calls, because AT&T is not providing interexchange service and Sprint is not providing access service.

Sprint has it exactly backwards. As I discussed in my direct testimony, it is Sprint that must pay access charges to AT&T on interMTA land-to-mobile calls. In fact, I strongly suspect that Sprint is making its untenable proposal that AT&T pay Sprint in the hope that it may induce the Commission to compromise by having neither Party pay the other, which would be a huge victory for Sprint. It would also be an error.

Q. MR. FARRAR CONTENDS, THOUGH, THAT 47 C.F.R. PART 20 SUPPORTS SPRINT'S POSITION, DOESN'T HE?

A. Yes, and that contention fails for the same reasons I discussed under the preceding issue. Mr. Farrar also asserts – in support of his argument that Sprint should not be liable for access charges on this traffic –that Sprint CMRS is not an IXC and is not acting as an IXC. But Mr. Farrar does not deny that Sprint CMRS transports these calls from one MTA to another, and when Sprint does that, it is acting as an IXC, as I have also discussed, and is therefore liable to pay switched access charges under the FCC's Part 69 Rules, section 251(g) of the 1996 Act, and the FCC's pronouncements in the *Local Competition Order*.

Q. MR. FARRAR COMPLAINS (AT 69) THAT AT&T IS IGNORING THE "CALLING PARTY'S NETWORK PAYS" POLICY BY SEEKING ACCESS CHARGES FOR INTERMTA CALLS. IS HE CORRECT?

A. No. The "Calling Party's Network Pays policy" applies to local compensation. The switched access regime that applies to InterMTA traffic is not consistent with that policy, nor has it ever been. On a typical landline long distance call, the Calling Party's Network pays nothing; it is paid by the IXC. Likewise here, on a land-to-mobile interMTA call,

the Calling Party's Network appropriately pays nothing; it is paid access charges by the party acting as an IXC – Sprint.

Q. STARTING ON PAGE 70, MR. FARRAR DISCUSSES AT SOME LENGTH HIS CONTENTION THAT THE ORIGINATING CARRIER IS FINANCIALLY RESPONSIBLE FOR DELIVERING ITS ORIGINATING TRAFFIC TO THE TERMINATING CARRIER. BEFORE YOU ADDRESS THE PARTICULARS OF MR. FARRAR'S DISCUSSION, CAN YOU COMMENT ON HIS CONTENTION AT A GENERAL LEVEL?

A. Yes. Mr. Farrar is simply wrong and, again, the familiar treatment of interexchange (*i.e.*, non-local) traffic in the landline context demonstrates that. When an intrastate or interstate interexchange call originates on AT&T's local network, AT&T is *not* financially responsible for delivering it to the terminating carrier – the IXC is. Again, the originating carrier bears no financial responsibility for the call; on the contrary, it *receives* originating access charges. Mr. Farrar is proposing to turn the access regime on its head for Sprint's benefit, based on the notion that 47 C.F.R. § 20.11 somehow overrides for CMRS providers the rules that apply to all other carriers. If Mr. Farrar were correct, cost-based reciprocal compensation rates would not apply to CMRS interconnection; instead, reciprocal compensation as between CMRS providers and ILECs would be at "reasonable" rates as mandated by Rule 20.11. I do not think Mr. Farrar is prepared to go that far – and if he is, he merely further exposes the failings in Sprint's position.

In any event, none of the authorities Mr. Farrar cites in support of his contention that the originating carrier is financially responsible for delivering its originating traffic to

the terminating carrier is pertinent here. I will leave most of the discussion for the briefs, but will address Mr. Farrar's authorities briefly.

Q. ON PAGE 71, MR. FARRAR HOLDS UP AN ORDER FROM THE DISTRICT COURT FOR THE EASTERN DISTRICT OF KENTUCKY AS AN EXAMPLE OF WHERE "THE TERMINATING CARRIER MAY NOT BE HELD RESPONSIBLE FOR THE ORIGINATING CARRIER'S COSTS." IS THIS DECISION RELEVANT TO THE ISSUE AT HAND?

