ORIGINAL *Complaint of NewSouth Communications Corp.*
May 23, 2003

Before the
FLORIDA PUBLIC SERVICE COMMISSION

Enforcement of an Interconnection Agreement between NewSouth Communications Corp. and Sprint-Florida, Inc.	)	Docket No. 030457-TP
	)	Filed: May 23, 2003

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COMPLAINT OF NEWSOUTH COMMUNICATIONS CORP. FOR ENFORCEMENT OF AN INTERCONNECTION AGREEMENT WITH SPRINT-FLORIDA, INC. AND REQUEST FOR RELIEF

NewSouth Communications Corp. ("NewSouth"), by and through its undersigned counsel and pursuant to Rule 25-22.036 of the Florida Administrative Code, hereby files this Complaint against Sprint-Florida, Inc. ("Sprint") (collectively, "the Parties") for breach of the current Interconnection and Resale Agreement for the State of Florida between NewSouth and Sprint.

I. Introduction and Background

1. On January 27, 1998, Sprint and the former UniversalCom, Inc. ("UCI") entered into Sprint's standard interconnection agreement (the "Agreement" or "UCI-Sprint Agreement").[1/] The Commission approved this Agreement on June 8, 1998.[2/] Effective December 31, 2001, UCI and NewSouth merged, leaving NewSouth as the surviving entity. In

1/ Interconnection and Resale Agreement for the State of Florida between UniversalCom, Inc. and Sprint-Florida, Inc. (Jan. 27, 1998) ("Agreement") (Exhibit 1). The Agreement is Sprint's standard template agreement and thus all references to "CLEC" in the agreement refer to NewSouth/UCI.

2/ Docket No. 980325-IP, *Petition by Sprint-Florida, Incorporated for Approval of Interconnection, Unbundling, and Resale Agreement with UniversalCom, Incorporated,* Order No. PSC-98-0779-FOF-TP, Order Approving Resale, Interconnection, and Unbundling Agreement (June 8, 1998), *as amended by* Order No. PSC-98-0779A-FOF-TP, Amendatory Order (July 7, 1998) (amending typographical error in initial order).

accordance with the terms of the merger, and by operation of law, NewSouth succeeded to all the rights, benefits, and obligations of UCI, including the UCI-Sprint Agreement.

2. Sprint has materially breached the Agreement by refusing to pay the rate to which it voluntarily agreed for the transport and termination of Local Traffic. The Agreement obligates each party to pay the other for the transport and termination of Local Traffic, which includes traffic terminated to Internet Service Providers ("ISP-bound traffic"), at the rates set forth in the Agreement. Beginning with the February, 2002, billing period and continuing to this day, Sprint has refused to pay NewSouth amounts due under the Agreement by asserting that the Federal Communications Commission's ("FCC's) *ISP Remand Order*[3/] gave it the unilateral right to reduce substantially the reciprocal compensation rate it agreed to pay to NewSouth for terminating Sprint-originated Local Traffic. Sprint has also assumed the right unilaterally to impose a limit on the amount of Local Traffic for which it will pay any reciprocal compensation. At the same time that it has assumed the right substantially to reduce the reciprocal compensation rate it will pay to NewSouth, Sprint has continued to bill NewSouth, and NewSouth has continued to pay to Sprint, the higher contract rate for Local Traffic terminated by Sprint.

3. Sprint has also waived its right to dispute amounts owed to NewSouth by failing to submit disputes within the time period and in the manner required by the Agreement. Finally, Sprint has further materially breached the Agreement by failing to pay even undisputed amounts within the time required by the Agreement. As a result of these actions, Sprint has and continues

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3/ *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996; Intercarrier Compensation for ISP-Bound Traffic*, 16 FCC Rcd 9151 (2001) ("*ISP Remand Order*") (Exhibit 2), *remanded, WorldCom, Inc. v. FCC*, 288 F.3d 429 (D.C. Cir. 2002) (remanding, but not vacating, the *ISP Remand Order*), *petition for reh'g and reh'g en banc denied* (Sept. 24, 2002), *cert. denied*, 71 U.S.L.W. 3697, No. 02-980 (U.S. May 5, 2003).

to unlawfully withhold substantial amounts rightfully due NewSouth under the Agreement. In light of the continuing and mounting damage caused by Sprint's flagrant violation of the Parties' Agreement, NewSouth respectfully requests that consideration of the Complaint be expedited. Section 22.1 of the Agreement provides that the Parties may submit disputes to the Commission and that Parties "agree to seek expedited resolution by the Commission, and shall request that resolution occur in no event later than sixty (60) days from the date of the submission of such dispute."

4. In support of this Complaint, NewSouth makes the following showing:

II. Parties

5. NewSouth incorporates by reference as though fully set forth herein the allegations of paragraphs 1 through 4 above.

6. NewSouth, a Delaware corporation, is certificated as an alternate local exchange carrier ("ALEC") and is authorized to provide services throughout the state of Florida.[4/]

7. In July 2000, UCI, a Florida corporation, became a subsidiary of NewSouth Holdings Corporation, a Delaware corporation. NewSouth Holdings Corporation is the parent company of NewSouth.[5/]

[4/] Docket Nos. 981222-TX, *et al.*, *Applications for Certificates to Provide Alternative Local Exchange Telecommunications Service by NewSouth Communications Corp., et al.*, Order No. PSC-98-1506-FOF-TX, Order Granting Certificates to Provide Alternative Local Exchange Telecommunications Service (Nov. 13, 1998); Docket Nos. 981394-TI, *et al.*, *Applications for Certificates to Provide Interexchange Telecommunications Service by NewSouth Communications Corp., et al.*, Order No. PSC-98-1697-FOF-TI, Order Granting Certificates to Provide Interexchange Telecommunications Service (Dec. 15, 1998).

[5/] Docket No. 000398-TP, *Request for Approval of Agreement and Plan of Merger and Reorganization whereby NewSouth Communications Corp. (holder of IXC Certificate No. 5770 and ALEC Certificate No. 5754), a subsidiary of NewSouth Holdings, Inc., Will Merge with and into UniversalCom, Inc. (holder of IXC Certificate No. 3174 and ALEC Certificate No. 4096), with UniversalCom Continuing as Surviving Entity*, Order No. PSC-00-1270-PAA-TP, Order Approving Agreement and Plan of Merger and Reorganization (July 11, 2000) ("*First UCI Merger Order*"). Although the Parties initially envisioned NewSouth's merger into UCI, in fact the two entities remained

8. Effective December 31, 2001, UCI merged with and into NewSouth, leaving NewSouth as the remaining entity.[6/] In accordance with this transaction and by operation of law, NewSouth has succeeded to all of the rights, benefits, and obligations of UCI under the Agreement.

9. UCI's authority to offer telecommunications services in Florida was cancelled effective December 31, 2001.[7/]

10. Upon information and belief, Sprint is, and has been, certificated as an incumbent local exchange carrier ("ILEC") in Florida during the entire period covered by the activities identified in this Complaint.

11. All correspondence regarding this Complaint should be provided to the following on behalf of NewSouth:

Jon Moyle, Jr.
Moyle, Flanigan, Katz, Raymond and Sheehan, P.A.
The Perkins House
118 North Gadsden Street
Tallahassee, FL 32301
Telephone: 850-681-3828
Fax: 850-681-8788

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separate subsidiaries of NewSouth Holdings, Inc., until December 31, 2001, when UCI merged into NewSouth.

6/ Articles of Merger of UniversalCom, Inc. (a Florida corporation) with and into NewSouth Communications Corp. (a Delaware corporation), being the surviving corporation (effective Dec. 31, 2001) ("NewSouth-UCI Merger Articles") (Exhibit 3); Docket No. 010753-TP, *Cancellation of Certificates to Provide Interexchange Telecommunications Services*, Order No. PSC-01-1380-PAA-TP, Order Cancelling Alternative Local Exchange Telecommunications and Interexchange Telecommunications Certificates (June 28, 2001), *vacated by* Order No. PSC-01-2057-FOF-TP (Oct. 18, 2001); Docket No. 020108-TP, *Request for Cancellation of UniversalCom, Inc.'s ALEC Certificate No. 4096, IXC Certificate No. 3174, and STS Certificate No. 4086, effective 12/31/01*, Order No. PSC-02-0475-PAA-TP, Order Cancelling Alternative Local Exchange Telecommunications Certificate, Shared Tenant Services Certificate and Interexchange Telecommunications Certificate (Apr. 8, 2002) (collectively, "*Second UCI Merger Orders*").

7/ *See* Docket No. 020108-TP, Memorandum from Blanca Bayó, Director, Division of Commission Clerk & Administrative Services on Cancellations for Alternative Local Exchange Telephone Utilities, to All Local, Alternative Local Exchange and Interexchange Telecommunications Companies 2 (July 15, 2002) ("*Cancellation Memo*").

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12. The complete name and mailing address of the respondents to this Complaint are:

Sprint-Florida, Inc.
Field Service Manager
555 Lake Border Drive
Apopka, Florida 32703

Sprint-Florida, Inc.
Sprint Director – Local Carrier Markets
6480 Sprint Parkway
KSOPHM0316-3B774
Overland Park, KS 66251

III. Jurisdiction

13. NewSouth incorporates by reference as though fully set forth herein the allegations of paragraphs 1 through 12 above.

14. The Commission has jurisdiction over this dispute, and the authority to grant the requested relief, pursuant to Section 364.162(1) of the Florida Statutes, which provides the Commission with "the authority to arbitrate any dispute regarding interpretation of interconnection or resale prices and terms and conditions"[8/] and Rule 25-22.036(2) of the Florida Administrative Code, which permits complaints to be filed "when a person complains of an act or omission by a person subject to Commission jurisdiction which affects the complainant's

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8/ FLA. STAT. § 364.162 (1).

substantial interests and which is in violation of a statute enforced by the Commission, or of any Commission rule or order."[9/] Sprint has violated federal statutes, Florida statutes, and orders of this Commission, all of which give the Commission jurisdiction over this dispute.

15. The Commission has the authority to hear this dispute under Sections 364.01, 364.03, and 364.05 of the Florida Statutes, which provide the Commission with the power to regulate telecommunications companies and to ensure that telecommunications companies provide just, reasonable, and sufficient service and charges.[10/] As further discussed below, Sprint refuses to pay the rate to which it voluntarily agreed for the transport and termination of Local Traffic under the Parties' Agreement.

16. The Commission also has jurisdiction over the issues raised herein under Section 252 of the federal Communications Act of 1934, as amended ("Act").[11/] The Act confers jurisdiction upon the Commission to adjudicate disputes arising out of interconnection agreements.[12/] Sprint has failed to comply with the requirements of the Parties' interconnection Agreement, which was approved by this Commission.

17. The Federal Communications Commission ("FCC") has determined that states have the duty under Section 252 to interpret or enforce all terms of an interconnection

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9/ FLA. ADMIN. CODE ANN. r. 25-22.036(2).

10/ FLA. STAT. §§ 364.01, 364.03, 364.05.

11/ 47 U.S.C. § 252 (2003).

12/ 47 U.S.C. § 252(e)(5); *BellSouth Telecom., Inc. v. MCImetro Access Transmission Servs., Inc., et al.*, 317 F.3d 1270 (11th Cir. 2003) (en banc) (reversing prior panel finding and holding that state commissions have authority to interpret and enforce interconnection agreements); *see also Global NAPS, Inc. v. FCC*, 291 F.3d 832, 838 (D.C. Cir. 2002); *MCI Telecomm. Corp. v. Bell Atlantic Pennsylvania*, 271 F.3d 491, 511 (3d Cir. 2001), *cert. denied sub nom. Pennsylvania Public Util. Comm'n v. MCI Telecomms.*, 123 S. Ct. 340 (2002); *Southwestern Bell Tel. Co. v. Brooks Fiber Communications of Oklahoma, Inc.*, 235 F.3d 493, 496-97 (10th Cir. 2000); *Southwestern Bell Tel. Co. v. Connect Communications Corp.*, 225 F.3d 942, 946 (8th Cir. 2000); *Southwestern Bell Tel. Co. v. Public Util. Comm'n of Texas*, 208 F.3d 475, 480 (5th Cir. 2000); *Illinois Bell Tel. Co. v. Worldcom Techns., Inc.*, 179 F.3d 566, 570-71 (7th Cir. 1999).

agreement, even those terms that govern reciprocal compensation for traffic destined to Internet Service Providers (known as "ISP-bound traffic").[13/]

18. Finally, the Agreement itself establishes the Commission's authority for resolving such disputes.[14/]

19. This dispute is ripe for resolution by the Commission. The Parties have attempted to resolve these disputes in accordance with the terms of the Agreement without success.[15/] The Parties have exchanged correspondence regarding their positions[16/] and have participated in settlement negotiations via written correspondence and telephone conversations. Each day that Sprint fails to honor its contractual obligations adds to the damages NewSouth has incurred in this dispute.

20. This matter is therefore properly submitted to this Commission.

IV. General Allegations of Fact

21. NewSouth incorporates by reference as though fully set forth herein the allegations contained in paragraphs 1 through 20 above.

22. UCI provided telecommunications services in Florida, including the origination and termination of Local Traffic, through a switch located in Destin, Florida ("the UCI switch"). After the merger of UCI into NewSouth on December 31, 2001, NewSouth continued to bill

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13/ *MCImetro Access Transmission Services LLC Petition for Preemption of the Jurisdiction of the New York Public Service Commission Pursuant to Section 252(e)(5) of the Communications Act of 1934, as Amended*, 17 FCC Rcd 23953, ¶¶ 8-9 (2002) (Exhibit 4).

14/ Agreement at Section 22.1 ("The Parties recognize and agree that the Commission has continuing jurisdiction to implement and enforce all terms and conditions of this Agreement.") (Exhibit 1).

15/ Agreement at Sections 22.3, 22.4 (Exhibit 1).

16/ *See, e.g.*, E-mail from John W. Clayton, Sprint, to Jake E. Jennings, NewSouth (Dec. 13, 2002) (Exhibit 5); E-mail from Jake E. Jennings, NewSouth, to John W. Clayton, Sprint (Jan. 6, 2003) (Exhibit 6); Letter from Michael H. Pryor, Counsel for NewSouth, to John W. Clayton, Sprint (Feb. 24, 2003) (Exhibit 7); Letter from Janette W. Luehring, Sprint, to Michael H. Pryor and Angela F. Collins, Counsel for NewSouth (Mar. 11, 2003) (Exhibit 8); Letter from Michael H. Pryor, Counsel for NewSouth, to Janette W. Luehring, Sprint (Mar. 17, 2003) (Exhibit 9).

Sprint separately for the termination of Sprint-originated Local Traffic over the UCI switch, and Sprint billed NewSouth separately for Sprint's termination of Local Traffic originated on the UCI switch. Additionally, both NewSouth, as UCI's successor, and Sprint continued to operate under the UCI-Sprint Agreement with respect to traffic originating or terminating over the UCI switch.

23. Neither party has sought to terminate the UCI-Sprint Agreement.[17/] The Agreement contains provisions that establish the rates, terms and conditions by which the Parties interconnect their network and exchange traffic, including provisions for reciprocal compensation. The terms of this Agreement control the Parties' dispute.

A. The Agreement Obligates the Parties to Pay Reciprocal Compensation for Local Traffic, Including ISP-Bound Traffic, at Specified Rates

24. In relevant part, the Agreement requires each party to compensate the other party for the transport and termination of "Local Traffic," which is defined as traffic "that is originated and terminated within a given local calling area, or mandatory expanded area service (EAS) area, as defined by State commissions or, if not defined by state commissions, then as defined in existing Sprint tariffs."[18/] The rates to be charged for the Parties' exchange of Local Traffic are set forth in Table 1 of the Agreement.[19/] Traffic terminated to Internet Service Providers ("ISPs") is "Local Traffic" under the Agreement and Sprint has never asserted otherwise. Both Sprint and UCI, and later NewSouth, have treated ISP-bound traffic as Local Traffic under the Agreement.

17/ NewSouth separately had an interconnection agreement with Sprint which governs the terms and conditions with respect to NewSouth's switches in Florida. Thus, NewSouth and Sprint operated under two interconnection agreements – the UCI-Sprint Agreement with respect to traffic over UCI's switch acquired by NewSouth as part of the merger, and a NewSouth-Sprint interconnection agreement for traffic over NewSouth switches.

18/ Agreement at Part B – Definitions (Exhibit 1).

19/ Agreement at Section 3.1 of Part C – Attachment 1 (Exhibit 1).

25. Importantly, the Agreement explicitly states that "[w]hen Sprint terminates calls to CLEC's subscribers using CLEC's switch, Sprint shall pay CLEC for transport charges from the [Interconnection Point] to the CLEC switching center for dedicated transport. Sprint shall also pay to CLEC a charge symmetrical to its own charges for the functionality actually provided by CLEC for call termination."[20/] The Agreement requires Parties to pay reciprocal compensation of $0.003587 per minute of use for End Office switching and $0.003345 per minute of use for Tandem switching (plus transport charges).[21/]

26. In accordance with these provisions, at all relevant times NewSouth has terminated Sprint-originated Local Traffic and thus is entitled to reciprocal compensation under the Agreement. NewSouth timely provided Sprint with monthly invoices requesting payment pursuant to the rates set forth in the Agreement for the amounts owed to NewSouth for terminating Local Traffic originated by Sprint under the Agreement.

B. Sprint Has Refused to Pay the Contract Reciprocal Compensation Rate, Even While It Has Continued to Charge NewSouth the Contract Rate

27. Beginning with the billing period for February, 2002, Sprint has refused to pay NewSouth the reciprocal compensation rate contained in the UCI-Sprint Agreement. On September 9, 2002, Sprint delivered to NewSouth via e-mail two dispute claim forms each dated August 15, 2002 for invoices dated March 1, 2002 (for February usage) and April 1, 2002 (for March usage) respectively.[22/] The dispute claim form for the March invoice, addressed to "NewSouth Comm. (UniversalCom, Inc.)," states that "Effective February 1, 2002 – Sprint

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20/ Agreement at Section 2.4.2 of Part C – Attachment IV (Exhibit 1).

21/ Agreement at Part C – Attachment 1, Table 1 – Network Element Price List- Sprint Florida (Exhibit 1).

22/ *See* Email from Lisa Sulzen, Sprint, to Tammy Couch, NewSouth, with accompanying attachments (Exhibit 10). As discussed at paragraphs 43-47 below, Sprint has waived its right to dispute any amounts in these and other identified invoices because it failed to submit disputes within the time required by the Agreement.

adopted the FCC order changing the rates to $0.0010 per minute for all local traffic and ISP traffic in Florida. That changes the Local Usage charges for the February 1-28, 2002 invoice from $49,364.30 to $13,762.00. The Local Usage rate will need to be updated from $0.003587 to $0.0010 on the next invoice" (Exhibit 10).

28. Beginning with the May 2002 invoice, Sprint has not only failed to pay the contract rate for Local Traffic, Sprint has refused to pay any reciprocal compensation for traffic above certain usage levels. Sprint's dispute claim forms assert that "UniversalCom has exceeded the ISP cap for 2002" and that Sprint is agreeing to pay for only "eligible Voice MOU."[23/] Sprint has provided no explanation as to how it determined what constitutes "eligible Voice" minutes. Nothing in the UCI-Sprint Agreement allows Sprint to refuse to pay reciprocal compensation for the termination of Local Traffic above certain usage levels.

29. The claim forms further state that "Sprint has no record of UniversalCom's decline, therefore all traffic must be billed at $0.0010" (Exhibit 10). Sprint has submitted similar dispute claim forms for other months (Exhibit 11).

30. By unilaterally changing the contract reciprocal compensation rate from $0.003587 to $0.0010, and by unilaterally determining to place a limit on the minutes of use for which it will pay any reciprocal compensation at all, Sprint has substantially underpaid NewSouth and materially breached the UCI-Sprint Agreement. The following chart shows the minutes of use charged by NewSouth for Sprint-originated traffic terminated over the UCI switch for each relevant billing period, the total charge (based on minutes of use multiplied by the contract rate of $0.003587) and the amount withheld by Sprint. All minutes of use charged

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[23/] Rather than using the phrase "eligible Voice MOU," the dispute claim form disputing the May 2002 invoice uses the phrase "eligible ISP MOU." *See* Exhibit 11.

by NewSouth to Sprint over the UCI switch reflected in the chart below qualify as Local Traffic under the terms of the UCI-Sprint Agreement.[24/]

Date of Invoice	Minutes of Local Traffic	Amount Charged by NewSouth	Amount Paid by Sprint	Difference
2-Mar	13,762,002	$ 49,364.30	$ 14,188.50	$ 35,175.80
2-Apr	18,669,029	$ 66,965.81	$ 18,669.03	$ 48,296.78
2-May	22,445,724	$ 80,512.81	$ 19,535.50	$ 60,977.31
2-Jun	16,333,242	$ 58,587.34	$ 4,578.43	$ 54,008.91
2-Jul	18,744,120	$ 67,235.16	$ 4,529.99	$ 62,705.17
2-Aug	21,817,184	$ 78,258.24	$ 5,660.78	$ 72,597.46
2-Sep	20,056,408	$ 71,942.34	$ 3,952.49	$ 67,989.85
2-Oct	17,808,564	$ 63,879.32	$ 3,809.03	$ 60,070.29
2-Nov	22,601,411	$ 81,071.26	$ 4,327.90	$ 76,743.36
2-Dec	22,100,443	$ 79,274.29	$ 3,823.15	$ 72,920.21
3-Jan	18,589,461	$ 66,680.40	$ 2,524.11	$ 64,156.29
3-Feb	14,927,177	$ 53,543.78	$ 14,927.18	$ 38,616.60
3-Mar	14,806,896	$ 53,112.34	$ 14,806.90	$ 38,305.44
3-Apr	11,375,786	$ 40,804.94	$ 11,375.79	$ 29,429.15
3-May	10,339,020	$ 37,086.06	--	$ 37,086.06

31. Even though Sprint has unilaterally reduced the contract rate from $0.003587 to $0.0010 when NewSouth terminates Sprint-originated Local Traffic over the UCI switch, Sprint has continued to charge NewSouth, and NewSouth has continued to pay Sprint, the contract rate when Sprint terminates Local Traffic that originates from the UCI switch.[25/] Thus, whereas Sprint claims all Local Traffic must now be billed at $0.0010/MOU, in fact it only applies that rate when it is required to pay reciprocal compensation – when Sprint sought reciprocal compensation payment from NewSouth, Sprint billed NewSouth the higher, $0.003587 contract rate. Sprint's actions are, among other things, a direct violation of the provisions of the UCI-

24/ *See also* Exhibit 13 (summarizing Sprint's payment history).

25/ *See* Exhibit 12 (providing sample summary sheets from Sprint's invoices to NewSouth).

Sprint Agreement that require Sprint to "pay to CLEC a charge symmetrical to its own charges for the functionality actually provided by CLEC for call termination."[26/]

C. The Federal Communication Commission's *ISP Remand Order* Does Not Permit Sprint Unilaterally to Reduce Existing Reciprocal Compensation Rates

32. Sprint's stated excuse for refusing to pay the agreed-upon reciprocal compensation rate is that, by a form letter dated January 24, 2002,[27/] Sprint could unilaterally change the terms of the Agreement by imposing on NewSouth the interim compensation regime adopted by the FCC in the *ISP Remand Order*. Under this regime, the FCC established gradually declining rate caps for the amounts that carriers could charge for terminating traffic to ISPs. For the relevant period, the *ISP Remand Order* capped the rate for ISP-bound traffic at $0.0010 per minute of use. Additionally, the FCC established a method to identify ISP-bound traffic to which the new rate caps would apply. Traffic terminated at a ratio of greater than 3:1 to originating traffic would be presumed to be ISP-bound traffic. Finally, the FCC established an overall cap on the amount of ISP-traffic eligible for compensation.[28/]

33. Critically, the regime adopted in the *ISP Remand Order* is only applicable to new or renegotiated contracts. A carrier cannot supplant existing contractual obligations to pay reciprocal compensation for ISP-bound traffic at agreed-upon rates with the FCC's interim regime unless the carrier renegotiates the existing agreement or unless the carrier can invoke a

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26/ Agreement at Section 2.4.2 of Part C – Attachment IV (Exhibit 1).

27/ The January 24, 2002 Sprint Offer Letter is attached hereto as Exhibit 14.

28/ *ISP Remand Order* ¶ 78 (Exhibit 2). Specifically, for the year 2001, a carrier may receive compensation only for ISP-bound minutes equal to, on an annualized basis, the number of ISP-bound minutes for which the carrier was entitled to compensation pursuant to an interconnection agreement in the first quarter of 2001, plus ten percent. *See id.* For 2002, a carrier may receive compensation, pursuant to a particular interconnection agreement, for ISP-bound minutes up to a ceiling equal to the number of minutes for which it was entitled to compensation under that agreement in 2001, plus ten percent. *See id.* Finally, in 2003, a carrier may receive compensation equal to the 2002 level. *See id.* Any amounts of ISP-bound traffic above these growth caps will be exchanged on a bill-and-keep basis.

contractual change of law provision in the existing agreement.[29/] With respect to existing contracts, the *ISP Remand Order* is not self-executing. Instead, a carrier may apply the interim regime to existing contracts only if a change of law provision is triggered, and the procedures set forth in the agreement have been followed.[30/]

34. Sprint did not seek to renegotiate the UCI-Sprint Agreement, it did not seek to amend the Agreement in the manner required by the Agreement, and it did not and has not invoked any change of law provision in the UCI-Sprint Agreement. Instead, in flagrant violation of the *ISP Remand Order*'s directive that the interim regime not be applied to existing agreements, Sprint has unilaterally reduced the rates it will pay NewSouth for termination of all Sprint's Local Traffic, not just ISP-bound traffic.

35. Because Sprint has failed to either renegotiate the Agreement or to amend the Agreement to incorporate the interim regime set forth in the *ISP Remand Order*, Sprint must continue to pay reciprocal compensation at the contract rates for all Local Traffic. Sprint may neither impose the $0.0010 capped rate, nor impose a cap on Local Traffic for which it will pay any reciprocal compensation without amending or renegotiating the existing UCI-Sprint Agreement.

D. NewSouth Rejected Sprint's January 24, 2002 Offer Letter

29/ *ISP Remand Order* ¶ 82 ("The interim compensation regime we establish here applies as carriers re-negotiate expired or expiring interconnection agreements. It does not alter existing contractual obligations, except to the extent that parties are entitled to invoke contractual change-of-law provisions.") (Exhibit 2).

30/ *See, e.g.*, Case No. 8914, *Petition of Verizon Maryland, Inc. for a Declaratory Ruling and for an Order Approving Amendments to Interconnection Agreements*, Order No. 77578, at 4-5 (Md. PSC Feb. 28, 2002) ("*Maryland Order*") (Exhibit 15); Case 01-10-036, *Verizon California, Inc. v. Pac-West Telecomm, Inc.*, Decision 02-01-062, Order Denying the Complaint of Verizon California, Inc. Against Pac-West Telecomm, Inc. (Cal. PUC Jan. 23, 2002) ("*California Order*") (Exhibit 16); *Verizon Maryland, Inc., f/k/a Bell Atlantic-Maryland, Inc. v. RCN Telecom Services, Inc., f/k/a RCN Telecom Services of Maryland Inc., et al.*, 248 F. Supp. 2d 468, 484-85 (D. Md. 2003) ("*RCN Case*") (Exhibit 17).

36. In addition to being prospective only, the *ISP Remand Order* established the so-called mirroring rule which requires incumbent carriers to offer to exchange all traffic subject to section 251(b) of the 1996 Act at the same lower rate established for ISP-bound traffic.[31/] Thus, in order to take advantage of the lower rates for ISP-bound traffic, the incumbent carrier must charge originating carriers the same lower rates for all traffic subject to reciprocal compensation.

37. On January 24, 2002, almost seven months after the effective date of the *ISP Remand Order*, Sprint sent a form letter addressed to "President, Universal Com, Incorporated," purporting to make the offer required by the *ISP Remand Order*.[32/] The letter purported to be Sprint's notice that, effective February 1, 2002, Sprint was offering to implement the rates contained in the *ISP Remand Order* in Florida for all local traffic. The letter also purported to be "official notice, to the extent such notice is required under the terms of our Interconnection Agreement(s), that Sprint is offering those rates to you." According to the letter, if the offer was accepted, the reciprocal compensation rate for all Local Traffic would be reduced to $0.0010 per minute of use. If the offer was rejected, Sprint would pay the contract rate for traffic up to the 3:1 ratio; and $0.0010 for traffic above the ratio. Regardless of whether the offer was accepted or rejected, Sprint asserted the right to reduce the agreed upon reciprocal compensation rate to zero for ISP-bound traffic, exceeding the growth cap set forth in the *ISP Remand Order*.

38. Sprint gave recipients of the letter 10 business days from the date of the letter -- until February 8, 2002 -- to reject the offer. If Sprint did not receive a rejection by then, the offer was deemed accepted and Sprint assumed the unilateral right to change the contract. In other words, Sprint's Offer Letter created a negative option – to accept the offer, no action was necessary; to reject the offer, the recipient was required to affirmatively notify Sprint by

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31/ *ISP Remand Order* ¶ 89 (Exhibit 2).

32/ *See* Exhibit 14.

February 8, 2002 that it rejected the offer. The letter further provided that carriers could reject the offer after that date, and the rejection would be effective on the first day of the month following receipt of the rejection.

39. Sprint's offer to exchange all Local Traffic at the capped rates, while a necessary condition to take advantage of the *ISP Remand Order*, was not sufficient to substitute the prospective interim compensation regime for the existing compensation provisions of UCI-Sprint Agreement.[33/] The Agreement does not permit a party to amend its terms simply through notice. Section 25 of the Agreement provides that "[n]o provision of this Agreement shall be deemed waived, amended or modified by either party unless such a waiver, amendment or modification is in writing, dated, and signed by both Parties."[34/] Additionally, Section 2.1 of the Agreement requires that "any amendment or modification" of the Agreement must be submitted to this Commission for approval.[35/] No amendment changing the rates, terms or conditions of the reciprocal compensation provisions of the Agreement has been signed by NewSouth. Nor has any amendment been filed with the Commission.

33/ *Maryland Order* at 4-5 (concluding that Verizon was required to invoke contractual change-of-law provisions in order to apply the FCC's regime to its existing interconnection agreements rather than automatically impose the regime on carriers via its standard Offer Letter) (Exhibit 15); *California Order* at 8 (finding that Verizon could not change the Parties' reciprocal compensation obligations via its standard Offer Letter and that Verizon was not "entitled without agreement by [the CLEC] or appropriate order by this Commission or by the Federal Communications Commission (FCC) to apply the FCC rate caps to Internet service provider (ISP)-bound traffic in lieu of reciprocal compensation rates specified under [the Agreement]") (Exhibit 16). A copy of the Verizon's Offer Letter, which is similar to the Sprint Offer Letter, is attached at Exhibit 18 and can be found at http://www22.verizon.com/wholesale/clecsupport/content/1,16835,east-wholesale-resources-clec_01-05_21,00.html. SBC also recently sent letters offering to exchange all traffic at the FCC capped rates. Unlike the Sprint Offer Letter, however, the SBC letter recognizes that existing agreements must be amended in order to apply the FCC's interim regime. A copy of SBC's Offer Letter, is attached at Exhibit 19 and can be found at https://clec.sbc.com/clec/ accletters-cgi/prime.pl.

34/ Agreement at Section 25 (Exhibit 1).

35/ Agreement at Section 2.1 (Exhibit 1).

40. Moreover, NewSouth, having succeeded to UCI's rights and obligations and being the surviving entity of the UCI-NewSouth merger, affirmatively rejected Sprint's offer on behalf of itself and UCI. In fact, NewSouth rejected Sprint's Offer Letter not once, but three times. Sprint has failed to accept any of these rejections. In accordance with the terms of the Sprint Offer Letter, on February 8, 2002, NewSouth, on behalf of itself and the former UCI, rejected Sprint's offer to exchange traffic pursuant to the FCC's graduated rates ("NewSouth 2/8 Rejection") (Exhibit 20). On September 9, 2002, NewSouth learned that Sprint did not deem NewSouth's February 8th rejection valid for UCI traffic. NewSouth did not learn of this until September 9th because that is when NewSouth first received claim forms withholding reciprocal compensation payments due to NewSouth's purported failure to reject Sprint's January 24th Offer Letter. Upon receiving the dispute claim forms claiming that NewSouth had failed to reject Sprint's offer, NewSouth, on September 30, 2002, informed Sprint that it had rejected Sprint's offer on behalf of itself and the former UCI on February 8, 2002 ("NewSouth 9/30 Rejection") (Exhibit 21). Sprint ignored this rejection. For the third time, for the avoidance of any doubt and without waiving the validity of its previous rejections, NewSouth again rejected Sprint's offer on behalf of itself and the former UCI on February 14, 2003 ("NewSouth 2/14 Rejection") (Exhibit 22). Sprint has ignored this rejection as well. In light of these rejections reflecting NewSouth's clearly expressed intent not to accept Sprint's "offer," the reciprocal compensation rates contained in the Parties' Agreement remain in effect. At minimum, those rates remain in effect for traffic below the 3:1 ratio of terminating to originating traffic per the terms of the letter.

41. Despite these repeated rejections, Sprint has, since March 2002 (for February usage), continued to withhold reciprocal compensation payments lawfully owed to NewSouth under the Agreement.

42. Additionally, Sprint's Offer Letter should be deemed rejected because Sprint has not lived up to the terms of its own offer. The Offer Letter provides that, unless rejected, Sprint would exchange all Local Traffic at the $0.0010 rate. Instead, as noted above, Sprint has not exchanged traffic at that rate, it has only deemed to *pay* that lower rate while continuing to *charge* NewSouth the higher contract rate.

F. Sprint Waived Its Right to Dispute Bills

43. The Agreement establishes the mechanism by which either party may dispute a charge assessed to it by the other party.[36/] Any disputed amounts must be designated as such within 30 days of the receipt of the invoice.[37/] The notice of dispute must contain "the specific details and reasons for disputing each item."[38/]

44. In clear violation of the Agreement, Sprint failed to timely notify NewSouth that it was disputing certain charges for NewSouth's termination of Sprint-originated Local Traffic. For example, Sprint did not notify NewSouth that it was disputing the amounts billed by NewSouth for reciprocal compensation for February 2002-March 2002 until September 9, 2002. On that date, NewSouth received an email containing dispute claim forms dated August 15, 2002 for invoice dates of March (for February usage) and April (for March usage) (Exhibit 10). As

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36/ Agreement at Section 22.2 (Exhibit 1).

37/ Agreement at Section 22.2 (Exhibit 1).

38/ Agreement at Section 22.2 (Exhibit 1). If the Parties are unable to resolve the issues surrounding the disputed amounts within 30 days after delivery of the dispute notice, each party must appoint a designated representative that has authority to settle the dispute. *See* Agreement at Section 22.3 (Exhibit 1). If the Parties' designated representatives are unable to resolve the dispute within 30 days, either party may petition the Commission for resolution or proceed with any other remedy pursuant to law or equity. *See* Agreement at Section 22.4 (Exhibit 1).

noted above, it was only at this time, nearly seven months after NewSouth's first rejection of the Sprint Offer Letter, that NewSouth became aware of Sprint's position that NewSouth had not rejected the offer. By failing to notify NewSouth of its position, Sprint prevented NewSouth from taking action to protect itself.

45. Similarly, NewSouth did not receive Sprint's notification for disputes for reciprocal compensation for May 2002-August 2002 invoices (for April through July usage) until October 10, 2002 (Exhibit 11). These dispute notices were provided long after the 30-day time period for disputing the invoices in question had passed.

46. NewSouth also has no record of receiving any dispute claim forms from Sprint for the September and October 2002 invoices (for August and September usage), although Sprint withheld significant payments rightfully due to NewSouth for these months. Although Sprint has claimed in subsequent correspondence to have sent such forms, Sprint has offered no evidence of such disputes despite NewSouth's requests to do so.[39/]

47. In the absence of timely disputes, Sprint cannot lawfully dispute the bills for March, April, May, June, July, August, September or October 2002. NewSouth thus demands payment in full for these months, including the appropriate late fees.

F. Sprint Has Failed to Make Payments When Due

48. The Agreement requires the Parties promptly to pay all undisputed amounts "when due" or pay late fees.[40/]

49. As a matter of practice, NewSouth sends its monthly bills to Sprint on or about the 15th of every month via first-class U.S. mail. NewSouth provides its invoices to the address

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39/ *See* Exhibit 7.

40/ Agreement at Section 22.2 (Exhibit 1).

designated by Sprint. Bills provided by NewSouth to Sprint are due within 30 days of Sprint's receipt of the bills.

50. Ignoring its obligations under the Agreement, Sprint has failed to pay undisputed amounts in a timely manner even though it is NewSouth's practice to timely provide Sprint with bills each month. Sprint made no payments for invoices dated November 1, 2001 through April 1, 2002 until September 2002 (Exhibit 10) (Email from Lisa Sulzen, Sprint, enclosing payment for October 1, 2001 through April 2002 (Sept. 9, 2002)).

51. NewSouth is entitled to appropriate late fees for Sprint's failure to pay undisputed amounts as required by the Agreement.

COUNT I

Sprint Breached the Parties' Interconnection Agreement by Unilaterally Reducing the Reciprocal Compensation Rate and By Unilaterally Imposing a Cap on Such Payments

52. NewSouth incorporates by reference as though fully set forth herein the allegations of paragraphs 1 through 51 above.

53. The Agreement requires Sprint to pay NewSouth $0.003857 per minute of use for the termination of all Local Traffic, including ISP-bound traffic, over the UCI switch. Sprint has refused to pay the contract rate and instead has unilaterally reduced to $0.0010 per minute of use the amount it will pay NewSouth for transport and termination of Local Traffic, and unilaterally imposed a cap on the amount of Local Traffic for which it will pay any reciprocal compensation at all.

54. By failing to pay NewSouth for terminating Sprint-originated Local Traffic at the rate of $0.003587 per minute of use, Sprint has breached the Agreement and damaged NewSouth in the amount of $781,992.62, as of April 2003 Invoice.

COUNT II

Sprint Waived Its Right To Dispute Charges by Failing To Submit Disputes as Required by the Agreement

55. NewSouth incorporates by reference as though fully set forth herein the allegations of paragraphs 1 through 54 above.

56. The Agreement requires Sprint to provide notice of disputed amounts within 30 days of receipt of an invoice. Sprint consistently and repeatedly failed to comply with this requirement.

57. By failing to timely notify NewSouth of disputed amounts, Sprint has breached the Agreement and damaged NewSouth in the amount of $461,921.57.

COUNT III

Sprint Breached the Parties' Interconnection Agreement by Failing To Pay Undisputed Amounts Within the Time Required by the Contract

58. NewSouth incorporates by reference as though fully set forth herein the allegations of paragraphs 1 through 57 above.

59. The Agreement requires Sprint to pay undisputed amounts when due. Failure to pay undisputed amounts within this time period subjects Sprint to late fees. Sprint has failed to timely pay undisputed amounts when due for invoices covering the months of March, April, May, June, July, August, September, and October 2002 and thus owes NewSouth appropriate late charges.

WHEREFORE, for the foregoing reasons, NewSouth respectfully requests that the Commission:

1. Grant expedited consideration to this Complaint;

2. Enter an Order declaring that Sprint has breached its obligations to NewSouth under the Agreement by attempting to unlawfully reduce the amount of reciprocal compensation owed to NewSouth under the Agreement;

3. Enter an Order declaring that Sprint has breached its obligations to NewSouth under the Agreement by failing to pay NewSouth $781,992.62 in reciprocal compensation charges for NewSouth's termination of Sprint-originated traffic;

4. Order Sprint to immediately pay NewSouth all outstanding reciprocal compensation charges due under the Agreement, including appropriate late fees, and to pay future reciprocal compensation charges pursuant to the Agreement;

5. Enter an Order declaring that Sprint has breached its obligations to NewSouth under the Agreement by failing to pay undisputed amounts due to NewSouth under the Agreement;

6. Order Sprint to pay immediately NewSouth undisputed amounts totaling $461,821.57 and associated late fees and interest due to NewSouth under the Agreement;

7. Order Sprint to present a proper amendment to NewSouth to the extent Sprint seeks to apply the *ISP Remand Order* prospectively to the Parties' relationship; and

8. Grant NewSouth such other and further relief as the Commission may deem just and proper.

Respectfully submitted,

NewSouth Communications Corp.

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Dated: May 23, 2003

CERTIFICATE OF SERVICE

I, Vickie Gomez, hereby certify that a true and correct copy of the foregoing document was sent via certified mail, return receipt requested, on this 23rd day of May, 2003 to the following:

Sprint-Florida, Inc.
Field Service Manager
555 Lake Border Drive
Apopka, Florida 32703

Sprint-Florida, Inc.
Sprint Director – Local Carrier Markets
6480 Sprint Parkway
KSOPHM0316-3B774
Overland Park, KS 66251

Vickie Gomez

List of Exhibits

Exhibit	Description
1	Interconnection and Resale Agreement for the State of Florida between UniversalCom, Inc. and Sprint-Florida, Inc. (Jan. 27, 1998) ("Agreement")
2	*Implementation of the Local Competition Provisions in the Telecommunications Act of 1996; Intercarrier Compensation for ISP-Bound Traffic*, 16 FCC Rcd 9151 (2001) ("*ISP Remand Order*")
3	Articles of Merger of UniversalCom, Inc. with and into NewSouth Communications Corp., being the surviving corporation (effective Dec. 31, 2001) ("NewSouth-UCI Merger Articles")
4	*MCImetro Access Transmission Services LLC Petition for Preemption of the Jurisdiction of the New York Public Service Commission Pursuant to Section 252(e)(5) of the Communications Act of 1934, as Amended*, 17 FCC Rcd 23953 (2002)
5	E-mail from John W. Clayton, Sprint, to Jake E. Jennings, NewSouth (Dec. 13, 2002)
6	E-mail from Jake E. Jennings, NewSouth, to John W. Clayton, Sprint (Jan. 6, 2003)
7	Letter from Michael H. Pryor, Counsel for NewSouth, to John Clayton, Sprint (Feb. 24, 2003)
8	Letter from Janette W. Luehring, Sprint, to Michael H. Pryor and Angela F. Collins, Counsel for NewSouth (Mar. 11, 2003)
9	Letter from Michael H. Pryor, Counsel for NewSouth, to Janette W. Luehring, Sprint (Mar. 17, 2003)
10	Email from Sprint (Sept. 9, 2002), attaching Claim Forms for Mar. 1, 2002 and Apr. 1, 2002 Invoices
11	Sprint Dispute Claim Forms for May 1, 2002 ($80,512.81), June 1, 2002 ($58,587.34), July 1, 2002 ($67,235.16), and August 1, 2002 ($78,258.24) Invoices Email from Sprint (Dec. 12, 2002), attaching Dispute Claim Form for Nov. 1, 2002 ($81,071.26) Invoice Email from Sprint (Feb. 4, 2003), attaching Dispute Claim Form for Dec. 1, 2002 ($79,274.29) Invoice Email from Sprint (Feb. 13, 2003), attaching Dispute Claim Form for Jan. 1, 2003 ($66,680.40) Invoice Email from Sprint (May 5, 2003), attaching Dispute Claim Forms for Feb. 1, 2003 ($53,543.78) and Mar. 1, 2003 ($53,112.34) Invoices Email from Sprint (May 15, 2003), attaching Dispute Claim Form for April 1, 2003 ($40,804.94) Invoice
12	Sprint Invoices to NewSouth
13	Summary of Disputed and Outstanding Payments
14	Sprint Offer Letter (Jan. 24, 2002)

List of Exhibits (Cont'd)

Exhibit	Description
15	Case No. 8914, *Petition Of Verizon Maryland, Inc. for a Declaratory Ruling and for an Order Approving Amendments to Interconnection Agreements*, Order No. 77578 (Md. PSC Feb. 28, 2002) ("*Maryland Order*")
16	Case 01-10-036, *Verizon California Inc. v. Pac-West Telecomm, Inc.* Decision No. 02-01-062, Order Denying the Complaint of Verizon California Inc. Against Pac-West Telecomm, Inc. (Cal. PUC Jan. 23, 2002) ("*California Order*")
17	*Verizon Maryland, Inc., f/k/a Bell Atlantic-Maryland, Inc. v. RCN Telecom Services, Inc., f/k/a RCN Telecom Services of Maryland Inc., et al.*, 248 F. Supp. 2d 468 (D. Md. 2003) ("*RCN Case*")
18	Verizon Offer Letter
19	SBC Offer Letter
20	Letter from NewSouth to Sprint (Feb. 8, 2002) ("NewSouth 2/8 Rejection")
21	Email from NewSouth to Sprint (Sept. 30, 2002) ("NewSouth 9/30 Rejection")
22	Letter from NewSouth to Sprint (Feb. 14, 2003) ("NewSouth 2/14 Rejection")

INTERCONNECTION AND RESALE AGREEMENT FOR THE STATE OF FLORIDA SUMMARY

May 4, 2000

BETWEEN: Universal Com, Incorporated and Sprint-Florida, Incorporated

DATE OF AGREEMENT: January 27, 1998

SERVICE: To establish the rates, terms and conditions for local interconnection, local resale, and purchase of unbundled network elements, and, to interconnect their local exchange networks for the purposes of transmission and termination of calls, so that customers of each can receive calls that originate on the other's network and place calls that terminate on the other's network, and for CLEC's use in the provision of exchange access

4. **RATES:** Rates are charged as set forth in Attachment I subject to the provisions of Section 2.3

2.2 **COMPENSATION FOR LOCAL TRAFFIC TRANSPORT AND TERMINATION:**

ATTACHMENT IV: 2. INTERCONNECTION COMPENSATION MECHANISMS: Charges to Sprint and to CLEC are based on % of usage.