A. No. The decision, and the excerpt Mr. Farrar relies upon, addresses payment obligations for traffic that originates and terminates *within* the same MTA, not InterMTA traffic.

Q. ON PAGES 71-73, MR. FARRAR ATTEMPTS TO MAKE A CASE THAT THE FCC RULES REQUIRE THE ORIGINATING CARRIER TO BE FINANCIALLY RESPONSBLE FOR DELIVERING ITS TRAFFIC TO A TERMINATING CARRIER IN ALL CASES. IS HE SUCCESSFUL?

A. No. Each rule and provision Mr. Farrar cites involve compensation for local interconnection, not carrier access services. Indeed, the FCC Rules to which Mr. Farrar cites – 47 C.F.R. §§ 51.703 and 51.709 – appear in Subpart H of the FCC's Part 51 Rules, entitled, "Reciprocal Compensation for Transport and Termination of Local Telecommunications Traffic." Similarly, the FCC discussion in the *Local Competition Order* to which Mr. Farrar cites concerns reciprocal compensation – not interexchange traffic – as does the FCC decision Mr. Farrar cites at page 73. None of this has the remotest bearing on the issue presented here, because that issue concerns compensation for interMTA traffic, not intraMTA traffic. Mr. Farrar does not – nor can he – provide any guidance from the FCC or otherwise, that compensation for interexchange calls adheres to the Calling Party's Network Pays policy. That is simply because interexchange calls are subject to the switched access regime, not the reciprocal compensation regime on which Mr. Farrar has erroneously focused.

Q. HOW DO YOU RESPOND TO MR. FARRAR'S CITATION (DIRECT AT 75-76) TO TESTIMONY OFFERED BY CINGULAR WIRELESS?

A Mr. Farrar apparently regards his citations to the Cingular Wireless testimony as some sort of "gotcha" that undermines my testimony here. It isn't, and it doesn't. The Commission is going to have to decide this issue based on the merits of the Parties' arguments, and I am confident it will not award Sprint points for unearthing the unremarkable fact that Cingular – before its merger with AT&T - has advocated the position that Sprint asserts here.

Q. WITH REGARD TO THE ACTUAL INTERMTA FACTOR APPLICABLE TO THE PARTIES' TRAFFIC, WHAT DOES AT&T PROPOSE?

A. Unless and until there is an auditable Sprint CMRS traffic study regarding the volume of InterMTA traffic it receives directly from AT&T, AT&T's proposed InterMTA factor of 6% should be used. This figure is based upon an audit AT&T performed on a major wireless carrier in 2005. AT&T is, however, willing to accept a different or lower percentage, if and only if Sprint CMRS can support its percentage with an appropriate and complete study of its own. Despite relaying to Sprint CMRS AT&T's willingness to mutually determine an appropriate InterMTA factor, and because it is Sprint CMRS that possesses the data on the location of its end users, the Parties have not been able to come to agreement simply because Sprint CMRS has not provided any information to AT&T.

Q. DOES THIS CONCLUDE YOUR REBUTTAL TESTIMONY?

A. Yes.

BEFORE THE PUBLIC UTILITY COMMISSION OF OREGON

IN THE MATTER OF SPRINT COMMUNICATIONS COMPANY L.P. PETITION FOR ARBITRATION OF AN INTERCONNECTION AGREEMENT WITH CENTURYTEL OF OREGON, INC.	)))))	**ARB 830**

INITIAL BRIEF OF SPRINT COMMUNICATIONS COMPANY L.P.

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Issue 11: What are the appropriate terms for reciprocal compensation under the bill and keep arrangement agreed to by the Parties?

Related Agreement Provisions: Article IV Sections 4.4.3.1, Article VII Sections I.A and I.B

This previously disputed item was resolved by the Parties through successful negotiations.

Issue 12: Should terms be included that provide for the opportunity of refunds and the ability to pursue dispute resolution if appropriate remedies are not agreed to when performance is not adequate?

Related Agreement Provisions: Article VI Section 5.0.

This previously disputed item was resolved by the Parties through successful negotiations.

Issue 13: What are the appropriate rates for transit service?

Related Agreement Provisions: Article VII Section I.B. and I.C

Section 251(a)(1) of the Act requires all telecommunications carriers to interconnect with other carriers either directly or indirectly. Each LEC has the choice to interconnect directly or indirectly with any other LEC.[94] Indirect interconnection is obtainable only if transiting is available.[95] Generally, only the incumbent LEC has ubiquitous interconnections throughout a specific geographic area to enable widespread indirect interconnection.[96] If the incumbent LEC is not obligated to provide transit service, Section 251(a)(1) of the Act has little meaning. Further, if the incumbent LEC is free to charge whatever rate it wants, such as a self-defined "market rate" or another rate that is

[94] Sprint/6, Farrar/9.

[95] Sprint/6, Farrar/9, *See also* Sprint/1, Burt/49.

[96] Sprint/6, Farrar/9.

not based on the forward-looking economic cost of providing that service, other carriers are at a distinct competitive disadvantage when compared to the incumbent LEC, which is able to provide transit services to itself at economic costs.[97]

The FCC has noted the critical importance of transit service. Specifically, the FCC stated:

> [T]he record suggests that the availability of transit service is increasingly critical to establishing indirect interconnection – a form of interconnection explicitly recognized and supported by the Act. It is evident that competitive LECs, CMRS carriers, and rural LECs often rely on transit service from the incumbent LECs to facilitate indirect interconnection with each other. Without the continued availability of transit service, carriers that are indirectly interconnected may have no efficient means by which to route traffic between their respective networks.[98]

At least seventeen (17) state commissions have explicitly concluded that ILECs such as CenturyTel must provide transiting services: Alabama,[99] Arkansas,[100] California,[101]

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[97] Sprint/6, Farrar/9-10.

[98] *In the Matter of Developing a Unified Intercarrier Compensation Regime*; CC Docket No. 01-92; Further Notice of Proposed Rulemaking; 20 FCC Rcd. 4685, P 125; Released March 3, 2005.

[99] *Petition for Arbitration of the Interconnection Agreement Between BellSouth Telecommunications, Inc. and Intermedia Communications Inc. Pursuant to Section 252(b) of the Telecommunications Act of 1996*; Docket No. 99-00948; Alabama Public Service Commission; 2000 Ala. PUC LEXIS 1924; Order dated July 11, 2000; page 122. Available at: http://www.lexis.com/research/xlink?app=00075&view=full&searchtype=get&search=2000+Ala.+PUC+LEXIS+1924

[100] *In the matter of Telcove Investment, LLC's Petition for Arbitration Pursuant to Section 252(b) of the Communications Act of 1934, as amended by the Telecommunications Act of 1996, and Applicable State Laws for Rates, Terms, and Conditions of Interconnection with Southwestern Bell Telephone, L.P. d/b/a SBC Arkansas*; Arkansas Public Service Commission Docket No. 04-167-U; Order No. 10; page 58; September 15, 2005. Available at: http://www.lexis.com/research/xlink?app=00075&view=full&searchtype=get&search=2005+Ark.+PUC+LEXIS+338

[101] *Application by Pacific Bell Telephone Company d/b/a SBC California (U 1001 C) for Arbitration of an Interconnection Agreement with MCImetro Access Transmission Services LLC (U 5253 C) Pursuant to Section 252(b) of the Telecommunications Act of 1996*; California Public Utilities Commission Decision 06-08-029; Application 05-05-027; page 9; August 24, 2006, Dated. Available at: http://www.lexis.com/research/xlink?app=00075&view=full&searchtype=get&search=2006+Cal.+PUC+LEXIS+371

Connecticut,[102] Florida,[103] Illinois,[104] Indiana,[105] Kansas,[106] Kentucky,[107] Massachusetts,[108] Michigan,[109] Missouri,[110] Nebraska,[111] North Carolina,[112] Ohio,[113] Oklahoma,[114] and Texas.[115]