5.3 **INVOICE DUE DATE:** Due date as shown on invoice. If dispute, (22.2) only pay the amount due, not the disputed amount.

5.1 **AUDITS:** 1 per twelve month period.

15. **GOVERNED UNDER:** State of Florida

ATTACHMENT VII – 3.1 OBF COMPLIANT – Sprint shall comply with industry standards

3. **TERM OF AGREEMENT:** Effective on the Approval date and terminating on December 31, 1999 with an automatic renewal for an additional term of 1 year.

18. **NOTICE REQUIREMENT:**

If to Sprint:

Sprint-Florida, Incorporated
Attn: Field Service Manager
555 Lake Border Drive
Apopka, FL 32703

If to CLEC:

Universal Com, Incorporated
Attn: President
185 Stahlman Avenue
Destin, FL 32541

Executed by:

Peter T. Bower, President, Universal Com, Incorporated
Jerry Johns, VP, Ext. Affairs, Sprint-Florida, Incorporated

ISSUES TO BE ADDRESSED:

1. 4.2.3 Sprint shall control congestion points??
2. Comparison of Rates: Reciprocal, Toll, UNE Elements, Resale %
3. Billing methods: swap CMDS bills
4. Subcontractor Confidentiality Policy – Get that started if not already in place.
5. What states does it cover?
6. Rates

CONTRACT NUMBER IC 1-56

Table of Contents

PART A

INTERCONNECTION AND RESALE AGREEMENT

This Interconnection and Resale Agreement (the "Agreement"), entered into this January 27, 1998, is entered into by and between Universal Com, Incorporated ("CLEC"), a Florida corporation, and Sprint-Florida, Incorporated ("Sprint"), a Florida corporation, to establish the rates, terms and conditions for local interconnection, local resale, and purchase of unbundled network elements (individually referred to as the "service" or collectively as the "services").

WHEREAS, the Parties wish to interconnect their local exchange networks in a technically and economically efficient manner for the transmission and termination of calls, so that customers of each can seamlessly receive calls that originate on the other's network and place calls that terminate on the other's network, and for CLEC's use in the provision of exchange access ("Local Interconnection"); and

WHEREAS, CLEC wishes to purchase Telecommunications Services for resale to others, and Sprint is willing to provide such service; and

WHEREAS, CLEC wishes to purchase unbundled network elements, ancillary services and functions and additional features ("Network Elements"), and to use such services for itself or for the provision of its Telecommunications Services to others, and Sprint is willing to provide such services; and

WHEREAS, the Parties intend the rates, terms and conditions of this Agreement, and their performance of obligations thereunder, to comply with the Communications Act of 1934, as amended by the Telecommunications Act of 1996 (the "Act"), the Rules and Regulations of the Federal Communications Commission ("FCC"), and the orders, rules and regulations of the Florida Public Service Commission (the "Commission");

Now, therefore, in consideration of the terms and conditions contained herein, CLEC and Sprint hereby mutually agree as follows:

PART A -- GENERAL TERMS AND CONDITIONS

Section 1. Scope of this Agreement

1.1 This Agreement, including Parts A, B, and C, specifies the rights and obligations of each party with respect to the establishment, purchase, and sale of Local Interconnection, resale of Telecommunications Services and Unbundled Network Elements. This PART A sets forth the general

terms and conditions governing this Agreement. Certain terms used in this Agreement shall have the meanings defined in PART B -- DEFINITIONS, or as otherwise elsewhere defined throughout this Agreement. Other terms used but not defined herein will have the meanings ascribed to them in the Act, in the FCC's, and in the Commission's Rules and Regulations. PART C sets forth, among other things, descriptions of the services, pricing, technical and business requirements, and physical and network security requirements.

LIST OF ATTACHMENTS COMPRISING PART C:

I. Price Schedule
II. Local Resale
III. Network Elements
IV. Interconnection
V. Collocation
VI. Rights of Way
VII. Number Portability
VIII. General Business Requirements
IX. Reporting Standards

1.2 Sprint shall not discontinue any interconnection arrangement, Telecommunications Service, or Network Element provided or required hereunder without providing CLEC thirty (30) days' prior written notice of such discontinuation of such service, element or arrangement. Sprint agrees to cooperate with CLEC with any transition resulting from such discontinuation of service and to minimize the impact to customers which may result from such discontinuance of service.

1.3 Sprint shall provide notice of network changes and upgrades in accordance with Sections 51.325 through 51.335 of Title 47 of the Code of Federal Regulations.

1.4 The services and facilities to be provided to CLEC by Sprint in satisfaction of this Agreement may be provided pursuant to Sprint tariffs and then current practices. Should there be a conflict between the terms of this Agreement and any such tariffs and practices, the terms of the tariff shall control to the extent allowed by law or Commission order.

Section 2. Regulatory Approvals

2.1 This Agreement, and any amendment or modification hereof, will be submitted to the Commission for approval in accordance with Section 252 of the Act. Sprint and CLEC shall use their best efforts to obtain

approval of this Agreement by any regulatory body having jurisdiction over this Agreement and to make any required tariff modifications in their respective tariffs, if any. CLEC shall not order services under this Agreement before Approval Date except as may otherwise be agreed in writing between the Parties. In the event any governmental authority or agency rejects any provision hereof, the Parties shall negotiate promptly and in good faith such revisions as may reasonably be required to achieve approval.

2.2 Notwithstanding the above provisions, or any other provision in this Agreement, this Agreement and any Attachments hereto are subject to such changes or modifications with respect to the rates, terms or conditions contained herein as may be ordered, allowed or directed by the Commission or the FCC, or as may be required to implement the result of an order or direction of a court of competent jurisdiction with respect to its review of any appeal of the decision of the Commission or the FCC, in the exercise of their respective jurisdictions whether said changes or modifications result from an order issued on an appeal of the decision of the Commission or the FCC, a rulemaking proceeding, a generic investigation, a tariff proceeding, a costing/pricing proceeding, or an arbitration proceeding conducted by the Commission or FCC which applies to Sprint or in which the Commission or FCC makes a generic determination) to the extent that CLEC had the right and/or opportunity to participate in said proceeding (regardless of whether CLEC actually participates.). Any rates, terms or conditions thus developed or modified shall be substituted in place of those previously in effect and shall be deemed to have been effective under this Agreement as of the effective date of the order by the court, Commission or the FCC, whether such action was commenced before or after the effective date of this Agreement. If any such modification renders the Agreement inoperable or creates any ambiguity or requirement for further amendment to the Agreement, the Parties will negotiate in good faith to agree upon any necessary amendments to the Agreement. Should the Parties be unable to reach agreement with respect to the applicability of such order or the resulting appropriate modifications to this Agreement, the Parties agree to petition such Commission to establish appropriate interconnection arrangements under sections 251 and 252 of the Act in light of said order or decision.

2.3 In the event Sprint is required by any governmental authority or agency to file a tariff or make another similar filing in connection with the performance of any action that would otherwise be governed by this Agreement, Sprint shall make reasonable efforts to provide to CLEC its proposed tariff prior to such filing. The other services covered by this

Agreement and not covered by such decision or order shall remain unaffected and shall remain in full force and effect.

2.4 The Parties intend that any additional services requested by either party relating to the subject matter of this Agreement will be incorporated into this Agreement by amendment.

Section 3. Term and Termination

3.1 This Agreement shall be deemed effective upon the Approval Date. No order or request for services under this Agreement shall be processed until this Agreement is so approved unless otherwise agreed to, in writing by the Parties.

3.2 Except as provided herein, Sprint and CLEC agree to provide service to each other on the terms defined in this Agreement for an initial term commencing on the Approval Date and terminating on December 31, 1999. Following the expiration of the initial term, this Agreement shall be renewed automatically for an additional term of (1) year unless terminated pursuant to Section 3.3 herein.

3.3 Either party may terminate this Agreement at the end of the term by providing written notice of termination to the other party, such written notice to be provided at least 180 days in advance of the date of termination. In the event of such termination pursuant to this Section 3.3, for service arrangements made available under this Agreement and existing at the time of termination, those arrangements shall continue without interruption under either (a) a new agreement executed by the Parties, or (b) standard interconnection terms and conditions contained in Sprint's tariff or other substitute document that are approved and made generally effective by the Commission or the FCC.

3.4 In the event of default, either Party may terminate this Agreement in whole or in part provided that the non-defaulting Party so advises the defaulting Party in writing of the event of the alleged default and the defaulting Party does not remedy the alleged default within 60 days after written notice thereof. Default is defined to include:

a. Either Party's insolvency or initiation of bankruptcy or receivership proceedings by or against the Party; or

b. Either Party's material breach of any of the terms or conditions hereof, including the failure to make any undisputed payment when due.

3.5 Termination of this Agreement for any cause shall not release either Party from any liability which at the time of termination has already accrued to the other Party or which thereafter may accrue in respect to any act or omission prior to termination or from any obligation which is expressly stated herein to survive termination.

3.6 If Sprint sells or trades substantially all the assets used to provide Telecommunications Services, Local Interconnection, or Network Elements in a particular exchange or group of exchanges Sprint may terminate this Agreement in whole or in part as to a particular exchange or group of exchanges upon sixty (60) days prior written notice.

Section 4. Charges and Payment

4.1 In consideration of the services provided by Sprint under this Agreement, CLEC shall pay the charges set forth in Attachment I subject to the provisions of Section 2.3 hereof The billing and payment procedures for charges incurred by CLEC hereunder are set forth in Attachment VIII.

4.2 In addition to any other applicable charges under this Section 4 and Attachment I, if CLEC purchases unbundled Local Switching elements, CLEC shall pay Sprint:

4.2.1 for intrastate toll minutes of use traversing such unbundled Local Switching elements, intrastate access charges comparable to those listed in 4.2.1 above and any explicit intrastate universal service mechanism based on access charges.

4.3 Sprint will not accept any new or amended orders for Telecommunications Services, Unbundled Network Elements, Interconnection or other services under the terms of this Agreement from CLEC while any past due, undisputed charges remain unpaid.

Section 5. Audits and Examinations

5.1 As used herein "Audit" shall mean a comprehensive review of services performed under this Agreement; "Examination" shall mean an inquiry into a specific element of or process related to services performed

under this Agreement (e.g., examination and verification of LOAs). Either party (the "Requesting Party") may perform one (1) Audit per 12-month period commencing with the Approval Date. The Requesting Party may perform Examinations as it deems necessary.

5.2 Upon thirty (30) days written notice by the Requesting Party to Audited Party, Requesting Party shall have the right through its authorized representative to make an Audit or Examination, during normal business hours, of any records, accounts and processes which contain information bearing upon the provision of the services provided and performance standards agreed to under this Agreement. Within the above-described 30-day period, the Parties shall reasonably agree upon the scope of the Audit or Examination, the documents and processes to be reviewed, and the time, place and manner in which the Audit or Examination shall be performed. Audited Party agrees to provide Audit or Examination support, including appropriate access to and use of Audited Party's facilities (e.g., conference rooms, telephones, copying machines).

5.3 Each party shall bear its own expenses in connection with the conduct of the Audit or Examination. The reasonable cost of special data extraction required by the Requesting Party to conduct the Audit or Examination will be paid for by the Requesting Party. For purposes of this Section 5.3, a "Special Data Extraction" shall mean the creation of an output record or informational report (from existing data files) that is not created in the normal course of business. If any program is developed to Requesting Party's specifications and at Requesting Party's expense, Requesting Party shall specify at the time of request whether the program is to be retained by Audited party for reuse for any subsequent Audit or Examination.

5.4 Adjustments, credits or payments shall be made and any corrective action shall commence within thirty (30) days from Requesting Party's receipt of the final audit report to compensate for any errors or omissions which are disclosed by such Audit or Examination and are agreed to by the Parties. One and one half (1 ½%) or the highest interest rate allowable by law for commercial transactions shall be assessed and shall be computed by compounding daily from the time of the overcharge to the day of payment or credit.

5.5 Neither such right to examine and audit nor the right to receive an adjustment shall be affected by any statement to the contrary appearing on checks or otherwise, unless such statement expressly waiving such right appears in writing, is signed by the authorized representative of the party having such right and is delivered to the other party in a manner sanctioned by this Agreement.

5.6 This Section 5 shall survive expiration or termination of this Agreement for a period of two (2) years after expiration or termination of this Agreement.

Section 6. Bona Fide Request Process for Further Unbundling

6.1 Each Party shall promptly consider and analyze access to categories of unbundled Network Elements not covered in this Agreement with the submission of a Network Element Bona Fide Request hereunder. The Network Element Bona Fide Request process set forth herein does not apply to those services requested pursuant to FCC Rule Section 51.319 adopted in First Report & Order, CC Docket No. 96-98, (rel. Aug. 8, 1996).

6.2 A Network Element Bona Fide Request shall be submitted in writing and shall include a technical description of each requested Network Element.

6.3 The requesting Party may cancel a Network Element Bona Fide Request at any time, but shall pay the other Party's reasonable and demonstrable costs of processing and/or implementing the Network Element Bona Fide Request up to the date of cancellation.

6.4 Within ten (10) business days of its receipt, the receiving Party shall acknowledge receipt of the Network Element Bona Fide Request.

6.5 Except under extraordinary circumstances, within thirty (30) days of its receipt of a Network Bona Fide Request, the receiving Party shall provide to the requesting Party a preliminary analysis of such Network Element Bona Fide Request. The preliminary analysis shall confirm that the receiving Party will offer access to the Network Element or will provide a detailed explanation that access to the Network Element does not qualify as a Network Element that is required to be provided under the Act.

6.6 Upon receipt of the preliminary analysis, the requesting Party shall, within thirty (30) days, notify the receiving Party of its intent to proceed or not to proceed.

6.7 The receiving Party shall promptly proceed with the Network Element Bona Fide Request upon receipt of written authorization from the

requesting Party. When it receives such authorization, the receiving Party shall promptly develop the requested services, determine their availability, calculate the applicable prices and establish installation intervals.

6.8 As soon as feasible, but not more than ninety (90) days after its receipt of authorization to proceed with developing the Network Element Bona Fide Request, the receiving Party shall provide to the requesting Party a Network Element Bona Fide Request quote which will include, at a minimum, a description of each Network Element, the availability, the applicable rates and the installation intervals.

6.9 Within thirty (30) days of its receipt of the Network Element Bona Fide Request quote, the requesting Party must either confirm its order for the Network Bona Fide Request pursuant to the Network Element Bona Fide Request quote or seek arbitration by the Commission pursuant to Section 252 of the Act.

6.10 If a Party to a Network Element Bona Fide Request believes that the other Party is not requesting, negotiating or processing the Network Element Bona Fide Request in good faith, or disputes a determination, or price or cost quote, such Party may seek mediation or arbitration by the Commission pursuant to Section 252 of the Act.

Section 7. Intellectual Property Rights

Any intellectual property which originates from or is developed by a Party shall remain in the exclusive ownership of that Party. Except for a limited license to use patents or copyrights to the extent necessary for the Parties to use any facilities or equipment (including software) or to receive any service solely as provided under this Agreement, no license in patent, copyright, trademark or trade secret, or other proprietary or intellectual property right now or hereafter owned, controlled or licensable by a Party, is granted to the other Party or shall be implied or arise by estoppel. It is the responsibility of each Party to ensure at no separate, additional cost to the other Party that it has obtained any necessary licenses in relation to intellectual property of third parties used in its network that may be required to enable the other Party to use any facilities or equipment (including software), to receive any service, or to perform its respective obligations under this Agreement. For the avoidance of doubt, the foregoing sentence shall not preclude Sprint from charging CLEC for such costs as permitted under a Commission order.

Section 8. Limitation of Liability

Except as otherwise set forth in this Agreement, neither Party shall be responsible to the other for any indirect, special, consequential or punitive damages, including (without limitation) damages for loss of anticipated profits or revenue or other economic loss in connection with or arising from anything said, omitted, or done hereunder (collectively "Consequential Damages"), whether arising in contract or tort, provided that the foregoing shall not limit a Party's obligation under Section 9 to indemnify, defend, and hold the other party harmless against amounts payable to third parties. Notwithstanding the foregoing, in no event shall Sprint's liability to CLEC for a service outage exceed an amount equal to the proportionate charge for the service(s) or unbundled element(s) provided for the period during which the service was affected.

Section 9. Indemnification

9.1 Each Party agrees to indemnify and hold harmless the other Party from and against claims for damage to tangible personal or real property and/or personal injuries arising out of the negligence or willful act or omission of the indemnifying Party or its agents, servants, employees, contractors or representatives. To the extent not prohibited by law, each Party shall defend, indemnify, and hold the other Party harmless against any loss to a third party arising out of the negligence or willful misconduct by such indemnifying Party, its agents, or contractors in connection with its provision of service or functions under this Agreement. In the case of any loss alleged or made by a Customer of either Party, the Party whose customer alleged such loss shall indemnify the other Party and hold it harmless against any or all of such loss alleged by each and every Customer. The indemnifying Party under this Section agrees to defend any suit brought against the other Party either individually or jointly with the indemnifying Party for any such loss, injury, liability, claim or demand. The indemnified Party agrees to notify the other Party promptly, in writing, of any written claims, lawsuits, or demands for which it is claimed that the indemnifying Party is responsible under this Section and to cooperate in every reasonable way to facilitate defense or settlement of claims. The indemnifying Party shall have complete control over defense of the case and over the terms of any proposed settlement or compromise thereof. The indemnifying Party shall not be liable under this Section for settlement by the indemnified Party of any claim, lawsuit, or demand, if the indemnifying Party has not approved the settlement in advance, unless the indemnifying Party has had the defense of the claim, lawsuit, or demand tendered to it in writing and has failed to assume such defense. In the event of such failure to assume defense, the indemnifying Party shall be liable for any reasonable settlement made by the indemnified Party without approval of the indemnifying Party.

9.2 Each Party agrees to indemnify and hold harmless the other Party from all claims and damages arising from the Indemnifying Party's discontinuance of service to one of the Indemnifying Party's subscribers for nonpayment.

9.3 When the lines or services of other companies and Carriers are used in establishing connections to and/or from points not reached by a Party's lines, neither Party shall be liable for any act or omission of the other companies or Carriers.

9.4 In addition to its indemnity obligations hereunder, each Party shall, to the extent allowed by law or Commission Order, provide, in its tariffs and contracts with its subscribers that relate to any Telecommunications Services or Network Element provided or contemplated under this Agreement, that in no case shall such Party or any of its agents, contractors or others retained by such Party be liable to any subscriber or third party for (i) any loss relating to or arising out of this Agreement, whether in contract or tort, that exceeds the amount such Party would have charged the applicable subscriber for the service(s) or function(s) that gave rise to such loss, and (ii) Consequential Damages (as defined in Section 8 above).

Section 10. Remedies

10.1 In addition to any other rights or remedies, and unless specifically provided here and to the contrary, either Party may sue in equity for specific performance.

10.2 Except as otherwise provided herein, all rights of termination, cancellation or other remedies prescribed in this Agreement, or otherwise available, are cumulative and are not intended to be exclusive of other remedies to which the injured Party may be entitled at law or equity in case of any breach or threatened breach by the other Party of any provision of this Agreement, and use of one or more remedies shall not bar use of any other remedy for the purpose of enforcing the provisions of this Agreement.

Section 11. Branding

11.1 In all cases of operator and directory assistance services CLEC provides using services provided by Sprint under this Agreement, Sprint shall, where technically feasible, at CLEC's sole discretion and expense, brand any and all such services at all points of customer contact

exclusively as CLEC services, or otherwise as CLEC may specify, or be provided with no brand at all, as CLEC shall determine. Sprint may not unreasonably interfere with branding by CLEC; provided that if there are technical limitations as to the number of CLECs that Sprint can brand for, branding will be made available to CLEC hereunder on a first come, first serve basis with an allowance for an unbranded alternative for all Telecommunications Carriers.

11.2 CLEC shall provide the exclusive interface to CLEC subscribers, except as CLEC shall otherwise specify. In those instances where CLEC requests Sprint personnel to interface with CLEC subscribers, such Sprint personnel shall inform the CLEC subscribers that they are representing CLEC, or such brand as CLEC may specify.

11.3 All forms, business cards or other business materials furnished by Sprint to CLEC subscribers shall bear no corporate name, logo, trademark or tradename.

11.4 Except as specifically permitted by a Party, in no event shall either Party provide information to the other Party's subscribers about the other Party or the other Party's products or services.

11.5 Sprint shall provide, for CLEC's review, the methods and procedures, training and approaches to be used by Sprint to assure that Sprint meets CLEC's branding requirements.

11.6 This Section 11 shall not confer on either Party any rights to the service marks, trademarks and trade names owned by or used in connection with services by the other Party, except as expressly permitted in writing by the other Party.

Section 12. Confidentiality and Publicity

12.1 All confidential or proprietary information disclosed by either Party during the negotiations and the term of this Agreement shall be protected by the Parties in accordance with the terms of this Section 12. All information which is disclosed by one party ("Disclosing Party") to the other ("Recipient") in connection with this Agreement, or acquired in the course of performance of this Agreement, shall be deemed confidential and proprietary to the Disclosing Party and subject to this Agreement, such information including but not limited to, orders for services, usage information in any form, and "CPNI", and the rules and regulations of the FCC ("Confidential and/or Proprietary Information").

12.1.1 For a period of three (3) years from receipt of Confidential Information, Recipient shall (i) use it only for the purpose of performing under this Agreement, (ii) hold it in confidence and disclose it only to employees or agents who have a need to know it in order to perform under this Agreement, and (iii) safeguard it from unauthorized use or Disclosure using no less than the degree of care with which Recipient safeguards its own Conficential Information.

12.1.2 Recipient shall have no obligation to safeguard Confidential Information (i) which was in the Recipient's possession free of restriction prior to its receipt from Disclosing Party, (ii) which becomes publicly known or available through no breach of this Agreement by Recipient, (iii) which is rightfully acquired by Recipient free of restrictions on its Disclosure, or (iv) which is independently developed by personnel of Recipient to whom the Disclosing Party's Confidential Information had not been previously disclosed. Recipient may disclose Confidential Information if required by law, a court, or governmental agency, provided that Disclosing Party has been notified of the requirement promptly after Recipient becomes aware of the requirement, and provided that Recipient undertakes all lawful measures to avoid disclosing such information until Disclosing Party has had reasonable time to obtain a protective order. Recipient agrees to comply with any protective order that covers the Confidential Information to be disclosed.

12.1.3 Each Party agrees that Disclosing Party would be irreparably injured by a breach of this Section 12 by Recipient or its representatives and that Disclosing Party shall be entitled to seek equitable relief, including injunctive relief and specific performance, in the event of any breach of this Section 12. Such remedies shall not be exclusive, but shall be in addition to all other remedies available at law or in equity.

12.2 Unless otherwise mutually agreed upon, neither Party shall publish or use the other Party's logo, trademark, service mark, name, language, pictures, or symbols or words from which the other Party's name may reasonably be inferred or implied in any product, service, advertisement, promotion, or any other publicity matter, except that nothing in this paragraph shall prohibit a Party from engaging in valid comparative advertising. This paragraph 12.3 shall confer no rights on a Party to the service marks, trademarks and trade names owned or used in connection with services by the other Party or its Affiliates, except as expressly permitted by the other Party.

12.3 Neither Party shall produce, publish, or distribute any press release or other publicity referring to the other Party or its Affiliates, or to this Agreement, without the prior written approval of the other Party. Each party shall obtain the other Party's prior approval before discussing this Agreement in any press or media interviews. In no event shall either Party mischaracterize the contents of this Agreement in any public statement or in any representation to a governmental entity or member thereof.

12.4 Except as otherwise expressly provided in this Section 12, nothing herein shall be construed as limiting the rights of either Party with respect to its customer information under any applicable law, including without limitation Section 222 of the Act.

Section 13. Warranties

Except as otherwise provided herein, each Party shall perform its obligations hereunder at a performance level at parity with that which it uses for its own operations, or those of its Affiliates, but in no event shall a party use less than reasonable care in the performance of its duties hereunder.

Section 14. Assignment and Subcontract

Any assignment by either Party to any non-affiliated entity of any right, obligation or duty, or of any other interest hereunder, in whole or in part, without the prior written consent of the other Party shall be void. A Party assigning this Agreement or any right, obligation, duty or other interest hereunder to an Affiliate shall provide written notice to the other Party. All obligations and duties of any party under this Agreement shall be binding on all successors in interest and assigns of such Party. No assignment hereof shall relieve the assignor of its obligations under this Agreement.

Section 15. Governing Law

This Agreement shall be governed by and construed in accordance with the Act, orders of the Commission, and the FCC's Rules and Regulations, except insofar as state law may control any aspect of this Agreement, in which case the domestic laws of the State of Florida, without regard to its conflicts of laws principles, shall govern.

Section 16. Relationship of Parties

It is the intention of the Parties that Sprint be an independent contractor and nothing contained herein shall constitute the Parties as joint venturers, partners, employees or agents of one another, and neither Party shall have the right or power to bind or obligate the other.

Section 17. No Third Party Beneficiaries

The provisions of this Agreement are for the benefit of the Parties hereto and not for any other person, provided, however, that this shall not be construed to prevent CLEC from providing its Telecommunications Services to other carriers. This Agreement shall not provide any person not a party hereto with any remedy, claim, liability, reimbursement, claim of action, or other right in excess of those existing without reference hereto.

Section 18. Notices

Except as otherwise provided herein, all notices or other communication hereunder shall be deemed to have been duly given when made in writing and delivered in person or deposited in the United States mail, certified mail, postage prepaid, return receipt requested and addressed as follows:

To CLEC: Universal Com. Incorporated
Attn: President
185 Stahlman Avenue
Destin, FL 32541

To Sprint: Sprint-Florida. Incorporated
Attn: Field Service Manager
555 Lake Border Drive
Apopka, FL 32703

If personal delivery is selected to give notice, a receipt of such delivery shall be obtained. The address to which notices or communications may be given to either party may be changed by written notice given by such Party to the other pursuant to this Section 18.

Section 19. Waivers

19.1 No waiver of any provisions of this Agreement and no consent to any default under this Agreement shall be effective unless the same shall be in writing and properly executed by or on behalf of the Party against whom such waiver or consent is claimed.

19.2 No course of dealing or failure of any Party to strictly enforce any term, right, or condition of this Agreement in any instance shall be construed as a general waiver or relinquishment of such term, right or condition.

19.3 Waiver by either party of any default by the other Party shall not be deemed a waiver of any other default.

Section 20. Survival

The following provisions of this Part A shall survive the expiration or termination of this Agreement: Sections 4, 5, 7, 8, 9, 10, 11.6, 12, 22, 23 and 24.

Section 21. Force Majeure

Neither Party shall be held liable for any delay or failure in performance of any part of this Agreement from any cause beyond its control and without its fault or negligence, such as acts of God, acts of civil or military authority, embargoes, epidemics, war, terrorist acts, riots, insurrections, fires, explosions, earthquakes, nuclear accidents, floods, power blackouts, strikes, work stoppage affecting a supplier or unusually severe weather. No delay or other failure to perform shall be excused pursuant to this Section 21 unless delay or failure and consequences thereof are beyond the control and without the fault or negligence of the Party claiming excusable delay or other failure to perform. In the event of any such excused delay in the performance of a Party's obligation(s) under this Agreement, the due date for the performance of the original obligation(s) shall be extended by a term equal to the time lost by reason of the delay. In the event of such delay, the delaying Party shall perform its obligations at a performance level no less than that which it uses for its own operations. In the event of such performance delay or failure by Sprint, Sprint agrees to resume performance in a nondiscriminatory manner and not favor its own provision of Telecommunications Services above that of CLEC.

Section 22. Dispute Resolution

22.1 The Parties recognize and agree that the Commission has continuing jurisdiction to implement and enforce all terms and conditions of this Agreement. Accordingly, the Parties agree that any dispute arising out of or relating to this Agreement that the Parties themselves cannot resolve may be submitted to the Commission for resolution. The Parties agree to seek expedited resolution by the Commission, and shall request that resolution occur in no event later than sixty (60) days from the date of submission of such dispute. If the Commission appoints an expert(s) or other facilitator(s) to assist in its decision making, each party shall pay half of the fees and expenses so incurred. During the Commission proceeding each Party shall continue to perform its obligations under this Agreement provided, however, that neither Party shall be required to act in any unlawful fashion. This provision shall not preclude the Parties from seeking relief available in any other forum.

22.2 If any portion of an amount due to a Party ("the Billing Party") under this Agreement is subject to a bona fide dispute between the Parties, the Party billed (the "Non-Paying Party") shall within thirty (30) days of its receipt of the invoice containing such disputed amount give notice to the Billing Party of the amounts it disputes ("Disputed Amounts") and include in such notice the specific details and reasons for disputing each item. The Non-Paying Party shall pay when due all undisputed amounts to the Billing Party. The balance of the Disputed Amount shall thereafter be paid with appropriate late charges, if appropriate, upon final determination of such dispute.

22.3 If the Parties are unable to resolve the issues related to the Disputed Amounts in the normal course of business within thirty (30) days after delivery to the Billing Party of notice of the Disputed Amounts, each of the Parties shall appoint a designated representative that has authority to settle the dispute and that is at a higher level of management than the persons with direct responsibility for administration of this Agreement. The designated representatives shall meet as often as they reasonably deem necessary in order to discuss the dispute and negotiate in good faith in an effort to resolve such dispute. The specific format for such discussions will be left to the discretion of the designated representatives. however all reasonable requests for relevant information made by one Party to the other Party shall be honored.

22.4 If the Parties are unable to resolve issues related to the Dispute Amounts within thirty (30) days after the Parties' appointment of designated representatives pursuant to subsection 22.3, then either Party may file a compliant with the Commission to resolve such issues or proceed with any other remedy pursuant to law or equity. The

Commission may direct payment of any or all funds plus applicable late charges to be paid to either Party.

Section 23. Taxes

Any Federal, state or local excise, license, sales, use, or other taxes or tax-like charges (excluding any taxes levied on income) resulting from the performance of this Agreement shall be borne by the Party upon which the obligation for payment is imposed under applicable law, even if the obligation to collect and remit such taxes is placed upon the other party. Any such taxes shall be shown as separate items on applicable billing documents between the Parties. The Party obligated to collect and remit taxes shall do so unless the other Party provides such Party with the required evidence of exemption. The Party so obligated to pay any such taxes may contest the same in good faith, at its own expense, and shall be entitled to the benefit of any refund or recovery, provided that such party shall not permit any lien to exist on any asset of the other party by reason of the contest. The Party obligated to collect and remit taxes shall cooperate fully in any such contest by the other Party by providing records, testimony and such additional information or assistance as may reasonably be necessary to pursue the contest.

Section 24. Responsibility for Environmental Hazards

24.1 CLEC shall in no event be liable to Sprint for any costs whatsoever resulting from the presence or release of any Environmental Hazard that CLEC did not cause or introduce to the affected work location. Sprint hereby releases, and shall also indemnify, defend (at CLEC's request) and hold harmless CLEC and each of CLEC's officers, directors and employees from and against any losses and expenses that arise out of or result from any Environmental Hazard that Sprint, its contractors or its agents introduce to the work locations; provided that in the event that after CLEC notifies Sprint that CLEC, its employees, contractors or agents plan to enter a Sprint work location and prior to CLEC or its employees, contractors or agents entering a work location Sprint fully informs CLEC in writing of an Environmental Hazard at such work location then Sprint shall not be obligated to indemnify CLEC for losses and expenses arising out of injuries to CLEC employees, contractors or agents resulting from their exposure to such Environmental Hazard except to the extent such injuries are exacerbated by the acts of Sprint or its employees, contractors, or agents.

24.2 Prior to CLEC or its employees, contractors, or agents introducing an Environmental Hazard into a work location CLEC shall fully inform Sprint in writing of its planned actions at such work location and shall receive Sprint's written permission for such actions and CLEC warrants that it shall comply with all legal and regulatory obligations it has with respect to such Environmental Hazard and notices it is required to provide with respect thereto. Sprint shall in no event be liable to CLEC for any costs whatsoever resulting from the presence or release of any Environmental Hazard that CLEC causes or introduces to the affected work location. CLEC shall indemnify, defend (at Sprint's request) and hold harmless Sprint and each of Sprint's officers, directors and employees from and against any losses and expenses that arise out of or result from any Environmental Hazard that CLEC, its contractors or its agents cause or introduce to the work location. CLEC shall be responsible for obtaining, including payment of associated fees, all environmental permits, licenses and/or registrations required for environmental hazards CLEC causes or introduces to the affected work location.

24.3 In the event any suspect material within Sprint-owned, operated or leased facilities are identified to be asbestos-containing, CLEC will, at CLECs expense, notify Sprint before commencing any activities and ensure that to the extent any activities which it undertakes in the facility disturb any asbestos-containing materials (ACM) or presumed asbestos containing materials (PACM) as defined in 29 CFR Section 1910.1001, such CLEC activities shall be undertaken in accordance with applicable local, state and federal environmental and health and safety statutes and regulations. Except for abatement activities undertaken by CLEC or equipment placement activities that result in the generation or disturbance of asbestos containing material, CLEC shall not have any responsibility for managing, nor be the owner of, not have any liability for, or in connection with, any asbestos containing material. Both Parties agree to immediately notify the other if the Party undertakes any asbestos control or asbestos abatement activities that potentially could affect CLEC equipment or operations, including, but not limited to, contamination of equipment.

24.4 Within ten (10) business days of CLEC's request for any space in Sprint owned or controlled facility, Sprint shall provide any information in its possession regarding the known environmental conditions of the space provided for placement of equipment and interconnection including, but not limited to, the existence and condition of known hazardous levels of friable asbestos, lead paint, hazardous substance contamination, or hazardous levels of radon. Information is considered in a Party's possession under this Agreement if it is in such Party's possession, or the possession of a current employee of Sprint's.

24.5 If the space provided for the placement of equipment, interconnection, or provision of service contains known environmental contamination or hazardous material, particularly but not limited to hazardous levels of friable asbestos, lead paint or hazardous levels of radon, which makes the placement of such equipment or interconnection hazardous, Sprint shall offer an alternative space, if available, for CLEC's consideration. If interconnection is complicated by the presence of environmental contamination or hazardous materials, and an alternative route is available, Sprint shall make such alternative route available for CLEC's consideration. If there is no alternative or CLEC declines same, and CLEC occupies the hazardous space, CLEC does so at its own risk and shall indemnify Sprint from all liability for damages or injury arising from the presence of the environmental contamination or hazardous materials.

24.6 Subject to this Section 24 and to Sprint's standard security procedures, which procedures will be provided to CLEC, Sprint shall allow CLEC at CLEC's expense to perform any environmental site investigations, including, but not limited to, asbestos surveys, which CLEC deems to be necessary in support of its collocation needs.

Section 25. Amendments and Modifications

No provision of this Agreement shall be deemed waived, amended or modified by either party unless such a waiver, amendment or modification is in writing, dated, and signed by both Parties.

Section 26. Severability

Subject to Section 2 - Regulatory Approvals, if any part of this Agreement is held to be invalid for any reason, such invalidity will affect only the portion of this Agreement which is invalid. In all other respects this Agreement will stand as if such invalid provision had not been a part thereof, and the remainder of the Agreement shall remain in full force and effect.

Section 27. Headings Not Controlling

The headings and numbering of Sections, Parts and Attachments in this Agreement are for convenience only and shall not be construed to define or limit any of the terms herein or affect the meaning or interpretation of this Agreement.

Section 28. Entire Agreement

This Agreement, including all Parts and Attachments and subordinate documents attached hereto or referenced herein, all of which are hereby incorporated by reference herein, constitute the entire matter thereof, and supersede all prior oral or written agreements, representations, statements, negotiations, understandings, proposals, and undertakings with respect to the subject matter thereof.

Section 29. Counterparts

This Agreement may be executed in counterparts. Each counterpart shall be considered an original and such counterparts shall together constitute one and the same instrument.

Section 30. Successors and Assigns

This Agreement shall be binding upon, and inure to the benefit of, the Parties hereto and their respective successors and permitted assigns.

Section 31. Implementation Plan

31.1 Implementation Team. This Agreement sets forth the overall standards of performance for services, processes, and systems capabilities that the Parties will provide to each other, and the intervals at which those services, processes and capabilities will be provided. The Parties understand that the arrangements and provision of services described in this Agreement shall require technical and operational coordination between the Parties. Accordingly, the Parties agree to form a team (the "Implementation Team") that shall develop and identify those processes, guidelines, specifications, standards and additional terms and conditions necessary to support the terms of this Agreement. Within thirty (30) days after the Approval Date, each Party shall designate, in writing, no more than four (4) persons to be permanent members of the Implementation Team; provided that either Party may include in meetings or activities such technical specialists or other individuals as may be reasonably required to address a specific task, matter or subject. Each Party may replace its representatives by delivering written notice thereof to the other Party.

31.2 Implementation Plan. Within one hundred twenty (120) days after the Approval Date, the agreements reached by the Implementation Team shall be documented in an operations manual (the "Implementation Plan").

The Implementation Plan shall address the following matters, and may include any other matters agreed upon by the Implementation Team:

31.2.1 the respective duties and responsibilities of the Parties with respect to the administration and maintenance of the interconnections (including signaling) specified in Attachment 3 and the trunk groups specified in Attachment 4 and, including standards and procedures for notification and discoveries of trunk disconnects;

31.2.2 disaster recovery and escalation provisions;

31.2.3 access to Operations Support Systems functions provided hereunder, including gateways and interfaces;

31.2.4 escalation procedures for ordering, provisioning, billing, and maintenance;

31.2.5 single points of contact for ordering, provisioning, billing, and maintenance;

31.2.6 service ordering and provisioning procedures, including provision of the trunks and facilities;

31.2.7 provisioning and maintenance support;

31.2.8 conditioning and provisioning of collocation space and maintenance of Virtually Collocated equipment;

31.2.9 procedures and processes for Directories and Directory Listings;

31.2.10 billing processes and procedures;

31.2.11 network planning components including time intervals;

31.2.12 joint systems readiness and operational readiness plans;

31.2.13 appropriate testing of services, equipment, facilities and Network Elements;

31.2.14 monitoring of inter-company operational processes;

31.2.15 procedures for coordination of local PIC changes and processing;

31.2.16 physical and network security concerns; and

31.2.17 such other matters specifically referenced in this Agreement that are to be agreed upon by the Implementation Team and/or contained in the Implementation Plan.

31.3 Action of the Implementation Team. The Implementation Plan may be amended from time to time by the Implementation Team as the team deems appropriate. Unanimous written consent of the permanent members of the Implementation Team shall be required for any action of the Implementation Team. If the Implementation Team is unable to act, the existing provisions of the Implementation Plan shall remain in full force and effect.

IN WITNESS WHEREOF, each of the Parties has caused this Agreement to be executed by its duly authorized representatives.

UNIVERSAL COM, INCORPORATED	SPRINT-FLORIDA, INCORPORATED
By: Peter T. Bower	By:
Name: PETER T. BOWER	Name: Jerry Johns
Title: PRESIDENT	Title: VP - Ext. Affairs
Date: 1·30·98	Date: 2/9/98

PART B -- DEFINITIONS

"911 SITE ADMINISTRATOR" is a person assigned by CLEC to establish and maintain E911 service location information for its subscribers.

"911 SERVICE" means a universal telephone number which gives the public direct access to the Public Safety Answering Point (PSAP). Basic 911 service collects 911 calls from one or more local exchange switches that serve a geographic area. The calls are then sent to the correct authority designated to receive such calls.

"ASR" (ACCESS SERVICE REQUEST) means the industry standard forms and supporting documentation used for ordering Access Services. The ASR may be used to order trunking and facilities between CLEC and Sprint for Local Interconnection.

"ACCESS SERVICES" refers to interstate and intrastate switched access and private line transport services.

"ACT" means the Communications Act of 1934 as amended by the Telecommunications Act of 1996, Public Law 104-104 of the 104th U.S. Congress, effective February 8, 1996.

"AFFILIATE" is an entity that directly or indirectly owns or controls, is owned or controlled by, or is under common ownership or control with, another entity. In this paragraph, "own" or "control" means to own an equity interest (or equivalent) of at least 10% with respect to either party, or the right to control the business decisions, management and policy of another entity.

"APPROVAL DATE" is the date on which Commission approval of the Agreement is granted.

"GATEWAY" (ALI GATEWAY) is a telephone company computer facility that interfaces with CLEC's 911 administrative site to receive Automatic Location Identification (ALI) data from CLEC. Access to the Gateway will be via a dial-up modem using a common protocol.

"AMA" means the Automated Message Accounting structure inherent in switch technology that initially records telecommunication message information. AMA format is contained in the Automated Message Accounting document, published by Bellcore as GR-1100-CORE which defines the industry standard for message recording.

"ALI" (AUTOMATIC LOCATION IDENTIFICATION) is a feature developed for E911 systems that provides for a visual display of the caller's telephone number, address and the names of the emergency response agencies that are responsible for that address

The Competitive Local Exchange Company will provide ALI record information in National Emergency Number Association (NENA) Version #2 format. The ALI also shows an Interim Number Portability (INP) number if applicable.

"ALI/DMS" (AUTOMATIC LOCATION IDENTIFICATION/DATA MANAGEMENT SYSTEM) means the emergency service (E911/911) database containing subscriber location information (including name, address, telephone number, and sometimes special information from the local service provider) used to determine to which Public Safety Answering Point (PSAP) to route the call.

"ANI" (AUTOMATIC NUMBER IDENTIFICATION) is a feature that identifies and displays the number of a telephone line that originates a call.

"ARS" (AUTOMATIC ROUTE SELECTION) means a service feature associated with a specific grouping of lines that provides for automatic selection of the least expensive or most appropriate transmission facility for each call based on criteria programmed into the system.

"BLV/BLI" (BUSY LINE VERIFY/BUSY LINE INTERRUPT) means an operator call in which the caller inquires as to the busy status of, or requests an interruption of a call on another subscriber's telephone line.

"BUSINESS DAY(S) means the days of the week excluding Saturdays, Sundays, and all official Sprint holidays.

"CABS" means the Carrier Access Billing System which is defined in a document prepared under the direction of the Billing Committee of the OBF. The Carrier Access Billing System document is published by Bellcore in Volumes 1, 1A, 2, 3, 3A, 4 and 5 as Special Reports SR-OPT-001868, SR-OPT-0011869, SR-OPT-001871, SR-OPT-001872, SR-OPT-001873, SR-OPT-001874, and SR-OPT-001875, respectively, and contains the recommended guidelines for the billing of access and other connectivity services. Sprint's carrier access billing system is its Carrier Access Support System (CASS). CASS mirrors the requirements of CABS.

"CPN" (CALLING PARTY NUMBER) is a Common Channel Signaling parameter which refers to the number transmitted through the network identifying the calling party.

"CENTRAL OFFICE SWITCH" or "CENTRAL OFFICE" means a switching entity within the public switched network, including but not limited to end office switches and tandem office switches. Central office switches may be employed as combination End Office/Tandem Office Switches (Combination Class 5/Class 4).

"CENTREX" means a Telecommunications Service associated with a specific grouping of lines that uses central office switching equipment for call routing to handle direct dialing of calls, and to provide numerous private branch exchange-like features.

"CHARGE NUMBER" is a CCS parameter which refers to the number transmitted through the network identifying the billing number of the calling party.

"CLASS" (Bellcore Service Mark) – means service features that utilize the capability to forward a calling party's number between end offices as part of call setup. Features include Automatic Callback, Automatic Recall, Caller ID, Call Trace, and Distinctive Ringing.

"CLEC" means a Competitive Local Exchange Carrier.

"COLLOCATION" means the right of CLEC to place equipment in the Sprint's central offices or other Sprint locations. This equipment may be placed via either a physical or virtual collocation arrangement. With physical collocation, CLEC obtains dedicated space to place and maintain its equipment. With virtual collocation, Sprint will install and maintain equipment that CLEC provides to Sprint.

"COMMISSION" means the Florida Public Service Commission.

"CCS" (COMMON CHANNEL SIGNALING) means a method of digitally transmitting call set-up and network control data over a digital signaling network fully separate from the public switched telephone network that carries the actual call.

"CONFIDENTIAL AND/OR PROPRIETARY INFORMATION" has the meaning set forth in Section 12 of Part A -- General Terms.

"CONTRACT YEAR" means a twelve (12) month period during the term of the contract commencing on the Approval Date and each anniversary thereof.

"CONTROL OFFICE" is an exchange carrier center or office designated as its company's single point of contact for the provisioning and maintenance of its portion of local interconnection arrangements.

"CUSTOM CALLING FEATURES" – means a set of Telecommunications Service features available to residential and single-line business customers including call-waiting, call-forwarding and three-party calling.

"CUSTOMER PROPRIETARY NETWORK INFORMATION ("CPNI") - means (A) information that relates to the quantity, technical configuration, type, destination, and amount of use of a Telecommunications Service subscribed to by any customer of a Telecommunications Carrier, and that is made available to the carrier by the customer solely by virtue of the carrier customer relationship; and (B) information contained in the bills pertaining to telephone exchange service or telephone toll service received by a customer of a carrier.

"DBMS" (DATABASE MANAGEMENT SYSTEM) is a computer process used to store, sort, manipulate and update the data required to provide selective routing and ALI.

"DIRECTORY ASSISTANCE DATABASE" refers to any subscriber record used by Sprint in its provision of live or automated operator-assisted directory assistance including but not limited to 411, 555-1212, NPA-555-1212.

"DIRECTORY ASSISTANCE SERVICES" provides listings to callers. Directory Assistance Services may include the option to complete the call at the caller's direction.

"DISCLOSER" means that party to this Agreement which has disclosed Confidential Information to the other party.

"E911" (ENHANCED 911 SERVICE) means a telephone communication service which will automatically route a call dialed "911" to a designated public safety answering point (PSAP) attendant and will provide to the attendant the calling party's telephone number and, when possible, the address from which the call is being placed and the emergency response agencies responsible for the location from which the call was dialed.

"E911 MESSAGE TRUNK" is a dedicated line, trunk or channel between two central offices or switching devices which provides a voice and signaling path for E911 calls.

ELECTRONIC INTERFACES - means access to operations support systems consisting of preordering, ordering, provisioning, maintenance and repair and billing functions. For the purposes of this Agreement, Sprint shall provide Electronic Interfaces in accordance with Exhibit 2.

"EMERGENCY RESPONSE AGENCY" is a governmental entity authorized to respond to requests from the public to meet emergencies.

"ENVIRONMENTAL HAZARD" means any substance the presence, use, transport, abandonment or disposal of which (i) requires investigation, remediation, compensation, fine or penalty under any Applicable Law (including, without limitation, the Comprehensive Environmental Response Compensation and Liability Act, Superfund Amendment and Reauthorization Act, Resource Conservation Recovery Act, the Occupational Safety and Health Act and provisions with similar purposes in applicable foreign, state and local jurisdictions) or (ii) poses risks to human health, safety or the environment (including, without limitation, indoor, outdoor or orbital space environments) and is regulated under any Applicable Law.

"ESN" (EMERGENCY SERVICE NUMBER) is a number assigned to the ALI and selective routing databases for all subscriber telephone numbers. The ESN designates a unique combination of fire, police and emergency medical service response agencies that serve the address location of each in-service telephone number.

"EMR" means the Exchange Message Record System for exchanging telecommunications message information for billable, non-billable, sample, settlement and study data. EMR format is contained in BR-010-200-010 CRIS Exchange Message Record, published by Bellcore and which defines the industry standard for exchange message records.

"ENHANCED DIRECTORY ASSISTANCE" refers to directory Assistance services, including but not limited to reverse search, talking yellow pages, and locator services.

"EIS" (EXPANDED INTERCONNECTION SERVICE) is the collocation arrangement which Sprint provides in its designated wire centers.

"GRANDFATHERED SERVICE" means service which is no longer available for new customers and is limited to the current customer at their current locations with certain provisioning limitations, including but not limited to upgrade denials, feature adds/changes and responsible/billing party.

"FCC INTERCONNECTION ORDER" is the Federal Communications Commission's First Report and Order and Second Report and Order in CC Docket No. 96-98 released August 8, 1996; as subsequently amended or modified by the FCC from time to time.

"ILEC" means the incumbent local exchange carrier.

"IXC" (INTEREXCHANGE CARRIER) means a provider of interexchange telecommunications services.

"INP" (INTERIM NUMBER PORTABILITY) is a service arrangement whereby subscribers who change local service providers may retain existing telephone numbers without impairment of quality, reliability, or convenience when remaining at their current location or changing their location within the geographic area served by the initial carrier's serving central office. (Notwithstanding the foregoing, the parties acknowledge that the provision of INP through Remote Call Forwarding results in a lesser grade of service.)

"IP" (INTERCONNECTION POINT) is a mutually agreed upon point of demarcation where the networks of Sprint and CLEC interconnect for the exchange of traffic.

"LIDB" (LINE INFORMATION DATA BASE(S)) means a Service Control Point (SCP) database that provides for such functions as calling card validation for telephone line number cards issued by Sprint and other entities and validation for collect and billed-to-third services.

"LOCAL SERVICE REQUEST" means an industry standard form used by the Parties to add, establish, change or disconnect local services.

"LOCAL TRAFFIC" means traffic (excluding Commercial Mobile Radio Services traffic, e.g., paging, cellular, PCS) that is originated and terminated within a given local calling area, or mandatory expanded area service (EAS) area, as defined by State commissions or, if not defined by state commissions, then as defined in existing Sprint tariffs.

"MSAG" (MASTER STREET ADDRESS GUIDE (MSAG)) is a database defining the geographic area of an E911 service. It includes an alphabetical list of the street names, high-low house number ranges, community names, and emergency service numbers provided by the counties or their agents to Sprint.

"CLEC 911 DATABASE RECORDS" are the CLEC subscriber records to be provided by CLEC to Sprint for inclusion in Sprint's E911 database.

"MECAB" refers to the Multiple Exchange Carrier Access Billing (MECAB) document prepared by the Billing Committee of the Ordering and Billing Forum (OBF), which functions under the auspices of the Carrier Liaison Committee (CLC) of the Alliance for Telecommunications Industry Solutions (ATIS). The MECAB document, published by Bellcore as Special Report SR-BDS-000983, contains the recommended guidelines for the billing of an access service provided by two or more LECs (including a LEC and a CLEC), or by one LEC in two or more states within a single LATA.

"MECOD" refers to the Multiple Exchange Carriers Ordering and Design (MECOD) Guidelines for Access Services - Industry Support Interface, a document developed by the Ordering/Provisioning Committee under the auspices of the Ordering and Billing Forum (OBF), which functions under the auspices of the Carrier Liaison Committee (CLC) of the Alliance for Telecommunications Industry Solutions (ATIS). The MECOD document, published by Bellcore as Special Report SR STS-002643, establishes recommended guidelines for processing orders for access service which is to be provided by two or more LECs (including a LEC and a CLEC).

"NANP" means the "North American Numbering Plan," the system or method of telephone numbering employed in the United States, Canada, and certain Caribbean countries. It denotes the three digit Numbering Plan Area code and a seven digit telephone number made up of a three digit Central Office code plus a four digit station number.

"NENA" (NATIONAL EMERGENCY NUMBER ASSOCIATION (NENA)) is an association with a mission to foster the technological advancement, availability and implementation of 911 nationwide.

"NETWORK ELEMENT" means a facility or equipment used in the provision of a Telecommunications Service. Such term also includes features, functions , and capabilities that are provided by means of such facility or equipment, including subscriber numbers, databases, signaling systems, and information sufficient for billing

and collection or used in the transmission, routing, or other provision of a Telecommunications Service. .

"NP" (NUMBER PORTABILITY) means the ability of users of Telecommunications Services to retain, at the same location, existing telecommunications numbers without impairment of quality, reliability, or convenience when switching from one telecommunications carrier to another. .

"NPA" (NUMBERING PLAN AREA) (sometimes referred to as an area code) is the three digit indicator which is designated by the first three digits of each 10-digit telephone number within the NANP. Each NPA contains 800 possible NXX Codes. There are two general categories of NPA, "Geographic NPAs" and "Non-Geographic NPAs." A "Geographic NPA" is associated with a defined geographic area, and all telephone numbers bearing such NPA are associated with services provided within that Geographic area. A "Non-Geographic NPA," also known as a "Service Access Code (SAC Code)" is typically associated with a specialized telecommunications service which may be provided across multiple geographic NPA areas; 500, 800, 900, 700, and 888 are examples of Non-Geographic NPAs.

"NXX," "NXX CODE," OR "CENTRAL OFFICE CODE," OR "CO CODE" is the three digit switch entity indicator which is defined by the fourth, fifth and sixth digits of a 10 digit telephone number within the North America Numbering Plan ("NANP").

"OBF" means the Ordering and Billing Forum, which functions under the auspices of the Carrier Liaison Committee (CLC) of the Alliance for Telecommunications Industry Solutions (ATIS)

"OBSOLETE SERVICE" means a service that is outmoded/outdated but yet has current subscribers to the services. Such service is no longer available for new customers and with existing customers there is no assurance of the service continuing to function. Any technical or feature change to the customer's service will eliminate such service at the time of request.

"OPERATOR SYSTEMS" is the Network Element that provides operator and automated call handling with billing, special services, subscriber telephone listings, and optional call completion services.

"OPERATOR SERVICES" provides (1) operator handling for call completion (e.g. collect calls); (2) operator or automated assistance for billing after the subscriber has dialed the called number (e.g. credit card calls); and (3) special services (e.g. BLV/BLVI, Emergency Agency Call).

"PARITY" means, subject to the availability, development and implementation of necessary industry standard Electronic Interfaces, the provision by Sprint of services, Network Elements, functionality or telephone numbering resources under this

Agreement to CLEC on terms and conditions, including provisioning and repair intervals, no less favorable that those offered to Sprint, its Affiliates or any other entity that obtains such services, Network Elements, functionality or telephone numbering resources. Until the implementation of necessary Electronic Interfaces, Sprint shall provide such services, Network Elements, functionality or telephone numbering resources on a non-discriminatory basis to CLEC as it provides to its Affiliates or any other entity that obtains such services, Network Elements, functionality or telephone numbering resources.

"Parties" means, jointly, Universal Com, Incorporated and Sprint-Florida, Incorporated, and no other entity, affiliate, subsidiary or assign. .

"PARTY" means either Universal Com, Incorporated or Sprint-Florida, Incorporated, and no other entity, affiliate, subsidiary or assign.

"P.01 TRANSMISSION GRADE OF SERVICE (GOS)" means a trunk facility provisioning standard with the statistical probability of no more than one call in 100 blocked on initial attempt during the average busy hour.

"PLU" (PERCENT LOCAL USAGE) is a calculation which represents the ratio of the local minutes to the sum of local and intraLATA toll minutes between exchange carriers sent over Local Interconnection Trunks. Directory assistance, BLV/BLVI, 900, 976, transiting calls from other exchange carriers and switched access calls are not included in the calculation of PLU.

"POP" means an IXC's point of presence.

"PROPRIETARY INFORMATION" shall have the same meaning as Confidential Information.

"PSAP" (PUBLIC SAFETY ANSWERING POINT (PSAP)) is the public safety communications center where 911 calls placed by the public for a specific geographic area will be answered.

"RATE CENTER" means the geographic point and corresponding geographic area which are associated with one or more particular NPA-NXX codes which have been assigned to Sprint (or CLEC) for its provision of Basic Exchange Telecommunications Services. The "rate center point" is the finite geographic point identified by a specific V&H coordinate, which is used to measure distance-sensitive end user traffic to/from the particular NPA-NXX designations associated with the specific Rate Center. The "rate center area" is the exclusive geographic area identified as the area within which Sprint (or CLEC) will provide Basic Exchange Telecommunications Services bearing the particular NPA-NXX designations associated with the specific Rate Center. The Rate Center point must be located within the Rate Center area.

"REAL TIME" means the actual time in which an event takes place, with the reporting on or the recording of the event simultaneous with its occurrence.

"RECIPIENT" means that party to this Agreement (a) to which Confidential Information has been disclosed by the other party or (b) who has obtained Confidential Information in the course of providing services under this Agreement.

"RESELLER" is a category of Local Exchange service providers who obtain dial tone and associated Telecommunications Services from another provider for resale to their end user subscribers.

"ROW" (RIGHT OF WAY (ROW)) has the meaning set forth in Section 2.13 of Attachment VI of this Agreement.

"ROUTING POINT" means a location which Sprint or CLEC has designated on its own network as the homing (routing) point for traffic inbound to Basic Exchange Services provided by Sprint or CLEC which bear a certain NPA-NXX designation. The Routing Point is employed to calculate mileage measurements for the distance-sensitive transport element charges of Switched Access Services. Pursuant to Bellcore Practice BR 795-100-100, the Routing Point may be an "End Office" location, or a "LEC Consortium Point of Interconnection." Pursuant to that same Bellcore Practice, examples of the latter shall be designated by a common language location identifier (CLLI) code with (x)KD in positions 9, 10, 11, where (x) may by any alphanumeric A-Z or 0-9. The above referenced Bellcore document refers to the Routing Point as the Rating Point. The Rating Point/Routing Point need not be the same as the Rate Center Point, nor must it be located within the Rate Center Area, but must be in the same LATA as the NPA-NXX.

"SECAB" means the Small Exchange Carrier Access Billing document prepared by the Billing Committee of the OBF. The Small Exchange Carrier Access Billing document, published by Bellcore as Special Report SR OPT-001856, contains the recommended guidelines for the billing of access and other connectivity services.

"SELECTIVE ROUTING" is a service which automatically routes an E911 call to the PSAP that has jurisdictional responsibility for the service address of the telephone that dialed 911, irrespective of telephone company exchange or wire center boundaries.

"SIGNALING TRANSFER POINT" or "STP" means a signaling point that performs message routing functions and provides information for the routing of messages between signaling points within or between CCIS networks. An STP transmits, receives and processes CCIS messages.

"SWITCH" means a Central Office Switch as defined in this Part B.

"SWITCHED ACCESS DETAIL USAGE DATA" means a category 1101XX record as defined in the EMR Bellcore Practice BR 010-200-010.

"SWITCHED EXCHANGE ACCESS SERVICE" means the offering of transmission or switching services to Telecommunications Carriers for the purpose of the origination or termination of Telephone Toll Service. Switched Exchange Access Services include: Feature Group A, Feature Group B, Feature Group D, 800/888 access and 900 access and their successor or similar Switched Exchange Access Services.

"SYNCHRONOUS OPTICAL NETWORK" or SONET" is an optical interface standard that allows interworking of transmission products from multiple vendors (i.e. mid-span meets). The base rate is 51.84 MHps (OC-1/STS-1 and higher rates are direct multiples of the base rate up to 1.22 GHps.

"TANDEM OFFICE SWITCHES" which are Class 4 switches which are used to connect and switch trunk circuits between and among end office switches and other tandems.

"TECHNICALLY FEASIBLE" refers solely to technical or operational concerns, rather than economic, space, or site considerations.

"TELECOMMUNICATIONS" means the transmission, between or among points specified by the user, of information of the user's choosing, without change in the form or content of the information as sent and received.

"TELECOMMUNICATION SERVICES" means the offering of Telecommunications for a fee directly to the public, or to such classes of users as to be effectively available directly to the public, regardless of the facilities used.

"THOUSANDS BLOCK OF NUMBERS" shall mean 1000 or more consecutive numbers beginning and ending on a digit boundary, e.g., 949-1000 to 949-1999.

"TRCO" means Trouble Reporting Control Office.

"VOLUNTARY FEDERAL SUBSCRIBER FINANCIAL ASSISTANCE PROGRAMS" are government programs that subsidize the provision of Telecommunications Services to low-income subscribers, pursuant to requirements established by the appropriate state regulatory body.

"WIRE CENTER" denotes a building or space within a building which serves as an aggregation point on a given carrier's network, where transmission facilities and circuits are connected or switched. Wire center can also denote a building in which one or more central offices, used for the provision of Basic Exchange Services and access services, are located. However, for purposes of EIC service, Wire Center shall mean those points eligible for such connections as specified in the FCC Docket No. 91-141, and rules adopted pursuant thereto.

PART C - ATTACHMENT I

PRICE SCHEDULE

1. **General Principles**

1.1 Subject to the provisions of Sections 2 and 12 of Part A of this Agreement, all rates provided under this Agreement shall remain in effect for the term of this Agreement.

2. **Local Service Resale**

The rates that CLEC shall pay to Sprint for Local Resale are as set forth in Table 1 of this Attachment and shall be applied consistent with the provisions of Attachment II of this Agreement .

3. **Interconnection and Reciprocal Compensation**

3.1 The rates to be charged for the exchange of Local Traffic are set forth in Table 1 of this Attachment and shall be applied consistent with the provisions of Attachment IV of this Agreement.

3.2 Compensation for the termination of toll traffic and the origination of 800 traffic between the interconnecting parties shall be based on the applicable access charges in accordance with FCC and Commission Rules and Regulations and consistent with the provisions of Attachment IV of this Agreement.

3.3 Where a toll call is completed through Sprint's INP arrangement (e.g., remote call forwarding, flexible DID, etc.) to a CLEC's subscriber, CLEC shall be entitled to applicable access charges in accordance with the FCC and Commission Rules and Regulations. If a national standard billing method has not been developed for a CLEC to directly bill a carrier access for a toll call that has been completed using interim number portability, then a blended rate method will be used.

3.3.1 The Parties will jointly determine the amount of traffic that will be considered INP'ed traffic for compensation purposes. The ported party shall charge the porting party for each minute of INP traffic at the INP blended rate specified in section 3.3.2, in lieu of any other compensation charges for terminating such traffic. The traffic that is not identified as INP'ed will be compensated as local interconnection as set forth in section 3.1.

3.3.2 For compensation of the INP traffic, the Parties shall jointly develop a process which will allow compensation for INP'ed traffic to be based on the initial origination point and final terminated point of the INP'ed call. The full reciprocal compensation rate, as listed in the Pricing Schedule, shall apply for local traffic, and full switched access charges, as listed in applicable tariffs, shall apply for intraLATA and interLATA. All three sets of rates will be weighted together based on the agreed minutes of use patterns to establish a single set of blended rates for all INP'ed traffic.

3.4 CLEC shall pay a transit rate, comprised of the transport and tandem rate elements, as set forth in Table 1 of this Attachment when CLEC uses a Sprint access tandem to terminate a local call to a third party LEC or another CLEC. Sprint shall pay CLEC a transit rate equal to the Sprint rate referenced above when Sprint uses a CLEC switch to terminate a local call to a third party LEC or another CLEC.

4. Unbundled Network Elements

The charges that CLEC shall pay to Sprint for Unbundled Network Elements are set forth in Table 1 of this Attachment I.

TABLE 1

NETWORK ELEMENT PRICE LIST - SPRINT FLORIDA

RATE ELEMENT		SOURCE	RECURRING RATE	NRC RATE
		TELRIC COST STUDY		
Service Order NRC				$25.15
Service Order Listing Only				$20.82
Central Office Interconnection Charge				$5.31
Trip Charge				$18.41
Outside Plant Interconnection (2-W)				$59.75
NID Installation Charge				$37.36
NID Connection Charge				$18.68
Testing				$1.42
Loop Rework Charge (2-W)				$52.38
Trouble Isolation and Testing				$96.75
NID		TELRIC COST STUDY		
1 Line			$0.91	
2 Line			$1.09	
LOOP		Commission Order		
Analog 2-wire	Band 1		$15.00	$65.00
	Band 2		$15.00	$65.00
	Band 3		$15.00	$65.00
	Band 4		$15.00	$65.00
Local Switching		Commission Order		
	Band 1		$7.00	$65.00
	Band 2		$7.00	$65.00
	Band 3		$7.00	$65.00
	Band 4		$7.00	$65.00
	Band 5		$7.00	$65.00
	ISDN		ICB	
	CENTREX		ICB	
	PBS		ICB	
	DS1		ICB	
Intrastate CCL Orig*		Intrastate Access Tariff	Current tariff rate	
Intrastate CCL Term*			Current tariff rate	
RIC*			Current tariff rate	
LOOP & PORT COMB Discount		TELRIC COST STUDY		
(1 Line NID, 2 Wire Loop, &Basic Port)			$1.83	
FEATURES		TELRIC COST STUDY		
CCF Package *			$0.25	$3.21
CLASS Package *			$7.12	$5.76
CENTREX Package *			$11.64	$36.66
- 3 Way Conf/Consult/Hold Transfer			$2.03	$21.12
- Conf Calling - 6 Way Station Control			$2.65	$31.00
- Dial Transfer to Tandem Tie Line			$0.13	$141.86
- Direct Connect			$0.03	$24.28
- Meet Me Conference			$19.18	$44.86
- Multi-Hunt Service			$0.09	$27.06
INTERIM NUMBER PORTABILITY		TELRIC COST STUDY		
RCF Residential			$0.31	$1.24
RCF Business			$1.00	$1.24
Call Path Residential			$0.03	$0.40
Call Path Business			$0.14	$0.40

NETWORK ELEMENT PRICE LIST - SPRINT FLORIDA

RATE ELEMENT	SOURCE	RECURRING RATE	NRC
	TELRIC COST STUDY		
TANDEM SWITCHING	TELRIC COST STUDY		
		$0.003345	$119.76
TRANSPORT	TELRIC COST STUDY		
DS1		Rate Varies	$135.83
DS3		Rate Varies	$249.16
Common		$0.001022	N/A
RECIPROCAL COMPENSATION	TELRIC COST STUDY		
End Office		$0.003587	$119.76
		$0.003345	$119.76
DS1		Rate Varies	$135.83
DS3		Rate Varies	$249.16
Common		$0.001022	N/A
INTERCONNECTION	TELRIC COST STUDY		
CROSS CONNECTION			
DS0 Elec X-Conn		$0.94	
DS1 Elec X-Conn		$2.93	
DS3 Elec X-Conn		$25.85	
COMMON CHANNEL SIGNALING INTERCONNECTION SERVICE			
STP Port		$498.97	$308.00
STP Transport Link 56.0 Kpbs SS7 Link		ICB	ICB
STP Transport Link 1.544 Mbps SS7 Link		ICB	ICB
STP Switching	TELRIC COST STUDY	$1.08	N/A
Multiplexing DS1 to DS0		$300.00	$142.00
Multiplexing DS3 to DS1		$600.00	$91.00
LINE INFORMATION DATABASE			
LIDB Administration Service	TELRIC COST STUDY	$0.0540	
LIDB Database Transport per query	Interstate Access Tariff	$0.0016	
LIDB Database per query	Interstate Access Tariff	$0.0366	
Toll Free Code Access Service query	Interstate Access Tariff	$0.008498	
Toll Free Code Optional Service query	Interstate Access Tariff	$0.001419	
DIRECTORY ASSISTANCE SERVICES			
DA Database Listing & Upcate	TELRIC COST STUDY	$0.0550	
DA Data Base Query Service	TELRIC COST STUDY	$0.0103	
TOLL & LOCAL OPERATOR SERVICES	TELRIC COST STUDY		
Toll and Local Assistance Service (Live)		$0.456	
DA OPERATOR SERVICE	TELRIC COST STUDY		
DA Operator Service (Live)		$0.388	
911 TANDEM PORT	TELRIC COST STUDY		
Per DS0 Equivalent Port		$18.92	$187.50
OPERATIONAL SUPPORT SYSTEMS			
OSS Interfaces*		ICB	
* Sprint is working on OSS and rates will be added as they are developed.			

PART C - ATTACHMENT II

LOCAL RESALE

Section 1. Telecommunications Services Provided for Resale

1.1 At the request of CLEC, and pursuant to the requirements of the Act, and FCC and Commission Rules and Regulations, Sprint shall make available to CLEC for resale Telecommunications Services that Sprint currently provides or may provide hereafter at retail to subscribers who are not telecommunications carriers. Such resale may be as allowed by the FCC and Commission. The Telecommunications Services provided by Sprint to CLEC pursuant to this Attachment II are collectively referred to as "Local Resale."

1.2 To the extent that this Attachment describes services which Sprint shall make available to CLEC for resale pursuant to this Agreement, this list of services is neither all inclusive nor exclusive.

Section 2. General Terms and Conditions

2.1 **Pricing.** The prices charged to CLEC for Local Resale are set forth in Attachment I of this Agreement.

2.2 **Requirements for Specific Services**

2.2.1 **CENTREX Requirements**

2.2.1.1 At CLEC's option, CLEC may purchase the entire set of CENTREX features or a subset of any one such feature. The CENTREX Service provided for resale will meet the requirements of this Subsection 2.3.1.

2.2.1.2 All features and functions of CENTREX Service, including CENTREX Management System (CMS), whether offered under tariff or otherwise, shall be available to CLEC for resale.

2.2.1.3 Sprint shall make information required for an "as is" transfer of CENTREX subscriber service, features, functionalities and CMS capabilities available to CLEC.

2.2.1.4 All service levels and features of CENTREX Service provided by Sprint for resale by CLEC shall be at parity with the service levels and features of CENTREX Service Sprint provides its subscribers.

2.2.1.5 Consistent with Sprint's tariffs, CLEC may aggregate the CENTREX local exchange, and IntraLATA traffic usage of CLEC subscribers to qualify for volume discounts on the basis of such aggregated usage.

2.2.1.6 CLEC may request that Sprint suppress the need for CLEC subscribers to dial "9" when placing calls outside the CENTREX System. Should CLEC request this capability for its subscriber, the subscriber will not be able to use 4 digit dialing.

2.2.1.7 CLEC may resell call forwarding in conjunction with CENTREX Service.

2.2.1.8 CLEC may purchase any CENTREX Service for resale subject to the minimum number of lines required by Sprint's tariff to qualify for CENTREX Service, but otherwise without restriction on the maximum number of lines that may be purchased for such service.

2.2.1.9 Sprint shall make available to CLEC for resale intercom calling within the same CENTREX system. To the extent that Sprint offers its own subscribers intercom calling between different CENTREX systems, Sprint shall make such capability available to CLEC for resale..

2.2.1.10 CLEC may resell Automatic Route Selection ("ARS"). CLEC may aggregate multiple CLEC subscribers on dedicated access facilities where such aggregation is allowed by law, rule or regulation.

2.2.2 Voluntary Federal and State Subscriber Financial Assistance Programs

Subsidized local Telecommunications Services are provided to low-income subscribers pursuant to requirements established by the appropriate state regulatory body, and include programs such as Voluntary Federal Subscriber Financial Assistance Program and Link-Up America. Voluntary Federal and State Subscriber Financial Assistance Programs are not Telecommunications

Services that are available for resale under this Agreement. However, when a Sprint subscriber who is eligible for such a federal program or other similar state program chooses to obtain Local Resale from CLEC and CLEC serves such subscriber via Local Resale, Sprint shall identify such subscriber's eligibility to participate in such programs to CLEC in accordance with the procedures set forth herein.

2.2.3 **Grandfathered Services.** Sprint shall offer for resale to CLEC all Grandfathered Services solely for the existing grandfathered base. Sprint shall make reasonable efforts to provide CLEC with advance copy of any request for the termination of service and/or grandfathering to be filed by Sprint with the Commission.

2.2.4 **N11 Service**

2.2.4.1 Sprint agrees not to offer any new N11 Telecommunications Services after the Approval Date of this Agreement unless Sprint makes any such service available for resale.

2.2.4.2 CLEC shall have the right to resell any N11 Telecommunications Service, including but not limited to 411 or 611 services, existing as of the Approval Date. Where technically feasible, these services shall be unbranded and routed to CLEC, as required by CLEC pursuant to Part A, Section 12.

2.2.5 **Contract Service Arrangements, Special Arrangements, and Promotions.** Sprint shall offer for resale all of its Telecommunications Services available at retail to subscribers who are not Telecommunications Carriers, including but not limited to Contract Service Arrangements (or ICB), Special Arrangements (or ICB), and Promotions in excess of ninety (90) days, all in accordance with FCC and Commission Rules and Regulations.

2.2.6 **COCOT Lines**

2.2.6.1 COCOT lines will not be resold at wholesale prices under this Agreement.

2.2.7 Voice Mail Service

Voice Mail Service is not a Telecommunications Service available for resale under this Agreement. However, where available, Sprint shall make available for Local Resale the SMDI-E (Station Message Desk Interface-Enhanced), or SMDI, Station Message Desk Interface where SMDI-E is not available, feature capability allowing for Voice Mail Services. Sprint shall make available the MWI (Message Waiting Indicator) stutter dial tone and message waiting light feature capabilities. Sprint shall make available CF-B/DA (Call Forward on Busy/Don't Answer), CF/B (Call Forward on Busy), and CF/DA (Call Forward Don't Answer) feature capabilities allowing for Voice Mail services.

2.2.8 Hospitality Service

Sprint shall provide all blocking, screening, and all other applicable functions available for hospitality lines under tariff.

2.2.9 Telephone Line Number Calling Cards.

Sprint shall maintain customer information for CLEC customers who subscribe to resold Sprint local service dial tone lines, in Sprint's LIDB in the same manner that it maintains information in LIDB for its own similarly situated end-user subscribers. Sprint shall update and maintain, on the same schedule that it uses for its own similarly situated end-user subscribers, the CLEC information in LIDB.

Until such time as Sprint's LIDB has the software capability to recognize a resold number as CLEC's, Sprint shall store the resold number in its LIDB at no charge and shall retain revenue for LIDB look-ups to the resold number. At such time as Sprint's LIDB has the software capability to recognize that the resold number is CLEC's then, if CLEC desires to store resold numbers on Sprint's LIDB, the parties shall negotiate a separate LIDB database storage and look-up agreement.

PART C - ATTACHMENT III

NETWORK ELEMENTS

Section 1. General

Pursuant to the following terms, Sprint will unbundle and separately price and offer Unbundled Network Elements such that CLEC will be able to subscribe to and interconnect to whichever of these unbundled elements CLEC requires for the purpose of providing local telephone service to its end-users. It is CLEC's obligation to combine Sprint-provided elements with any facilities and services that CLEC may itself provide.

Section 2. Unbundled Network Elements

2.1 Sprint shall offer Network Elements to CLEC for the purpose of offering Telecommunication Services to CLEC subscribers. Sprint shall offer Network Elements to CLEC on an unbundled basis on rates, terms and conditions that are just, reasonable, and non-discriminatory in accordance with the terms and conditions of this Agreement. The initial set of Network Elements include:

1) Local Loop
2) Network Interface Device (NID)
3) Switching Capability
   - Local Switching
   - Tandem Switching
4) Interoffice Transmission Facilities
   - Dedicated
   - Common
5) Signaling Networks & Call Related Databases
6) Operations Support Systems
7) Operator Services & Directory Assistance

2.2 CLEC may use one or more Network Elements to provide any feature, function, capability, or service option that such Network Element(s) is technically capable of providing.

2.3 Standards for Network Elements

2.3.1 Each Network Element provided by Sprint to CLEC shall be at parity with the quality of design, performance, features, functions, capabilities and other characteristics, including but not

PART C - ATTACHMENT III

NETWORK ELEMENTS

Section 1. General

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2.1 Sprint shall offer Network Elements to CLEC for the purpose of offering Telecommunication Services to CLEC subscribers. Sprint shall offer Network Elements to CLEC on an unbundled basis on rates, terms and conditions that are just, reasonable, and non-discriminatory in accordance with the terms and conditions of this Agreement. The initial set of Network Elements include:

1) Local Loop
2) Network Interface Device (NID)
3) Switching Capability
   - Local Switching
   - Tandem Switching
4) Interoffice Transmission Facilities
   - Dedicated
   - Common
5) Signaling Networks & Call Related Databases
6) Operations Support Systems
7) Operator Services & Directory Assistance

2.2 CLEC may use one or more Network Elements to provide any feature, function, capability, or service option that such Network Element(s) is technically capable of providing.

2.3 Standards for Network Elements

2.3.1 Each Network Element provided by Sprint to CLEC shall be at parity with the quality of design, performance, features, functions, capabilities and other characteristics, including but not

limited to levels and types of redundant equipment and facilities for power, diversity and security, that Sprint provides to itself, Sprint's own subscribers, to a Sprint Affiliate or to any other entity.

Section 3. Loop

3.1 Definition

3.1.1 . A "Loop" is a transmission path between the main distribution frame [cross-connect], or its equivalent, in a Sprint Central Office or wire center, and up to the Network Interface Device at a customer's premises, to which CLEC is granted exclusive use. This includes, but is not limited to, two-wire and four-wire cooper analog voice-grade loops, two-wire and four-wire loops that are conditioned to transmit the digital signals needed to provide services such as ISDN and DS1-level signals. This also includes DS-3, OC-n and STS-n services (e.g., n = 1,3,12...). Sprint will also provide conditioned loops (e.g., ADSL, HDSL) for Telecommunications Services requiring loop unfettered by any intervening equipment (e.g., filters, load coils, range extenders) so that CLEC can use these loops for a variety of Telecommunications Services that can be supported by use of copper by attaching appropriate terminal equipment at the ends.

3.2 . Digital Loops

3.2.1. Sprint will provide loops conditioned for ADSL and HDSL without electronic terminal equipment at the ends unless otherwise specified by CLEC. If Sprint does not have available the facilities requested by CLEC or if the service requested exceeds the spectrum compatibility of the transmission path, then CLEC will issue a bona fide request to Sprint for the appropriate facilities.

3.2.2. Sprint requires CLEC to provide in writing the grade of service desired in a particular loop (e.g., ISDN-BRI, PRI, ADSL, HDSL, DS1, etc.) so that the loop may be engineered to meet the appropriate spectrum compatibility requirements If CLEC requires a change in the grade of service of a particular loop, e.g. changing from ISDN service to ADSL, CLEC shall notify Sprint in writing of the requested change in grade of service. If Sprint finds that it is not technically feasible to provide the new level of service to CLEC, Sprint will notify CLEC that it is unable to meet CLEC's request If

Section 4. Local Switching

4.1 Definition:

4.1.1 Local Switching is the Network Element that provides the functionality required to connect the appropriate lines or trunks wired to the Main Distributing Frame (MDF) or Digital Cross Connect (DSX) panel to a desired line or trunk. Such functionality shall include all of the features, functions, and capabilities that the underlying Sprint switch providing such Local Switching function provides for Sprint's own services. Functionality may include, but is not limited to: line signaling and signaling software, digit reception, dialed number translations, call screening, routing, recording, call supervision, dial tone, switching, telephone number provisioning, announcements, calling features and capabilities (including call processing), Centrex, or Centrex like services, Automatic Call Distributor (ACD), CLEC pre-subscription (e.g., long distance Carrier, intraLATA toll), Carrier Identification Code (CIC) portability capabilities, testing and other operational features inherent to the switch and switch software.

4.2 Technical Requirements

4.2.1 Sprint shall provide its standard recorded announcements (as designated by CLEC) and call progress tones to alert callers of call progress and disposition. CLEC will use the BFR process for unique announcements in accordance with Section 6 of Part A of this Agreement.

4.2.2 Sprint shall change a subscriber from Sprint's Telecommunications Services to CLEC's Telecommunications Services without loss of feature functionality unless expressly agreed otherwise by CLEC.

4.2.3 Sprint shall control congestion points such as mass calling events, and network routing abnormalities, using capabilities such as Automatic Call Gapping, Automatic Congestion Control, and Network Routing Overflow. Application of such control shall be competitively neutral and not favor any user of unbundled switching or Sprint.

4.2.4 Sprint shall offer all Local Switching features that are technically feasible and provide feature offerings at parity with those provided by Sprint to itself or any other party.

4.3 Interface Requirements:

4.3.1 Sprint shall provide the following interfaces to loops:

4.3.1.1 Standard Tip/Ring interface including loopstart or groundstart, on-hook signaling (e.g., for calling number, calling name and message waiting lamp);

4.3.1.2 Coin phone signaling;

4.3.1.3 Basic and Primary Rate Interface ISDN adhering to ANSI standards Q.931, Q.932 and appropriate Bellcore Technical Requirements;

4.3.1.4 Two-wire analog interface to PBX to include reverse battery, E&M, wink start and DID;

4.3.1.5 Four-wire analog interface to PBX to include reverse battery, E&M, wink start and DID;

4.3.1.6 Four-wire DS1 interface to PBX or subscriber provided equipment (e.g., computers and voice response systems);

4.4 Sprint shall provide access to interfaces, including but not limited to:

4.4.1 SS7 Signaling Network, Dial Plus or Multi-Frequency trunking if requested by CLEC;

4.4.2 Interface to CLEC operator services systems or Operator Services through appropriate trunk interconnections for the system; and

4.4.3 Interface to CLEC directory assistance services through the CLEC switched network or to Directory Services through the appropriate trunk interconnections for the system; and 950 access or other CLEC required access to interexchange carriers as requested through appropriate trunk interfaces.

Section 5: Directory Assistance Service

5.1 Sprint shall provide for the routing of directory assistance calls (including but not limited to 411, 555-1212, NPA-555-1212) dialed by

CLEC subscribers directly to, at CLEC's option, either (a) the CLEC DA service platform to the extent Sprint's switch can perform this customized routing, or (b) Sprint's DA service platform to the extent there is a DA service platform for that serving area.

5.1.1 Sprint shall provide CLEC with the same level of support for the provisioning of Directory Assistance as Sprint provides itself. Quality of service standards shall be measured at the aggregate level in accordance with standards and performance measurements that are at parity with the standards and/or performance measurements that Sprint uses and/or which are required by law or regulatory agency rules or orders.

5.1.2 Directory Assistance services provided by Sprint to CLEC subscribers shall be branded in accordance with Section 11 of Part A of this Agreement.

Section 6: Operator Services

6.1 Sprint shall provide for the routing of local Operator Services calls (including but not limited to 0+, 0-) dialed by CLEC subscribers directly to either the CLEC operator Service platform or Sprint Operator Service platform to the extent Sprint's switch can perform this customized routing.

6.1.1. Sprint shall provide Operator Services to CLEC as described below until, at CLEC's discretion, Sprint routes calls to the CLEC Local Operator Services platform.

6.1.1.1.1 Sprint agrees to provide CLEC subscribers the same Operator Services available to Sprint subscribers. Sprint shall make available its service enhancements on a non-discriminatory basis.

6.1.1.1.2 Operator Services provided to CLEC subscribers shall be branded in accordance with Section 11 of Part A of this Agreement.

6.1.2 Sprint shall exercise the same level of fraud control in providing Operator Service to CLEC that Sprint provides for its own operator service.

Section 7: Transport

7.1 Common Transport

7.1.1 Definition: Common Transport provides a local interoffice transmission path between the Sprint tandem switch and a Sprint or CLEC end office switch. Common transport is shared between multiple customers and is required to be switched at the tandem.

7.1.2 Sprint shall offer Common Transport at DS0, DS1, DS3, STS-1 or higher transmission bit rate circuits.

7.1.3 Sprint shall be responsible for the engineering, provisioning, and maintenance of the underlying equipment and facilities that are used to provide Common Transport

7.2 Dedicated Transport

7.2.1 Definition:

Dedicated Transport provides a local interoffice transmission path between Sprint and/or CLEC central offices. Dedicated transport is limited to the use of a single customer and does not require switching at a tandem.

7.2.2 Technical Requirements

Where technologically feasible and available, Sprint shall offer Dedicated Transport consistent with the underlying technology as follows:

7.2.2.1 When Sprint provides Dedicated Transport as a circuit or a system, the entire designated transmission circuit or system (e.g., DS1, DS3, STS-1) shall be dedicated to CLEC designated traffic.

7.2.2.2 Where Sprint has technology available, Sprint shall offer Dedicated Transport using currently available technologies including, but not limited to, DS1 and DS3 transport systems, SONET (or SDH) Bi-directional Line Switched Rings, SONET (or SDH) Unidirectional Path Switched Rings, and SONET (or SDH) point-to-point transport systems (including linear add-drop systems), at all available transmission bit rates.

Section 8 Tandem Switching

8.1 Definition:

Tandem Switching is the function that establishes a communications path between two switching offices (connecting trunks to trunks) through a third switching office (the tandem switch) including but not limited to CLEC, Sprint, independent telephone companies, IXCs and wireless Carriers.

8.2 Technical Requirements

8.2.1 The requirements for Tandem Switching include, but are not limited to, the following:

8.2.1.1 Interconnection to Sprint tandem(s) will provide CLEC local interconnection for local and toll access service purposes to the Sprint end offices and NXXs which interconnect with that tandem(s) either directly or through other Sprint facilities for local and toll service purposes, and to other companies which are likewise connected to that tandem(s).

8.2.1.2 Interconnection to a Sprint tandem for transit purposes will provide CLEC interexchange access to Sprint, Interexchange Carriers ("IXCs"), Carriers, ILECs, and CMRS providers which are connected to that tandem.

8.2.1.3 Where a Sprint Tandem Switch also provides End-Office Switch functions, interconnection to a Sprint tandem serving that exchange will also provide CLEC access to Sprint's end offices and access the NXXs served by that individual end-office.

8.2.2 Tandem Switching shall preserve CLASS/LASS features and Caller ID as traffic is processed.

8.2.3 To the extent technically feasible, Tandem Switching shall record billable events and send them to the area billing centers designed by CLEC.

8.2.4 Tandem Switching shall control congestion using capabilities such as Automatic Congestion Control and Network Routing Overflow. Congestion control provided or imposed on CLEC traffic shall be at parity with controls being provided or imposed on Sprint traffic (e.g. Sprint shall not block CLEC traffic and leave its traffic unaffected or less affected.)

8.2.5 The Local Switching and Tandem Switching functions may be combined in an office. If this is done, both Local Switching and Tandem switching shall provide all of the functionality required of each of those Network Elements in this Agreement.

8.2.6 Tandem Switching shall provide interconnection to the E911 PSAP where the underlying Tandem is acting as the E911 Tandem.

8.3 Interface Requirements

8.3.1 Tandem Switching shall interconnect, with direct trunks, to all carriers with which Sprint interconnects.

8.3.2 Sprint shall provide all signaling necessary to provide Tandem Switching with no loss of feature functionality.

Section 9 Network Interface Device

9.1 Definition:

The Network Interface Device (NID) is a single-line termination device or that portion of a multiple-line termination device required to terminate a single line or circuit. The function of the NID is to establish the network demarcation point between a carrier and its subscriber. The NID features two independent chambers or divisions which separate the service provider's network from the subscriber's inside wiring. Each chamber or division contains the appropriate connection points or posts to which the service provider, and the subscriber each make their connections. The NID or protector provides a protective ground connection, provides protection against lightning and other high voltage surges and is capable of terminating cables such as twisted pair cable.