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[102] *Petition of Cox Connecticut Telecom, L.L.C. for Investigation of the Southern New England Telephone Company's Transit Service Cost Study and Rates*; State of Connecticut, Department of Public Utility Control Docket No. 02-01-23; Decision; dated January 15, 2003. Available at: http://www.lexis.com/research/xlink?app=00075&view=full&searchtype=get&search=2003+Conn.+PUC+LEXIS+11

[103] *Joint petition by TDS Telecom d/b/a/ TDS Telecom/Quincy Telephone, et. al. objecting to and requesting suspension and cancellation of proposed transit traffic service tariff filed by BellSouth Telecommunications, Inc.*, Order on BellSouth Telecommunications, Inc.'s Transit Traffic Service Tariff, Florida Public Service Commission, Order No. PSC-06-0776-FOF-TP, Docket Nos. 05-0119-TP and 05-0125-TP, issued September 18, 2006, p. 17. Available at: http://www.lexis.com/research/xlink?app=00075&view=full&searchtype=get&search=2006+Fla.+PUC+LEXIS+543

[104] Level 3 Communications, L.L.C Petition for Arbitration Pursuant to Section 252(b) of the Communications Act of 1934, as amended by the Telecommunications Act of 1996, and the Applicable State Laws for Rates, Terms, and Conditions of Interconnection with Illinois Bell Telephone Company (SBC Illinois).; Illinois Commerce Commission Docket No. 04-0428; Administrative Law Judge's Proposed Arbitration Decision; dated December 23, 2004. This docket was subsequently settled without a final commission order. Available at: http://www.icc.illinois.gov/downloads/public/edocket/132520.pdf

[105] *In the Matter of Level 3 Communications, LLC's Petition for Arbitration Pursuant to Section 252(b) of the Communications Act of 1934, as Amended by the Telecommunications Act of 1996, and Applicable State Laws for Rates, Terms, and Conditions of Interconnection with Indiana Bell Telephone Company d/b/a SBC Indiana*; Indiana Utility Regulatory Commission Cause No. 42663 INT-01; page 12; approved December 22, 2004. Vacated at request of parties who had negotiated 13-state ICA, March 16, 2005. Available at: http://www.lexis.com/research/xlink?app=00075&view=full&searchtype=get&search=2004+Ind.+PUC+LEXIS+465

[106] *In the Matter of arbitration Between Level 3 Communications, LLC and SBC Communications, Inc., Pursuant to Section 252(b) of the Communications Act of 1934, as Amended by the Telecommunications Act of 1996, for Rates, Terms, and Conditions of Interconnection*; Kansas Corporation Commission Docket No. 04-L3CT-1046-ARB; page 283; February 4, 2005, Dated. Available at: http://www.lexis.com/research/xlink?app=00075&view=full&searchtype=get&search=2005+Kan.+PUC+LEXIS+166

[107] *Joint Petition for Arbitration of NewSouth Communications Corp., NUVOX Communications, Inc., KMC Telecom V, Inc., KMC Telecom III LLC, and Xspedius Communications, LLC on Behalf of its Operating Subsidiaries Xspedius Management Co. Switched Services, LLC, Xspedius Management Co. of Lexington, LLC and Xspedius Management Co. of Louisville, LLC of an Interconnection Agreement with BellSouth Telecommunications, Inc. Pursuant to Section 252(b) of the Communications Act of 1934, as Amended*; Kentucky Public Service Commission Case No. 2004-00044; page 27; March 14, 2006. Available at: http://www.lexis.com/research/xlink?app=00075&view=full&searchtype=get&search=2006+Ky.+PUC+LEXIS+159

[108] Petitions of MediaOne Telecommunications of Massachusetts, Inc. and New England Telephone and Telegraph Company d/b/a Bell Atlantic-Massachusetts for arbitration, pursuant to Section 252(b) of the Telecommunications Act of 1996 to establish an interconnection agreement, et al.; Massachusetts Department of Telecommunications and Energy Docket Nos. 99-42/43, 99-52; at page 122; August 25, 1999.