9.1.1 CLEC may connect its NID to Sprint's NID.

9.1.2 With respect to multiple-line termination devices, CLEC shall specify the quantity of NIDs it requires within such device.

Figure 1 shows a schematic of a NID.

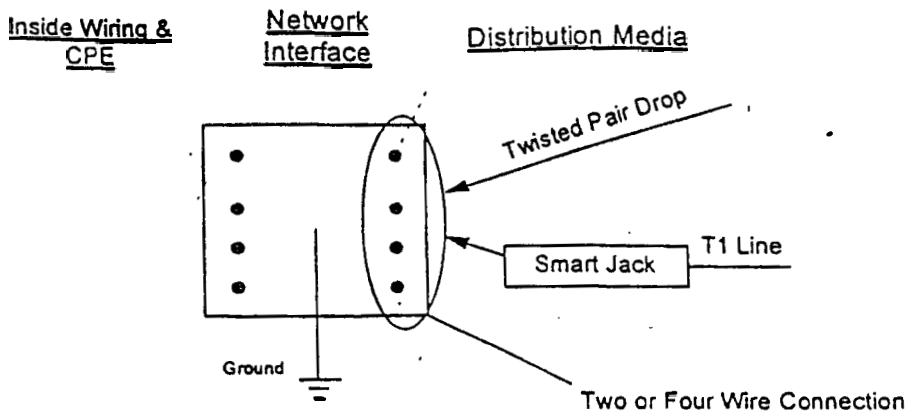

Figure 1 - Network Interface Device

9.2 Technical Requirements

9.2.1 The Sprint NID shall provide a clean, accessible point of connection for the inside wiring and for the Distribution Media and/or cross connect to CLEC's NID and shall maintain a connection to ground that meets the requirements set forth below. Each party shall ground its NID independently of the other party's NID.

9.2.2 The NID shall be the interface to subscribers' premises wiring for all loop technologies.

Section 10 Signaling Systems and Databases

10.1 Signaling Systems

10.1.1 Signaling Link Transport

10.1.1.1 Definition:

Signaling Link Transport is a set of two or four dedicated 56 Kbps transmission paths between CLEC-designated Signaling Points of Interconnection (SPOI) that provides appropriate physical diversity and a cross connect at a Sprint STP site.

10.1.1.2 Technical Requirements

10.1.1.2.1 Signaling Link Transport shall consist of full duplex mode 56 Kbps transmission paths.

10.1.1.3 Interface Requirements

10.1.1.3.1 There shall be a DS1 (1.544 Mbps) interface at the CLEC-designated SPOIs. Each 56 Kbps transmission path shall appear as a DS0 channel within the DS1 interface.

10.1.2 Signaling Transfer Points (STPs)

10.1.2.1 Definition:

Signaling Transfer Points (STPs) provide functionality that enable the exchange of SS7 messages among and between switching elements, database elements and signaling transfer points.

10.1.2.1.1 Figure 2 depicts Signaling Transfer Points.

Signaling Transfer Points.

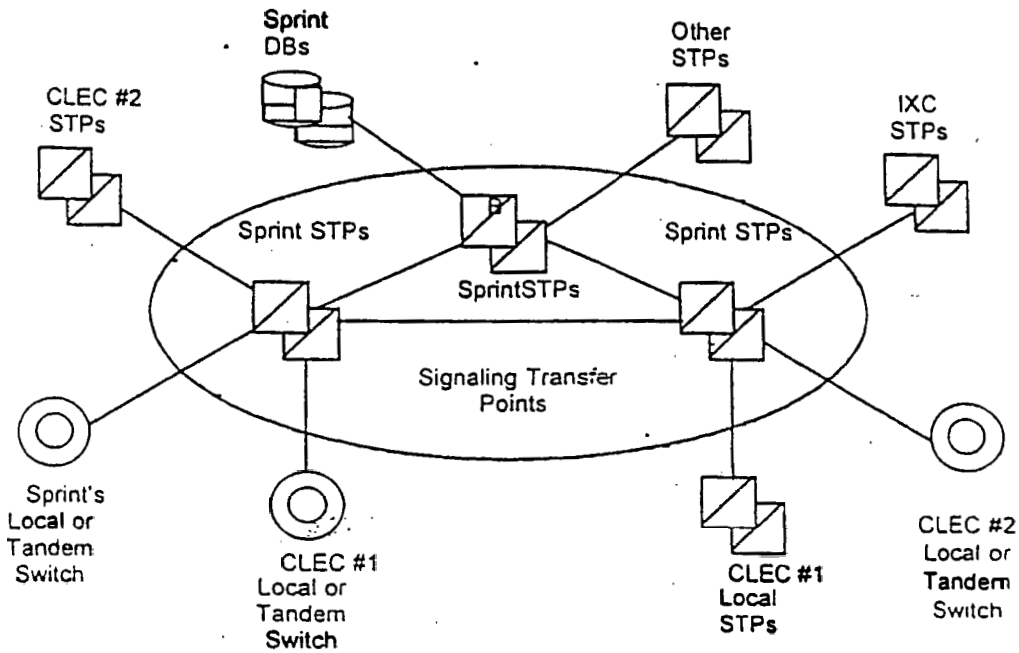

Figure 2

10.1.2.2 Technical Requirements

STPs shall provide access to and fully support the functions of all other Network Elements connected to the Sprint SS7 network. These include:

10.2.2.2.1 Sprint Local Switching or Tandem Switching;

10.2.2.2.2 Sprint Service Control Points/DataBases;

10.2.2.2.3 Third-party local or tandem switching systems; and

10.2.2.2.4 Third-party-provided STPs

10.1.2.3 Interface Requirements

10.1.2.3.1 Sprint shall provide the following STPs options to connect CLEC or CLEC-designated local switching systems or STPs to the Sprint SS7 network:

10.1.2.3.1.1 An A-link interface from CLEC local switching systems; and,

10.1.2.3.1.2 B or D-link interface from CLEC STPs.

10.1.2.3.2 Each type of interface shall be provided by one or more sets (layers) of signaling links, as follows:

10.1.2.3.2.1 An A-link layer shall consist of two links, as depicted in Figure 3.

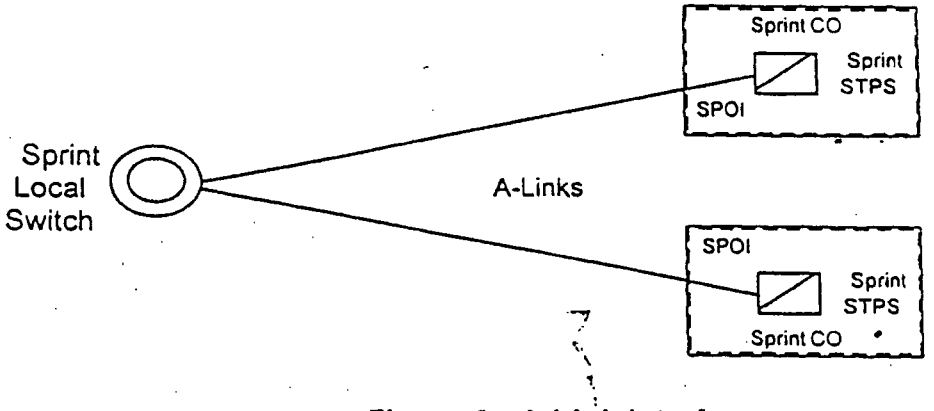

Figure 3. A-Link Interface

10.1.2.3.2. 2 A B or D-link layer shall consist of four links, as depicted in Figure 4.

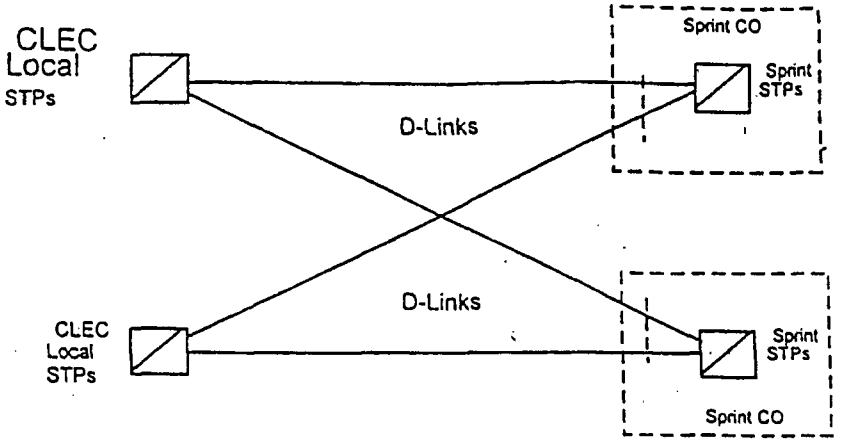

Figure 4. D-Link Interface

10.1.2.3.3 Signaling point of Interconnection (SPOI) for each link shall be located at a cross-connect element, such as a DSX-1, in the Central Office (CO) where the Sprint STPs is located. There shall be a DS1 or higher rate transport interface at each of the SPOIs. Each signaling link shall appear as a DSO channel within the DS1 or higher rate interface.

10.2 Line Information Database (LIDB)

10.2.1 The LIDB is a transaction-oriented database accessible through Common Channel Signaling (CCS) networks. It contains records associated with subscribers Line Numbers and Special Billing Numbers. LIDB accepts queries from other Network Elements, or CLEC's network, and provides appropriate responses. The query originator need not be the owner of LIDB data. LIDB queries include functions such as screening billed numbers that provides the ability to accept Collect or Third Number Billing calls and validation of Telephone Line Number based non-proprietary calling cards. The interface for the LIDB functionality is the interface between the Sprint CCS network and other CCS networks. LIDB also interfaces to administrative systems. The administrative system interface provides Work Centers with an interface to LIDB for functions such as provisioning, auditing of data, access to LIDB measurements and reports.

10.2.2 Technical Requirements

10.2.2.1 Prior to the availability of a long-term solution for Number Portability, Sprint shall enable CLEC to store in Sprint's LIDB any subscriber Line Number or Special Billing Number record, whether ported or not, for which the NPA-NXX or NXX-0/1XX Group is supported by that LIDB.

10.2.2.2 Prior to the availability of a long-term solution for Number Portability, Sprint shall enable CLEC to store in Sprint's LIDB any subscriber Line Number or Special Billing Number record, whether ported or not, and NPA-NXX and NXX-0/1XX Group Records, belonging to an NPA-NXX or NXX-0/1 XX owned by CLEC.

10.2.2.3 Subsequent to the availability of a long-term solution for Number Portability, Sprint shall enable CLEC to store in Sprint's LIDB any subscriber Line Number or Special Billing Number record, whether ported or not, regardless of the number's NPA-NXX or NXX-0/1XX.

10.2.2.4 Sprint shall perform the following LIDB functions for CLEC's subscriber records in LIDB: Billed Number Screening (provides information such as whether the Billed Number may accept Collect or Third Number Billing calls); and Calling Card Validation.

10.2.2.5 Sprint shall process CLEC's subscriber records in LIDB at parity with Sprint subscriber records, with respect to other LIDB functions (as defined in the technical reference in Section 13.5). Sprint shall indicate to CLEC what additional functions (if any) are performed by LIDB in their network.

10.2.2.6 Sprint shall perform backup and recovery of all of CLEC's data in LIDB at parity with backup and recovery of all other records in the LIDB, including sending to LIDB all changes made since the date of the most recent backup copy.

10.3 Toll Free Number Database

10.3.1 Definition

10.3.1.1 The Toll Free Number Database provides functionality necessary for toll free (e.g., 800 and 888) number services by providing routing information and additional vertical features during call set-up in response to queries from SSPs. Sprint shall provide the Toll Free Number Database in accordance with the following:

10.3.2 Technical Requirements

10.3.2.1 Sprint shall make the Sprint Toll Free Number Database available for CLEC to query, from CLEC's designated switch including Sprint unbundled local switching with a toll-free number and originating information.

10.3.2.2 The Toll Free Number Database shall return carrier identification and, where applicable, the queried toll free number, translated numbers and instructions as it would in response to a query from a Sprint switch.

10.3.3 Interface Requirements

10.3.3.1 The signaling interface between the CLEC or other local switch and the Toll-Free Number database shall use the TCAP protocol, together with the signaling network interface.

PART C - ATTACHMENT IV

INTERCONNECTION

Section 1. Local Interconnection Trunk Arrangement

1.1 The Parties agree to initially use 2-Way trunks (1-way directionalized) for an interim period of 120 days after date of initial trunk turn-up. Either Party may extend the use of 1-way trunks for an additional 30 days, if necessary for engineering and billing purposes; provided that the Parties shall transition all 1-way trunks established under this Agreement.

1.1.1 The Parties shall initially reciprocally terminate Local Traffic and IntraLATA/InterLATA toll calls originating on each others' networks as follows:

1.1.1.1 The Parties shall make available to each other two-way trunks for the reciprocal exchange of combined Local Traffic, and non-equal access IntraLATA toll traffic.

1.1.1.2 Separate two-way trunks will be made available for the exchange of equal-access InterLATA or IntraLATA interexchange traffic that transits Sprint's network. Upon agreement between CLEC and Sprint, equal access InterLATA and/or IntraLATA traffic may be combined on the same trunk group as Local Traffic, non-equal access IntraLATA toll traffic, and local transit traffic.

1.1.1.3 Separate trunks will be utilized for connecting CLEC's switch to each 911/E911 tandem.

1.1.1.4 Separate trunk group will be utilized for connecting CLEC's switch to Sprint's Operator Service center for operator-assisted busy line interrupt/verify.

1.1.1.5 Separate trunk group will be utilized for connecting CLEC's switch to Sprint's Directory Assistance center in instances where CLEC is purchasing Sprint's unbundled Directory Assistance service.

1.2 Interconnection Point

1.2.1 "Interconnection Point" or "IP" means the physical point that establishes the technical interface, the test point, and the operational responsibility hand-off between CLEC and Sprint for the local interconnection of their networks.

1.2.2 CLEC will be responsible for engineering and maintaining its network on its side of the IP. Sprint will be responsible for engineering and maintaining its network on its side of the IP. If and when the parties choose to interconnect at a mid-span meet, CLEC and Sprint will jointly provision the facilities that connect the two networks. Sprint will be required to provide fifty (50) percent of the facilities or to its exchange boundary, whichever is less. CLEC will be required to provide fifty (50) percent of the facilities or to Sprint's exchange boundary, whichever is greater.

on 2. Compensation Mechanisms

2.1 Interconnection Point

2.1.1 Each party is responsible for bringing their facilities to the IP.

2.2 Compensation for Local Traffic Transport and Termination

2.2.2 The IP determines the point at which the originating carrier shall pay the terminating carrier for the completion of that traffic. The following compensation elements shall apply:

2.2.2.1 "Transport", which includes the two rate elements of transmission and any necessary tandem switching of Local Traffic from the interconnection point between the two carriers to the terminating carrier's end-office switch that directly serves the called end-user.

2.2.2.2 "Termination", which includes the switching of Local Traffic at the terminating carrier's end office switch.

2.3 When a CLEC subscriber places a call to Sprint's subscriber, CLEC will hand off that call to Sprint at the IP. Conversely, when Sprint hands over Local Traffic to CLEC for CLEC to transport and terminate, Sprint may use the established IP or Sprint may designate its own IP.

2.4 CLEC and Sprint may designate an IP at any technically feasible point including but not limited to any electronic or manual cross-connect.

points, collocations, entrance facilities, and mid-span meets. The transport and termination charges for Local Traffic flowing through an IP shall be as follows:

2.4.1 When calls from CLEC are terminating on Sprint's network through the Sprint tandem switch, CLEC will pay Sprint for transport charges from the IP to the tandem for dedicated transport. CLEC shall also pay a charge for tandem switching, or common transport to the end office, and end-office termination.

2.4.2 When Sprint terminates calls to CLEC's subscribers using CLEC's switch, Sprint shall pay CLEC for transport charges from the IP to the CLEC switching center for dedicated transport. Sprint shall also pay to CLEC a charge symmetrical to its own charges for the functionality actually provided by CLEC for call termination.

2.4.3 CLEC may choose to establish direct trunking to any given end office. If CLEC leases trunks from Sprint, it shall pay charges for dedicated transport. For calls terminating from CLEC to subscribers served by these directly-trunked end offices, CLEC shall also pay an end-office termination. For Sprint traffic terminating to CLEC over the direct end office trunking, compensation payable by Sprint shall be the same as that detailed in Section 2.4.2 above.

Section 3. Signaling

3.1 Signaling protocol. The parties will interconnect their networks using SS7 signaling where technically feasible and available as defined in FR 905 Bellcore Standards including ISDN user part ("ISUP") for trunk signaling and transaction capabilities application part ("TCAP") for CCS-based features in the interconnection of their networks. All Network Operations Forum (NOF) adopted standards shall be adhered to.

3.2 Refer to Attachment III, Section 10 for detailed terms of SS7 Network Interconnection.

3.3 Standard interconnection facilities shall be extended superframe (ESF) with B8ZS line code. Where ESF/B8ZS is not available, CLEC will agree to using other interconnection protocols on an interim basis until the standard ESF/B8ZS is available. Sprint will provide anticipated dates of availability for those areas not currently ESF/B8ZS compatible.

3.3.1 Where CLEC is unwilling to utilize an alternate interconnection protocol, CLEC will provide Sprint an initial forecast

of 64 Kbps clear channel capability ("64K CCC") trunk quantities within 30 days of the Approval Date consistent with the forecasting agreements between the parties. Upon receipt of this forecast, the parties will begin joint planning for the engineering, procurement, and installation of the segregated 64K CCC Local Interconnection Trunk Groups, and the associated B8ZS extended super frame ("ESF") facilities, for the sole purpose of transmitting 64K CCC data calls between CLEC and Sprint. Where additional equipment is required, such equipment would be obtained, engineered, and installed on the same basis and with the same intervals as any similar growth job for IXC, CLEC, or Sprint internal customer demand for 64K CCC trunks. Where technically feasible, these trunks will be established as two-way.

Section 4. Network Servicing

4.1 Trunk Forecasting:

4.1.1 The Parties shall work towards the development of joint forecasting responsibilities for traffic utilization over trunk groups. Orders for trunks that exceed forecasted quantities for forecasted locations will be accommodated as facilities and or equipment are available. The Parties shall make all reasonable efforts and cooperate in good faith to develop alternative solutions to accommodate orders when facilities are not available. Intercompany forecast information must be provided by the Parties to each other once a year. The annual forecasts shall include:

4.1.1.1 Yearly forecasted trunk quantities (which include baseline data that reflect actual tandem and end office Local Interconnection and meet point trunks and tandem-subtending Local Interconnection end office equivalent trunk requirements for no more than two years (current plus one year);

4.1.1.2 The use of Common Language Location Identifier (CLLI-MSG), which are described in Bellcore documents BR 795-100-100 and BR 795-400-100;

4.1.1.3 Description of major network projects that affect the other Party will be provided in the semi-annual forecasts. Major network projects include but are not limited to trunking or network rearrangements, shifts in anticipated traffic patterns, or other activities by either party that are reflected

by a significant increase or decrease in trunking demand for the following forecasting period.

4.1.2 Parties shall meet to review and reconcile their forecasts if forecasts vary significantly.

4.1.3 Each Party shall provide a specified point of contact for planning forecasting and trunk servicing purposes.

4.1.4 Trunking can be established to tandems or end offices or a combination of both via either one-way or two-way trunks. Trunking will be at the DS-0 level, DS-1 level, DS-3/OC-3 level, or higher, as agreed upon by CLEC and Sprint. Initial trunking will be established between the CLEC switching centers and Sprint's access tandem(s). The Parties may utilize direct end office trunking depending upon tandem exhaust, traffic volumes, or by mutual agreement.

4.2 Grade of Service

4.2.1 A blocking standard of one percent (.01) during the average busy hour, as defined by each Party's standards, for final trunk groups between a CLEC end office and a Sprint access tandem carrying meet point traffic shall be maintained. All other final trunk groups are to be engineered with a blocking standard of one percent (.01). Direct end office trunk groups are to be engineered with a blocking standard of one percent (.01).

4.3 Trunk Servicing

4.3.1 Orders between the Parties to establish, add, change or disconnect trunks shall be processed by use of an ASR, or another industry standard eventually adopted to replace the ASR for local service ordering.

Section 5. Network Management

5.1 Protective Protocols

5.1.1 Either Party may use protective network traffic management controls such as 7-digit and 10-digit code gaps on traffic toward each others network, when required to protect the public switched network from congestion due to facility failures, switch congestion or failure or focused overload. CLEC and Sprint will immediately

notify each other of any protective control action planned or executed.

5.2 Expansive Protocols

5.2.1 Where the capability exists, originating or terminating traffic reroutes may be implemented by either party to temporarily relieve network congestion due to facility failures or abnormal calling patterns. Reroutes will not be used to circumvent normal trunk servicing. Expansive controls will only be used when mutually agreed to by the parties.

5.3 Mass Calling

5.3.1 CLEC and Sprint shall cooperate and share pre-planning information, where available, regarding cross-network call-ins expected to generate large or focused temporary increases in call volumes, to prevent or mitigate the impact of these events on the public switched network.

Section 6. Usage Measurement

6.1 Each Party shall calculate terminating interconnection minutes of use based on standard AMA recordings made within each Party's network, these recordings being necessary for each Party to generate bills to the other Party. In the event either Party cannot measure minutes terminating on its network, the other Party shall provide the measuring mechanism or the Parties shall otherwise agree on an alternate arrangement.

6.2 Measurement of minutes of use over Local Interconnection trunk groups shall be in actual conversation seconds. The total conversation seconds over each individual Local Interconnection trunk group will be totaled for the entire monthly bill period and then rounded to the next whole minute.

6.3 Each Party shall provide to the other, within 20 business days after the end of each quarter (commencing with the first full quarter after the effective date of this Agreement), a usage report with the following information regarding traffic sent by the recording Party over the Local Interconnection trunk groups whether the arrangement is direct interconnection or transit through a third party:

6.3.1 Total traffic volume described in terms of minutes and messages and by call type (local, toll, and other) terminated to each other over the Local Interconnection trunk groups, and

6.3.2. Percent Local Use (PLU)

Section 7. Responsibilities Of The Parties

7.1 Sprint and CLEC agree to treat each other fairly, nondiscriminatorily, and equally for all items included in this Agreement. or related to the support of items included in this Agreement.

7.2 CLEC and Sprint will review engineering requirements on a semi-annual basis and establish forecasts for trunk and facilities utilization provided under this Agreement. Sprint and CLEC will work together to begin providing these forecasts within 30 days from the Approval Date. New trunk groups will be implemented as dictated by engineering requirements for either Sprint or CLEC.

7.3 CLEC and Sprint shall share responsibility for all Control Office functions for Local Interconnection Trunks and Trunk Groups, and both parties shall share the overall coordination, installation, and maintenance responsibilities for these trunks and trunk groups.

7.4 CLEC is responsible for all Control Office functions for the meet point trunking arrangement trunks and trunk groups, and shall be responsible for the overall coordination, installation, and maintenance responsibilities for these trunks and trunk groups.

7.5 CLEC and Sprint shall:

7.5.1 Provide trained personnel with adequate and compatible test equipment to work with each other's technicians.

7.5.2 Notify each other when there is any change affecting the service requested, including the due date.

7.5.3 Coordinate and schedule testing activities of their own personnel, and others as applicable, to ensure its interconnection trunks/trunk groups are installed per the interconnection order, meet agreed-upon acceptance test requirements, and are placed in service by the due date.

7.5.4 Perform sectionalization to determine if a trouble is located in its facility or its portion of the interconnection trunks prior to referring the trouble to each other.

7.5.5 Advise each other's Control Office if there is an equipment failure which may affect the interconnection trunks.

7.5.6 Provide each other with a trouble reporting/repair contact number that is readily accessible and available 24 hours/7 days a week. Any changes to this contact arrangement must be immediately provided to the other party.

7.5.7 Provide to each other test-line numbers and access to test lines.

7.5.8 Cooperatively plan and implement coordinated repair procedures for the meet point and Local Interconnection trunks and facilities to ensure trouble reports are resolved in a timely and appropriate manner.

PART C - ATTACHMENT V

COLLOCATION

Section 1. Introduction

This Attachment sets forth the requirements for Collocation.

Section 2. Technical Requirements

2.1 Sprint shall provide space, as requested by CLEC, to meet CLEC's needs for placement of equipment, interconnection, or provision of service ("Collocated Space") in accordance with this Attachment V and Sprint's FCC #1 tariff and Sprint-Florida, Incorporated Access Service tariff.

2.1.1 CLEC shall not occupy or use the Collocated Space, or permit the Collocated Space to be occupied or used, for any purpose, act or thing, whether or not otherwise permitted by this Agreement, if such purpose, act or thing (i) is in violation of any public law, ordinance or governmental regulation; (ii) may be dangerous to persons or property; (iii) may invalidate or increase the amount of premiums beyond such increase as results from the contemplated occupancy for any insurance policy carried on the building or covering its operation; or (iv) violates the terms of this Agreement.

2.2 Sprint shall provide intraoffice facilities (e.g., DS0, DS-1, DS-3, and other available transmission speeds) as agreed to by CLEC and Sprint to meet CLEC's need for placement of equipment, interconnection, or provision of service.

2.3 Sprint agrees to allow CLEC's employees and designated agents unrestricted but escorted access to CLEC dedicated space in manned Sprint offices twenty-four (24) hours per day each day of the week. CLEC shall use reasonable efforts to provide Sprint twenty-four (24) hours prior notice of such access. Sprint may place reasonable security restrictions, including an escort requirement and charge for such escort, on access by CLEC's employees and designated agents to the Collocated Space in unmanned Sprint offices. Notwithstanding the above, Sprint agrees that such space shall be available to CLEC's employees and designated agents twenty-four (24) hours per day each day of the week upon twenty-four (24) hours prior notice. In no case should any reasonable security restrictions be more restrictive than those Sprint places on their own

personnel, except with respect to an escort requirement as set forth above.

2.4 CLEC may collocate the amount and type of equipment it deems necessary in its Collocated Space in accordance with FCC Rules and Regulations and Sprint's FCC #1 tariff and Sprint-Florida, Incorporated Access Service tariff. Such equipment shall meet Bellcore specifications and be manufactured by a Sprint approved vendor. Approved vendors will, at a minimum, be vendors Sprint currently approves for its own use. Sprint will approve additional vendors provided they meet industry standards.

2.5 Sprint shall permit a collocating telecommunications carrier to interconnect its network with that of another collocating telecommunications carrier at the Sprint premises and to connect its collocated equipment to the collocated equipment of another telecommunications carrier within the same premises. Sprint in all cases shall provide such interconnections.

2.6 Sprint shall permit CLEC or its designated subcontractor to perform the construction of physical collocation arrangements , provided, however, that any such CLEC subcontractor shall be subject to Sprint's approval, such approval shall not be unreasonably withheld. Approval by Sprint shall be based on the same criteria it uses in approving contractors for its own purposes.

2.7 CLEC shall not make substantial installations, alterations or additions in or to the Collocated Space without submitting plans and specifications to Sprint and securing the prior written consent of Sprint in each instance. Sprint's consent shall not be unreasonably withheld or unduly delayed for non-structural interior alteration to the Collocated Space that do not adversely affect the building's appearance, value, structural strength and mechanical integrity. Such work shall be done at the sole expense of CLEC.

2.7.1 All installations, alterations and additions shall be constructed in a good and workmanlike manner and only new and good grades of material shall be used, and shall comply with all insurance requirements, governmental requirements, and terms of this Agreement. Work shall be performed at such times and in such manner as to cause a minimum of interference with Sprint's transaction of business. CLEC shall permit Sprint to inspect all construction operations within the premises and to approve contractors, which approval shall not be unreasonably withheld. If alterations are made by CLEC's contractors, CLEC shall furnish to

Sprint prior to commencement thereof, building permits and certificates of insurance to be provided by CLEC's contractors and sub-contractors. Any such insurance to be provided by CLEC's contractors or sub-contractors shall provide for coverage in amounts not less than as required by Sprint of CLEC under Section 2.45 of this Attachment V. Upon completion of any installation, alteration or addition, contractor's affidavits and full and final waivers of lien covering all labor and material expended and used shall be furnished to Sprint. CLEC and its contractors and sub-contractors shall hold Sprint harmless from all claims, costs, damages, liens and expenses which may arise out of or be connected in any way with installations, alterations or additions.

2.7.2 All installations, alterations and additions which take the form of fixtures, except trade fixtures, placed in the Collocated Space by and at the expense of CLEC or others shall become the property of Sprint, and shall remain upon and be surrendered with the Collocated Space. Upon termination of a license for Collocated Space, however, Sprint shall have the right to require CLEC to remove such fixtures and installations, alterations or additions at CLEC's expense, and to surrender the Collocated Space in the same condition as it was prior to the making of any or all such improvements, reasonable wear and tear excepted.

2.7.3 All fixtures and other equipment to be used by CLEC in, about or upon the premises shall be subject to the prior written approval of Sprint, which shall not be unreasonably withheld.

2.8 Sprint shall provide basic telephone service with a connection jack as ordered by CLEC from Sprint for the Collocated Space. Upon CLEC's request, this service shall be available at the Collocated Space on the day that the space is turned over to CLEC by Sprint.

2.9 Sprint shall provide adequate lighting, ventilation, power, heat, air conditioning, and other environmental conditions for CLEC's space and equipment. These environmental conditions shall adhere to Bellcore Network Equipment Building System (NEBS) standards TR-EOP-000063 or other mutually agreed standards.

2.9.1 If CLEC locates equipment or facilities in the Collocated Space which Sprint determines affect the temperature or other environmental conditions otherwise maintained by Sprint in the building, Sprint reserves the right to provide and install supplementary air conditioning units or other environmental control devices for the Collocated Space, and the cost of providing,

installing, operating and maintaining any such supplementary air conditioning units or other environmental control devices made necessary solely by CLEC's equipment or facilities shall be paid by CLEC to Sprint.

2.9.2 If CLEC's equipment or facilities requires cooling capability in excess of that normally provided by Sprint for its own equipment, any required supplementary air conditioning required by CLEC shall be paid by CLEC to Sprint.

2.10 Where available and subject to Sprint's standard security procedures, Sprint shall provide access to eyewash stations, shower stations, bathrooms, and drinking water within the collocated facility on a twenty-four (24) hours per day, seven (7) days per week basis for CLEC personnel and its designated agents.

2.11 Sprint shall provide all ingress and egress of fiber and power cabling to Collocated Spaces. CLEC's specific diversity requirements for each site or Network Element will be provided in the collocation request.

2.12 Each party shall ensure protection of the other party's proprietary subscriber information. In conjunction with any collocation arrangement Sprint and CLEC shall adhere to the provisions of Section 13 of Part A of this Agreement.

2.13 Sprint shall participate in and adhere to negotiated and agreed to service guarantees and Performance Standards, if any.

2.14 Sprint shall provide CLEC with written notice five (5) business days prior to those instances where Sprint or its subcontractors may be performing work in the general area of the Collocated Space, or in the general area of the AC and DC power plants which support CLEC equipment. Sprint will inform CLEC by telephone of any emergency related activity that Sprint or its subcontractors may be performing in the general area of the Collocated Space, or in the general area of the AC and DC power plants which support CLEC equipment. Notification of any emergency related activity shall be made immediately prior to the start of the activity so that CLEC can take any action required to monitor or protect its service.

2.15 Sprint shall, at its sole expense, except as hereinafter provided, provide repair and maintenance of heating, cooling and lighting equipment and regularly scheduled refurbishments or decorating to the Collocated Space, building and property, in a manner consistent with Sprint's normal business practices.

2.15.1 Sprint shall, where practical, provide CLEC with 24 hours prior notice before making repairs and/or performing maintenance on the Collocated Space; provided, however, that Sprint shall have no obligation to provide such notice if Sprint determines, in the exercise of its sole discretion, that such repair or maintenance must be done sooner in order to preserve the safety of the building or the Collocated Space, or if required to do so by any court or governmental authority. Work shall be completed during normal working hours or at other times identified by Sprint; provided, however, that CLEC shall pay Sprint for overtime and for any other expenses incurred if such work is done during other than normal working hours at CLEC's request. CLEC shall have the right, at its sole expense, to be present during repair or maintenance of the Collocated Space.

2.16 CLEC shall provide Sprint with written notice five (5) business days prior to those instances where CLEC or its subcontractors may be performing work in the general area of the Collocated Space, or in the general area of the AC and DC power plants which support Sprint equipment. CLEC will inform Sprint by telephone of any emergency related activity that CLEC or its subcontractors may be performing in the general area of the Collocated Space, or in the general area of the AC and DC power plants which support Sprint equipment. Notification of any emergency related activity shall be made immediately prior to the start of the activity so that Sprint can take any action required to monitor or protect its service.

2.17 To the extent Sprint performs the construction of the physical collocation arrangement, Sprint shall construct the Collocated Space in compliance with mutually agreed collocation request. Any deviation to CLEC's order must thereafter be approved by CLEC.

2.18 CLEC and Sprint will complete an acceptance walk through of those portions of the collocation arrangement provided by Sprint. Exceptions that are noted during this acceptance walk through shall be corrected by Sprint within five (5) business days after the walk through except where circumstances reasonably warrant additional time. In such event, subject to CLEC's consent, which shall not be unreasonably withheld, Sprint shall be given additional time. The correction of these exceptions from the original collocation request shall be at Sprint's expense.

2.19 Sprint shall provide detailed Telephone Equipment drawings depicting the exact location, type, and cable termination requirements

(i.e., connector type, number and type of pairs, and naming convention) for Sprint Point of Termination Bay(s) to CLEC within ten (10) business days of acceptance of CLEC's request for Collocated Space.

2.20 Sprint shall provide detailed drawings depicting the exact path, with dimensions, for CLEC Outside Plant Fiber ingress and egress into Collocated Space within ten (10) business days of the acceptance of CLEC's request for Collocated Space.

2.21 Sprint shall provide detailed power cabling connectivity information including the sizes and number of power feeders to CLEC within ten (10) business days of the acceptance of CLEC's request for Collocated Space.

2.22 To the extent Sprint performs the construction of the physical collocation arrangement, Sprint shall provide positive confirmation to CLEC when construction of Collocated Space is 50% completed. This confirmation shall also include confirmation of the scheduled completion and turnover dates.

2.23 Sprint shall provide the following information to CLEC within ten (10) business days of receipt of a written request from CLEC:

2.23.1 Work restriction guidelines.

2.23.2 Sprint or Industry technical publication guidelines that impact the design of Sprint collocated equipment.

2.23.3 Sprint contacts (names and telephone numbers) for the following areas:

Engineering
Physical & Logical Security
Provisioning
Billing (Related to Collocation Services)
Operations
Site and Building Managers
Environmental and Safety

2.23.4 Escalation process for the Sprint employees (names, telephone numbers and the escalation order) for any disputes or problems that might arise pursuant to CLEC's collocation.

2.24 Power as referenced in this document refers to any electrical power source supplied by Sprint for CLEC equipment. It includes all superstructure, infrastructure, and overhead facilities, including, but not

limited to, cable, cable racks and bus bars. Sprint will supply power to support CLEC equipment at equipment specific DC and AC voltages. At a minimum, Sprint shall supply power to CLEC at parity with that provided by Sprint to itself or to any third party. If Sprint performance, availability, or restoration falls below industry standards, Sprint shall bring itself into compliance with such industry standards as soon as technologically feasible.

2.24.1 Central office power supplied by Sprint into the CLEC equipment area, shall be supplied in the form of power feeders (cables) on cable racking into the designated CLEC equipment area. The power feeders (cables) shall efficiently and economically support the requested quantity and capacity of CLEC equipment. The termination location shall be as requested by CLEC.

2.24.2 Sprint shall provide power as requested by CLEC to meet CLEC's need for placement of equipment, interconnection, or provision of service.

2.24.3 Sprint power equipment supporting CLEC's equipment shall:

2.24.3.1 Comply with applicable industry standards (e.g., Bellcore, NEBS and IEEE) or manufacturer's equipment power requirement specifications for equipment installation, cabling practices, and physical equipment layout or at minimum, at parity with that provided for similar Sprint equipment;

2.24.3.2 Have redundant power feeds with physical diversity and battery back-up as required by the equipment manufacturer's specifications for CLEC equipment, or, at minimum, at parity with that provided for similar Sprint equipment;

2.24.3.3 Provide, upon CLEC's request, the capability for real time access to power performance monitoring and alarm data that impacts (or potentially may impact) CLEC traffic;

2.24.3.4 Provide central office ground, connected to a ground electrode located within the Collocated Space, at a level above the top of CLEC equipment plus or minus 2 feet to the left or right of CLEC's final request; and

2.24.3.5 Provide feeder cable capacity and quantity to support the ultimate equipment layout for CLEC equipment in accordance with CLEC's collocation request.

2.24.3.6 To the extent Sprint performs the construction of physical collocation arrangements, Sprint shall, within ten (10) business days of CLEC's request:

2.24.3.6.1 The standard prices for collocation are as set forth in Sprint's tariffs, and nonstandard charges shall be negotiated between the parties.

2.24.3.6.2 Provide an installation schedule and access that will allow Sprint and CLEC installation efforts in parallel without jeopardizing either party's personnel safety or existing services;

2.24.3.6.3 Provide information on existing power plant alarms that adhere to Bellcore Network Equipment Building System (NEBS) standards TR-EOP-000063;

2.24.3.7 Sprint shall provide cabling that adheres to Bellcore Network Equipment Building System (NEBS) standards TR-EOP-000063; 2.24.3.8 Sprint shall provide Lock Out-Tag Out and other electrical safety procedures and devices in conformance with the most stringent of OSHA or industry guidelines.

2.24.3 Sprint will provide CLEC with written notification within ten (10) business days of any scheduled AC or DC power work or related activity in the collocated facility that will or might cause an outage or any type of power disruption to CLEC equipment located in Sprint facility. Sprint shall provide CLEC immediate notification by telephone of any emergency power activity that would impact CLEC equipment.

2.24.4 CLEC will provide Sprint with written notification within ten (10) business days of any scheduled AC or DC power work or related activity in the collocated facility that will or might cause an outage or any type of power disruption to Sprint equipment located in CLEC facility. CLEC shall provide Sprint immediate notification by telephone of any emergency power activity that would impact Sprint equipment.

2.25 To the extent that space for virtual collocation is available, Sprint shall provide virtual collocation where physical collocation is not practical for technical reasons or because of space limitations. Sprint shall take collocator demand into account when renovating existing facilities and constructing or leasing new facilities.

2.26 Where collocation space and associated requirements are available, intervals for physical collocation shall be a maximum of three months from the requested date, subject to additional time for asbestos removal or extraordinary construction as mutually agreed upon by CLEC and Sprint. Virtual collocations will have a maximum interval of 2 months.

2.27 CLEC may choose to lease unbundled transport from the Sprint, or from a third carrier, rather than construct to the Sprint facility where equipment will be collocated.

2.28 Sprint will maintain, at CLEC's expense, CLEC's virtually collocated equipment in a manner equal to that with which it maintains its own equipment. Maintenance includes the change out of electronic cards provided by CLEC and per CLEC's request.

2.29 As part of the license granted in Section 4 herein, CLEC, its employees, agents and invitees shall have a non-exclusive right to use those portions of the common area of the building as are designated by Sprint from time to time, including, but not limited to, the right to use rest rooms in proximity to the Collocated Space, corridors and other access ways from the entrance to the building, the Collocated Space, and the parking areas adjacent to the building for vehicles of persons while working for or on behalf of CLEC at the Collocated Space; provided, however, that Sprint shall have the right to reserve parking spaces for Sprint's exclusive use or by other occupants of the building. Sprint does not guarantee that there is or will be sufficient parking spaces in parking areas to meet CLEC's needs. All common areas shall remain under the exclusive control and management of Sprint, and Sprint shall have the right to change the level, location and arrangement of parking areas and other common areas as Sprint may deem necessary. Use of all common areas shall be subject to such reasonable rules and regulations as Sprint may from time to time impose, such as those set forth in Section 2.3 of this Attachment V.

2.30 Where available, Sprint shall furnish passenger elevator service as necessary to reach the Collocated Space or common areas to which CLEC has access pursuant to the terms of this Attachment V 24 hours a day, seven days a week. Where available, freight elevator service when

used by CLEC's contractors, employees or agents shall be provided at times reasonably satisfactory to Sprint.

2.31 CLEC shall regularly inspect the Collocated Space to ensure that the Collocated Space is in good working condition. CLEC shall promptly notify Sprint of any damage to the Collocated Space or of the need to perform any repair or maintenance of the Collocated Space, fixtures and appurtenances (including hardware, heating, cooling, ventilating, electrical and other mechanical facilities in the Collocated Space). CLEC shall keep the Collocated Space clean and trash free.

2.31.1 The cost of all repairs and maintenance performed by or on behalf of Sprint to the Collocation Space or building which are, in Sprint's reasonable judgment, beyond normal repair and maintenance, or are made necessary as a result of misuse or neglect by CLEC or CLEC's employees, invitees, or agents, shall be paid by CLEC to Sprint within 10 days after being billed for such repairs and maintenance by Sprint.

2.32 CLEC shall, with the prior written consent of Sprint, have the right to provide additional fire protection systems within the Collocated Space; provided, however, that CLEC may not install or use sprinklers or carbon dioxide fire suppression systems within the building or the Collocated Space. If any governmental bureau, department or organization or Sprint's insurance carrier requires that changes, modifications, or alterations be made to the fire protection system, or that additional stand alone fire extinguishing, detection or protection devices be supplied within the Collocated Space, such changes, modifications or additions shall be made by CLEC at it's expense, following review and approval by Sprint prior to any work being done. If any governmental bureau, department or organization or Sprint's insurance carrier requires that changes or modifications be made to the fire protection system or that additional stand alone fire extinguishing, detection or protection devices be supplied within that portion of the building in which the Collocated Space of CLEC's in general are located, such changes, modifications, or additions shall be made by Sprint and CLEC shall reimburse Sprint for the cost thereof in the same proportion as the square footage of the Collocated Space as compared to the total square footage of the affected portion of the building.

2.33 CLEC, its employees, agents, contractors, and business invitees shall (i) comply with all rules and regulations which Sprint may from time to time adopt for the safety, environmental protection, care, cleanliness and/or preservation of the good order of the building, the property and the Collocated Space and its tenants and occupants, and (ii) comply, at its

own expense, with all ordinances which are applicable to the Collocated Space and with all lawful orders and requirements of any regulatory or law enforcement agency requiring the correction, prevention and abatement of nuisances in or upon the Collocated Space during the term of this Agreement or any extension hereof.

2.34 CLEC shall not cut or drill into, drive nails or screws into, install conduit or wires, or in any way deface any part of the Collocated Space or the building, outside or inside, without the prior written consent of Sprint. If CLEC desires signal, communications, alarm or other utility or service connections installed or changed, the same shall be made by and at the expense of CLEC. Sprint shall have the right of prior approval of such utility or service connections, and shall direct where and how all connections and wiring for such service shall be introduced and run. In all cases, in order to maintain the integrity of the halon space for proper halon concentration, and to ensure compliance with Sprint's fireproofing policy, any penetrations by CLEC, whether in the Collocated Space, the building or otherwise, shall be sealed as quickly as possible by CLEC with Sprint-approved fire barrier sealants, or by Sprint at CLEC's cost.

2.35 CLEC shall not exceed the uniformly distributed live load capacity.

2.36 CLEC equipment within the Collocated Space shall be connected to Sprint's grounding system.

2.37 CLEC shall post in a prominent location visible from the common building area, the telephone numbers of emergency contact personnel for 24 hour emergency use by Sprint. CLEC will promptly update this information as changes occur.

2.38 CLEC shall not paint, display, inscribe or affix any sign, trademark, picture, advertising, notice, lettering or direction on any part of the outside or inside of the Sprint location, or on the Collocated Space, without the prior written consent of Sprint.

2.39 CLEC shall not use the name of the Sprint building or Sprint for any purpose other than that of the business address of CLEC, or use any picture or likeness of the Sprint building on any letterhead, envelope, circular, notice or advertisement, without the prior written consent of Sprint.