[109] *In the matter of the petition of Michigan Bell Telephone Company, d/b/a/ SBC Michigan, for arbitration of interconnection rates, terms, and conditions, and related arrangements with MCIMetro Access transmission Services, LLC, pursuant to Section 252b of the Telecommunications Act of 1996*; Michigan Public Service Commission Case No. U-13758; page 46; August 18, 2003. Available at: http://www.lexis.com/research/xlink?app=00075&view=full&searchtype=get&search=2003+Mich.+PSC+LEXIS+206

[110] *Petition of Socket Telecom, LLC for Compulsory Arbitration of Interconnection Agreements with CenturyTel of Missouri, LLC and Spectra Communications, LLC, pursuant to Section 251(b)(1) of the Telecommunications Act of 1996*; Missouri Public Service Commission Case No. TO-2006-0299; page 47; June 27, 2006, Issued. Available at: http://www.lexis.com/research/xlink?app=00075&view=full&searchtype=get&search=2006+Mo.+PSC+LEXIS+1380

[111] *In the Matter of the Application of Cox Nebraska Telcom, LLC, Omaha, seeking arbitration and approval of an interconnection agreement pursuant to Section 252 of the Telecommunications Act of 1996, with Qwest Corporation, Denver, Colorado*; Nebraska Public Service Commission Application No. C-3796; Order Approving Agreement; Entered January 29, 2008. Available at: http://www.lexis.com/research/xlink?app=00075&view=full&searchtype=get&search=2008+Neb.+PUC+LEXIS+30

[112] *In the Matter of Joint Petition of NewSouth Communications Corp. et al. for Arbitration with BellSouth Telecommunications, Inc.*; North Carolina Utilities Commission Docket No. P-772, Sub 8; Docket No. P-913, Sub 5; Docket No. P-989, Sub 3; Docket No. P-824, Sub 6; Docket No. P-1202, Sub 4; page 130; July 26, 2005. Available at: http://www.lexis.com/research/xlink?app=00075&view=full&searchtype=get&search=2005+N.C.+PUC+LEXIS+888

[113] *In the Matter of the Establishment of Carrier-to-Carrier Rules In the Matter of the Commission Ordered Investigation of the Existing Local Exchange Competition Guidelines In the Matter of the Commission Review of the Regulatory Framework for Competitive Telecommunications Services Under Chapter 4927, Revised Code*; Public Utilities Commission of Ohio Case No. 06-1344-TP-ORD; Case No. 99-998-TP-COI; Case No. 99-563-TP-COI; page 52; November 21, 2006, Entered. Available at: http://www.lexis.com/research/xlink?app=00075&view=full&searchtype=get&search=2006+Ohio+PUC+LEXIS+718

[114] *Petition of CLEC Coalition for Arbitration Against Southwestern Bell Telephone, L.P. d/b/a SBC Oklahoma Under Section 252(b)(1) of the Telecommunications Act of 1996*; Oklahoma Corporation Commission Cause Nos. PUD 200400497 and 200400496; Order No. 522119; Final Order; dated March 24, 2006.

[115] *Arbitration of Non-Costing Issues for Successor Interconnection Agreements to the Texas 271 Agreement*; Public Utility Commission of Texas P.U.C. Docket No. 28821; Arbitration Award – Track I Issues; page 23; February22, 2005 (available at: http://interchange.puc.state.tx.us/WebApp/Interchange/application/dbapps/filings/pgSearch_Results.asp?TXT_CNTR_NO=28821&TXT_ITEM_NO=520)

At least eight of these states have concluded that transiting must be priced at TSLRIC or TELRIC.[116] Sprint submits that the same conclusion applies in this case; CenturyTel should be required to provide transit service at TELRIC rates.

Issue 14: What are the appropriate rates for services provided in the Interconnection Agreement, including rates applicable to the processing of orders and number portability?

Related Agreement Provisions: Article VII Section II

Rates for Section 251-related services should be priced consistent with the pricing methodology set forth in 47 USC Section 252(d).[117] The rates must be just and reasonable and based on the cost (determined without reference to a rate-of-return or other rate-based proceeding), nondiscriminatory, and may include a reasonable profit.[118]

CenturyTel has proposed rates for non-recurring charges for CLEC account establishment, customer record search, initial service order, subsequent service order and complex orders. On May 2 CenturyTel proposed new rates, different from those provided during negotiations, just prior to filing its testimony on May 5. Thus, Sprint was unable to ask for support for these new rates in the three days prior to the filing of CenturyTel's testimony.[119] CenturyTel's testimony provided little information thus making it impossible to perform any meaningful analysis.[120] CenturyTel did not provide a cost study with its

[116] Texas, California, Kentucky, Missouri, North Carolina, Ohio, Connecticut, and Nebraska, *id.*

[117] Sprint/1, Burt/52.

[118] *Id.*

[119] Sprint/6, Farrar/14.

[120] Sprint/6, Farrar/14.

ORDER NO. 08-486

ENTERED 09/30/08

BEFORE THE PUBLIC UTILITY COMMISSION

OF OREGON

ARB 830

In the Matter of	)	
	)	
SPRINT COMMUNICATIONS COMPANY L.P.	)	ORDER
	)	
Petition for Arbitration of an Intercon-nection Agreement with CENTURYTEL OF OREGON, INC.	)	

DISPOSITION: ARBITRATOR'S DECISION ADOPTED AS MODIFIED

I. PROCEDURAL HISTORY

On March 11, 2008, Sprint Communications Company L.P. (Sprint) filed a petition with the Public Utility Commission of Oregon (Commission) requesting arbitration of an Interconnection Agreement (ICA) with CenturyTel of Oregon, Inc. (CenturyTel), under Section 252(b) of the Communications Act of 1934, as amended by the Telecommunications Act of 1996[1] (the Act). The parties agreed to waive the statutory timeline due to the number of arbitrations pending in different states. CenturyTel responded to Sprint's petition on April 4, 2008.

Telephone conferences were held in this matter in April and June 2008 to establish a schedule and discuss procedural matters. General Protective Order No. 08-524 was issued on May 14, 2008.

The parties submitted written testimony on May 5 and June 4, 2008. The parties waived cross-examination and submitted the case for consideration based on their prefiled testimony. The hearing scheduled for June 24, 2008, was therefore canceled. The parties submitted opening briefs on July 16, 2008. CenturyTel submitted its reply brief on July 23, 2008. Sprint received a one-day extension and submitted its reply brief on July 24. Because this extension gave Sprint the opportunity to review CenturyTel's reply brief before submitting its own, CenturyTel was permitted to file a surreply brief on July 28, 2008.

[1] 47 USC §§ 151-614.

CenturyTel against claims by a third-party carrier asserting that CenturyTel is liable for such charges.

The Arbitrator concluded that it is reasonable for the ICA to include provisions that would protect CenturyTel from any adverse economic consequences if Sprint fails to compensate a terminating carrier for traffic that Sprint originates and CenturyTel transits. Conversely, the Arbitrator also found that it was reasonable for the ICA to include a reciprocal provision that protects Sprint when a third party seeks payment for terminating charges from Sprint for traffic originated by CenturyTel.[20]

Sprint objects to the Arbitrator's findings, stating that the language will have the opposite of its intended effect. "If CenturyTel compensates a third party it may result in a dispute that not only involves the originating and terminating party but also CenturyTel." Sprint is concerned that including the language about indemnification would encourage terminating carriers who were not entitled to compensation from Sprint to go after CenturyTel and, through the indemnification process, get Sprint to pay them money to which they might not be otherwise entitled. [21] Sprint also speculates that the indemnification terms would result in payments that were not reciprocal; CenturyTel would collect compensation for Sprint's originating traffic, but would not collect compensation from the originating third party for traffic that Sprint terminates.[22]

Discussion. We find Sprint's concern that carriers that are not entitled to compensation would be induced by the Sprint/CenturyTel ICA to make false claims against CenturyTel, who would then pay those claims without making a determination as to their validity and then seek reimbursement from Sprint, to be highly speculative. We concur with the Arbitrator who concluded "that it is reasonable for the ICA to include provisions that would protect CenturyTel from any adverse economic consequences if Sprint fails to compensate a terminating carrier for traffic that Sprint originates and CenturyTel transits. It is also reasonable for the ICA to include a reciprocal provision that protects Sprint when a third party seeks payment for terminating charges from Sprint for traffic originated by CenturyTel."[23] The Arbitrator's decision on this issue is affirmed.