2.40 CLEC shall not exhibit, sell or offer for sale, rent or exchange in the Collocated Space or on the Sprint property any article, thing or service except those ordinarily embraced within the use of the Collocated Space specified in this Attachment V, without the prior written consent of Sprint

2.41 CLEC shall not place anything or allow anything to be placed near the glass of any door, partition or window which Sprint determines is unsightly from outside the Collocated Space; take or permit to be taken in or out of other entrances of the Sprint building, or take or permit to be taken on any passenger elevators, any item normally taken through service entrances or elevators; or whether temporarily, or accidentally, or otherwise, allow anything to remain in, place, or store anything in, or obstruct in any way, any passageway, exit, stairway, elevator, or shipping platform. CLEC shall lend its full cooperation to keep such areas free from all obstruction and in a clean and sightly condition, move all supplies, furniture and equipment directly to the Collocated Space as soon as received, and move all such items and waste, other than waste customarily removed by employees of the building.

2.42 CLEC shall not do or permit anything to be done upon the premises, or bring or keep anything thereon which is in violation of any federal, state or local laws or regulations (including environmental laws or regulations not previously described), or any rules, regulations or requirements of the local fire department, Fire Insurance Rating Organization, or any other similar authority having jurisdiction over the building. CLEC shall not do or permit anything to be done upon the premises which may in any way create a nuisance, disturb, endanger, or otherwise interfere with the Telecommunications Services of Sprint, any other occupant of the building, their patrons or customers, or the occupants of neighboring property, or injure the reputation of the property.

2.42.1 CLEC shall not, without the prior written consent of Sprint: (i) install or operate any lead-acid batteries, refrigerating, heating or air conditioning apparatus or carry on any mechanical business in the premises; (ii) use the premises for housing, lodging, or sleeping purposes; (iii) permit preparation or warming of food, presence of cooking or vending equipment, sale of food or smoking in the premises; or (iv) permit the use of any fermented, intoxicating or alcoholic liquors or substances in the premises or permit the presence of any animals except those used by the visually impaired. Sprint may, in its sole discretion, withhold such consent, or impose any condition in granting it, and revoke its consent at will.

2.43 Sprint reserves the right to stop any service when Sprint deems such stoppage necessary by reason of accident or emergency, or for repairs improvements or otherwise; however, Sprint agrees to use its best efforts not to interfere with CLEC's use of the Collocation Space. Sprint does not warrant that any service will be free from interruptions caused by

labor controversies, accidents, inability to obtain fuel, water or supplies, governmental regulations, or other causes beyond the reasonable control of Sprint.

2.43.1 No such interruption of service shall be deemed an eviction or disturbance of CLEC's use of the Collocation Space or any part thereof, or render Sprint liable to CLEC for damages, by abatement of collocation charges, except as set forth in the tariff, or relieve CLEC from performance of its obligations under this Agreement. CLEC hereby waives and releases all other claims against Sprint for damages for interruption or stoppage of service.

2.43.2 Sprint shall have the right to reduce heat, light, water and power as required by any mandatory or voluntary conservation programs.

2.44 Sprint shall have the following rights, and others not specifically excluded in this Agreement, exercisable without notice and without liability to CLEC for damage or injury to property, person or business (all claims for damage being hereby released), and without effecting an eviction or disturbance of CLEC's use or possession or giving rise to any claim for offsets, or abatement of rent:

2.44.1 To change the name or street address of the building;

2.44.2 To install and maintain signs on the exterior and interior of the building or anywhere on the property;

2.44.3 To designate all sources furnishing sign painting and lettering, ice, mineral or drinking water, beverages, foods, towels, vending machines or toilet supplies used or consumed on the premises;

2.44.4 To use any means Sprint may deem proper to open Collocation Space doors in an emergency. Entry into the Collocation Space obtained by Sprint by any such means shall not be deemed to be forcible or unlawful entry into or a detainment of or an eviction of CLEC from the Collocation Space or any portion thereof;

2.44.5 To utilize the space within the building in such a manner as will best enable it to fulfill its own service requirements;

2.44.6 At any time, to decorate and to make, at its own expense, repairs, alterations, additions, and improvements, structural or

otherwise, in or to the premises, the property, or any part thereof (including, without limitation, the permanent or temporary relocation of any existing facilities such as parking lots or spaces), and to perform any acts related to the safety, protection or preservation thereof, and during such operations to take into and through the premises or any part of the property all material and equipment required, and to close or suspend temporarily operation of entrances, doors, corridors, elevators or other facilities, provided that Sprint shall limit inconvenience or annoyance to CLEC as reasonably possible under the circumstances;

2.44.7 To do or permit to be done any work in or about the Collocation Space or the property or any adjacent or nearby building, land, street or alley;

2.44.8 To grant to anyone the exclusive right to conduct any business or render any service on the property, provided such exclusive right shall not operate to exclude CLEC from the use expressly permitted by this Agreement;

2.44.9 If it becomes necessary in Sprint's reasonable judgment, and there are no other reasonable alternatives, to require CLEC to move to equivalent Collocation Space in the building upon receipt of sixty (60) days written notice from Sprint, in which event, Sprint shall pay all moving costs, and the charges for collocation provided for herein shall remain the same; and

2.44.10 To designate all spaces occupied by CLEC's facilities under this Agreement.

2.45 CLEC shall carry insurance, at CLEC's expense, insuring CLEC and, except for worker's compensation, and showing Sprint as additional insured and/or loss payee, as its interest may appear. Such insurance shall contain such terms and conditions, provide such coverages and exclusions and be written by such companies as Sprint shall find satisfactory.

2.45.1 As of the date that CLEC begins construction of any portion of a physical collocation arrangement or as of the date that CLEC begins to occupy any physical collocation arrangement under this Agreement, whichever is earlier, CLEC shall maintain the following coverages in the following amounts; provided, however, that Sprint retains the right to require additional and/or different coverages and amounts during the term of this Agreement:

2.45.1.1 Commercial general liability, occurrence form, in limits of not less than $1,000,000 combined single limit for bodily injury, personal injury and property damage liability insurance to include coverage for products/completed operations and explosion, collapse and underground liability;

2.45.1.2 "All Risk" property insurance on a full replacement cost basis, insuring CLEC's real and personal property situated on or within the property. CLEC may elect to insure business interruption and contingent business interruption, as it is agreed that Sprint has no liability for loss of profit or revenues should an interruption of service occur;

2.45.1.3 Business auto insurance, including all owned, non-owned and hired automobiles, in an amount of not less than $1,000,000 combined single limit for bodily injury and property damage liability;

2.45.1.4 Worker's compensation insurance in accordance with statutory requirements, and employer's liability with a minimum amount of $500,000 per accident; and

2.45.1.5 Umbrella or excess liability in an amount not less than $5,000,000 per occurrence and aggregate to provide excess limits over all primary liability coverages.

2.45.2 The limits of the insurance policies obtained by CLEC as required above shall in no way limit CLEC's liability to Sprint should CLEC be liable to Sprint under the terms of this Agreement or otherwise.

2.45.3 CLEC shall furnish to Sprint a certificate or certificates of insurance, satisfactory in form and content to Sprint, evidencing that the above coverage is in force and has been endorsed and to guarantee that the coverage will not be canceled or materially altered without first giving at least 30 days prior written notice to Sprint.

2.45.4 All policies required of CLEC shall contain evidence of the insurer's waiver of the right of subrogation against Sprint for any insured loss covered thereunder. All policies of insurance shall be written as primary policies and not contributing with or in excess of the coverage, if any, that Sprint may carry. Any other provisions contained in this Section, this Attachment or this Agreement notwithstanding, the amounts of all insurance required to be

obtained by CLEC shall not be less than an amount sufficient to prevent Sprint from becoming a co-insurer.

2.46 If the premise or a portion thereof sufficient to make the premises substantially unusable shall be destroyed or rendered unoccupiable by fire or other casualty, Sprint may, at its option, restore the premises to its previous condition A license granted under this Attachment shall not terminate unless, within 90 days after the occurrence of such casualty, Sprint notifies CLEC of its election to terminate said license. If Sprint does not elect to terminate said license, Sprint shall repair the damage to the premises caused by such casualty.

2.46.1 Notwithstanding any other contrary provision of this Agreement, if any casualty is the result of any act, omission or negligence of CLEC, its agents, employees, contractors, licensees, customers or business invitees, unless Sprint otherwise elects, a license for Collocation Space shall not terminate, and, if Sprint elects to make such repairs, CLEC shall reimburse Sprint for the cost of such repairs, or CLEC shall repair such damage, including damage to the building and the area surrounding it, and the charges to be paid to Sprint by CLEC shall not abate.

2.46.2 If the building shall be damaged by fire or other casualty to the extent that portions are rendered unoccupiable, notwithstanding that the Collocation Space may be directly unaffected, Sprint may, at its election within 90 days of such casualty, terminate a license for Collocation Space by giving written notice of its intent to terminate said license. The termination as provided in this paragraph shall be effective 30 days after the date of the notice.

2.46.3 Notwithstanding any other provision of this Agreement, Sprint shall not be liable for any repair or restoration until, and then only to the extent that, insurance proceeds are received.

2.47 If the property, or any portion thereof which includes a substantial part of the Collocation Space, shall be taken or condemned by any competent authority for any public use or purpose, the term of a Collocation Space license shall end upon, and not before, the date when the possession of the part so taken shall be required for such use or purpose. If any condemnation proceeding shall be instituted in which it is sought to take or damage any part of the property, or if the grade of any street or alley adjacent to the property is changed by any competent authority and such change of grade makes it necessary or desirable to remodel the property to conform to the changed grade, Sprint shall have the right to terminate a Collocation Space license upon not less than 30

days notice prior to the date of cancellation designated in the notice. No money or other consideration shall be payable by Sprint to CLEC for such cancellation, and CLEC shall have no right to share in the condemnation award or in any judgment for damages caused by such eminent domain proceedings.

2.48 At the termination of a Collocation Space license by lapse of time or otherwise:

2.48.1 CLEC shall surrender all keys, access cards and Sprint-provided photo identification cards to the Collocation Space and the building to Sprint, and shall make known to Sprint the combination of all combination locks remaining on the Collocation Space.

2.48.2 CLEC shall remove its equipment from the Collocation Space within thirty (30) days.

2.48.3 CLEC shall return to Sprint the Collocation Space and all equipment and fixtures of Sprint in as good a condition and state of repair as when CLEC originally took possession, normal wear and tear or damage by fire or other casualty excepted. CLEC shall be responsible to Sprint for the cost of any repairs that shall be made necessary by the acts or omissions of CLEC or of its agents, employees, contractors or business invitees. Sprint reserves the right to oversee CLEC's withdrawal from the Collocation Space and CLEC agrees to comply with all directives of Sprint regarding the removal of equipment and restoration of the Collocation Space, including, without limitation, Sprint's directive to return the Collocation Space in other than its original condition on the date of occupancy; provided, however, that CLEC shall not be responsible for putting the Collocation Space in other than its original condition if to do so would put CLEC to additional expense above and beyond that which would be necessary to return the Collocation Space in its original condition,

2.48.4 All installations, additions, hardware, non-trade fixtures and improvements, temporary or permanent, except movable furniture and equipment belonging to CLEC, in or upon the Collocation Space, whether placed there by CLEC or Sprint, shall be Sprint's property and shall remain upon or in the Collocation Space, all without compensation, allowance or credit to CLEC; provided, however, that if prior to such termination or within ten (10) days thereafter, Sprint so directs, CLEC shall promptly remove the installations, additions, hardware, non-trade fixtures and

improvements, placed in or upon the Collocation Space by CLEC, failing which Sprint may remove the same, and CLEC shall, upon demand, pay to Sprint the cost of such removal and of any necessary restoration of the Collocation Space. No cable shall be removed from inner duct or outside cable duct except as directed by Sprint.

2.48.5 All fixtures, installations, and personal property belonging to CLEC not removed from the Collocation Space upon termination of a Collocation Space license and not required by Sprint to have been removed as provided in this Attachment V, shall be conclusively presumed to have been abandoned by CLEC and title thereto shall pass to Sprint under this Attachment V as if by a bill of sale.

2.48.6 If the Collocation Space is not surrendered at the termination of the Collocation Space license, CLEC shall indemnify Sprint against loss or liability resulting from delay by CLEC in so surrendering the Collocation Space, including, without limitation, any claims made by any succeeding tenant founded on such delay.

2.49 If the owner of the building or Sprint sells, transfers or assigns any interest in the building, or there is any material change in the lease to which the building is subject, and such sale, transfer, assignment or material change in the lease gives rise to an obligation which is inconsistent with a Collocation Space license granted under this Attachment V, Sprint's performance under this Attachment V shall be excused to the extent of the inconsistency. Sprint hereby agrees that it will use its reasonable efforts to avoid any such inconsistency; provided, however, that this obligation shall in no way obligate Sprint to incur any out of pocket expenses in its efforts to avoid such inconsistencies.

2.50 A Collocation Space license granted under this Attachment V shall at all times be subject and subordinate to the lien of any mortgage (which term shall include all security instruments) that may be placed on the premises, building or any portion thereof and CLEC agrees, upon demand, to execute any instrument as may be required to effectuate such subordination.

Section 3. Physical Security

3.1 Each party shall exercise the same degree of care [but not less than reasonable] to prevent harm or damage to the other party or its employees, agents or subscribers, or their property. Sprint and its employees, agents or representatives shall take reasonable and prudent

steps to ensure the adequate protection of CLEC property, equipment and services including, but not limited to:

3.1.1 Restricting access to CLEC equipment, support equipment, systems, tools, or spaces which contain or house CLEC equipment enclosures to CLEC employees and other authorized non-CLEC personnel to the extent necessary to perform their specific job function.

3.1.2 CLEC shall provide a written logbook for Sprint's employees to sign when entering CLEC's physical Collocation Space which houses or contains CLEC equipment or equipment enclosures.

3.1.3 When Sprint's employees enter CLEC's physical Collocation Space, Sprint's employees shall comply at all times with CLEC security and safety procedures and requirements, including but not limited to sign-in, identification, and escort requirements while in CLEC's physical Collocation Spaces which house or contain CLEC equipment or equipment enclosures. In the event any issues or problems arise under this Section 3.1 the parties agree to negotiate a reasonable resolution to such issue or problem.

3.1.4 Ensuring that the physical collocation area which houses CLEC's equipment is adequately secured and monitored to prevent unauthorized entry to the same extent and at the same level Sprint provides itself.

3.1.5 Subject to Section 2.3 of this Attachment V, allowing CLEC to inspect or observe spaces which house or contain CLEC equipment or equipment enclosures at any time and to furnish CLEC with all keys, entry codes, lock combinations, or other materials or information which may be needed to gain entry into any secured CLEC space.

3.1.6 Limiting the keys used in its keying systems for CLEC's physical Collocation Spaces which contains or houses CLEC equipment or equipment enclosures to Sprint employees and representatives to emergency access only. CLEC shall further have the right to change locks where deemed necessary for the protection and security of such spaces.

3.1.7 Upon CLEC's request, installing security studs in the hinge plates of doors having exposed hinges with removable pins if such leads to CLEC's physical Collocation Space which contains or houses CLEC equipment or equipment enclosures.

3.1.8 Controlling unauthorized access from passenger and freight elevators by continuous surveillance or by personnel security escort, installing security partitions, security grills, locked gates or doors between elevator lobbies and spaces which contain or house CLEC equipment or equipment enclosures.

3.1.9 Providing real time notification to designated CLEC personnel to indicate an actual or attempted security breach.

3.1.10 Subject to the provisions of Sections 2.9, 2.9.1 and 2.9.2 above, ensuring that areas designated to house CLEC equipment are environmentally appropriate for the CLEC equipment installation, and adequate to maintain proper operating conditions for the CLEC equipment.

3.2 Sprint, at CLEC's expense, may issue non-employee photo identification cards for each CLEC employee or vendor. Temporary identification cards may otherwise be provided by Sprint for employees or agents, contractors and invitees of CLEC who may require occasional access to the Collocated Space.

3.3 Sprint may issue access cards, codes, or keys to CLEC's listed employees or vendors where such systems are available and their use by CLEC will not otherwise compromise building security.

3.4 Sprint reserves the right to close and keep locked all entrance and exit doors of the building during hours Sprint may deem advisable for the adequate protection of the building.

3.5 CLEC agrees to abide by all of Sprint's security practices for non-Sprint employees with access to the building, including, without limitation:

3.5.1 CLEC will supply to Sprint, and update as changes occur, a list of its employees or approved vendors who require access to the building. The list will include the social security numbers of all such individuals.

3.5.2 CLEC is responsible for returning identification and access cards, codes, or keys of its terminated employees or its employees who no longer require access to the Collocated Space. All cards, codes, or keys must be returned upon termination of this Agreement. Unreturned or replacement cards, codes, or keys may be subject to a reasonable fee at the discretion of Sprint.

3.5.3 CLEC's employees, agents, invitees and vendors must display identification cards at all times.

3.5.4 CLEC will assist Sprint in validation and verification of identification of its employees, agents, invitees and vendors by providing a telephone contact available 24 hours a day, seven days a week to verify identification.

3.5.5 Before leaving the Collocated Space unattended, CLEC shall close and securely lock all doors and windows and shut off unnecessary equipment in the Collocated Space. Any damage resulting from CLEC's failure to do so shall be the responsibility of CLEC.

3.6 CLEC will allow Sprint to access its Collocated Space at all times, via pass key or otherwise, to allow Sprint to react to emergencies, to maintain the space (not including CLEC equipment), and to monitor compliance with the rules and regulations of the Occupational Health and Safety Administration or Sprint, or other regulations and standards including but not limited to those related to fire, safety, health, and environmental safeguards. Except in emergencies or unless CLEC has waived such notice elsewhere in this Attachment V, and if conditions permit, Sprint will provide CLEC with notice of its intent to access the Collocated Space, thereby providing CLEC the option to be present at the time of access. CLEC shall not attach, or permit to be attached, additional locks or similar devices to any door or window, nor change existing locks or the mechanism thereof.

Section 4. License

Sprint hereby grants CLEC a license to occupy any premises or rack space which contain collocated equipment, including without limit all necessary ingress, egress and reasonable use of Sprint's property, for the Term of the Agreement.

Section 5. Technical References

Sprint shall provide collocation in accordance with the following standards

5.1 National Electrical Code (NEC) use latest issue.

5.2 TA-NPL-000286, NEBS Generic Engineering Requirements for System Assembly and Cable Distribution, Issue 2, (Bellcore, January 1989).

5.3 TR-EOP-000063 Network Equipment Building System (NEBS) Generic Equipment Requirements, Issue 3, March 1988.

5.4 TR-EOP-000151, Generic Requirements for 24-, 48-, 130-, and 140- Volt Central Office Power Plant Rectifiers, Issue 1, (Bellcore, May 1985).

5.5 TR-EOP-000232, Generic Requirements for Lead-Acid Storage Batteries, Issue 1 (Bellcore, June 1985).

5.6 TR-NWT-000154, Generic Requirements for 24-, 48-, 130, and 140- Volt Central Office Power Plant Control and Distribution Equipment. Issue 2, (Bellcore, January 1992).

5.7 TR-NWT-000295, Isolated Ground Planes: Definition and Application to Telephone Central Offices, Issue 2, (Bellcore, July 1992).

5.8 TR-NWT-000840, Supplier Support Generic Requirements (SSGR), (A Module of LSSGR, FR-NWT-000064), Issue 1, (Bellcore, December 1991).

5.9 TR-NWT-001275 Central Office Environment Installations/Removal Generic Requirements, Issue 1, January 1993.

PART C - ATTACHMENT VI

RIGHTS OF WAY (ROW), CONDUITS, POLE ATTACHMENTS

Section 1. Introduction

This attachment sets forth the requirements for Rights of Way, Conduits and Pole Attachments.

Section 2. Definitions

2.1 An "anchor" refers to a device, structure, or assembly which stabilizes a Pole and holds it in place. An anchor assembly may consist of a rod and fixed object or plate, typically embedded in the ground, which is attached to a guy strand or guy wire, which, in turn, is attached to the Pole. The term "anchor" does not include the guy strand which connects the anchor to the Pole.

2.2 An "Attachment" is any placement of CLEC's facilities in or on Sprint's Poles, ducts, conduits, or Right of Way.

2.3 A "conduit" is a tube or protected trough that may be used to house communication cables. Conduit may be underground or above ground (for example, inside buildings) and may contain one or more inner ducts.

2.4 A "conduit system" is any combination of ducts, conduits, manholes and handholes joined to form an integrated whole. Conduit systems may pass through or originate in or terminate in other facilities which may be physically connected to the conduit system .

2.5 A "duct" is a single enclosed path to house facilities to provide Telecommunications Services.

2.6 The terms "facility" and "facilities" refers to any property, equipment, or items owned or controlled by any person or entity. The terms "facility" and "facilities" include, but are not limited to, Poles, anchors, Pole hardware, wires, cables, strands, apparatus enclosures, or any other items attached to a Pole or attached to hardware affixed to or associated with a Pole; conduit and conduit systems and wires, cables, optical conductors, associated hardware, or other equipment located within a Conduit System. The terms "facility" and "facilities" may also include property, equipment, and items which do not occupy a conduit system or which are not attached to a Pole or attached to hardware affixed to or associated with a Pole.

2.7 An "inner duct" is one of the single enclosed pathways located within a duct, or buried separately without the benefit of a conduit.

2.8 The term "Make Ready Work" refers to all work performed or to be performed to prepare Sprint's Poles, Ducts, Conduits or other Right of Way for the requested occupancy or attachment of CLEC's facilities. "Make ready work" includes, but is not limited to, clearing obstructions, the rearrangement, transfer, replacement, and removal of existing facilities on a Pole or in a conduit system where such work is required solely to accommodate CLEC's facilities. "Make ready work" may include the repair, or modification of Sprint's facilities (including, but not limited to, conduits, ducts, or manholes) or the performance of other work required to make a Pole, conduit or duct usable for the placement of CLEC's facilities.

2.9 A "manhole" is a subsurface enclosure that personnel may enter and use for the purpose of installing, operating, maintaining, and repairing communications facilities.

2.10 A "handhole" is a subsurface enclosure that is too small for personnel to enter and is used for the purpose of installing, operating, maintaining, and repairing communications facilities.

2.11 A "Pole" refers to Sprint Poles and anchors and does not include poles or anchors with respect to which Sprint has no legal authority to permit attachments by other persons or entities.

2.12 A "Pole attachment" is the connection of a facility to a Pole. Some examples of such facilities are mechanical hardware, grounding and transmission cable, and equipment boxes.

2.13 A "Right of Way" ("ROW") is the right to use the land or other property of another party to place poles, conduits, cables, or other structures and equipment, or to provide passage to access such structures and equipment for the purpose of providing Telecommunications Services. A ROW may run under, on, or above public or private property (including air space above public or private property) and may include the right to use discrete space in buildings, building complexes, or other locations.

Section 3. Requirements

3.1 General

3.1.1 Sprint shall make Poles, ducts, conduits, conduit systems, and other ROW available to CLEC for Attachments under the terms and conditions set forth in this Section 3.

3.1.2 Sprint shall provide CLEC equal and non-discriminatory access to Poles, ducts, conduits, and other ROW, it owns or controls. Such access shall be provided on terms and conditions equal to that provided by Sprint to itself or to any other party consistent with Section 224 of the Act. Further, Sprint shall not preclude or delay allocation of these facilities to CLEC because of the potential needs of itself or of other parties, except for work in progress, which may be retained for Sprint facilities deployment within three hundred sixty-five (365) calendar days of the date of the formal CLEC request.

3.1.3 Each of the parties shall designate to the other, on the basis of specific operating regions, single points of contact for negotiating all issues relating to implementation of this Section 3. The single points of contact shall also be the contacts for all notices and demands, offers and acceptances under this Section 3, unless otherwise agreed in writing by the parties.

3.1.4 Excepting work in progress as described above, and maintenance and emergency ducts as provided below, all usable but unassigned space on Poles, or in ducts, conduits, or other ROW owned or controlled by Sprint shall be available for the attachments of CLEC, Sprint or other providers of Telecommunications Services or cable television systems. Sprint may reserve for emergency and maintenance purposes one duct in each conduit section of its facility routes. Such duct shall be equally accessible and available by any party with facilities in such conduit section to use to maintain its facilities or to restore them in an emergency.

3.1.5 All CLEC facilities placed in or upon Sprint ROW shall be clearly tagged or labeled with CLEC ownership identification so that it may be readily identified by Sprint or its contractors as CLEC facilities.

3.1.6 Access to Sprint Poles, ducts, conduits or other ROW by CLEC or its designated personnel or contractors shall be provided

on an escorted basis and upon a reasonable request for access to such Poles, ducts, conduits or other ROW. CLEC shall pay for one access escort based on an hourly rate of the appropriate level of escorting personnel as determined by Sprint, unless Sprint and CLEC have reached agreement that no escort is necessary, which may be negotiated on a case by case basis. Such escort service shall be available on a reasonable basis 24 hours per day.

3.2 Pre-Ordering Disclosure Requirements

3.2.1 CLEC may request information regarding the availability and conditions of Poles, ducts, conduits and other ROW prior to the submission of Attachment Requests (as defined below). Sprint shall provide information regarding the availability and condition of Sprint's Poles, ducts, conduits or other ROW for Attachments within fifteen (15) business days of a request. If it is unable to inform CLEC about availability and conditions within such fifteen-day interval, Sprint shall advise CLEC within ten (10) business days after receipt of CLEC's information request and will seek a mutually satisfactory time period for Sprint's response, which in no event shall exceed thirty (30) calendar days. If Sprint's response requires a field-based survey, CLEC shall have the option to be present at the field-based survey and Sprint shall provide CLEC at least two (2) calendar days notice prior to the start of such field survey. During and after the field based survey, Sprint shall allow CLEC personnel (with Sprint escort) to enter manholes and view Pole structures to inspect such structures in order to confirm usability or assess the condition of the structure.

3.2.2 Sprint shall make existing route maps of Poles, ducts, conduits or other Right of Way available to CLEC, at a city level, at Sprint's facilities within two (2) business days and if such maps need to be generated, within ten (10) business days of CLEC's request. Preparation of such maps requested by CLEC shall be accommodated by Sprint on a reasonable basis and at CLEC's expense, plus a reasonable administrative fee. In making these maps and drawings available, Sprint makes no express or implied warranty as to the accuracy of these maps and drawings, except that they reflect the equivalent accuracy and timeliness of information used by Sprint in its operations.

3.2.3 Sprint shall invoice CLEC an administrative fee equal to one hundred percent (100%) of the direct cost of providing maps and drawings, in addition to the direct cost of copying any requested maps or drawings.

3.3 Attachment Requests

3.3.1 Sprint agrees to permit CLEC to place CLEC's facilities on or in Sprint's Poles, ducts, conduits, and other ROW pursuant to Attachment requests from CLEC approved in accordance with this Section 3.3, on the terms and conditions set forth herein and in the "Attachment Request".

3.3.2 At any time after the Approval Date, CLEC may submit a written Attachment Request, in a form to be designated by Sprint, to Sprint. An Attachment Request shall be deemed properly submitted if it identifies with specificity the Sprint Poles, ducts, conduits, or other ROW for which CLEC seeks Attachment. Sprint shall approve any properly submitted Attachment Request within ten (10) business days, if the space has previously been determined to be available under the procedures set forth in Section 3.2.1 of this Attachment VI above. No Attachments shall be placed on any Sprint Pole identified in an Attachment Request until the Attachment Request has been approved by Sprint. CLEC may submit subsequent Attachment Requests as needed. CLEC shall have fourteen (14) calendar days after Sprint's return of the approved Attachment Request to CLEC to execute the Attachment Request and return the same to Sprint. If CLEC does not return the Attachment Request within the fourteen (14) calendar day interval specified above, then such request shall be null and void and such ROW shall become immediately available to other parties. The approved Attachment Request shall serve as the binding attachment contract between the parties.

3.3.3 Together with Sprint's notice of approval of an Attachment Request submitted by CLEC, Sprint shall also provide an estimate of the Make Ready Work costs associated with making the space available for CLEC's Attachment. Sprint shall complete any Make Ready Work required to enable CLEC to install its facilities at both a reasonable cost and within a reasonable time, both of which shall be agreed upon by Sprint and CLEC. If such agreement does not occur within ten (10) calendar days of Sprint's provision of a quote for such work or CLEC determines the quote is too high, CLEC may complete Make Ready Work on its own or hire outside contractors to do the work at CLEC's expense. Any contractors hired by CLEC pursuant to this Section 3 shall meet Sprint's reasonable standards, which shall not exceed the equivalent personnel qualifications of Sprint personnel performing the same task. Sprint shall provide a security escort for CLEC and CLEC

contractor and CLEC shall pay for such escort based on an hourly rate. Where CLEC submits an Attachment Request and subsequently fails to return an executed Attachment Request within fourteen calendar (14) days of Sprint's notice of approval, CLEC shall reimburse Sprint for its reasonable cost to provide pre-ordering information and any site survey work and the Attachment Request shall become null and void. Upon acceptance of an approved Attachment Request by CLEC and its return to Sprint, Sprint shall bill CLEC for any Make Ready Work non-recurring charges, if Sprint is to perform the Make Ready Work. Upon completion of any required Make Ready Work by Sprint or upon receipt of the approved Application Request by Sprint, whichever is later, written notice shall be provided to CLEC granting access to the ROW and advising CLEC of the date that monthly billing for such ROW shall commence. CLEC shall have one hundred eighty (180) calendar days to begin attachment and/or installation of its facilities after receipt of such notice. Any such construction shall be completed by the end of three hundred sixty-five (365) calendar days after receipt of such notice, unless CLEC notifies Sprint differently and Sprint agrees to such delay. CLEC notification to Sprint shall be provided at least sixty (60) calendar days prior to the expiration of the three hundred sixty-five (365) calendar day period. If CLEC does not begin construction within this time frame, Sprint will cease monthly billing to CLEC and the access to the ROW and the Attachment Request shall be deemed null and void.

3.3.4 Sprint shall make space available to CLEC as soon as any Make Ready Work to be provided by Sprint, as described in Section 3.3.3, is completed. At that time, CLEC shall have the right, subject to the terms and conditions of this Agreement, to place and maintain the facilities described in the Attachment Request in the space designated on or in Sprint's Poles, ducts, conduits, and other ROW identified therein. CLEC may, at its option, use CLEC or CLEC-designated personnel, which CLEC shall identify to Sprint prior to beginning construction, to attach its equipment to Sprint structures, subject to Sprint's agreement with the proposed construction methods proposed by CLEC to perform such work. Sprint shall provide a security escort to accompany CLEC or its contractors and CLEC shall pay for same based on an hourly rate. Sprint may stop CLEC or its contractors' construction activities if the same is not performed in accordance with the approved methods. Any such approval shall not be unreasonably withheld, delayed or denied. Sprint may require dismissal of the CLEC or CLEC-designated personnel in the event Sprint

reasonably believes such personnel are not properly performing construction hereunder.

3.3.5 If Sprint performs the Make Ready Work specified by Section 3.3.3, CLEC agrees to pay Sprint the Make Ready Work costs within sixty (60) business days of receiving Sprint's invoice.

3.3.6 Sprint will provide CLEC with answers to an environmental, health and safety questionnaire for each Sprint facility in or on which CLEC seeks an Attachment. CLEC may provide this questionnaire with its Attachment Request and Sprint shall return it to CLEC with the approval of CLEC's Attachment Request.

3.4 Authority to Place Attachments

3.4.1 Before CLEC places any Attachment pursuant to an approved Attachment Request, CLEC shall submit evidence of its authority to erect and maintain the facilities to be placed on Sprint's facilities within the public streets, highways and other thoroughfares or on private property, where such additional authority is required by law. CLEC shall be solely responsible for obtaining all necessary licenses, authorizations, permits, and consents from federal, state and municipal authorities that may be required to place Attachments on Sprint's facilities.

3.4.2 Sprint shall not unreasonably intervene against or attempt to delay the granting of any necessary licenses, authorizations, permits or consents from federal, state and municipal authorities or private property owners that may be required for CLEC to place its Attachments on or in any Poles, ducts, conduits, or other ROW that Sprint owns or controls.

3.4.3 If any license, authorization, permit or consent obtained by CLEC is subsequently revoked or denied for any reason, permission to attach to Sprint's facilities shall terminate immediately and CLEC shall remove its Attachments (if any) within one hundred twenty (120) calendar days. CLEC may, at its option, litigate or appeal any such revocation or denial and if CLEC is diligently pursuing such litigation or appeal, CLEC may continue to maintain its Attachment. In doing so, CLEC agrees to indemnify Sprint from and against any and all cost resulting from Sprint's continuation of the Attachment which is the subject of such litigation or appeal.

3.5 Capacity

3.5.1 When there is insufficient space on a Pole or in a Sprint conduit to accommodate an CLEC-requested Attachment or occupancy, Sprint shall, at CLEC's option: (1) replace the Pole or conduit with one of greater height or capacity; or (2) permit CLEC to replace the Pole or conduit with a Sprint-furnished Pole or conduit of greater height or capacity, or (3) place additional Poles or conduits in the ROW. CLEC shall be obligated to reimburse Sprint for its proportionate share of the actual costs incurred.

3.5.2 Sprint shall permit CLEC to break out of Sprint conduit and to maintain facilities within conduit space used by CLEC and. where required by Sprint, shall provide CLEC designated personnel with one escort and CLEC shall pay for such escort based on an hourly rate. Such escort service shall be available twenty-four (24) hours per day each day of the week.

3.5.3 Sprint shall permit manhole interconnections and breaking out of Sprint manholes and shall provide CLEC with sufficient space in manholes for the racking and storage of cable and other materials as requested by CLEC. Sprint reserves the right to deny nonstandard requests to break out of manholes where the location in which CLEC wants to break out is blocked by a cable rack.

3.5.4 Sprint shall take all reasonable measures to allow access and/or egress to all conduit systems. This shall include but not be limited to Sprint's removal, upon CLEC's request, of any retired cable for conduit systems to allow for the efficient use of conduit space within a reasonable period of time. If the parties are unable to agree on what is reasonable (in terms of measures or time intervals), the matter may be submitted in accordance with the Dispute Resolution Procedures, described in Part A of this Agreement, by either party.

3.5.5 Where a spare inner duct does not exist, Sprint shall allow installation of an inner duct in a spare Sprint conduit. The procedure set forth in Section 3.3.3 shall govern such installation.

3.5.6 Neither party shall attach, or permit other entities to attach facilities on existing facilities of the other without the other party's prior written consent. Such consent will not be unreasonably withheld if the requested use is to facilitate use of the ROW by Sprint or any other party on a temporary basis until such reasonable time as the ROW can be expanded.

3.5.7 CLEC acknowledges that, from time to time, it may be necessary or desirable for Sprint to change out Poles, relocate, reconstruct, or modify portions of its conduit system or rearrange facilities contained therein or connected thereto and that such changes may be necessitated by Sprint's business needs or by factors outside of Sprint's control, such as the decision by a municipality to widen streets or authorized application of another entity seeking access to Sprint's Poles or conduit systems. CLEC agrees that CLEC will, upon Sprint's request and at Sprint's expense, but at no cost to CLEC so long as no additional cost is incurred by Sprint as a result of CLEC being attached, participate with Sprint (and other licensees) in the relocation, reconstruction, or modification of Sprint's conduit system or facilities rearrangement.

3.6 Sharing of Right of Way

3.6.1 Sprint shall offer the use of such ROW it has obtained from a third party to CLEC, to the extent that Sprint's agreement with the third party explicitly permits Sprint to grant such rights to CLEC. If said third party agreement does not explicitly permit Sprint to grant such rights to CLEC, Sprint will, upon CLEC's request, grant said rights to CLEC provided that CLEC agrees, in writing, to indemnify, defend and hold Sprint harmless from and against any loss, cost, claim, liability, damage and expense (including reasonable attorney fees) to third parties relating to or arising out of the grant of such right of use to CLEC.

3.7 Emergency Situations

3.7.1 Within fifteen (15) business days after the Approval Date, Sprint and CLEC shall mutually agree on a non-discriminatory priority method to access Sprint manholes and conduits in emergency situations.

3.8 Attachment Fees

3.8.1 CLEC shall pay Sprint an Attachment fee consistent with the Act, the FCC's implementing rules and regulations promulgated thereunder, and/or any relevant state commission order, for each Sprint facility upon which CLEC obtains authorization to place an Attachment. The parties agree that any new FCC rules and regulations setting forth a new methodology for determining the Attachment fee shall govern the establishment of the pricing of Attachments.

3.8.2 Sprint shall maintain an inventory of the Sprint facilities occupied by CLEC based upon the cumulative facilities specified in all Attachment Requests approved in accordance with Section 3.3. CLEC shall provide Sprint with "as built" drawing after each Attachment is completed. CLEC shall have the right to remove any Attachment at any time, and it shall be CLEC's sole responsibility to notify Sprint of any and all removals by CLEC of its Attachments from Sprint's facilities. Such notice shall be provided to Sprint at least thirty (30) calendar days prior to the removal of the Attachment and shall take the form of a notice of removal. CLEC shall remain liable for an Attachment fee for each Sprint facility included in all approved Attachment Requests until a notice of removal has been received by Sprint or CLEC cancels an Attachment pursuant to Section 3.13. Sprint may, at its option, conduct a physical inventory of the Attachments for purposes of determining the Attachment fees to be paid by CLEC under this Section 3.

3.9 Additions and Modifications to Existing Attachments

3.9.1 CLEC shall not modify, add to or replace facilities on any pre-existing Attachment without first notifying Sprint in writing of the intended modification, addition or replacement at least thirty (30) calendar days prior to the date the activity is scheduled to begin. The required notification shall include: (1) identification of the impacted Attachment, (2) the date the activity is scheduled to begin, (3) a description of the planned modification, addition or replacement, (4) a representation that the modification, addition or replacement will not require any space other than the space previously designated for CLEC's Attachments, and (5) a representation the modification, addition or replacement will not impair the structural integrity of the facilities involved.

3.9.2 If the modification, addition or replacement specified by CLEC in its notice will require more space than that currently allocated to CLEC or will require the reinforcement of replacement of or an addition of support equipment to the facilities involved in order to accommodate CLEC's modification, addition or replacement, CLEC will submit an Attachment Request in compliance with Section 3.3 in order to obtain authorization for the modification, addition or replacement of its facilities.

3.10 Noncompliance

3.10.1 If, at any time, Sprint determines that CLEC's facilities or any part thereof have not been placed or maintained or are not being used in accordance with the requirements of this Section 3, Sprint may send written notice to CLEC specifying the alleged noncompliance. If CLEC does not dispute Sprint's assertion in writing within thirty (30) calendar days of receipt thereof, CLEC will, within sixty (60) calendar days of receipt of the notice of noncompliance, provide Sprint with a schedule for bringing CLEC's facilities into compliance (which schedule shall be subject to Sprint's agreement, which agreement shall not be unreasonably withheld) and shall bring such facilities into compliance within the time periods specified in such schedule.

3.10.2 If CLEC disputes Sprint's assertion of noncompliance, CLEC shall notify Sprint of the basis of CLEC's belief that CLEC's facilities are compliant. If the parties are unable to agree on whether a noncompliance exists within thirty (30) calendar days of receipt of the noncompliance notice by CLEC, then the issue shall be resolved pursuant to the Dispute Resolution Procedures set forth in Part A of this Agreement.

3.11 Surveys and Inspections of Attachments

3.11.1 The exact location of Attachments on or in Sprint's facilities may be determined through a survey (at Sprint's expense) to be made not more than once per calendar year by Sprint. If so requested, CLEC and/or any other entity owning or jointly owning the facilities with Sprint may participate in the survey.

3.11.2 Apart from surveys conducted in accordance with Section 3.11.1 above, Sprint shall have the right to inspect (at Sprint's expense) any Attachment on or in Sprint's facilities as conditions may warrant upon written notice to CLEC. No joint survey or inspection by Sprint shall operate to relieve CLEC of any responsibility, obligation or liability assumed under this Agreement.

3.12 Notice of Modification or Alteration of Poles, Ducts, Conduits, or Other ROW by Sprint

3.12.1 If Sprint plans to modify or alter any Sprint facilities upon which CLEC has Attachments, Sprint shall provide CLEC notice of the proposed modification or alteration at least sixty (60) calendar days prior to the time the proposed modification or alteration is

scheduled to take place. If CLEC decides not to modify or add to its existing Attachment, CLEC shall participate at no cost in such modification and rearrangement. If CLEC adds to or modifies its facilities CLEC shall be charged its proportionate share of the reasonable costs incurred by Sprint for such modification or rearrangement. CLEC shall make all rearrangements of its facilities within such period of time, which shall not be less than sixty (60) calendar days, as is jointly determined to be reasonable by the parties based on the amount of rearrangements necessary and a desire to minimize chances for service interruption or facility-based service denial to an CLEC customer.

3.13 Termination of Section 3 or An Individual Attachment by CLEC

3.13.1 This Section 3 may be terminated by CLEC any time prior to the expiration of its term by providing written notice to Sprint of its intent to terminate not less than ninety (90) calendar days prior to the date such termination is to become effective. Within one hundred twenty (120) calendar days after the date this Section 3 is terminated, CLEC shall cause all of its Attachments to be removed from all of Sprint's Poles. In the event CLEC fails to remove its Attachments as required by this Section 3, Sprint shall have the option to remove all such Attachments and store them in a public warehouse or elsewhere at the expense of and for the account of CLEC without Sprint being deemed guilty of trespass or conversion, and without Sprint becoming liable for any loss or damages to CLEC occasioned thereby.

3.13.2 Sprint may terminate, at any time, an Attachment under this Agreement upon thirty (30) calendar days in connection with any taking or condemnation of property on which such Attachment is located by a competent authority for any public use or purpose.

3.14 Abandonment

3.14.1 Nothing in this Agreement shall prevent or be construed to prevent Sprint from abandoning, selling, assigning or otherwise disposing of any Poles, conduit systems, or other Sprint property used for Attachments, provided, however, that Sprint shall condition any such sale, assignment or other disposition subject to the rights granted to CLEC pursuant to this Agreement. Sprint shall promptly notify CLEC of any proposed sale, assignment or other disposition of any facilities or other Sprint property used for CLEC's Attachments.

3.15 Dispute Resolution Procedures

3.15.1 If either party has declared the other in default of any provisions of this Attachment VI , or has otherwise notified the other party that it is not in compliance with the terms of this Section 3, either party may invoke the Dispute Resolution Procedures, described in Part A of this Agreement, or the procedures described in the Act, the *FCC's First Interconnection Order*, §1217-1231 and the FCC's Rules at 47 CFR § 1.1401-1.1416. In the event either party invokes the Dispute Resolution Procedures as provided herein, Sprint will continue to process Attachment Requests pursuant to this Section 3.

3.15.2 Sprint will not be relieved of its obligations to process Attachment Requests by CLEC if CLEC is alleged to be in default of this Section 3 for nonpayment of fees and charges due Sprint under this Section 3, so long as such default is (1) the subject of Dispute Resolution Procedures as set forth in Part A of this Agreement; or (2) being adjudicated before the FCC or any other court, regulatory body, agency, or tribunal having jurisdiction over such dispute.

PART C - ATTACHMENT VII

INTERIM NUMBER PORTABILITY

Section 1. Sprint Provision of Interim Number Portability

Sprint shall provide interim number portability in accordance with requirements of the Act and FCC Rules and Regulations. INP shall be provided with minimum impairment of functionality, quality, reliability and convenience to subscribers of CLEC services.

Section 2. Interim Number Portability (INP)

INP shall be provided to the extent technical capabilities allow, by Remote Call Forwarding ("RCF") or Direct Inward Dialing (DID).

2.1 Remote Call Forwarding: Remote Call Forwarding (RCF) is an INP method to provide subscribers with service-provider portability by redirecting calls within the telephone network. When RCF is used to provide interim number portability, calls to the ported number will first route to the Sprint switch to which the ported number was previously assigned. The Sprint switch will then forward the call to a number associated with the CLEC designated switch to which the number is ported. CLEC may order any additional paths to handle multiple simultaneous calls to the same ported telephone number.

2.2 DID is an INP method that makes use of direct inward dialing trunks. Each DID trunk group used for INP is dedicated to carrying FLEX-DID INP traffic between the Sprint end office and the CLEC switch. Traffic on these trunks cannot overflow to other trunks, so the number of trunks shall be conservatively engineered by Sprint. Also, inter-switch signaling is usually limited to multi-frequency (MF). This precludes passing CLID to the CLEC switch.

2.3. The trunking requirements will be agreed upon by Sprint and CLEC resultant from application of sound engineering principles. These trunking options may include SS7 signaling, inband signaling, and may be one way or two way. The trunks used may be the same as those used for exchange of other Local Traffic and toll traffic between Sprint and CLEC.

2.4 LERG Reassignment: Portability for an entire NXX shall be provided by utilizing reassignment of the block to CLEC through the Local Exchange Routing Guide (LERG). Updates to translations in the Sprint switching office from which the telephone number is ported will be made

by Sprint prior to the date on which LERG changes become effective, in order to redirect calls to the CLEC switch via route indexing.

2.5 Other Currently Available Number Portability Provisions:

2.5.1 Where SS7 is available, Sprint shall exchange with CLEC, SS7 TCAP messages as required for the implementation of Custom Local Area Signaling Services (CLASS) or other features available in the Sprint network, if technically feasible.

2.5.2 Upon notification that CLEC will be initiating INP, Sprint shall disclose to CLEC any technical or capacity limitations that would prevent use of the requested INP in the affected switching office. Sprint and CLEC shall cooperate in the process of porting numbers to minimize subscriber out-of-service time, including updating switch translations where necessary within five (5) minutes after notification that physical cut-over has been completed (or initiated), as CLEC may designate.

2.5.3 For INP, CLEC shall have the right to use the existing Sprint 911 infrastructure for all 911 capabilities. When RCF is used for CLEC subscribers, both the ported numbers and shadow numbers shall be stored in ALI databases. CLEC shall have the right to verify the accuracy of the information in the ALI databases.

2.5.4 When any INP method is used to port a subscriber, the donor provider must maintain the Line Information Database (LIDB) record for that number to reflect appropriate conditions as reported to it by the porting service provider. The donor must outclear call records to CLEC for billing and collection from the subscriber. Until such time as Sprint's LIDB has the software capability to recognize a ported number as CLEC's, Sprint shall store the ported number in its LIDB at no charge and shall retain revenue for LIDB look-ups to the ported number. At such time as Sprint's LIDB has the software capability to recognize that the ported number is CLEC's then, if CLEC desires to store numbers on Sprint's LIDB, the parties shall negotiate a separate LIDB database storage and look-up agreement.

2.5.5 Sprint should send a CARE transaction 2231 to notify IXC that access is now provided by a new CLEC for that number.

Section 3. Requirements for INP

3.1 Cut-Over Process

3.1.1 Sprint and CLEC shall cooperate in the process of porting numbers from one carrier to another so as to limit service outage for the ported subscriber.

3.1.1.1 For a Coordinated Cutover Environment, Sprint shall verbally coordinate with CLEC the disconnect and switch translations as close to the requested time as possible. The coordination shall be pre-specified by CLEC and agreed to by both parties and in no case shall begin more than 30 minutes after the agreed upon time.

3.1.1.2 For a Non-Coordinated Cutover Environment, Sprint shall schedule a mechanized update of disconnect and switch translations at the CLEC requested cutover time. Such updates will be available to CLEC at parity with Sprint's own availability for such activity. Sprint shall provide an operations contact whom CLEC can reach in the event manual intervention is needed to complete the cutover. In the event of manual intervention, and if Sprint is unable to resolve the issue within sixty (60) minutes, Sprint shall notify CLEC of the issue and CLEC and Sprint shall determine the plan to resolve it.

3.2 Testing

Sprint and CLEC shall cooperate in conducting CLEC's testing to ensure interconnectivity between systems. Sprint shall inform CLEC of any system updates that may affect the CLEC network and Sprint shall, at CLEC's request, perform tests to validate the operation of the network. Additional testing requirements may apply as specified by this Agreement.

3.3 Installation Timeframes

3.3.1 Installation Time Frames for RCF ILNP where no other work is required, will be as follows:

3.3.1.1 Business Lines and Trunks:

3.3.1.1.1 After the FOC date has been established:
Orders of 1-20 lines in three (3) business days;
Orders of 21-40 lines in seven (7) business days;

Orders of 41-60 in twelve (12) business days; Orders of over 60 lines will have an installation timeframe mutually agreed upon by Sprint and CLEC.

3.3.1.2 Residential Lines:

3.3.1.2.1 Within two (2) business days of Service Order Receipt by Sprint.

3.3.2 If a subscriber elects to move its Telephone Exchange Service back to Sprint while on an INP arrangement, Sprint shall notify CLEC of the Subscriber's termination of service with CLEC and the Subscriber's instructions regarding its telephone number(s) within two (2) business days of receiving notification from the Subscriber.

3.4 Call Referral Announcements

3.4.1 Sprint shall allow CLEC to order all referral announcements, and specify the particular announcement from Sprint's standard set of call referral announcement options, on a per telephone number basis, for telephone numbers which CLEC has ported from Sprint to CLEC and for which INP measures have, at CLEC's direction, been terminated.

3.5 Engineering and Maintenance

Sprint and CLEC will cooperate to ensure that performance of trunking and signaling capacity is engineered and managed at levels which are at parity with that provided by Sprint to its subscribers and to ensure effective maintenance testing through activities such as routine testing practices, network trouble isolation processes and review of operational elements for translations, routing and network fault isolation.

3.6 Operator Services and Directory Assistance

With respect to operator services and directory assistance associated with INP for CLEC subscribers, Sprint shall provide the following:

3.6.1 While INP is deployed :

3.6.1.1 Sprint shall allow CLEC to order provisioning of Telephone Line Number (TLN) calling cards and Billed Number Screening (BNS), in its LIDB, for ported numbers.

PART C - ATTACHMENT VIII

GENERAL BUSINESS REQUIREMENTS

Section 1. General Business Requirements

1.1 Procedures

1.1.1 Contact with Subscribers

1.1.1.1 Each Party at all times shall be the primary contact and account control for all interactions with its subscribers, except as specified by that Party. Subscribers include active subscribers as well as those for whom service orders are pending.

1.1.1.2 Each Party shall ensure that any of its personnel who may receive subscriber inquiries, or otherwise have opportunity for subscriber contact from the other Party's subscribers regarding the other Party's services: (i) provide appropriate referrals to subscribers who inquire about the other Party's services or products; (ii) do not in any way disparage or discriminate against the other Party, or its products or services; and (iii) do not provide information about its products or services during that same inquiry or subscriber contact.

1.1.1.3 Sprint shall not use CLEC's request for subscriber information, order submission, or any other aspect of CLEC's processes or services to aid Sprint's marketing or sales efforts.

1.1.2 Expedite, Escalation, and Disaster Procedures

1.1.2.1 No later than thirty (30) days after the Approval Date of this Agreement, Sprint and CLEC shall develop mutually acceptable escalation and expedite procedures which may be invoked at any point in the Service Ordering, Provisioning, Maintenance, and Subscriber Usage Data transfer processes to facilitate rapid and timely resolution of disputes. In addition, Sprint and CLEC will establish intercompany contacts lists for purposes of handling subscriber and other matters which require attention/resolution outside of normal business procedures within thirty (30) days after the Approval Date of this Agreement. Each party shall notify the other party of any changes to its escalation contact list at least one (1) week before such changes are effective

1.1.2.2 No later than thirty (30) days after the Approval Date of this Agreement, Sprint shall provide CLEC with contingency plans for those cases in which normal Service Ordering, Provisioning, Maintenance, Billing, and other procedures for Sprint's unbundled Network Elements, features, functions, and resale services are inoperable.

1.1.3 Subscriber of Record

1.1.3.1 Sprint shall recognize CLEC as the Subscriber of Record for all Network Elements or services for resale ordered by CLEC and shall send all notices, invoices, and information which pertain to such ordered services directly to CLEC. CLEC will provide Sprint with addresses to which Sprint shall send all such notices, invoices, and information.

1.2 Service Offerings

1.2.1. Sprint shall provide CLEC with access to new services, features and functions concurrent with Sprint's notice to CLEC of such changes, if such service, feature or function is installed and available in the network or as soon thereafter as it is installed and available in the network, so that CLEC may conduct market testing.

1.2.2 Essential Services

1.2.2.1 For purposes of service restoral, Sprint shall designate a CLEC access line as an Essential Service Line (ESL) at Parity with Sprint's treatment of its own subscribers and applicable state law or regulation, if any.

1.2.3 TTY/TDD

1.2.3.1 Sprint shall cooperate with CLEC to provide Telecommunications Services at parity to serve TTY/TDD subscribers.

1.2.4 Blocking Services

Upon request from CLEC, Sprint shall provide blocking of 700, 900, and 976 services, or other services of similar type as may now exist or be developed in the future, and shall provide Billed Number Screening (BNS), including required LIDB updates, or equivalent service for blocking completion of bill-to-third party and collect calls.

on a line, PBX, or individual service basis. Blocking shall be provided the extent (a) it is an available option for the Telecommunications Service resold by CLEC, or (b) it is technically feasible when requested by CLEC as a function of unbundled Network Elements.

1.2.5 Training Support

1.2.5.1 Sprint shall provide training, on a non-discriminatory basis, for all Sprint employees who may communicate, either by telephone or face-to-face, with CLEC subscribers. Such training shall include compliance with the branding requirements of this Agreement including without limitation provisions of forms, business cards and "Not at Home' notices.

1.2.6 Carrier Identification Codes

Sprint shall provide to CLEC the active Codes (CIC) for both Dial 1 and 800 services for each of its access tandems and shall provide updates promptly as those codes change from time to time.

Section 2. Ordering and Provisioning

2.1 General Business Requirements

2.1.1 Ordering and Provisioning Parity

2.1.1.1 Sprint shall provide necessary ordering and provisioning business process support as well as those technical and systems interfaces as may be required to enable CLEC to provide the same level and quality of service for all resale services, functions, features, capabilities and unbundled Network Elements at Parity.

2.1.2 Local Carrier Service Center (LCSC)/Single Point of Contact (SPOC)

2.1.2.1 Sprint shall provide a Local Carrier Service Center or equivalent which shall serve as CLEC's Single Point of Contact (SPOC) for all activities involved in the ordering and provisioning of Sprint's unbundled Network Elements, features, functions, and resale services.

2.1.2.2 The SPOC shall provide to CLEC a nationwide telephone number (available from 6:00 a.m. to 8:00 p.m. Eastern Standard Time, Monday through Friday, and 8:00 am through 5:00 P.M.

Eastern Standard Time on Saturday) answered by competent, knowledgeable personnel and trained to answer questions and resolve problems in connection with the ordering and provisioning of unbundled Network Elements (except those associated with local trunking interconnection), features, functions, capabilities, and resale services.

2.1.2.3 Sprint shall provide, as requested by CLEC, through the SPOC, provisioning and premises visit installation support in the form of coordinated scheduling, status, and dispatch capabilities during Sprint's standard business hours and at other times as agreed upon by the parties to meet subscriber demand.

2.1.3 Street Address Guide (SAG)

2.1.3.1 Within thirty (30) days after the Approval Date of this Agreement or as otherwise mutually agreed, Sprint shall provide to CLEC the SAG data, or its equivalent, in an electronic format mutually agreeable to the parties. All changes and updates to the SAG shall be provided to in a mutually agreed format and timeframe.

2.1.4 CLASS and Custom Features

2.1.4.1 CLEC may order the entire set of CLASS, CENTREX and Custom features and functions, or a subset of any one of such features.

2.1.5 Number Administration/Number Reservation

2.1.5.1 Sprint shall provide testing and loading of CLEC's NXX on the same basis as Sprint provides itself or its affiliates. Further, Sprint shall provide CLEC with access to abbreviated dialing codes, access arrangements for 555 line numbers, and the ability to obtain telephone numbers, including vanity numbers, while a subscriber is on the phone with CLEC. Sprint shall provide the same range of number choices to CLEC, including choice of exchange number, as Sprint provides its own subscribers. Reservation and aging of numbers shall remain Sprint's responsibility.

2.1.5.2 In conjunction with an order for service, Sprint shall accept CLEC orders for vanity numbers and blocks of numbers for use with complex services including, but not limited to, DID, CENTREX, and Hunting arrangements, as requested by CLEC.

2.1.5.3 For simple services number reservations and aging of Sprint's numbers, Sprint shall provide real-time confirmation of the number reservation. For number reservations associated with complex services, Sprint shall provide confirmation of the number reservation within twenty-four (24) hours of CLEC's request. Consistent with the manner in which Sprint provides numbers to its own subscribers, no telephone number assignment is guaranteed until service has been installed.

2.2 Service Order Process Requirements

2.2.1 Service Migrations and New Subscriber Additions

2.2.1.1 For resale services, Sprint shall not disconnect any subscriber service or existing features at any time during the migration of that subscriber to CLEC service without prior CLEC agreement.

2.2.1.2 For services provided through unbundled Network Elements, Sprint shall recognize CLEC as an agent, in accordance with OBF developed processes, for the subscriber in coordinating the disconnection of services provided by another CLEC or Sprint. In addition, Sprint and CLEC will work cooperatively to ensure that a subscriber is not disconnected from service during these conversions.

2.2.1.3 Unless otherwise directed by CLEC and when technically capable, when CLEC orders resale services or Network Elements all trunk or telephone numbers currently associated with existing services shall be retained without loss of feature capability and without loss of associated ancillary services including, but not limited to, Directory Assistance and 911/E911 capability.

2.2.1.4 For subscriber conversions requiring coordinated cut-over activities, on a per order basis, Sprint and CLEC will agree on a scheduled conversion time, which will be a designated four-hour time period within a designated date.

2.2.1.5 End user service interruptions shall be held to a minimum, and in any event shall not exceed the time Sprint experiences when performing such work for its own subscribers.

2.2.1.6 A general Letter of Agency ("LOA") initiated by Carrier or Sprint will be required to process a PLC or PIC change order. No

LOA signed by the end-user will be required to process a PLC or PIC change ordered by Carrier or Sprint. Carrier and Sprint agree that PLC and PIC change orders will be supported with appropriate documentation and verification as required by FCC and Commission rules. In the event of a subscriber complaint of an unauthorized PLC record change where the Party that ordered such change is unable to produce appropriate documentation and verification as required by FCC and Commission rules (or, if there are no rules applicable to PLC record changes, then such rules as are applicable to changes in long distance carriers of record), such Party shall be liable to pay and shall pay all nonrecurring charges associated with reestablishing the subscriber's local service with the original local carrier.

2.2.2 Intercept Treatment and Transfer Service Announcements

2.2.2.1 Sprint shall provide unbranded intercept treatment and transfer of service announcements to CLEC's subscribers. Sprint shall provide such treatment and transfer of service announcement in accordance with local tariffs and as provided to similarly situated Sprint subscribers for all service disconnects, suspensions, or transfers.

2.2.3 Due Date

2.2.3.1 Sprint shall supply CLEC with due date intervals to be used by CLEC personnel to determine service installation dates.

2.2.3.2 Sprint shall use best efforts to complete orders by the CLEC requested DDD within agreed upon intervals and performance measures.

2.2.4 Subscriber Premises Inspections and Installations

2.2.4.1 CLEC shall perform or contract for all CLEC's needs assessments, including equipment and installation requirements, at the subscriber premises.

2.2.4.2 Sprint shall provide CLEC with the ability to schedule subscriber premises installations. The parties shall mutually agree on an interim process to provide this functionality during the implementation planning process.

2.2.5 Firm Order Confirmation (FOC)

2.2.5.1 Sprint shall provide to CLEC, a Firm Order Confirmation (FOC) for each CLEC order. The FOC shall contain the appropriate data elements as defined by the OBF standards.

2.2.5.2 For a revised FOC, Sprint shall provide standard detail as defined by the OBF standards.

2.2.5.3 Sprint shall provide to CLEC the date that service is scheduled to be installed.

2.2.6 Order Rejections

2.2.6.1 Sprint shall reject and return to CLEC any order that Sprint cannot provision, due to technical reasons, missing information, or jeopardy conditions. When an order is rejected, Sprint shall, in its reject notification, specifically describe all of the reasons for which the order was rejected. Sprint shall not reject any orders on account of the Desired Due Date.

2.2.7 Service Order Changes

2.2.7.1 If an installation or other CLEC ordered work requires a change from the original CLEC service order in any manner, Sprint shall call CLEC in advance of performing the installation or other work to obtain authorization. Sprint shall then provide CLEC an estimate of additional labor hours and/or materials. After all installation or other work is completed, Sprint shall promptly notify CLEC of costs.

2.2.7.1.1 If additional work is completed on a service order, as approved by CLEC, the cost of the additional work must be reported promptly to CLEC.

2.2.7.1.2 If a service order is partially completed, notification must identify the work that was done and work remaining to complete.

2.2.7.2 If a CLEC subscriber requests a service change at the time of installation or other work being performed by Sprint on behalf of CLEC, Sprint, while at the subscriber premises, shall direct the CLEC subscriber to contact CLEC.

2.2.8 Cooperative Testing

2.2.8.1 Network Testing

2.2.8.1.1 Sprint shall perform all its standard pre-service testing prior to the completion of the order.

2.2.8.1.2 Within 24 hours of CLEC's request for scheduled cooperative maintenance testing, Sprint shall perform said testing with CLEC (including trouble shooting to isolate any problems) to test Network Elements purchased by CLEC in order to identify any problems.

2.2.9 Service Suspensions/Restorations

2.2.9.1 Upon CLEC's request through an Industry Standard (OBF) Suspend/Restore Order, or mutually agreed upon interim procedure, Sprint shall suspend or restore the functionality of any Network Element, feature, function, or resale service to which suspend/restore is applicable. Sprint shall provide restoration priority on a per network element basis in a manner that conforms with any applicable regulatory Rules and Regulations or government requirements.

2.2.10 Order Completion Notification

2.2.10.1 Upon completion of the requests submitted by CLEC, Sprint shall provide to CLEC a completion notification in an industry standard (i.e. OBF) or in a mutually agreed format. The completion notification shall include detail of the work performed, to the extent this is defined within OBF guidelines, and in an interim method until such standards are defined.

2.2.11 Specific Unbundling Requirements

2.2.11.1 CLEC may order and Sprint shall provision unbundled Network Elements. However, it is CLEC's responsibility to combine the individual network elements should it desire to do so.

2.3 Systems Interfaces and Information Exchanges

2.3.1 General Requirements

2.3.1.1 Sprint shall provide to CLEC Electronic Interface(s) for transferring and receiving information and executing transactions for all business functions directly or indirectly related to Service Ordering and Provisioning of Network Elements, features, functions

and Telecommunications Services, as specified in Exhibit to Part A. The Interface(s) shall be developed/designed for the transmission of data from CLEC to Sprint, and from Sprint to CLEC.

2.3.1.2 Interim interfaces or processes may be modified, if so agreed by CLEC and Sprint, during the interim period.

2.3.1.3 Until the real-time, Electronic Interface is available, Sprint agrees that the Local Carrier Service Center (LCSC) or similar function will accept CLEC orders. Orders will be transmitted to the LCSC via an interface or method agreed upon by CLEC and Sprint.

2.3.2 For any CLEC subscriber Sprint shall provide, subject to applicable rules, orders, and decisions, CLEC with access to Customer Proprietary Network Information (CPNI) without requiring CLEC to produce a signed Letter of Agency (LOA), based on CLEC's blanket representation that subscriber has authorized CLEC to obtain such CPNI.

2.3.2.1 The preordering Electronic Interface includes the provisioning of Customer Proprietary Network Information (CPNI) information from Sprint to CLEC. The Parties agree to execute a Letter of Authorization (LOA) agreement prior to requesting CPNI for a Sprint end user, and to request end user CPNI only when the end user has specifically given permission to receive CPNI. The Parties agree that they will conform to FCC and/or state regulations regarding the provisioning of CPNI between the parties, and regarding the use of that information by the requesting party.

2.3.2.2 The requesting Party will document end user permission obtained to receive CPNI, whether or not the end user has agreed to change local service providers. For end users changing service from one party to the other, specific end user LOAs may be requested by the Party receiving CPNI requests to investigate possible slamming incidents, and for other reasons agreed to by the Parties. The receiving Party may also request documentation of an LOA if CPNI is requested and a subsequent service order for the change of local service is not received.

2.3.2.3 On a schedule to be determined by Sprint, Sprint will perform a comparison of requests for CPNI to service orders received for the change of Local Service to CLEC. Sprint will produce a report of unmatched requests for CPNI, and may require an LOA from CLEC for each unmatched request. CLEC agrees to provide evidence of end user permission for receipt of CPNI for all end users in the request by Sprint within three (3) business days of receipt of a request from Sprint. Should Sprint determine that there

has been a substantial percentage of unmatched LOA requests, Sprint reserves the right to immediately disconnect the preordering Electronic Interface.

2.3.2.4 If CLEC is not able to provide the LOA for 95% of the end users requested by Sprint, or if Sprint determines that the LOA is inadequate, CLEC will be considered in breach of the agreement. CLEC can cure the breach by submitting to Sprint evidence of an LOA within three (3) business days of notification of the breach.

2.3.2.5 Should CLEC not be able to cure the breach in the timeframe noted above, Sprint will provide written notice to CLEC that Sprint will disconnect the preordering Electronic Interface between the Parties. Sprint will provide its manual interim systems and procedures for CLEC's use, which will not provide parity of service to CLEC. Sprint will suspend the calculation of the preordering service quality measures agreed to in Attachment 9 until, in Sprint's determination, CLEC has corrected the problem that caused the breach.

2.3.2.6 Sprint will reconnect the preordering Electronic Interface upon Sprint's timely review and acceptance of evidence provided by CLEC to correct the problem that caused the breach.

2.3.2.7 Should Sprint disconnect the preordering Electronic Interface to CLEC three times in any twenty four (24) month period for breach of these preordering procedures, Sprint may permanently disconnect the preordering Electronic Interface, and/or may terminate the Interconnection Agreement in accordance with Part A herein.

2.3.2.8 If CLEC and Sprint do not agree that CLEC requested CPNI for a specific end user, or that Sprint has erred in not accepting proof of an LOA, the Parties may immediately request dispute resolution in accordance with Part A . Sprint will not disconnect the preordering Electronic Interface during the Alternate Dispute Resolution process.

2.3.2.9 When available per Electronic Interface Implementation Plan, Sprint shall provide to CLEC Electronic Interface to Sprint information systems to allow CLEC to assign telephone number(s) (if the subscriber does not already have a telephone number or requests a change of telephone number) at Parity.

2.3.2.10 When available per Electronic Interface Implementation Plan, Sprint shall provide to CLEC a real-time, Electronic Interface to schedule dispatch and installation appointments at Parity.

2.3.2.11 When available per Electronic Interface Implementation Plan, Sprint shall provide to CLEC a real-time, Electronic Interface to Sprint subscriber information systems which will allow CLEC to determine if a service call is needed to install the line or service at Parity.

2.3.2.12 When available per Electronic Interface Implementation Plan, Sprint shall provide to CLEC a real-time, Electronic Interface to Sprint information systems which will allow CLEC to provide service availability dates at Parity.

2.3.2.13 When available per Electronic Interface Implementation Plan, Sprint shall provide to CLEC a real-time, Electronic Interface which transmits status information on service orders at Parity. Until real-time Electronic Interface is available, Sprint agrees that Sprint will provide proactive status on service orders at the following critical intervals: acknowledgment, firm order confirmation, and completion according to interim procedures to be mutually developed.

2.3.3 Ordering and Provisioning for Unbundling

2.3.3.1 To the extent Sprint has such information, Sprint shall provide to CLEC upon request advance information of the details and requirements for planning and implementation of NPA splits at least 6 months prior to implementation of the split.

2.3.3.2 Sprint shall provide to CLEC information on charges associated with special construction. Until real-time, Electronic Interface is available, Sprint agrees that Sprint will promptly notify CLEC of any charges associated with necessary construction.

2.4 Standards

2.4.1 General Requirements

2.4.1.1 CLEC and Sprint shall agree upon the appropriate ordering and provisioning codes to be used for Network Elements. These codes shall apply to all aspects of the unbundling of that element and shall be known as data elements as defined by the Telecommunications Industry Forum Electronic Data Interchange Service Order Subcommittee (TCIF-EDI-SOSC).

Section 3. Billing

3.1 Procedures

3.1.1 Sprint shall comply with various industry, OBF, and other standards referred to throughout this Agreement. Sprint and CLEC will review any changes to industry standards, and Sprint's interpretation of these standards before they are implemented by Sprint. Until industry standards are adopted and implemented, Sprint shall utilize an interim process as determined by Sprint and reviewed by CLEC as part of the Implementation Plan.

3.1.2 Sprint shall bill CLEC for each service supplied by Sprint to CLEC pursuant to this Agreement at the rates set forth in this Agreement.

3.1.3 Sprint shall provide to CLEC a single point of contact for interconnection and Network Elements at Sprint's National Access Service Center (NASC), and for resale at Sprint's IPOC to handle any Connectivity Billing questions or problems that may arise during the implementation and performance of the terms and conditions of this Agreement.

3.1.4 Sprint shall provide a single point of contact at each Sprint data center for handling of any data exchange questions or problems that may arise during the implementation and performance of the terms and conditions of this Agreement.

3.1.5 Subject to the terms of this Agreement, including without limitation Sections 3.1.6 of this Attachment VIII, CLEC shall pay Sprint within thirty (30) days from the Bill Date. If the payment due date is a Saturday, Sunday or a has been designated a bank holiday payment shall be made the next business day.

3.1.6 Billed amounts which are being investigated, queried, or for which claims have or may be filed shall be handled in accordance with the procedures set forth in Part A Section 23 of this Agreement.

3.1.7 Sprint will assess late payment charges to CLEC in accordance with the applicable tariff or, if there is no tariff Sprint will assess a late payment charge equal to the lesser of one and one-half percent (1 1/2%) or the maximum rate allowed by law per month of the balance due, until the amount due, including late payment charges, is paid in full.

3.1.8 Sprint shall credit CLEC for incorrect Connectivity Billing charges including without limitation: overcharges, services ordered or requested but not delivered, interrupted services, services of poor quality and installation problems if caused by Sprint. Such reimbursements shall be set forth in the appropriate section of the Connectivity Bill pursuant to CABS, or SECAB standards.

3.1.9 The parties agree to record call information for interconnection in accordance with this Subsection 3.1. To the extent technically feasible, each party shall record all call detail information associated with every call originated or terminated to the other party's local exchange subscriber. Sprint shall record for CLEC the messages that Sprint records for its end users. These records shall be provided at a party's request and shall be formatted pursuant to Bellcore's EMR standards and the terms and conditions of this Agreement. These records shall be transmitted to the other party on non-holiday business days in EMR format via CDN. Sprint and CLEC agree that they shall retain, at each party's sole expense, copies of all EMR records transmitted to the other party for at least forty five (45) calendar days after transmission to the other party.

3.1.10 Sprint shall be responsible for billing and collecting charges from IXCs for access related to interexchange calls generated by resale subscribers.

3.1.11 Sprint shall establish a switched access meet point billing arrangement with CLEC. This arrangement will include tandem routed IXC calls and IXC calls.

3.1.11.1 CLEC will bill for CLEC common line, local switching, RIC, and its portion of the transport charges for tandem routed IXC calls.

3.1.11.2 SPRINT and CLEC will provide all necessary switched access records to each other for access billing.

3.2 Revenue Protection

3.2.1 Sprint shall make available to CLEC, at parity with what Sprint provides to itself, its Affiliates and other local telecommunications CLECs, all present and future fraud prevention or revenue protection features, including prevention, detection, or control functionality embedded within any of the Network Elements. These features include, but are not limited to screening codes, information digits assigned such as information digits '29' and '70' which indicate prison and COCOT pay phone originating line types respectively, call blocking of domestic, international, 800, 888, 900, NPA-976, 700, 500 and specific line numbers, and the capability to require end-user entry of an authorization code for dial tone. Sprint shall, when technically capable and consistent with the implementation schedule for OSS, additionally provide partitioned access to fraud prevention, detection and control functionality within pertinent Operations Support Systems ("OSS").

Section 4. Provision Of Subscriber Usage Data

This Section 4 sets forth the terms and conditions for Sprint's provision of Recorded Usage Data (as defined in this Attachment VIII) to CLEC and for information exchange regarding long distance billing.

4.1 Procedures

4.1.1 General

4.1.1.1 Sprint shall comply with various industry and OBF standards referred to throughout this Agreement..

4.1.1.2 Sprint shall comply with OBF standards when recording and transmitting Usage Data.

4.1.1.3 Sprint shall record all usage originating from CLEC subscribers using service ordered by CLEC, where Sprint records those same services for Sprint subscribers. Recorded Usage Data includes, but is not limited to, the following categories of information:

- Use of CLASS/LASS/Custom Features that Sprint records and bills for its subscribers on a per usage basis
- Calls To Information Providers Reached Via Sprint Facilities will be provided in accordance with Section 4.1.1.7

- Calls To Directory Assistance Where Sprint Provides Such Service To An CLEC Subscriber

- Calls Completed Via Sprint-Provided Operator Services Where Sprint Provides Such Service To CLEC's Local Service Subscriber and where Sprint records such usage for its subscribers using Industry Standard Bellcore EMR billing records.

- For Sprint-Provided Centrex Service, Station Level Detail

4.1.1.4 Retention of Records: Sprint shall maintain a machine readable back-up copy of the message detail provided to CLEC for a minimum of forty-five (45) calendar days. During the 45 day period, Sprint shall provide any data back-up to CLEC upon the request of CLEC. If the 45 day has expired, Sprint may provide the data back-up at CLEC's expense.

4.1.1.5 Sprint shall provide to CLEC Recorded Usage Data for CLEC subscribers. Sprint shall not submit other CLEC local usage data as part of the CLEC Recorded Usage Data.

4.1.1.6 Sprint shall not bill directly to CLEC subscribers any recurring or non-recurring charges for CLEC's services to the subscriber except where explicitly permitted to do so within a written agreement between Sprint and CLEC.

4.1.1.7 Sprint will record 976/N11 calls and transmit them to the Information Service Provider ("ISP") for billing. Sprint will not bill these calls to either the CLEC or the CLEC's end user.

4.1.1.8 Sprint shall provide Recorded Usage Data to CLEC billing locations as agreed to by the Parties.

4.1.1.9 Sprint shall establish a Local Carrier Service Center (LCSC) or similar function to serve as CLEC's single point of contact to respond to CLEC call usage, data error, and record transmission inquiries.

4.1.1.10 Sprint shall provide CLEC with a single point of contact and remote identifiers (IDs) for each sending location.

		special characters
NAME - SUBSEQUENT WORD(S)	Given name and/or initial(s) of a Surname listing or Additional word(s) for a Business or Government listing	Expected if the First Word is the Surname of a Residence or Business listing. Maximum of 250 alpha, numeric, special, or alphanumeric characters.
LINEAL DESCENT	e.g. SR, JR, III. If Lineal Descent data cannot be uniquely identified, it should be included with the Listed Name Subsequent Word(s) data and placed at the end of the name data.	Optional: Maximum 10 alpha characters
TITLE(s)	e.g. MRS, LT COL, RET SGR, DR. Multiple titles are acceptable. If title data cannot be uniquely identified, it should be included with the Listed Name Subsequent Word(s) data and placed at the end of the name data stream. If lineal descent is also in the Listed Name Subsequent Word(s) data field, title data should be placed following the lineal descent data.	Optional: Maximum of 20 alpha characters
DEGREE	e.g. MD, CPA, PHD. Multiple degrees are acceptable. If degree data cannot be uniquely identified, it should be included with the Listed Name Subsequent Word(s) data and placed at the end of the name data stream. If lineal descent and/or title data is also present, it should follow title data.	Optional: Maximum of 20 alpha characters
NICKNAME	Another name the listed subscriber may be known by.	Optional: Maximum of 20 alpha characters
BUSINESS DESIGNATION	Term used to identify the listed subscriber's profession, business,	Optional: Maximum of 50 alpha characters

	or location, e.g. ATTY, CARPETS, OFC	
STANDARD TELEPHONE NUMBER •	NPA NXX-LINE	Optional: 12 characters, including space and hyphen
YELLOW PAGE PUBLISHERS ASSOCIATION (YPPA)	CLEC shall provide to Sprint the code for the directory in which the listing is to be placed.	
NON-STANDARD TELEPHONE NUMBER •	Telephone numbers less than or more than the standard telephone number.	Optional: Minimum of 1 digit, maximum of 22 characters, including spaces and hyphens

• Either a Standard or Non-standard telephone is required for a zero level record unless the record is a Cross-Reference listing or an Indented Listing (caption) Set record. A telephone number may, or may not be present on an Indented Listing Set record for level(s) 0-7.

6.3 Systems Security

6.3.1 Sprint agrees to comply with industry accepted standards which in large measure reflect common practices and proven technology for protecting computer resources.

PART C - ATTACHMENT IX

REPORTING STANDARDS

Section 1. General

1.1 Sprint shall satisfy all service standards, intervals, measurements, specifications, performance requirements, technical requirements, and performance standards (Performance Standards) that are specified in this agreement or are required by law or regulation. In addition, Sprint's performance under this Agreement shall be provided to CLEC will be at Parity with the performance Sprint provides itself for like service(s).

1.2 Sprint and CLEC agree that generally remedies at law alone are adequate to compensate CLEC for any failures to meet the Performance Standard requirements specified in this Agreement, or for failures to provide Customer Usage Data in accordance with this Agreement. However, CLEC shall have the right to seek injunctive relief and other equitable remedies to require Sprint (I) to cause the service ordered by CLEC to meet the Performance Standards specified by the Agreement, (ii) install or provision service ordered by CLEC within the Due Dates specified in this Agreement and (iii) to provide Customer Usage Data in accordance with this Agreement.

1.3 Sprint and CLEC agree that all financial remedies available to end-user and access customers for same or like services will be offered to CLEC. At such time that state or federal commission-approved credits/financial remedies are put in place between Sprint and any of its CLEC customers. Sprint would renegotiate this arrangement where such arrangements exist.

Section 2. Parity and Quality Measurements

2.1 Sprint will develop self-reporting capabilities comparing Sprint results with CLEC results for the following measures of service parity within 6 months. but no later than July 1, 1998, of the Approval Date :

Percentage of Commitment Times Met - Service Order

Percentage of Commitment Times Met - Trouble Report

Trouble Reports per 100 Access Lines (Resale only)

Percent Repeated Trouble Reports

In the event CLEC chooses to utilize the Sprint operator service platform the following measures will be implemented within 6 months of the date of first use by CLEC:

Average Toll Answer Time

Average Directory Assistance Answer Time

All above measures will be implemented in a manner that is consistent with the current measures Sprint makes of its own performance.

2.2 Sprint will develop and implement the following measures no later than July 1, 1998:

Pre-Ordering/Ordering/Provisioning

Prompt Transmission of Customer Service Record (CSR) Information

Prompt transmission of Firm Order Confirmation (FOC)

PLC Changes Completed Within 24 Hours

Interconnection

Trunk Orders on or Before the Committed Due Date

Firm Order Confirmation (FOC) time delivery

Rights of Way (ROW) Conduit and Pole Attachment Availability

Trouble Reports per 100 Access Lines (Loops)

Maintenance and Repair

Average Clearing Time - Out of Service

Average Call Answer Time - Repair Center

2.3 Sprint will develop and implement the following measures within 1 year, but not later than January 1, 1999 of the Approval Date :

Pre-Ordering/Ordering/Provisioning

Disconnect Order Completion Interval

Billing

Advance Notice of Late Billing Associated with the Wholesale Bill

Delivery of Mechanized Customer Service Record (CSR) for Wholesale Bill Verification

Charges Billed in Current Wholesale Bill Period for Flat Rated Services

Charges Billed Within 90 days for Usage Charges

Financial Accuracy of local OCC Bills

Customer Usage Data - File Transfer

Customer Usage Data - Timeliness

Customer Usage Data - Accuracy

Maintenance and Repair

Percent Reporting Trouble Within 5 Days of the Date Installed

Sprint

SPRINT ELECTRONIC INTERFACE PLAN
Exhibit 2

Sprint consistently has supported the necessity for industry standards for reasons of cost, efficiency, and competitive neutrality in speed to market. Although Sprint is working now on the basis of preliminary outputs from the OBF, significant efforts are required to define the data elements and develop infrastructure to capture those elements in Sprint's disparate legacy systems to enable electronic interfaces.

Pre-Ordering

- Sprint will implement an electronic interface for pre-ordering information within 12 months of industry standards being developed. Absent finalized industry standards by 3/1/97, Sprint will work with CLEC to jointly develop a mutually agreeable electronic interface plan. Sprint will implement the interface no later than 12 months after the companies mutually agree on a development plan. Any cost associated with CLEC specific requirements included within the interface plan that are above and beyond industry standards will be the responsibility of CLEC. Sprint will provide a cost estimate as part of the plan development.

- Sprint is open to suggestions on interim solutions.

  ⇒ Sprint will provide telephone number assignment, due date assignment, and features available via a toll free number within 30 days of the effective date.

  ⇒ Sprint will provide a magnetic tape per industry standards (NENA MSAG) on a monthly basis within 30 days of the effective date.

Ordering

- Sprint will implement OBF industry standards related to the Local Service Request via EDI. The issues resolved at the October, 1996 OBF will be implemented by 7/1/97. Issues resolved in future OBFs will be implemented as soon as development efforts allow but no later than 12 months from finalization.

Trouble Administration

- Sprint will implement T.227 and T.228 standards for local use by 12/31/97.

Billing

- Sprint will implement industry billing requirements within the OBF implementation window. BOS 28 is anticipated to be implemented on 9/1/97 but no later than 12/1/97. Certain elements may be billed by Sprint's end-user billing system or non-standard CASS billing.

Usage

- Sprint will provide usage data per OBF standards by 7/1/97.

Exhibit 1

Sprint Local Services Resale Discounts

STATE	DESCRIPTION	DISCOUNT
Florida	CATEGORY I - All Other Discount	19.40% (1)
	CATEGORY II - Operator Assistance/DA Discount	12.10% (1)

Note: (1) - Discount rates are subject to change based upon Commission rulings and proceedings.

Provision of Subscriber Usage Data in EMR Format

This Section sets forth the terms and conditions for Sprint's provision of Recorded Usage Data to CLEC.

Provisioned subscriber usage data (messages) will be rated with a Zero (Ø) rate with the exception of 976/N11 information service calls and alternate billed calls which will be rated at the same rates as would be applicable to Sprint customers making similar calls.

Provision of Subscriber Usage Data involves providing an output file from the Sprint LMP (Local Message Processing) system of EMR formatted message detail for calls made over resold lines or that utilize Sprint LTD switching.

These messages include:

- Sprint Provided Toll and Operator messages billable to a CLEC
- Sprint Provided Directory Assistance
- LMS(Local Measured Service) on the CLEC's resold customers with LMS service.
- CLASS usage (when available): Call return, remote call forwarding, call trace, repeat dial, 3-way calling (Note: these messages are scheduled to be available early 3Q97)
- Sprint Provided Directory Assistance Call Completion records.
- Customer Name and Address look up records (Nevada and Illinois only)

Dropped Records will not be included:

- Busies
- Incomplete calls
- and other free calls such as Intra Municipal calls; police , sheriff ,fire, ambulance, county offices, or calls to telephone company/utility business offices dictated as free calls by the commission.
- Messages on access lines that are subscribed to flat rate alternative toll service such as flat rate extended area calling.

Application of Rate Elements

The following charges are applicable to message detail provisioned to CLEC by Sprint.

- Message Provisioning - This rate element is applicable to all records. This rate element provides for the effort to extract CLEC specific records from all other records and guide them to a data output medium.

- Data Transmission - This rate element is applicable to all records distributed to CLEC via a data transmission medium, usually CONNECT DIRECT NETWORK (CDN)). It recovers Sprint's cost of CDN Software, Equipment, and the file monitoring group.
- Tape Charges - These are applicable for each physical tape distributed to a CLEC. Sprint may use at its discretion, new or recycled tapes. The rate includes Air Express delivery via Sprint's contracted carrier.

RATES

The following are the rate fees for each rate element described above depending on whether the tape is provided for a Sprint/United or Sprint/Centel company.

	Sprint
Message Provisioning	$.005 per msg
Data Transmission	$.002 per msg
Tape Charge	$50.00 per tape

Other Terms and Conditions

CLEC shall designate to Sprint , in writing, the location to which Sprint shall provide any requested Recorded Usage Data and a point contact at that location.

Sprint and CLEC shall each establish a Local Carrier Service Center or similar function to serve as the single point of contact to respond to CLEC call usage, data error, and record transmission inquiries.

Sprint may bill charges for provision of Recorded Usage Data on a separate bill to CLEC. CLEC shall pay such bill in accordance with the terms and conditions set forth in section III.B of this agreement.

Lost Data

CLEC Usage Data determined to have been lost, damaged or destroyed as a result of an error or omission by Sprint in its performance of the recording function shall be recovered by Sprint at no charge to CLEC. In the event the data cannot be recovered by Sprint, Sprint shall estimate the messages and associated revenue with assistance from CLEC based upon the method described below. This method shall be applied on a consistent basis, subject to modifications agreed to by Sprint and CLEC. This estimate shall be used to reduce amounts CLEC owes Sprint for services Sprint provides in conjunctions with the provision of Recorded Usage Data.

Partial Loss - Sprint shall review its daily controls to determine if data has been lost. When there has been a partial loss, actual message and minute volumes shall be reported, if possible through recovery as discussed above. Where actual data are not available, a full day shall be estimated for the recording entity, as outlined in the following

paragraphs. The amount of the partial loss is then determined by subtracting the data actually recorded for such day from the estimated total for such day.

Complete Loss - When Sprint is unable to recover data as discussed above, estimated message and minute volumes for each loss consisting of an entire AMA tape or entire data volume due to its loss prior to or during processing, lost after receipt, degaussed before processing, receipt of a blank or unreadable tape, or lost for other causes, shall be reported.

Estimated Volumes - From message and minute volume reports for the entity experiencing the loss, Sprint shall secure message/minute counts for the four (4) corresponding days of the weeks preceding that in which the loss occurred and compute an average of these volumes. Sprint shall apply the appropriate average revenue per message ("arpm") agreed to by CLEC and Sprint to the estimated message volume for messages for which usage charges apply to the subscriber to arrive at the estimated lost revenue.

If the day of loss is not a holiday but one (1) (or more) of the preceding corresponding days is a holiday, use additional preceding weeks in order to procure volumes for two (2) non-holidays in the previous two (2) weeks that correspond to the day of the week that is the day of the loss

If the loss occurs on a weekday that is a holiday (except Christmas & Mothers day), Sprint shall use volumes from the two (2) preceding Sundays.

If the loss occurs on Mother's Day or Christmas day, Sprint shall use volumes from that day in the preceding year multiplied by a growth factor derived from an average of CLEC's most recent three (3) month message volume growth. If a previous year's message volumes are not available, a settlement shall be negotiated.

All settlements shall be paid within 30 days of the establishment of the settlement amount via a separate payment to CLEC.

CLEC may also request data be provided that has previously been successfully provided by Sprint to CLEC. Sprint shall re-provide such data, if available, at CLEC's expense.

Testing, Changes and Controls

The Recorded Usage Data, EMR format, content, and transmission process shall be tested as agreed upon by CLEC and Sprint.

Interface Testing: The purpose of this test is to ensure that the usage records can be sent by Sprint to CLEC and can be accepted and processed by CLEC. Sprint shall provide a test file to CLEC's designated Regional Processing Center (RPC) in the format that shall be used for live day-to-day processing. The file shall contain all potential call types.

CLEC shall review the file and verify that it conforms to its data center requirements. CLEC shall notify Sprint in writing whether the format is acceptable. CLEC shall also provide Sprint with the agreed-upon control reports as part of this test.

Operational Test: The purpose of this test is to ensure that volumes of usage in consecutive sequence can be extracted. distributed, and processed by Sprint and CLEC.