G. Issue 13 – Rates for Transit Service – Article VII, Sections I.B and I.C

Issue 13 involves the rates CenturyTel should be permitted to charge Sprint for transit services. Sprint argued that CenturyTel is required to provide transit services as part of its duty to provide indirect interconnection and that CenturyTel must provide transit service at TELRIC rates because charging rates that are not based on forward-looking economic cost would hinder competition. After reviewing the relevant case law, the Arbitrator found that the FCC has clarified that direct interconnection

[20] Arbitrator's Decision at 15-16.
[21] Sprint Exceptions at 7.
[22] *Id.* at 8.
[23] Arbitrator's Decision at 15-16.

facilities must be provided at TELRIC rates, but there has been no such clarification about the services necessary for indirect interconnection.[24] The most recent case law "seems to contradict the conclusion that TELRIC is the appropriate rate for transit services."[25]

Sprint opines that the statement upon which the Arbitrator relies was made by the Chief of the FCC's Common Carrier Bureau acting on delegated authority and merely stated that the Commission had not had occasion to determine whether incumbent LECs have a duty to provide transit service under this provision of the statute...."[26] Since the FCC has not made a determination, Sprint believes that the Commission may, as many other state commissions have, find that CenturyTel is obligated to provide transit services at TELRIC rates.[27]

Discussion. The Arbitrator took great pains in examining the law and making a close call, noting "[a]lthough the precedent cited above does not provide a clear resolution to this issue, I find particularly relevant the FCC's statement that any duty 'under section 251(a)(1) of the Act to provide transit service would not require that service to be priced at TELRIC.'"[28] Notwithstanding the fact that the FCC Order was issued by the Common Carrier Bureau, it did so with the full authority of the FCC. The Bureau decision stands as unreversed case law some six years later. The Arbitrator's findings on this issue are therefore affirmed.

H. Issue 14 – Rates for Processing Orders and Number Portability – Article VII, Section II

The Arbitrator dealt with several subissues in the findings under Issue 14. The first subissue was what interim rate should be charged for nonrecurring charges pending the submission of an acceptable cost study by CenturyTel. The Arbitrator stated:

> I disagree, however, that the rates should be set at zero until CenturyTel files, and the Commission approves, new rates based on an appropriate cost study. I find that the ICA should include the rates proposed by CenturyTel for customer record searches and service order charges (simple, complex, and subsequent) as "interim" rates. CenturyTel must file a more detailed cost study. Once the Commission approves new rates to be included in the ICA, the interim rates will be subject to "true-up."[29]

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[24] Arbitrator's Decision at 18.
[25] *Id.*
[26] Sprint Exceptions at 8.
[27] *Id. at* 9.
[28] Arbitrator's Decision at 18.
[29] *Id.* at 20.

ORDER

IT IS ORDERED that:

1. The Arbitrator's Decision in this case, attached to and made part of this Order as Appendix A, is adopted as modified herein.

2. Within 30 days of the date of this Order, Sprint and CenturyTel shall, in accordance with the provisions of OAR 860-016-0030(12), file an Interconnection Agreement complying with the terms of the Arbitrator's Decision as modified herein.

Made, entered and effective SEP 3 0 2008.