For testing purposes Sprint shall provide CLEC with Sprint recorded, unrated usage for a minimum of five (5) consecutive days. CLEC shall provide Sprint with the message validation reports associated with test usage.

Test File: Test data should be transported via CONNECT DIRECT NETWORK (CDN) whenever possible. In the event that courier service must be used to transport test media, the physical tape characteristics to be used are described in this Agreement.

Periodic Review: Control procedures for all usage transferred between Sprint and CLEC shall require periodic review. This review may be included as part of an Audit of Sprint by CLEC or as part of the normal production interface management function. Breakdowns which impact the flow of usage between Sprint and CLEC must be identified and jointly resolved as they occur. The resolution may include changes to control procedures so similar problems would be avoided in the future. Any changes to control procedures would need to be mutually agreed upon by CLEC and Sprint.

Sprint Initiated Software Changes

When Sprint plans to introduce any software changes which impact the format or content structure of the usage data feed to CLEC, designated Sprint personnel shall notify CLEC no less than ninety (90) calendar days before such changes are implemented.

Sprint shall communicate the projected changes to CLEC's single point of contact so that potential impacts on CLEC processing can be determined.

CLEC personnel shall review the impact of the change on the entire control structure and the Post Conversion Test Plan, herein. CLEC shall negotiate any perceived problems with Sprint and shall arrange to have the data tested utilizing the modified software.

If it is necessary for Sprint to request changes in the schedule, content or format of usage data transmitted to CLEC, Sprint shall notify CLEC.

CLEC Requested/Initiated Changes

CLEC may negotiate changes in the schedule, content, format of the usage data transmitted from Sprint.

When the negotiated changes are to be implemented, CLEC and/or Sprint shall arrange for testing of the modified data in a Post Conversion Test Plan designed to encompass all types of changes to the usage data transferred by Sprint to CLEC and the methods of transmission for that data.

Sprint System Change Description:

For a Sprint system change, Sprint shall provide CLEC with an overall description of the change, stating the objective and a brief explanation of the reasons for the change.

During the initial negotiations regarding the change, Sprint shall provide a list of the specific records and/or processes impacted by the change to designated CLEC personnel.

Sprint shall also provide CLEC a detailed description of the changes to be implemented. It shall include sufficient detail for designated CLEC personnel to analyze and estimate the effects of the changes and to design tests to verify the accuracy of the implementation.

Change Negotiations:

CLEC shall be notified in writing of proposed change negotiations initiated by Sprint. In turn, CLEC shall notify Sprint in writing of proposed change negotiations initiated by CLEC.

After formal notification of planned changes, whether originated by Sprint or CLEC, designated CLEC personnel shall schedule negotiation meetings as required with designated Sprint personnel.

Changes to controls:

CLEC and Sprint may negotiate changes to the control structure.
Sprint and CLEC shall comply with the agreed upon changes.

Verification Of Changes

Based on the detailed description of changes furnished by the party initiating the change, the parties shall negotiate:

- The type of change(s) to be implemented.
- Development of a comprehensive test plan.
- Scheduling and transfer of modified data with Sprint
- Testing of modified data with the appropriate CLEC point of contact.
- Processing of verified data through the CLEC billing system with the CLEC point of contact.
- Review and verification of testing with appropriate CLEC groups.
- Review of modified controls, if applicable.

Introduction of Changes:

When all the testing requirements have been met and the results reviewed and accepted, designated CLEC and Sprint personnel shall mutually agree on an implementation schedule:

Information Exchange and Interfaces

Core Billing Information

Recorded Usage Data all intraLATA toll and local usage. Sprint shall provide CLEC with unrated EMR records associated with all intraLATA toll and local usage which they record on CLEC's behalf, with the exception of 976/N11 information service messages, Alternate Billed Services and any dropped messages. Any Category, Group and/or Record types approved in the future for Sprint shall be included if they fall within the definition of local service resale. CLEC shall normally be given notification at least thirty (30) days prior to implementation of a new type, category and / or record

CLEC and Sprint shall agree upon the types of rated EMR records that Sprint shall send to CLEC.

All messages recorded for CLEC subscribers by Sprint are to be transmitted to CLEC.

Data Delivery Schedules: Data shall be delivered to CLEC by Sprint on a daily schedule (business days) as agreed to by CLEC and Sprint unless otherwise negotiated based on Sprint's operational processes. CLEC and/or Sprint data center holidays are excluded. Sprint and CLEC shall exchange schedules of designated data center holidays.

Product/Service Specific

Sprint shall provide a 42-50-01 Miscellaneous Charge record Specialized Service /Service Provider Charge record to support the Special Features Star Services when these features are part of Sprint's offering and are available in Sprint's systems.

Emergency Information

Sprint shall provide the transport facility for transmitting usage and billing data between the Sprint location and the CLEC location. Sprint shall transmit via CONNECT DIRECT NETWORK (CDN) whenever possible. In the event usage transfer cannot be accommodated by CONNECT DIRECT NETWORK (CDN) because of extended (one (1) business day or longer) facility outages, Sprint shall contract for a courier service to transport the data via tape.

Sprint shall comply with the following standards when data is transported to CLEC on tape or cartridge via a courier. The data shall be in variable block:

Tape: 9-track, 6250 (or 1600) BPI (Bytes per inch)
Cartridge: 38,000 BPI (Bytes per inch)
LRECL: 2,472 Bytes
Parity: Odd
Character Set: Extended Binary Coded Decimal Interchange Code (EBCDIC)
External labels: Exchange Carrier Name, Dataset Name (DSN) and volume serial number
Internal labels: IBM Industry OS labels shall be used. They consist of a single volume label and two sets of header and trailer labels.

Rejected Recorded Usage Data

Upon agreement between CLEC and Sprint messages that cannot be rated and/or billed by CLEC may be returned to Sprint via CONNECT DIRECT NETWORK (CDN). Returned messages shall be sent directly to Sprint in EMR format. Standard EMR return codes shall be utilized.

Rejected messages or invoices shall be returned to CLEC in accordance with procedures and timeframes already established between Sprint and CLEC.

Sprint can correct and return messages to the CLEC.

CLEC agrees to not return any message after 30 days of receipt.

CLEC will not return a message they have returned once,
and Sprint has investigated and deemed billable by the CLEC and re-sent to CLEC.

Sprint assumes liability only for the errors and unguidables it causes.

Interfaces

Upon establishment of CONNECT DIRECT NETWORK (CDN) connections and suitable testing, Sprint shall transmit formatted Recorded Usage Data to CLEC via CONNECT DIRECT NETWORK (CDN) as designated by CLEC.

CLEC shall notify Sprint of resend requirements if a pack or entire dataset must be replaced due to pack rejection, damage in transit, dataset name failure, etc.

Critical edit failure on the Pack Header or Pack Trailer records shall result in pack rejection (e.g., detail record count not equal to grand total included in the pack trailer).

Notification of pack rejection shall be made by CLEC within one (1) business day of processing. CLEC shall provide to Sprint its list of critical edits, and once the edits have been agreed to in writing by Sprint, rejected packs will be corrected by Sprint and retransmitted to CLEC within twenty-four (24) hours or within an alternate timeframe negotiated on a case by case basis.
A pack shall contain a minimum of one message record or a maximum of 9,999 message records (or the approved OBF standard) plus a pack header record and a pack trailer record. A file transmission contains a maximum of 99 packs. A dataset shall contain a minimum of one pack. Sprint shall provide CLEC one dataset per sending location, with the agreed upon RAO/OCN populated in the Header and Trailer records.

Formats & Characteristics

Rated in collect messages can be intermingled with the unrated messages. No special packing is needed.

EMR: Sprint shall provide Recorded Usage Data in the EMR format and by category, group and record type, and shall be transmitted, via a direct feed, to CLEC. The following is a list of EMR records that CLEC can expect to receive from Sprint:

Detail Records *
01-01-01, 06, 08, 09, 14, 17, 18, 31, 32, 35, 37, 80, 81, 82

10-01-01, 06, 08, 09, 14, 17, 18, 31, 32, 35, 37, 80, 81, 82

Credit Records
03-01-01, 06, 08, 09, 14, 17, 18, 31, 32, 35, 37, 80, 81, 82.

Rated Credits
41-01-01, 06, 08, 09, 14, 17, 18, 31, 32, 35, 37, 80, 81, 82.

Cancel Records
51-01-01, 06, 08, 09, 14, 17, 18, 31, 32, 35, 37, 80, 81, 82,

Correction Records
71-01-01, 06, 08, 09, 14, 17, 18, 31, 32, 35, 37, 80, 81, 82,

* Category 01 is utilized for Rated Messages; Category 10 is utilized for Unrated Messages. Category 10 records are to have indicator 13 populated with a value of 5.

Upon modification of Sprint's process to allow for providing the newly defined industry standard Header Record 20-24-01 and Trailer Record 20-24-02, Sprint

shall use its interim Header and Trailer records as defined to CLEC which are derivative of the 20-20-01 Header Record and the 20-20-02 Trailer Record. Sprint shall comply with the most current version of Bellcore standard practice guidelines for formatting EMR records with the exception noted above.

The file's Record Format (RECFM) shall be Variable Block or fixed as negotiated, Size and the Logical Record Length (LRECL) shall be as specified by CLEC.

Sprint may elect not to comply with specific sorting requirements. However, CLEC may elect to negotiate with Sprint to sort PACKS in accordance with CLEC specifications at a later date.

Sprint shall transmit the usage to CLEC using dataset naming conventions prescribed by CLEC.

Controls

Sprint proposes the paragraph read:

CLEC and Sprint shall jointly test and certify the CONNECT DIRECT NETWORK (CDN) interface to ensure the accurate transmission and receipt of Recorded Usage Data.

Until Sprint implements the newly defined industry standard Header and Trailer records, Header and Trailer records shall be populated as follows:

Position

CLEC OCN - value

The trailer grand total record count shall be populated with total records in pack (excluding header & trailer).

Control Reports: CLEC accepts input data provided by Sprint in EMR format in accordance with the requirements and specifications detailed in this Section 8 of the Attachment III. In order to ensure the overall integrity of the usage being transmitted from Sprint to CLEC, data transfer control reports shall be required. These reports shall be provided by CLEC on an electronic basis, unless negotiated otherwise, to Sprint on a daily or otherwise negotiated basis and will reflect the results of the processing for each pack transmitted by Sprint.

Control Reports - Distribution: Since Sprint is not receiving control reports, dataset names shall be established during detailed negotiations.

Message Validation Reports: CLEC shall provide the following once(1) per day (or as otherwise negotiated) Message Validation reports to the designated Sprint System Control Coordinator. These reports shall be provided for all data received within Sprint Local Resale Feed and shall be transmitted Monday through Friday.

Incollect Pack Processing: This report provides vital statistics and control totals for packs rejected and accepted and dropped messages. The information is provided in the following report formats and control levels:

Sprint Name
Reseller Total Messages processed in a pack
Packs processed shall reflect the number of messages initially erred and accepted within a pack
Reseller Total Packs processed
Sprint agrees to provide CLEC information on a subscriber's selection of billing method, special language billing, and other billing options at parity with information maintained for Sprint subscribers.

Interim Number Portability - Recording and Billing

Sprint shall provide CLEC with accurate billing and Customer Subscriber Account Record Exchange data for CLEC subscribers whose numbers have been ported.

Sprint shall provide CLEC call detail records identified for IXC which are sufficient to allow CLEC to render bills to IXCs for calls IXCs place to ported numbers in the Sprint network which the Sprint forwards to CLEC for termination.

Standards

When requested by CLEC for security purposes, Sprint will use its best efforts to expeditiously provide CLEC with Recorded Usage Data. If not available in EMR format, the Recorded Usage Data may be provided in AMA format.

Sprint shall include the Working Telephone Number (WTN) of the call originator on each EMR call record.

End user subscriber usage records and station level detail records shall be in packs in accordance with EMR standards.

UCI Contracts:

Subsidiary	Vendor	Initial Contract Sign Date	Term	MMRC	Total Volume Commitment	Addendum /Amendment Term Starting	Addendum /Admendment Term Ending	Concerns
DES Long Distance	ITC Deltacom	05/06/1996	14 mo.	$75,000.00	$ 2,400,000.00	04/22/1999	04/22/2000	Don't know their monthly volume and if they are meeting the minimum.
UniversalCom, Inc.	Sprint Commun	02/20/1998	30 mo.	$50,000.00	$ 1,200,000.00	05/01/1998	02/01/2000	Don't know their monthly volume and if they are meeting the minimum. They had pending unsigned amendment to reduce rates that we are reviewing with our account rep to incorporate into our recently signed contract.
UniversalCom, Inc.	print-Florida, In	02/01/1998	12/31/1999	N/A	N/A	N/A	N/A	Renews successive 1 yr. Term with 180 day notice to terminate.

as specified by CLEC. Sprint shall continue to allow CLEC access to its LIDB. Other LIDB provisions are specified in this Agreement.

3.6.1.2 Where Sprint has control of directory listings for NXX codes containing ported numbers, Sprint shall maintain entries for ported numbers as specified by CLEC.

3.6.2 Sprint shall provide a 10-Digit Global Title Translation (GTT) Node for routing queries for TCAP-based operator services (e.g., LIDB).

3.6.3 Sprint OSS shall meet all requirements specified in "Generic Operator Services Switching Requirements for Number Portability," Issue 1.00, Final Draft, April 12, 1996. Editor - Nortel.

3.7 Number Reservation

3.7.1 When a subscriber ports to another service provider and has previously secured, via a tariffed offering, a reservation of line numbers from the donor provider for possible activation at some future point, these reserved but inactive numbers shall "port" along with the active numbers being ported by the subscriber in order to ensure that the end user subscriber will be permitted to expand its service using the same number range it could use if it remained with the donor provider.

4.1.1.11 CLEC shall provide a single point of contact responsible for receiving usage transmitted by Sprint and receiving usage tapes from a courier service in the event of a facility outage.

4.1.1.12 Sprint shall bill and CLEC shall pay the charges for Recorded Usage Data. Billing and payment shall be in accordance with the applicable terms and conditions set forth in the Connectivity Billing and Recording Section of this Attachment VIII.

4.1.2 Charges

4.1.2.1 Sprint shall bill for message provisioning, data transmission and for data tape charges.

4.1.3 Central Clearinghouse & Settlement

4.1.3.1 Sprint and CLEC shall agree upon Clearinghouse and Incollect/Outcollect procedures.

4.1.3.2 Sprint shall settle with CLEC for both intra-region and inter-region billing exchanges of calling card, bill-to-third party, and collect calls under separately negotiated settlement arrangements.

4.1.4 Lost Data

4.1.4.1 Loss of Recorded Usage Data - CLEC Recorded Usage Data determined to have been lost, damaged or destroyed as a result of an error or omission by Sprint in its performance of the recording function shall be recovered by Sprint at no charge to CLEC. In the event the data cannot be recovered by Sprint, Sprint shall estimate the messages and associated revenue, with assistance from CLEC, based upon the method described below This method shall be applied on a consistent basis, subject to modifications agreed to by Sprint and CLEC. This estimate shall be used to adjust amounts CLEC owes Sprint for services Sprint provides in conjunction with the provision of Recorded Usage Data

4.1.4.2 Partial Loss - Sprint shall review its daily controls to determine if data has been lost. When there has been a partial loss, actual message and minute volumes shall be reported, if possible through recovery as discussed in 4.1.4.1 above. Where actual data are not available, a full day shall be estimated for the recording entity, as outlined in the following paragraphs. The amount of the partial loss is then determined by subtracting the

data actually recorded for such day from the estimated total for such day.

4.1.4.3 Complete Loss - When Sprint is unable to recover data as discussed in 4.1.4.1 above estimated message and minute volumes for each loss consisting of an entire AMA tape or entire data volume due to its loss prior to or during processing, lost after receipt, degaussed before processing, receipt of a blank or unreadable tape, or lost for other causes, shall be reported.

4.1.4.4 Estimated Volumes - From message and minute volume reports for the entity experiencing the loss, Sprint shall secure message/minute counts for the four (4) corresponding days of the weeks preceding that in which the loss occurred and compute an average of these volumes. Sprint shall apply the appropriate average revenue per message ("arpm") agreed to by CLEC and Sprint to the estimated message volume for messages for which usage charges apply to the subscriber to arrive at the estimated lost revenue.

4.1.4.5 If the day of loss is not a holiday but one (1) (or more) of the preceding corresponding days is a holiday, use additional preceding weeks in order to procure volumes for two (2) non-holidays in the previous two (2) weeks that correspond to the day of the week that is the day of the loss

4.1.4.6 If the loss occurs on a weekday that is a holiday (except Christmas and Mother's day), Sprint shall use volumes from the two (2) preceding Sundays.

4.1.4.7 If the loss occurs on Mother's day or Christmas day, Sprint shall use volumes from that day in the preceding year multiplied by a growth factor derived from an average of CLEC's most recent three (3) month message volume growth. If a previous year's message volumes are not available, a settlement shall be negotiated.

4.1.5 Testing, Changes and Controls

4.1.5.1 The Recorded Usage Data, EMR format, content, and transmission process shall be tested as agreed upon by CLEC and Sprint.

4.1.5.2 Periodic Review: Control procedures for all usage transferred between Sprint and CLEC shall require periodic review. This review may be included as part of an Audit of Sprint by CLEC or as part of the normal production interface management function. Breakdowns which impact the flow of usage between Sprint and CLEC must be identified and jointly resolved as they occur. The resolution may include changes to control procedures, so similar problems would be avoided in the future. Any changes to control procedures would need to be mutually agreed upon by CLEC and Sprint.

4.1.5.3 Sprint Software Changes

4.1.5.3.1 When Sprint plans to introduce any software changes which impact the format or content structure of the usage data feed to CLEC, designated Sprint personnel shall notify CLEC no less than ninety (90) calendar days before such changes are implemented.

4.1.5.3.2 Sprint shall communicate the projected changes to CLEC's single point of contact so that potential impacts on CLEC processing can be determined.

4.1.5.3.3 CLEC personnel shall review the impact of the change on the entire control structure. CLEC shall negotiate any perceived problems with Sprint and shall arrange to have the data tested utilizing the modified software if required.

4.1.5.3.4 If it is necessary for Sprint to request changes in the schedule, content or format of usage data transmitted to CLEC, Sprint shall notify CLEC.

4.1.5.4 CLEC Requested Changes:

4.1.5.4.1 CLEC may submit a purchase order to negotiate and pay for changes in the content and format of the usage data transmitted by Sprint.

4.1.5.4.2 When the negotiated changes are to be implemented, CLEC and/or Sprint shall arrange for testing of the modified data.

4.2 Information Exchange and Interfaces

4.2.1 Product/Service Specific

4.2.1.1 Sprint shall provide a Bellcore standard 42-50-01 miscellaneous charge record to support the Special Features Star Services if these features are part of Sprint's offering and are provided for Sprint's subscribers on a per usage basis.

4.2.2 Rejected Recorded Usage Data

4.2.2.1 Upon agreement between CLEC and Sprint messages that cannot be rated and/or billed by CLEC may be returned to Sprint via CDN. Returned messages shall be sent directly to Sprint in their original EMR format. Standard EMR return codes shall be utilized.

4.2.2.2 Sprint may correct and resubmit to CLEC any messages returned to Sprint. Sprint will not be liable for any records determined by Sprint to be billable to a CLEC end user. CLEC will not return a message that has been corrected and resubmitted by Sprint. Sprint will only assume liability for errors and unguideables caused by Sprint.

Section 5. General Network Requirements

5.1 Sprint shall provide repair, maintenance and testing for all Telecommunications Services and unbundled Network Elements in accordance with the terms and conditions of this Agreement.

5.1.1 During the term of this Agreement, Sprint shall provide necessary maintenance business process support as well as those technical and systems interfaces at Parity. Sprint shall provide CLEC with maintenance support at Parity.

5.1.2 Sprint shall provide, initially on a regional basis, and subsequently on a national basis, a SPOC (Single Point of Contact) for CLEC to report via telephone maintenance issues and trouble reports twenty four (24) hours a day and seven (7) days a week.

5.1.3 Sprint shall provide CLEC maintenance dispatch personnel on the same schedule that it provides its own subscribers.

5.1.4 Sprint shall cooperate with CLEC to meet maintenance standards for all Telecommunications Services and unbundled network elements ordered under this Agreement. Such maintenance standards shall include, without limitation, standards for testing, network management, call gapping, and notification of upgrades as they become available.

5.1.5 All Sprint employees or contractors who perform repair service for CLEC subscribers shall follow Sprint standard procedures in all their communications with CLEC subscribers. These procedures and protocols shall ensure that: (1) Sprint employees or contractors shall perform repair service that is equal in quality to that provided to Sprint subscribers; (2) trouble calls from CLEC subscribers shall receive response time priority that is equal to that of Sprint subscribers and shall be handled on a "first come first served" basis regardless of whether the subscriber is a CLEC subscriber or an Sprint subscriber.

5.1.6 Sprint shall provide CLEC with scheduled maintenance, including, without limitation, required and recommended maintenance intervals and procedures, for all Telecommunications Services and network elements provided to CLEC under this Agreement equal in quality to that currently provided by Sprint in the maintenance of its own network.

5.1.7 Sprint shall give maximum advanced notice to CLEC of all non-scheduled maintenance or other planned network activities to be performed by Sprint on any network element, including, without limitation, any hardware, equipment, software, or system, providing service functionality which may potentially impact CLEC subscribers.

5.1.8 For purposes of this subsection 5.1 an emergency network outage is defined as an outage affecting more than 25% of subscriber facilities in a single exchange.

5.1.9 On all misdirected calls from CLEC subscribers requesting repair, Sprint shall provide such CLEC subscriber with the correct CLEC repair telephone number as such number is provided to Sprint by CLEC.

5.1.10 Upon establishment of an Electronic Interface, Sprint shall notify CLEC via such electronic interface upon completion of trouble report. The report shall not be considered closed until such notification is made. CLEC will contact its subscriber to determine if repairs were completed and confirm the trouble no longer exists.

5.1.11 Sprint and CLEC may mutually agree to performance reporting as business needs demand.

5.1.12 Once the electronic gateway is established between Sprint and CLEC, Sprint agrees that CLEC may report troubles directly to a single Sprint repair/maintenance center for both residential and business subscribers, unless otherwise agreed to by CLEC.

5.1.13 Sprint shall perform all testing for resold Telecommunications Services.

5.1.14 Sprint shall provide test results to CLEC, if appropriate, for trouble clearance. In all instances, Sprint shall provide CLEC with the disposition of the trouble.

5.1.15 If Sprint initiates trouble handling procedures, it will bear all costs associated with that activity. If CLEC requests the trouble dispatch, then CLEC's subscriber will bear the cost.

Section 6. Miscellaneous Services and Functions

6.0 General

6.0.1 To the extent that Sprint does not provide the services described in this Section 6 to itself, Sprint will use reasonable efforts to facilitate the acquisition of such services for or by CLEC through the existing service provider. CLEC must contract directly with the service provider for such services.

6.1 General Requirements

6.1.1 Basic 911 and E911 General Requirements

6.1.1.1 Basic 911 and E911 provides a caller access to the appropriate emergency service bureau by dialing a 3-digit universal telephone number (911). Basic 911 and E911 access from Local Switching shall be provided to CLEC in accordance with the following:

6.1.1.2 E911 shall provide additional routing flexibility for 911 calls E911 shall use subscriber data, contained in the Automatic Location Identification/ Data Management System (ALI/DMS), to determine to which Public Safety Answering Point (PSAP) to route the call.

6.1.1.3 If available, Sprint shall offer a third type of 911 service, S911. All requirements for E911 also apply to S911 with the exception of the type of signaling used on the interconnection trunks from the local switch to the S911 tandem.

6.1.1.4 Basic 911 and E911 functions provided to CLEC shall be at parity with the support and services that Sprint provides to its subscribers for such similar functionality.

6.1.1.5 Basic 911 and E911 access when CLEC purchases Local Switching shall be provided to CLEC in accordance with the following:

6.1.1.5.1 Sprint shall conform to all state regulations concerning emergency services.

6.1.1.5.2 For E911, Sprint shall use its service order process to update and maintain subscriber information in the ALI/DMS data base. Through this process, Sprint shall provide and validate CLEC subscriber information resident or entered into the ALI/DMS data base.

6.1.1.6 Sprint shall provide for overflow 911 traffic to be routed to Sprint Operator Services or, at CLEC's discretion, directly to CLEC operator services.

6.1.1.7 Basic 911 and E911 access from the CLEC local switch shall be provided to CLEC in accordance with the following:

6.1.1.7.1 If required by CLEC, Sprint shall interconnect direct trunks from the CLEC network to the E911 PSAP, or the E911 tandems as designated by CLEC. Such trunks may alternatively be provided by CLEC.

6.1.1.7.2 In government jurisdictions where Sprint has obligations under existing agreements as the primary provider of the 911 System to the county ("Host SPRINT"), CLEC shall participate in the provision of the 911 System as follows:

6.1.1.7.2.1 Each party shall be responsible for those portions of the 911 System for which it has control, including any necessary maintenance to each party's portion of the 911 System.

6.1.1.7.2.2 Host SPRINT shall be responsible for maintaining the E-911 database. Sprint shall be responsible for maintaining the E-911 routing database.

6.1.1.7.3 If a third party, is the primary service provider to a government agency, CLEC shall negotiate separately with such third party with regard to the provision of 911 service to the agency. All relations between such third party and CLEC are totally separate from this Agreement and Sprint makes no representations on behalf of the third party.

6.1.1.7.4 If CLEC or its Affiliate is the primary service provider to a government agency. CLEC and Sprint shall negotiate the specific provisions necessary for providing 911 service to the agency and shall include such provisions in an amendment to this Agreement.

6.1.1.7.5 Interconnection and database access shall be priced as specified in Attachment I or at any rate charged to other interconnected CLECs, whichever is lower.

6.1.1.7.6 Sprint shall comply with established, competitively neutral intervals for installation of facilities, including any collocation facilities, diversity requirements, etc.

6.1.1.7.7 In a resale situation, where it may be appropriate for Sprint to update the ALI database, Sprint shall update such database with CLEC data in an interval at parity with that experienced by Sprint subscribers, or other CLECs, whichever is faster, at no additional cost.

6.1.1.8 Sprint shall transmit to CLEC daily all changes, alterations, modifications, and updates to the emergency public agency telephone numbers linked to all NPA NXX's. This transmission shall be electronic and be a separate feed from the subscriber listing feed.

6.1.1.9 Sprint shall provide to CLEC the necessary Network Elements in order for CLEC to provide E911/911 services to government agencies. If such elements are not available from Sprint, Sprint shall offer E911/911 service for resale by CLEC to government agencies.

6.1.1.10 The following are Basic 911 and E911 Database Requirements:

6.1.1.10.1 The ALI database shall be managed by Sprint, but is the property of Sprint and any participating telephone company and SPRINT for those records provided by the company.

6.1.1.10.2 To the extent allowed by the governmental agency, and where available, copies of the MSAG shall be provided within three business days from the time requested and provided on diskette, magnetic tape, or in a format suitable for use with desktop computers.

6.1.1.10.3 CLEC shall be solely responsible for providing CLEC database records to Sprint for inclusion in Sprint's ALI database on a timely basis.

6.1.1.10.4 Sprint and CLEC shall arrange for the automated input and periodic updating of the E911 database information related to CLEC end users. Sprint shall work cooperatively with CLEC to ensure the accuracy of the data transfer by verifying it against the Master Street Address Guide (MSAG). Sprint shall accept electronically transmitted files or magnetic tape that conform to National Emergency Number Association (NENA) Version #2 format.

6.1.1.10.5 CLEC shall assign an E911 database coordinator charged with the responsibility of forwarding CLEC end user ALI record information to Sprint or via a third-party entity, charged with the responsibility of ALI record transfer. CLEC assumes all responsibility for the accuracy of the data that CLEC provides to Sprint.

6.1.1.10.6 CLEC shall provide information on new subscribers to Sprint within one (1) business day of the order completion. Sprint shall update the database within two (2) business days of receiving the data from CLEC. If Sprint detects an error in the CLEC provided data, the data shall be returned to CLEC within two (2) business days from when it was provided to Sprint. CLEC shall respond to requests from Sprint to make corrections to database record errors by uploading corrected records within two (2) business days. Manual entry shall be allowed only in the event that the system is not functioning properly.

6.1.1.10.7 Sprint agrees to treat all data on CLEC subscribers provided under this Agreement as strictly confidential and to use data on CLEC subscribers only for the purpose of providing E911 services.

6.1.1.10.8 Sprint shall adopt use of a CLEC Code (NENA standard five-character field) on all ALI records received from CLEC. The CLEC Code will be used to identify the CLEC of record in INP configurations. The NENA CLEC Code for CLEC is "CLEC".

6.1.1.10.9 Sprint shall identify which ALI databases cover which states, counties or parts thereof, and identify and communicate a Point of Contact for each.

6.1.1.11 The following are basic 911 and E911 Network Requirements:

6.1.1.11.1 Sprint, at CLEC's option, shall provide a minimum of two (2) E911 trunks per Numbering Plan Area (NPA) code, or that quantity which will maintain P.01 transmission grade of service, whichever is the higher grade of service. These trunks will be dedicated to routing 911 calls from CLEC's switch to a Sprint selective router.

6.1.1.11.2 Sprint shall provide the selective routing of E911 calls received from CLEC's switching office. This includes the ability to receive the ANI of CLEC's subscriber, selectively route the call to the appropriate PSAP, and forward the subscriber's ANI to the PSAP. Sprint shall provide CLEC with the appropriate CLLI codes and specifications regarding the tandem serving area associated addresses and meet-points in the network.

6.1.1.11.3 Copies of Selective Routing Boundary Maps shall be available to CLEC. Each map shows the boundary around the outside of the set of exchange areas served by that selective router. The map provides CLEC the information necessary to set up its network to route E911 callers to the correct selective router.

6.1.1.11.4 CLEC shall ensure that its switch provides an eight-digit ANI consisting of an information digit and the seven-digit exchange code. CLEC shall also ensure that its

switch provides the line number of the calling station. Where applicable, CLEC shall send a ten-digit ANI to Sprint.

6.1.1.11.5 Each ALI discrepancy report shall be jointly researched by Sprint and CLEC. Corrective action shall be taken immediately by the responsible party.

6.1.1.11.6 Where Sprint controls the 911 network, Sprint should provide CLEC with a detailed written description of, but not limited to, the following information:

6.1.1.11.6.1 Geographic boundaries of the government entities, PSAPs, and exchanges as necessary.

6.1.1.11.6.2 LECs rate centers/exchanges, where "Rate Center" is defined as a geographically specified area used for determining mileage dependent rates in the Public Switched Telephone Network.

6.1.1.11.6.3 Technical specifications for network interface, Technical specifications for database loading and maintenance.

6.1.1.11.7 Sprint shall identify special routing arrangements to complete overflow.

6.1.1.11.8 Sprint shall begin restoration of E911 and/or E911 trunking facilities immediately upon notification of failure or outage. Sprint must provide priority restoration of trunks or networks outages on the same terms/conditions it provides itself and without the imposition of Telecommunications Service Priority (TSP).

6.1.1.11.9 Sprint shall identify any special operator-assisted calling requirements to support 911.

6.1.1.11.10 Trunking shall be arranged to minimize the likelihood of central office isolation due to cable cuts or other equipment failures. There will be an alternate means of transmitting a 911 call to a PSAP in the event of failures.

6.1.1.11.11 Circuits shall have interoffice, loop and CLEC system diversity when such diversity can be achieved using existing facilities. Circuits will be divided as equally as

possible across available CLEC systems. Diversity will be maintained or upgraded to utilize the highest level of diversity available in the network.

6.1.1.11.12 Repair service shall begin immediately upon receipt of a report of a malfunction. Repair service includes testing and diagnostic service from a remote location, dispatch of or in-person visit(s) of personnel. Technicians will be dispatched without delay.

6.1.1.11.13 All 911 trunks must be capable of transmitting and receiving Baudot code or ASII necessary to support the use of Telecommunications Devices for the Deaf (TTY/TDDs).

6.1.1.12 Basic 911 and E911 Additional Requirements

6.1.1.12.1 All CLEC lines that have been ported via INP shall reach the correct PSAP when 911 is dialed. Sprint shall send both the ported number and the CLEC number (if both are received from CLEC). The PSAP attendant shall see both numbers where the PSAP is using a standard ALI display screen and the PSAP extracts both numbers from the data that is sent.

6.1.1.12.2 Sprint shall work with the appropriate government agency to provide CLEC the ten-digit POTS number of each PSAP which sub-tends each Sprint selective router/911 tandem to which CLEC is interconnected.

6.1.1.12.3 Sprint shall notify CLEC 48 hours in advance of any scheduled testing or maintenance affecting CLEC 911 service, and provide notification as soon as possible of any unscheduled outage affecting CLEC 911 service.

6.1.1.12.4 CLEC shall be responsible for reporting all errors, defects and malfunctions to Sprint. Sprint shall provide CLEC with the point of contact for reporting errors, defects, and malfunctions in the service and shall also provide escalation contacts.

6.1.1.12.5 CLEC may enter into subcontracts with third parties, including CLEC Affiliates, for the performance of any of CLEC's duties and obligations stated herein.

6.1.1.12.6 Sprint shall provide sufficient planning information regarding anticipated moves to SS7 signaling, for 911 services, for the next 12 months.

6.1.1.12.7 Sprint shall provide notification of any impacts to the 911 services provided by Sprint to CLEC resulting from of any pending tandem moves, NPA splits, or scheduled maintenance outages, with enough time to react.

6.1.1.12.8 Sprint shall identify process for handling of "reverse ALI" inquiries by public safety entities.

6.1.1.12.9 Sprint shall establish a process for the management of NPA splits by populating the ALI database with the appropriate new NPA codes.

6.1.1.12.10 Sprint must provide the ability for CLEC to update 911 databases with end user information for lines that have been ported via INP or NP.

6.1.2 Directory Assistance Service

6.1.2.1 Sprint shall provide for the routing of directory assistance calls (including but not limited to 411, 555-1212, NPA-555-1212) dialed by CLEC subscribers directly to, at CLEC's option, either (a) the CLEC DA service platform to the extent Sprint's switch can perform this customized routing, or (b) Sprint DA service platform to the extent there is a DA service platform for that serving area.

6.1.2.2 CLEC subscribers shall be provided the capability by Sprint to dial the same telephone numbers for access to CLEC Directory Assistance that Sprint subscribers dial to access Sprint Directory Assistance.

6.1.2.3 Sprint shall provide Directory Assistance functions and services to CLEC for its subscribers as described below until Sprint routes calls to the CLEC Directory Assistance Services platform.

6.1.2.3.1 Sprint agrees to provide CLEC subscribers with the same Directory Assistance service available to Sprint subscribers.

6.1.2.3.2 Sprint shall notify CLEC in advance of any changes or enhancements to its DA service, and shall make

available such service enhancements on a non-discriminatory basis to CLEC.

6.1.2.3.3 Sprint shall provide Directory Assistance to CLEC subscribers in accordance with Sprint's internal local operator procedures and standards.

6.1.2.3.4 Sprint shall provide CLEC with the same level of support for the provisioning of Directory Assistance as Sprint provides itself. Quality of service standards shall be measured at the aggregate level in accordance with standards and performance measurements that are at parity with the standards and/or performance measurements that Sprint uses and/or which are required by law, regulatory agency, or by Sprint's own internal procedures, whichever are the most rigorous.

6.1.2.3.5 Service levels shall comply, at a minimum, with State Regulatory Commission requirements for number of rings to answer, average work time, and disaster recovery options.

6.1.2.3.6 CLEC or its designated representatives may inspect any Sprint owned or sub-contracted office, which provides DA services, upon five (5) business days notice to Sprint.

6.1.2.3.7 Directory Assistance services provided by Sprint to CLEC subscribers shall be branded in accordance with Section 11 of Part A of this Agreement.

6.1.2.3.8 Sprint shall provide the following minimum Directory Assistance capabilities to CLEC's subscribers:

6.1.2.3.8.1 A maximum of two subscriber listings and/or addresses or Sprint parity per CLEC subscriber request.

6.1.2.3.8.2 Telephone number and address to CLEC subscribers upon request, except for non-published/unlisted numbers, in the same states where such information is provided to Sprint subscribers.

6.1.2.3.8.3 Upon CLEC's request, call completion to the requested number for local and intraLATA toll

calls shall be sent to the network specified by CLEC where such call completion routing is technically feasible. If fulfillment of such routing request is not technically feasible, Sprint shall promptly notify CLEC if and when such routing becomes technically feasible. Rating and billing responsibility shall be agreed to by CLEC and Sprint.

6.1.2.3.8.4 Populate the Directory Assistance database in the same manner and in the same time frame as for Sprint subscribers.

6.1.2.3.8.5 Any information provided by a Directory Assistance Automatic Response Unit (ARU) shall be repeated the same number of times for CLEC subscribers as for Sprint's subscribers.

6.1.2.4 Sprint shall provide CLEC call detail records in a mutually agreed format and manner.

6.1.3 Operator Services

6.1.3.1 Sprint shall provide for the routing of local operator services calls (including but not limited to 0+, 0-) dialed by CLEC subscribers directly to either the CLEC operator service platform or Sprint operator service platform to the extent Sprint's switch can perform this customized routing, as specified by CLEC.

6.1.3.2 CLEC subscribers shall be provided the capability by Sprint to dial the same telephone numbers to access CLEC operator service that Sprint subscribers dial to access Sprint operator service.

6.1.3.3 Sprint shall provide Operator Services to as described below until, at CLEC's discretion, Sprint routes calls to the CLEC Local Operator Services platform.

6.1.3.3.1 Sprint agrees to provide CLEC subscribers the same Operator Services available to Sprint subscribers. Sprint shall make available its service enhancements on a non-discriminatory basis.

6.1.3.3.2 Operator Services provided to CLEC subscribers shall be branded in accordance with Section 11 of Part A of this Agreement.

6.1.3.3.3 Sprint shall provide the following minimum Operator Service capabilities to CLEC subscribers:

6.1.3.3.3.1 Sprint shall complete 0+ and 0- dialed local calls.

6.1.3.3.3.2 Sprint shall complete 0+ intraLATA toll calls.

6.1.3.3.3.3 Sprint shall complete calls that are billed to a 0+ access calling card.

6.1.3.3.3.4 Sprint shall complete person-to-person calls.

6.1.3.3.3.5 Sprint shall complete collect calls.

6.1.3.3.3.6 Sprint shall provide the capability for callers to bill to a third party and complete such calls.

6.1.3.3.3.7 Sprint shall complete station-to-station calls.

6.1.3.3.3.8 Sprint shall process emergency calls.

6.1.3.3.3.9 Sprint shall process Busy Line Verify and Busy Line Verify and Interrupt requests.

6.1.3.3.3.10 To the extent not prohibited by law or regulation, Sprint shall process emergency call trace

6.1.3.3.3.11 Sprint shall process operator-assisted directory assistance calls.

6.1.3.3.3.12 Sprint shall provide basic rate quotes, subject to Sprint's operator systems being capable to perform unique rating for CLEC.

6.1.3.3.3.13 Sprint shall process time-and-charges requests, at parity with Sprint's own service offerings

6.1.3.3.3.14 Sprint shall route 0- traffic directly to a "live" operator team.

6.1.3.3.3.15 When requested by CLEC, Sprint shall provide instant credit on operator services calls as provided to Sprint subscribers or shall inform CLEC subscribers to call an 800 number for CLEC subscriber service to request a credit. Sprint shall provide one 800 number for business subscribers and another for residential subscribers.

6.1.3.3.3.16 Caller assistance for the disabled shall be provided in the same manner as provided to Sprint subscribers.

6.1.3.3.3.17 When available, Sprint shall provide operator-assisted conference calling.

6.1.3.4 Operator Service shall provide CLEC's local usage rates when providing rate quote and time-and-charges services, and subject to Section 6.1.3.3.3.13 above.

6.1.3.5 Operator Service shall adhere to equal access requirements.

6.1.3.6 Sprint shall exercise the same level of fraud control in providing Operator Service to CLEC that Sprint provides for its own operator service.

6.1.3.7 Sprint shall query for Billed Number Screening restrictions when handling Collect, Third Party, and Calling Card Calls, both for station to station and person to person call types.

6.1.3.8 Sprint shall provide at an aggregate level for the operator service center, service measurements and accounting reports to CLEC at parity with the service measurements and accounting reports Sprint provides itself or as otherwise mutually agreed by the parties.

6.1.3.9 CLEC or its designated representatives may inspect any Sprint owned or sub-contracted office, which provides Operator Services, upon five (5) business days notice to Sprint.

6.1.3.10 Sprint shall direct CLEC subscriber account and other similar inquiries to the subscriber service center designated by CLEC.

6.1.3.11 Sprint shall provide call records in accordance with Section 4 of this Attachment VIII.

6.1.3.12 Sprint shall accept and process overflow 911 traffic routed from CLEC to the underlying platform used to provide Operator Service where such overflow is performed by Sprint for its subscribers.

6.1.3.13 Busy Line Verification and Busy Line Verify and Interrupt:

6.1.3.13.1 Sprint shall permit CLEC to connect its Local Operator Service to Sprint's Busy Line Verification and Busy Line Verify and Interrupt ("BLV/BLVI").

6.1.3.13.2 Sprint shall engineer its BLV/BLVI facilities to accommodate the anticipated volume of BLV/BLVI requests during the Busy Hour. CLEC may, from time to time, provide its anticipated volume of BLV/BLVI requests to Sprint. In those instances when the BLV/BLVI systems and databases become unavailable, Sprint shall promptly inform CLEC.

6.1.4 Directory Assistance and Listings Service Requests

6.1.4.1 These requirements pertain to Sprints DA and Listings Service Request process that enables CLEC to (a) submit CLEC subscriber information for inclusion in Sprint Directory Assistance and Directory Listings databases; (b) submit CLEC subscriber information for inclusion in published directories; and (c) provide CLEC subscriber delivery address information to enable Sprint to fulfill directory distribution obligations.

6.1.4.1.1 Sprint shall accept orders on a real-time basis via electronic interface in accordance with OBF Directory Service Request standards within 3 months of the effective date of this Agreement. In the interim, Sprint shall create a standard format and order process by which CLEC can place an order with a single point of contact within Sprint.

6.1.4.1.2 Sprint will provide to CLEC the following Directory Listing Migration Options, valid under all access methods, including but not limited to, Resale, Unbundled Network Elements and Facilities-Based:

6.1.4.1.2.1 Migrate with no Changes: Retain all white page listings for the subscriber in both DA and

DL. Transfer ownership and billing for white page listings to CLEC.

6.1.4.1.2.2 Migrate with Additions: Retain all white page listings for the subscriber in both DA and DL. Incorporate the specified additional listings order. Transfer ownership and billing for the white page listings to CLEC.

6.1.4.1.2.3 Migrate with Deletions: Retain all white page listings for the subscriber in both DA and DL. Delete the specified listings from the listing order. Transfer ownership and billing for the white page listings to CLEC.

6.1.4.1.2.4 To ensure accurate order processing, Sprint or its directory publisher shall provide to CLEC the following information, with updates promptly upon changes:

6.1.4.1.2.4.1 A matrix of NXX to central office

6.1.4.1.2.4.2 Geographical maps if available of Sprint service area

6.1.4.1.2.4.3 A description of calling areas covered by each directory, including but not limited to maps of calling areas and matrices depicting calling privileges within and between calling areas

6.1.4.1.2.4.4 Listing format rules

6.1.4.1.2.4.5 Listing alphabetizing rules

6.1.4.1.2.4.6 Standard abbreviations acceptable for use in listings and addresses

6.1.4.1.2.4.7 Titles and designations

6.1.4.1.2.4.8 A list of all available directories and their Business Office close dates

6.1.4.1.3 Based on changes submitted by CLEC, Sprint shall update and maintain directory assistance and directory listings data for CLEC subscribers who:

6.1.4.1.3.1 Disconnect Service

6.1.4.1.3.2 Change CLEC

6.1.4.1.3.3 Install Service

6.1.4.1.3.4 Change any service which affects DA information

6.1.4.1.3.5 Specify Non-Solicitation

6.1.4.1.3.6 Are Non-Published, Non-Listed, or Listed

6.1.4.1.4 Sprint shall not charge for storage of CLEC subscriber information in the DA and DL systems.

6.1.4.1.5 CLEC shall not charge for storage of Sprint subscriber information in the DA and DL systems.

6.1.5 Directory Listings General Requirements. CLEC acknowledges that many directory functions including but not limited to yellow page listings, enhanced white page listings, information pages, directory proofing, and yellow pages directory distribution are not performed by Sprint but rather are performed by and are under the control of the directory publisher. Sprint shall use reasonable efforts to assist CLEC in obtaining an agreement with the directory publisher that treats CLEC at parity with the publisher's treatment of Sprint.