Lee Beyer
Chairman

Ray Baum
Commissioner

John Savage
Commissioner

A party may request rehearing or reconsideration of this order pursuant to ORS 756.561. A request for rehearing or reconsideration must be filed with the Commission within 60 days of the date of service of this order. The request must comply with the requirements in OAR 860-014-0095. A copy of any such request must also be served on each party to the proceeding as provided by OAR 860-013-0070(2). A party may appeal this order by filing a petition for review with the Court of Appeals in compliance with ORS 183.480-183.484

COMMONWEALTH OF KENTUCKY

KENTUCKY PUBLIC SERVICE COMMISSION

COUNTY OF NEW LONDON

STATE OF CONNECTICUT

BEFORE ME, the undersigned authority, duly commissioned and qualified in and for the State and County aforesaid, personally came and appeared Patricia H. Pellerin, who being by me first duly sworn deposed and said that she is appearing as a witness on behalf of BellSouth Telecommunications, Inc. d/b/a AT&T Kentucky before the Kentucky Public Service Commission in Docket Number 2010-00061, *In the Matter of: Petition for Arbitration of Interconnection Agreement Between BellSouth Telecommunications, Inc. d/b/a AT&T Kentucky and Sprint Spectrum L.P., Nextel West Corp., and NPCR, Inc. d/b/a Nextel Partners,* and Docket Number 2010-00062, *In the Matter of: Petition for Arbitration of Interconnection Agreement Between BellSouth Telecommunications, Inc. d/b/a AT&T Kentucky and Sprint Communications Company, L.P.* and if present before the Commission and duly sworn, her statements would be set forth in the annexed rebuttal testimony consisting of 54 pages and 0 exhibits.

Patricia H. Pellerin
NAME

SWORN TO AND SUBSCRIBED BEFORE ME
THIS 10th DAY OF SEPTEMBER, 2010

Notary Public

My Commission Expires:

Darlene Ann DeLaura
Notary Public, State of Connecticut
My Commission Expires 11-30-2013

AT&T KENTUCKY

REBUTTAL TESTIMONY OF PATRICIA H. PELLERIN

BEFORE THE KENTUCKY PUBLIC SERVICE COMMISSION

DOCKET NO. 2010-00061

SEPTEMBER 17, 2010

ISSUES

I.A(1), I.B(1), I.B(2)(a), I.B(2)(b)(i),
I.B(3), II.A, III.A(1), III.A(2),
III.A(3), III.A.1(1), III.A.1(2).
III.A.7(1), III.A.7(2), III.E(1),
III.E(2), III.G, III.H(1), III.H(2),
III.H(3), III.I(1)(a), III.I(1)(b),
III.I(2), III.I(3), III.I(4), III.I(5)

I. INTRODUCTION

Q. PLEASE STATE YOUR NAME.

A. My name is Patricia H. Pellerin.

Q. ARE YOU THE SAME PATRICIA H. PELLERIN WHO PROVIDED DIRECT TESTMONY IN THIS PROCEEDING?

A. Yes.

Q. WHAT IS THE PURPOSE OF YOUR REBUTTAL TESTIMONY?

A. The purpose of my rebuttal testimony is to respond to Sprint's testimony proffered by its witnesses Randy Farrar ("Farrar Direct"), Mark Felton ("Felton Direct"), and James Burt ("Burt Direct") with respect to DPL Issues I.A(1), I.B(1), I.B(2)(a), I.B(2)(b)(i), I.B(3), II.A, III.A(1), III.A(2), III.A(3), III.A.1(1), III.A.1(2), III.A.7(1), III.A.7(2), III.E(1), III.E(2), III.G, III.H(1), III.H(2), III.H(3), III.I(1)(a). III.I(1)(b), III.I(2), III.I(3), III.I(4), III.I(5). In addition, I respond to the introductory testimony of Mr. Burt, which is unrelated to any issues presented for arbitration.

Q. TO WHAT "INTRODUCTORY TESTIMONY" OF MR. BURT ARE YOU REFERRING?

A. At pages 5-17 of his Direct Testimony Mr. Burt provides what he describes as "Background and Overview Perspective" on this arbitration.

Q. WHY DO YOU DESCRIBE THAT TESTIMONY AS BEING "UNRELATED" TO THE ISSUES IN ARBITRATION?

A. Essentially, Mr. Burt uses that testimony not to provide factual and legal background that would assist the Commission in resolving the discrete issues presented for resolution in this arbitration, but rather to cast aspersions on