6.1.5.1 This Section 6.1.5 pertains to listings requirements published in the traditional white pages.

6.1.5.2 Sprint shall include in its master subscriber system database all white pages listing information for CLEC subscribers in Sprint territories where CLEC is providing local telephone exchange services.

6.1.5.3 Sprint agrees to include one basic White pages listing for each CLEC customer located within the geographic scope of its White Page directories, at no additional charge to CLEC. A basic White Pages listing is defined as a customer name, address and either the CLEC assigned number for a customer or the number for

which number portability is provided, but not both numbers. Basic White Pages listings of CLEC customers will be interfiled with listings of Sprint and other LEC customers.

6.1.5.4 CLEC agrees to provide CLEC customer listing information, including without limitation directory distribution information, to Sprint, at no charge. Sprint will provide CLEC with the appropriate format for provision of CLEC customer listing information to Sprint. The parties agree to adopt a mutually acceptable electronic format for the provision of such information as soon as practicable. In the event OBF adopts an industry-standard format for the provision of such information, the parties agree to adopt such format.

6.1.5.5 Sprint agrees to provide White Pages database maintenance services to CLEC. CLEC will be charged a Service Order entry fee upon submission of Service Orders into Sprint's Service Order Entry System, which will include compensation for such database maintenance services. Service Order entry fees apply when Service Orders containing directory records are entered into Sprint's Service Order Entry System initially, and when Service Orders are entered in order to process a requested change to directory records.

6.1.5.6 CLEC customer listing information will be used solely for the provision of directory services, including the sale of directory advertising to CLEC customers.

6.1.5.7 In addition to a basic White Pages listing, Sprint will provide, at the rates set forth in Attachment II of this Agreement, tariffed White Pages listings (e.g., additional, alternate, foreign and non-published listings) for CLEC to offer for resale to CLEC's customers.

6.1.5.8 Sprint agrees to provide White Pages distribution services to CLEC customers within Sprint's service territory at no additional charge to CLEC. Sprint represents that the quality, timeliness, and manner of such distribution services will be at parity with those provided to Sprint and to other CLEC customers.

6.1.5.9 Sprint agrees to include critical contact information pertaining to CLEC in the "Information Pages" of those of its White Pages directories covering markets in which CLEC is providing or plans to commence providing local exchange service during the publication cycle of such directories. Critical contact information

includes CLEC's business office number, repair number, billing information number, and any other information required to comply with applicable regulations, but not advertising or purely promotional material. CLEC will not be charged for inclusion of its critical contact information. The format, content and appearance of CLEC's critical contact information will conform to applicable Sprint and/or directory publisher guidelines and will be consistent with the format, content and appearance of critical contact information pertaining to all CLECs in a directory.

6.1.5.10 Sprint will accord CLEC customer listing information the same level of confidentiality that Sprint accords it own proprietary customer listing information. Sprint shall ensure that access to CLEC customer proprietary listing information will be limited solely to those of Sprint and Sprint's directory publisher's employees, agents and contractors that are directly involved in the preparation of listings, the production and distribution of directories, and the sale of directory advertising. Sprint will advise its own employees, agents and contractors and its directory publisher of the existence of this confidentiality obligation and will take appropriate measures to ensure their compliance with this obligation. Notwithstanding any provision herein to the contrary, the furnishing of White Pages proofs to a CLEC that contains customer listings of both Sprint and CLEC will not be deemed a violation of this confidentiality provision.

6.1.5.11 Sprint will not sell or license CLEC's customer listing information to any third parties without CLEC's prior written consent. Upon receipt of such consent, Sprint and CLEC will work cooperatively to address any payments for the sale or license of CLEC customer listing information to third parties. Any payments due to CLEC for its customer listing information will be net of administrative expenses incurred by Sprint in providing such information to third parties. The parties acknowledge that the release of CLEC's customer listing to Sprint's directory publisher will not constitute the sale or license of CLEC's customer listing information causing any payment obligation to arise pursuant to this Subsection 6.1.5.11.

6.1.6 Other Directory Services. Sprint will exercise reasonable efforts to cause its directory publisher to enter into a separate agreement with CLEC which will address other directory services desired by CLEC as described in this Section 6.1.6. Both parties acknowledge that Sprint's directory publisher is not a party to this Agreement and that the provisions

contained in this Section 6.1.6 are not binding upon Sprint's directory publisher.

6.1.6.1 Sprint's directory publisher will negotiate with CLEC concerning the provision of a basic Yellow Pages listing to CLEC customers located within the geographic scope of publisher's Yellow Pages directories and distribution of Yellow Pages directories to CLEC customers.

6.1.6.2 Directory advertising will be offered to CLEC customers on a nondiscriminatory basis and subject to the same terms and conditions that such advertising is offered to Sprint and other CLEC customers. Directory advertising will be billed to CLEC customers by directory publisher.

6.1.6.3 Directory publisher will use commercially reasonable efforts to ensure that directory advertising purchased by customers who switch their service to CLEC is maintained without interruption.

6.1.6.4 Information pages, in addition to any information page or portion of an information page containing critical contact information as described above in Section 6.1.5.9 may be purchased from Sprint's directory publisher, subject to applicable directory publisher guidelines and regulatory requirements.

6.1.6.5 Directory publisher maintains full authority as publisher over its publishing policies, standards and practices, including decisions regarding directory coverage area, directory issue period, compilation, headings, covers, design, content or format of directories, and directory advertising sales.

6.1.7 Directory Assistance Data

6.1.7.1 This section refers to the residential, business, and government subscriber records used by Sprint to create and maintain databases for the provision of live or automated operator assisted Directory Assistance. Directory Assistance Data is information that enables telephone exchange CLECs to swiftly and accurately respond to requests for directory information, including, but not limited to name, address and phone numbers. Under the provisions of the Act and the FCC's Interconnection order, Sprint shall provide unbundled and non-discriminatory access to the residential, business and government subscriber records used by Sprint to create and maintain databases for the provision of live or automated operator assisted Directory Assistance. CLEC may

combine this element with any other Network Element for the provision of any Telecommunications Service.

6.1.7.2 Sprint shall provide an initial load of subscriber records via magnetic tape for Sprint, included in its Directory Assistance Database within sixty (60) days of the Effective Date of this Agreement. The NPAs included shall represent the entire Sprint operating region. The initial load shall reflect all data that is current as of one business day prior to the provision date.

6.1.7.3 Sprint shall provide CLEC a complete list of LECs, CLECs, and independent Telcos that provided data to Sprint for its DA database.

6.1.7.4 All directory assistance data shall be provided in a mutually agreed format.

6.1.7.5 On the same schedule that Sprint updates its database Sprint shall provide updates (end user and mass) to the Directory Assistance Database via electronic data transfer. Updates shall be current as of one business day prior to the date provided to CLEC

6.1.7.6 DA data shall specify whether the subscriber is a residential, business, or government subscriber, to the extent Sprint so marks its own DA database records with such indication Additionally, data must include all levels of indentation and all levels of information specified in "Directory Assistance Data Information Exchanges and Interfaces" below, to the extent Sprint's data is so formatted.

6.1.7.7 CLEC shall pay to Sprint charges for DA listings and updates that are developed consistent with the Act.

6.1.7.8 Sprint shall provide complete refresh of the DA data upon request by CLEC and at CLEC's expense.

6.1.7.9 CLEC will designate the location to which the data will be provided, and CLEC shall order DA data from Sprint at a state/company level.

6.2 Systems Interfaces and Exchanges

6.2.1 Directory Assistance Data Information Exchanges and Interfaces

6.2.1.1 Subscriber List Information

6.2.1.1.1 Sprint shall provide to CLEC, within sixty (60) days after the Approval Date of this Agreement, or at CLEC's request, all published Subscriber List Information (including such information that resides in Sprint's master subscriber system/accounts master file for the purpose of publishing directories in any format as specified by the Act) via an electronic data transfer medium and in a mutually agreed to format, on the same terms and conditions and at the same rates that the Sprint provides Subscriber List Information to itself or to other third parties. All changes to the Subscriber List Information shall be provided to CLEC pursuant to a mutually agreed format and schedule. Both the initial List and all subsequent Lists shall indicate for each subscriber whether the subscriber is classified as residence or business class of service.

6.2.1.1.2 CLEC shall provide directory listings to Sprint pursuant to the directory listing and delivery requirements in the approved OBF format, at a mutually agreed upon timeframe. Other formats and requirements shall not be used unless mutually agreed to by the parties.

6.2.1.2 This section addresses data format requirements and data inclusion requirements for directory assistance data information exchange between Sprint and CLEC. Sprint shall provide CLEC the following where available:

6.2.1.2.1 List of NPA-NXX's relating to the listing records being provided.

6.2.1.2.2 List of Directory Section names and their associated NPA-NXX's.

6.2.1.2.3 List of Community Names expected to be associated with each of the NPA-NXX's for which listing records shall be provided.

6.2.1.2.4 List of Independent Company names and their associated NPA-NXXs for which their listing data is a part of

Sprint's directory database, but Sprint is not to provide the listing data to CLEC under this request.

6.2.1.2.5 Listing volume totals by directory section, NPA. and state.

6.2.1.2.6 Average daily update volume by directory section, NPA, and state.

6.2.1.2.7 Identify any area wide or universal service numbers which may be listed. Identify the telephone number to be provided to callers outside the servicing area.

6.2.1.2.8 Identify any listing condition(s) unique to Sprint's serving area which may require special handling in data processing in the directory. Indented Listings (Captions) should be identified and delivered and/or handled as specified.

6.2.1.3 Considerations Relating to an Indented Listing (Caption) Set Requirements

6.2.1.3.1 Use of line numbers, or other methods, to ensure the integrity of the caption set and identify the sequence or placement of a listing record within the caption set. A sufficient range of numbers between listing records is required to allow for the expansion of the caption set. A method is also required to permit the caption header record to be identified, but each level of indent is not required to be recapped; placement of the indent is based on line number. This method does require stringent edits to ensure the integrity of the caption set.

6.2.1.3.2 Use of guideline or recapped data to identify previously established header and sub-header records for placement of data within the caption set. This permits flexibility to easily expand the caption set. This method also requires that, in addition to the caption header record, each level of indent be recapped in order to properly build the caption set.

6.2.1.3.3 CLEC requires listing instruction codes on the service order which indicate how the set is to appear in the published directory.

6.2.1.4 Data Processing Requirements: Sprint and CLEC shall mutually agree to standards on the following data processing requirements:

6.2.1.4.1 Identify type of tape to be used in sending the test and initial load data. For example, reel or cartridge tape. Due to the size of an initial load, it would be generally expected to be on tape and the daily update activity via another media, and via a mutually agreed to timeframe, such as NDM.

6.2.1.4.2 Identify tape or dataset label requirements.

6.2.1.4.3 Identify tracking information requirements. For example, use of header and trailer records for tracking date and time, cycle numbers, sending and receiving site codes, volume count for the given tape/dataset. It may also be helpful to have some filler fields for future use.

6.2.1.4.4 Identify dates on which the other party should not expect to receive daily update activity.

6.2.1.4.5 Data should be received in uppercase and lowercase pursuant to OBF standards. An asterisk (*) should be used to advise of the need to apply the reverse capitalization rule. However, if the provider determines to provide the listing data from a database that has already messaged the data and applied the capitalization rules, the asterisk may be omitted.

6.2.1.4.6 Identify information that shall enable CLEC to identify listings within an indented list (caption) set. For example:

6.2.1.4.6.1 When a particular listing has been designated to be filed as the first listing for a given level (0-7) of indent - usually out of alpha sequence.

6.2.1.4.6.2 When an alternate call listing (e.g. If no answer) relates to multiple preceding listings of the same level.

6.2.1.4.7 Identify any other pertinent information needed to properly process the data.

6.2.1.5 Listing Types

LISTED	The listing information is available for all directory requirements.
NON-LISTED	The listing information is available to all directory requirements, but the information does not appear in the published street directory.
NON-PUBLISHED	A directory service may confirm, by name and address, the presence of a listing, but the telephone number is not available. The listing information is not available in either the published directory or directory assistance.

6.2.1.6 Listing Styles

LISTING STYLE	DESCRIPTION
STRAIGHT LINE	All listing information is formatted in a straight line. Data generally consists of Name, Address, Community, and Telephone Number. Additional data may consist of dialing instructions or other general information relating to the listing.
INDENTED LISTING SET - CAPTION SET	Formatted with one listing header record and multiple indented listing records. See detailed description below.

INDENTED LISTING (CAPTION) SET

HEADER RECORD	Contains listed name; address and telephone number data fields are blank.
SUB-HEADER RECORD/ LISTING	May contain name data only. Associated subordinate records are required.
INDENTED NAME LISTING	Contains name data , may or may not have address data, and telephone number data.
INDENTED ADDRESS LISTING	Contains address and telephone number data; the name data text field is blank.

LEVEL OF INDENT	Header record is zero (0), sub-header and indented records range from 1 -6.

6.2.1.7 Data Field Elements

Requirements for Initial Processing and Daily Update Activity

DATA FIELD LENGTH	DATA ELEMENT	FIELD
ACTION CODE	A = Add I = In D = Delete or O = out	Required: 1 alpha character
RECORD NUMBER	Sequentially assigned number to each record for a given process (test, initial load, or update activity). Number assignment begins with 00000001 and is incremented by 1 for each record on the file.	Required: 8 digits
NPA	Area code relating to the directory section the record is to be listed.	Required: 3 digits
COMPANY IDENTIFIER	The 4-character company code as defined in Section 8 of the National Exchange CLEC Association, Inc. Tariff.	Required: 4 digits
DIRECTORY SECTION	Name of the directory section where the record is to be listed.	Required: Maximum of 50 alpha characters
LISTING IDENTIFIER	F = Foreign C = Cross-Reference E = Enterprise (WX number requiring operator assistance to connect the call) W = Wide area or universal service	Optional: 1 alpha character
FILE PLACEMENT	B = Business (4) R = Residence (1)	Required: Maximum of 3 alpha characters

	G = Government (2) BR = Business & Residence (5) BG = Business & Government (6) BRG = Business, Residence, & Government (7)	
LISTING TYPE	L = Listed N = Non-Listed NP = Non-Published	Required: Maximum of 2 alpha characters
ADVANCE LISTING	AVL = Advance Listing This is used when it is very close to the Business Office close date and the service is not actually established but the subscriber needs to be in the directory. Once the service is established, a second order is placed without the indicator and the listing is established permanently and sent to DA.	Optional: 3 alpha characters
LISTING STYLE	S = Straight line I = Indented listing set CH = Caption Header CS = Caption Sub-header An Indented listing relates to either a caption or Straight Line Under (SLU) set listing.	Required: 2 alpha characters
INDENT LEVEL	0 = Non-indented record 1 - 6 = Level of indented record	Required: 1 digit.
ADDRESS HOUSE NUMBER	For example: 123, A-123, 123-1/2	Optional: Maximum of 20 alphanumeric characters, including hyphen, space, and slash
ADDRESS PRE-DIRECTIONAL	For example: N, S, E, W, NE, SW, NORTH	Optional: Maximum of 5 alpha characters
ADDRESS	For example: Main, Peachtree-	Optional: Maximum of 100

STREET NAME	Dunwoody, HWY 75 at Exit 30	alpha, alphanumeric characters, including spaces and hyphens.
ADDRESS SUFFIX OR THOROUGHFARE	For example: SUITE 160, ST, or WAY	Optional: Maximum of 20 numeric, alpha, or alphanumeric characters
DDRESS POST IRECTION	For example: N, S, NE, SW	Optional: Maximum of 5 alpha characters
DDRESS ZIP ODE	5-digits or ZIP + 4	Optional: Maximum of 10 digits, including the hyphen when using ZIP + 4
OMMUNITY AME	Identifies the name of the community associated with the listing record. See Glossary for more details.	Maximum of 50 alphanumeric characters, including spaces and hyphen
STATE NAME ABBREVIATION	Identifies the state associated with the community name; 2-character state abbreviation used by the US Postal Office.	Maximum of 2 alpha characters
INFORMATION TEXT	Miscellaneous information relating to the listing. Including, but not limited to, for example: TOLL FREE DIAL 1 & THEN, CALL COLLECT, or TDD ONLY. The various types of Information Text must be identified to CLEC.	Optional: Maximum of 250 alpha, numeric, or alphanumeric characters
NAME - FIRST WORD	Surname of a Residence or Business listing, or first word of a Business or Government listing Multi-word or hyphenated surnames should be treated as one word.	Required for a zero (0) level record. Optional if an indented (level 1-8) record, unless the name text present in the indented record relates to a Surname. Maximum of 50 alpha, numeric, alphanumeric, or

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	)	
Implementation of the Local Competition Provisions in the Telecommunications Act of 1996	)	CC Docket No. 96-98
Intercarrier Compensation for ISP-Bound Traffic	)	CC Docket No. 99-68

ORDER ON REMAND AND REPORT AND ORDER

Adopted: April 18, 2001 **Released:** April 27, 2001

By the Commission: Chairman Powell issuing a statement; Commissioner Furchtgott-Roth dissenting and issuing a statement.

TABLE OF CONTENTS

I. INTRODUCTION

1. In this Order, we reconsider the proper treatment for purposes of intercarrier compensation of telecommunications traffic delivered to Internet service providers (ISPs). We previously found in the *Declaratory Ruling*[1] that such traffic is interstate traffic subject to the jurisdiction of the Commission under section 201 of the Act[2] and is not, therefore, subject to the reciprocal compensation provisions of section 251(b)(5).[3] The Court of Appeals for the District of Columbia Circuit held on appeal, however, that the *Declaratory Ruling* failed adequately to explain why our jurisdictional conclusion was relevant to the applicability of section 251(b)(5) and

[1] Implementation of the Local Competition Provisions in the Telecommunications Act of 1996; Intercarrier Compensation for ISP-Bound Traffic, Declaratory Ruling in CC Docket No. 96-98 and Notice of Proposed Rulemaking in CC Docket No. 99-68, 14 FCC Rcd 3689 (1999) (*Declaratory Ruling* or *Intercarrier Compensation NPRM*).

[2] *See* 47 U.S.C. § 201, Communications Act of 1934 (the Act), as amended by the Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996 Act). Hereinafter, all citations to the Act and to the 1996 Act will be to the relevant section of the United States Code unless otherwise noted.

[3] 47 U.S.C. § 251(b)(5).

remanded the issue for further consideration.[4] As explained in more detail below, we modify the analysis that led to our determination that ISP-bound traffic falls outside the scope of section 251(b)(5) and conclude that Congress excluded from the "telecommunications" traffic subject to reciprocal compensation the traffic identified in section 251(g), including traffic destined for ISPs. Having found, although for different reasons than before, that the provisions of section 251(b)(5) do not extend to ISP-bound traffic, we reaffirm our previous conclusion that traffic delivered to an ISP is predominantly interstate access traffic subject to section 201 of the Act, and we establish an appropriate cost recovery mechanism for the exchange of such traffic.

2. We recognize that the existing intercarrier compensation mechanism for the delivery of this traffic, in which the originating carrier pays the carrier that serves the ISP, has created opportunities for regulatory arbitrage and distorted the economic incentives related to competitive entry into the local exchange and exchange access markets. As we discuss in the *Unified Intercarrier Compensation NPRM,*[5] released in tandem with this Order, such market distortions relate not only to ISP-bound traffic, but may result from any intercarrier compensation regime that allows a service provider to recover some of its costs from other carriers rather than from its end-users. Thus, the *NPRM* initiates a proceeding to consider, among other things, whether the Commission should replace existing intercarrier compensation schemes with some form of what has come to be known as "bill and keep."[6] The *NPRM* also considers modifications to existing payment regimes, in which the calling party's network pays the terminating network, that might limit the potential for market distortion. The regulatory arbitrage opportunities associated with intercarrier payments are particularly apparent with respect to ISP-bound traffic, however, because ISPs typically generate large volumes of traffic that is virtually all one-way -- that is, delivered to the ISP. Indeed, there is convincing evidence in the record that at least some carriers have targeted ISPs as customers merely to take advantage of these intercarrier payments. Accordingly, in this Order we also take interim steps to limit the regulatory arbitrage opportunity presented by ISP-bound traffic while we consider the broader issues of intercarrier compensation in the *NPRM* proceeding.

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[4] *See Bell Atl. Tel. Cos. v. FCC*, 206 F.3d 1 (D.C. Cir. 2000) (*Bell Atlantic*).

[5] Developing a Unified Intercarrier Compensation Regime, CC Docket No. 01-92, Notice of Proposed Rulemaking, FCC 01-132 (rel. April 27, 2001) ("*Unified Intercarrier Compensation NPRM*" or "*NPRM*").

[6] "Bill and keep" refers to an arrangement in which neither of two interconnecting networks charges the other for terminating traffic that originates on the other network. Instead, each network recovers from its own end-users the cost of both originating traffic that it delivers to the other network and terminating traffic that it receives from the other network. Implementation of the Local Competition Provisions in the Telecommunications Act of 1996; Interconnection between Local Exchange Carriers and Commercial Mobile Radio Service Providers, CC Docket Nos. 96-98, 95-185, First Report and Order, 11 FCC Rcd 15499, 16045 (1996) (*Local Competition Order*), *aff'd in part and vacated in part sub nom. Competitive Telecommunications Ass'n v. FCC*, 117 F.3d 1068 (8th Cir. 1997) (*CompTel*), *aff'd in part and vacated in part sub nom. Iowa Utils. Bd. v. FCC*, 120 F.3d 753 (8th Cir. 1997) (*Iowa Utils. Bd.*), *aff'd in part and rev'd in part sub nom., AT&T Corp. v. Iowa Utils. Bd.*, 525 U.S. 366 (1999); Order on Reconsideration, 11 FCC Rcd 13042 (1996); Second Order on Reconsideration, 11 FCC Rcd 19738 (1996); Third Order on Reconsideration and Further Notice of Proposed Rulemaking, 12 FCC Rcd 12460 (1997); *further recon. pending*. Bill and keep does not, however, preclude intercarrier charges for transport of traffic between carriers' networks. *Id.*

II. EXECUTIVE SUMMARY

3. As presaged above, we must wrestle with two difficult issues in this Order: first, whether intercarrier compensation for ISP-bound traffic is governed by section 251 or section 201; and, if the latter, what sort of compensation mechanism should apply. The first question is difficult because we do not believe it is resolved by the plain language of section 251(b)(5) but, instead, requires us to consider the relationship of that section to other provisions of the statute. Moreover, we recognize the legitimate questions raised by the court with respect to the rationales underlying our regulatory treatment of ISPs and ISP traffic. We seek to respond to those questions in this Order. Ultimately, however, we conclude that Congress, through section 251(g),[7] expressly limited the reach of section 251(b)(5) to exclude ISP-bound traffic. Accordingly, we affirm our conclusion in the *Declaratory Ruling* that ISP-bound traffic is not subject to the reciprocal compensation obligations of section 251(b)(5).

4. Because we determine that intercarrier compensation for ISP-bound traffic is within the jurisdiction of this Commission under section 201 of the Act, it is incumbent upon us to establish an appropriate cost recovery mechanism for delivery of this traffic. Based upon the record before us, it appears that the most efficient recovery mechanism for ISP-bound traffic may be bill and keep, whereby each carrier recovers costs from its own end-users. As we recognize in the *NPRM*, intercarrier compensation regimes that require carrier-to-carrier payments are likely to distort the development of competitive markets by divorcing cost recovery from the ultimate consumer of services. In a monopoly environment, permitting carriers to recover some of their costs from interconnecting carriers might serve certain public policy goals. In order to promote universal service, for example, this Commission historically has capped end-user common line charges and required local exchange carriers to recover any shortfall through per-minute charges assessed on interexchange carriers.[8] These sorts of implicit subsidies cannot be sustained, however, in the competitive markets for telecommunications services envisioned by the 1996 Act. In the *NPRM*, we suggest that, given the opportunity, carriers always will prefer to recover their costs from other carriers rather than their own end-users in order to gain competitive advantage. Thus carriers have every incentive to compete, not on basis of quality and efficiency, but on the basis of their ability to shift costs to other carriers, a troubling distortion that prevents market forces from distributing limited investment resources to their most efficient uses.

5. We believe that this situation is particularly acute in the case of carriers delivering traffic to ISPs because these customers generate extremely high traffic volumes that are entirely one-directional. Indeed, the weight of the evidence in the current record indicates that precisely the types of market distortions identified above are taking place with respect to this traffic. For example, comments in the record indicate that competitive local exchange carriers (CLECs), on average, terminate eighteen times more traffic than they originate, resulting in annual CLEC reciprocal compensation billings of approximately two billion dollars, ninety percent of which is

[7] 47 U.S.C. § 251(g).

[8] Access Charge Reform, CC Docket No. 96-262, First Report and Order, 12 FCC Rcd 15982, 15998-99 (1997) (*Access Charge Reform Order*), *aff'd, Southwestern Bell Telephone Co. v. FCC,* 153 F.3d 523 (8th Cir. 1998).

for ISP-bound traffic.[9] Moreover, the traffic imbalances for some competitive carriers are in fact much greater, with several carriers terminating more than forty times more traffic than they originate.[10] There is nothing inherently wrong with carriers having substantial traffic imbalances arising from a business decision to target specific types of customers. In this case, however, we believe that such decisions are driven by regulatory opportunities that disconnect costs from end-user market decisions. Thus, under the current carrier-to-carrier recovery mechanism, it is conceivable that a carrier could serve an ISP free of charge and recover all of its costs from originating carriers. This result distorts competition by subsidizing one type of service at the expense of others.

6. Although we believe this arbitrage opportunity is particularly manifest with respect to ISP-bound traffic, we suggest in the *NPRM* that any compensation regime based on carrier-to-carrier payments may create similar market distortions. Accordingly, we initiate an inquiry as to whether bill and keep is a more economically efficient compensation scheme than the existing carrier-to-carrier payment mechanisms. Alternatively, the record developed in that proceeding may suggest modifications to carrier-to-carrier cost recovery mechanisms that address the competitive concerns identified above. Based upon the current record, however, bill and keep appears the preferable cost recovery mechanism for ISP-bound traffic because it eliminates a substantial opportunity for regulatory arbitrage. We do not fully adopt a bill and keep regime in this Order, however, because there are specific questions regarding bill and keep that require further inquiry, and we believe that a more complete record on these issues is desirable before requiring carriers to recover most of their costs from end-users. Because these questions are equally relevant to our evaluation of a bill and keep approach for other types of traffic, we will consider them in the context of the *NPRM*. Moreover, we believe that there are significant advantages to a global evaluation of the intercarrier compensation mechanisms applicable to different types of traffic to ensure a more systematic, symmetrical treatment of these issues.

7. Because the record indicates a need for immediate action with respect to ISP-bound traffic, however, in this Order we will implement an interim recovery scheme that: (i) moves aggressively to eliminate arbitrage opportunities presented by the existing recovery mechanism for ISP-bound by lowering payments and capping growth; and (ii) initiates a 36-month transition towards a complete bill and keep recovery mechanism while retaining the ability to adopt an alternative mechanism based upon a more extensive evaluation in the *NPRM* proceeding. Specifically, we adopt a gradually declining cap on the amount that carriers may recover from

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[9] *See, e.g.,* Letter from Robert T. Blau, BellSouth, to Magalie Roman Salas, Secretary, FCC (November 6, 2000); *see also* Verizon Remand Comments at 2 (Verizon will be billed more than one billion dollars in 2000 for Internet-bound calls); Letter from Richard J. Metzger, Focal, to Deena Shetler, Legal Advisor to Commissioner Gloria Tristani, FCC (Jan. 11, 2001)(ILECs owed $1.98 billion in reciprocal compensation to CLECs in 2000). On June 23, 2000, the Commission released a Public Notice seeking comment on the issues raised by the court's remand. *See* Comment Sought on Remand of the Commission's Reciprocal Compensation Declaratory Ruling by the U.S. Court of Appeals for the D.C. Circuit, CC Docket Nos. 96-98, 99-68, Public Notice, 15 FCC Rcd 11311 (2000) (*Public Notice*). Comments and reply comments filed in response to the *Public Notice* are identified herein as "Remand Comments" and "Remand Reply Comments," respectively. Comments and replies filed in response the 1999 *Intercarrier Compensation NPRM* are identified as "Comments" and "Reply Comments," respectively.

[10] *See, e.g.,* Verizon Remand Comments at 11, 21.

other carriers for delivering ISP-bound traffic. We also cap the amount of traffic for which any such compensation is owed, in order to eliminate incentives to pursue new arbitrage opportunities. In sum, our goal in this Order is decreased reliance by carriers upon carrier-to-carrier payments and an increased reliance upon recovery of costs from end-users, consistent with the tentative conclusion in the *NPRM* that bill and keep is the appropriate intercarrier compensation mechanism for ISP-bound traffic. In this regard, we emphasize that the rate caps we impose are not intended to reflect the costs incurred by each carrier that delivers ISP traffic. Some carriers' costs may be higher; some are probably lower. Rather, we conclude, based upon all of the evidence in this record, that these rates are appropriate limits on the amounts recovered from other carriers and provide a reasonable transition from rates that have (at least until recently) typically been much higher. Carriers whose costs exceed these rates are (and will continue to be) able to collect additional amounts from their ISP customers. As we note above, and explain in more detail below, we believe that such end-user recovery likely is the most efficient mechanism.

8. The basic structure of this transition is as follows:

* Beginning on the effective date of this Order, and continuing for six months, intercarrier compensation for ISP-bound traffic will be capped at a rate of $.0015/minute-of-use (mou). Starting in the seventh month, and continuing for eighteen months, the rate will be capped at $.0010/mou. Starting in the twenty-fifth month, and continuing through the thirty-sixth month or until further Commission action (whichever is later), the rate will be capped at $.0007/mou. Any additional costs incurred must be recovered from end-users. These rates reflect the downward trend in intercarrier compensation rates contained in recently negotiated interconnection agreements, suggesting that they are sufficient to provide a reasonable transition from dependence on intercarrier payments while ensuring cost recovery.

* We also impose a cap on total ISP-bound minutes for which a local exchange carrier (LEC) may receive this compensation. For the year 2001, a LEC may receive compensation, pursuant to a particular interconnection agreement, for ISP-bound minutes up to a ceiling equal to, on an annualized basis, the number of ISP-bound minutes for which that LEC was entitled to compensation under that agreement during the first quarter of 2001, plus a ten percent growth factor. For 2002, a LEC may receive compensation for ISP-bound minutes up to a ceiling equal to the minutes for which it was entitled to compensation in 2001, plus another ten percent growth factor. In 2003, a LEC may receive compensation for ISP-bound minutes up to a ceiling equal to the 2002 ceiling. These caps are consistent with projections of the growth of dial-up Internet access for the first two years of the transition and are necessary to ensure that such growth does not undermine our goal of limiting intercarrier compensation and beginning a transition toward bill and keep. Growth above these caps should be based on a carrier's ability to provide efficient service, not on any incentive to collect intercarrier payments.

* Because the transitional rates are *caps* on intercarrier compensation, they have no effect to the extent that states have ordered LECs to exchange ISP-bound traffic either at rates below the caps or on a bill and keep basis (or otherwise have not required payment of compensation for this traffic). The rate caps are designed to provide a transition toward bill and keep, and no transition is necessary for carriers already exchanging traffic at rates below the caps.

* In order to limit disputes and costly measures to identify ISP-bound traffic, we adopt a rebuttable presumption that traffic exchanged between LECs that exceeds a 3:1 ratio of terminating to originating traffic is ISP-bound traffic subject to the compensation mechanism set forth in this Order. This ratio is consistent with those adopted by state commissions to identify ISP or other convergent traffic that is subject to lower intercarrier compensation rates. Carriers that seek to rebut this presumption, by showing that traffic above the ratio is not ISP-bound traffic or, conversely, that traffic below the ratio is ISP-bound traffic, may seek appropriate relief from their state commissions pursuant to section 252 of the Act.

* Finally, the rate caps for ISP-bound traffic (or such lower rates as have been imposed by states commissions for the exchange of ISP-bound traffic) apply only if an incumbent LEC offers to exchange all traffic subject to section 251(b)(5) at the same rate. An incumbent LEC that does not offer to exchange section 251(b)(5) traffic at these rates must exchange ISP-bound traffic at the state-approved or state-negotiated reciprocal compensation rates reflected in their contracts. The record fails to demonstrate that there are inherent differences between the costs of delivering a voice call to a local end-user and a data call to an ISP, thus the "mirroring" rule we adopt here requires that incumbent LECs pay the same rates for ISP-bound traffic that they receive for section 251(b)(5) traffic.

III. BACKGROUND

9. In the *Declaratory Ruling* released on February 26, 1999, we addressed the regulatory treatment of ISP-bound traffic. In that order, we reached several conclusions regarding the jurisdictional nature of this traffic, and we proposed several approaches to intercarrier compensation for ISP-bound traffic in an accompanying *Intercarrier Compensation NPRM*. The order, however, was vacated and remanded on appeal.[11] This Order, therefore, again focuses on the regulatory treatment of ISP-bound traffic and the appropriate intercarrier compensation regime for carriers that collaborate to deliver traffic to ISPs.

10. As we noted in the *Declaratory Ruling*, an ISP's end-user customers typically access the Internet through an ISP server located in the same local calling area.[12] Customers generally pay their LEC a flat monthly fee for use of the local exchange network, including connections to their local ISP.[13] They also generally pay their ISP a flat monthly fee for access to the Internet.[14] ISPs then combine "computer processing, information storage, protocol

[11] *See Bell Atlantic*, 206 F.3d 1.

[12] *Declaratory Ruling*, 14 FCC Rcd at 3691.

[13] *Declaratory Ruling*, 14 FCC Rcd at 3691.

[14] *Declaratory Ruling*, 14 FCC Rcd at 3691.

conversion, and routing with transmission to enable users to access Internet content and services."[15]

11. ISPs, one class of enhanced service providers (ESPs),[16] also may utilize LEC services to provide their customers with access to the Internet. In the *MTS/WATS Market Structure Order*, the Commission acknowledged that ESPs were among a variety of users of LEC interstate access services.[17] Since 1983, however, the Commission has exempted ESPs from the payment of certain interstate access charges.[18] Consequently ESPs, including ISPs, are treated as end-users for the purpose of applying access charges and are, therefore, entitled to pay local business rates for their connections to LEC central offices and the public switched telephone network (PSTN).[19] Thus, despite the Commission's understanding that ISPs use *interstate* access services, pursuant to the ESP exemption, the Commission has permitted ISPs to take service under *local* tariffs.

12. The 1996 Act set standards for the introduction of competition into the market for local telephone service, including requirements for interconnection of competing telecommunications carriers.[20] As a result of interconnection and growing local competition, more than one LEC may be involved in the delivery of telecommunications within a local service

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[15] *Declaratory Ruling*, 14 FCC Rcd at 3691 (citing Federal-State Joint Board on Universal Service, CC Docket No. 96-45, Report to Congress, 13 FCC Rcd 11501, 11531 (1998) (*Universal Service Report to Congress*)).

[16] The Commission defines "enhanced services" as "services, offered over common carrier transmission facilities used in interstate communications, which employ computer processing applications that act on the format, content, code, protocol or similar aspects of the subscriber's transmitted information; provide the subscriber additional, different, or restructured information; or involve subscriber interaction with stored information." 47 C.F.R. § 64.702(a). The 1996 Act describes these services as "information services." *See* 47 U.S.C. § 153(20) ("information service" refers to the "offering of a capability for generating, acquiring, storing, transforming, processing, retrieving, utilizing, or making available information via telecommunications."). *See also Universal Service Report to Congress*, 13 FCC Rcd at 11516 (the "1996 Act's definitions of telecommunications service and information service essentially correspond to the pre-existing categories of basic and enhanced services").

[17] MTS and WATS Market Structure, CC Docket No. 78-72, Memorandum Opinion and Order, 97 FCC 2d 682, 711 (1983)(*MTS/WATS Market Structure Order)*(ESPs are "[a]mong the variety of users of access service" and "obtain[] local exchange services or facilities which are used, in part or in whole, for the purpose of completing interstate calls which transit [their] location and, commonly, another location.").

[18] This policy is known as the "ESP exemption." *See MTS/WATS Market Structure Order*, 97 FCC 2d at 715 (ESPs have been paying local business service rates for their interstate access and would experience rate shock that could affect their viability if full access charges were instead applied); *see also* Amendments of Part 69 of the Commission's Rules Relating to Enhanced Service Providers, CC Docket 87-215, Order, 3 FCC Rcd 2631, 2633 (1988) (*ESP Exemption Order*) ("the imposition of access charges at this time is not appropriate and could cause such disruption in this industry segment that provision of enhanced services to the public might be impaired"); *Access Charge Reform Order*, 12 FCC Rcd at 16133 ("[m]aintaining the existing pricing structure ... avoids disrupting the still-evolving information services industry").

[19] *ESP Exemption Order*, 3 FCC Rcd at 2635 n.8, 2637 n.53. *See also Access Charge Reform Order*, 12 FCC Rcd at 16133-35.

[20] 47 U.S.C. §§ 251-252.

area. Section 251(b)(5) of the Act addresses the need for LECs to agree to terms for the mutual exchange of traffic over their interconnecting networks. It specifically provides that LECs have the duty to "establish reciprocal compensation arrangements for the transport and termination of telecommunications."[21] The Commission determined, in the *Local Competition Order,* 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.[22]

13. As a result of this determination, 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.[23] The Commission determined at that time that resolution of this question turned on whether ISP-bound traffic "originates and terminates within a local area," as set forth in our rule.[24] Many competitive LECs argued that ISP-bound traffic is local traffic that terminates at the ISP's local server, where a second, packet-switched "call" then begins.[25] Thus, they argued, the reciprocal compensation obligations of section 251(b)(5) apply to this traffic. Incumbent LECs, on the other hand, argued that no reciprocal compensation is due because ISP-bound traffic is interstate telecommunications traffic that continues through the ISP server and terminates at the remote Internet sites accessed by ISP customers.[26]

14. The Commission concluded in the *Declaratory Ruling* that the jurisdictional nature of ISP-bound traffic should be determined, consistent with Commission precedent, by the end

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[21] 47 U.S.C. § 251(b)(5).

[22] *See Local Competition Order*, 11 FCC Rcd at 16013 ("With the exception of traffic to or from a CMRS network, state commissions have the authority to determine what geographic areas should be considered 'local areas' for the purpose of applying reciprocal compensation obligations under section 251(b)(5), consistent with the state commissions' historical practice of defining local service areas for wireline LECs."); *see also* 47 C.F.R. § 51.701(b)(1-2). For CMRS traffic, the Commission determined that reciprocal compensation applies to traffic that originates and terminates within the same Major Trading Area (MTA). *See* 47 C.F.R. § 51.701(b)(2).

[23] *See, e.g.,* Petitions for Reconsideration and Clarification of Action in Rulemaking Proceedings, 61 Fed. Reg. 53922 (1996); Petition for Partial Reconsideration and Clarification of MFS Communications Co., Inc. at 28; Letter from Richard J. Metzger, ALTS, to Regina M. Keeney, Chief, Common Carrier Bureau, FCC (June 20, 1997); Pleading Cycle Established for Comments on Request by ALTS for Clarification of the Commission's Rules Regarding Reciprocal Compensation for Information Service Provider Traffic, CCB/CPD 97-30, DA 97-1399 (rel. July 2, 1997); Letter from Edward D. Young and Thomas J. Tauke, Bell Atlantic, to William E. Kennard, Chairman, FCC (July 1, 1998). The Commission later directed parties wishing to make *ex parte* presentations regarding the applicability of reciprocal compensation to ISP-bound traffic to make such filings in CC Docket No. 96-98, the local competition proceeding. *See Ex Parte* Procedures Regarding Requests for Clarification of the Commission's Rules Regarding Reciprocal Compensation for Information Service Provider Traffic, CC Docket No. 96-98, Public Notice, 13 FCC Rcd. 15568 (1998).

[24] *Declaratory Ruling*, 14 FCC Rcd at 3693-94.

[25] *Declaratory Ruling,* 14 FCC Rcd at 3694.

[26] *Declaratory Ruling,* 14 FCC Rcd at 3695.

points of the communication.[27] Applying this "end-to-end" analysis, the Commission determined that Internet communications originate with the ISP's end-user customer and continue beyond the local ISP server to websites or other servers and routers that are often located outside of the state.[28] The Commission found, therefore, that ISP-bound traffic is not local because it does not "originate[] and terminate[] within a local area."[29] Instead, it is jurisdictionally mixed and largely interstate, and, for that reason, the Commission found that the reciprocal compensation obligations of section 251(b)(5) do not apply to this traffic.[30]

15. Despite finding that ISP-bound traffic is largely interstate, the Commission concluded that it had not yet established a federal rule to govern intercarrier compensation for this traffic.[31] The Commission found that, in the absence of conflicting federal law, parties could voluntarily include ISP-bound traffic in their interconnection agreements under sections 251 and 252 of the Act.[32] It also found that, even though section 251(b)(5) does not *require* reciprocal compensation for ISP-bound traffic, nothing in the statute or our rules prohibits state commissions from determining in their arbitrations that reciprocal compensation for this traffic is appropriate, so long as there is no conflict with governing federal law.[33] Pending adoption of a federal rule, therefore, state commissions exercising their authority under section 252 to arbitrate, interpret, and enforce interconnection agreements would determine whether and how interconnecting carriers should be compensated for carrying ISP-bound traffic.[34] In the *Intercarrier Compensation NPRM* accompanying the *Declaratory Ruling*, the Commission requested comment on the most appropriate intercarrier compensation mechanism for ISP-bound traffic.[35]

16. On March 24, 2000, prior to release of a decision addressing these issues, the court of appeals vacated certain provisions of the *Declaratory Ruling* and remanded the matter to the

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[27] *Declaratory Ruling,* 14 FCC Rcd at 3695-3701; *see also* Petition for Emergency Relief and Declaratory Ruling Filed by BellSouth Corporation, Memorandum Opinion and Order, 7 FCC Rcd 1619 (1992) (*BellSouth MemoryCall*), *aff'd, Georgia Pub. Serv. Comm'n v. FCC*, 5 F.3d 1499 (11th Cir. 1993)(table); Teleconnect Co. v. Bell Telephone Co. of Penn., E-88-83, 10 FCC Rcd 1626 (1995) (*Teleconnect*), *aff'd sub nom. Southwestern Bell Tel. Co. v. FCC*, 116 F.3d 593 (D.C. Cir. 1997).

[28] *Declaratory Ruling,* 14 FCC Rcd at 3695-97.

[29] *Declaratory Ruling,* 14 FCC Rcd at 3697.

[30] *Declaratory Ruling,* 14 FCC Rcd at 3690, 3695-3703.

[31] *Declaratory Ruling,* 14 FCC Rcd at 3703.

[32] *Declaratory Ruling,* 14 FCC Rcd at 3703.

[33] *Declaratory Ruling,* 14 FCC Rcd at 3706.

[34] *Declaratory Ruling,* 14 FCC Rcd at 3703-06. The Commission did recognize, however, that its conclusion that ISP-bound traffic is largely interstate might cause some state commissions to re-examine their conclusions that reciprocal compensation is due to the extent that those conclusions were based on a finding that this traffic terminates at the ISP's server. *Id.* at 3706.

[35] *Declaratory Ruling,* 14 FCC Rcd at 3707-09.

Commission.[36] The court observed that, although "[t]here is no dispute that the Commission has historically been justified in relying on this [end-to-end] method when determining whether a particular communication is jurisdictionally interstate,"[37] the Commission had not adequately explained why the jurisdictional analysis was dispositive of, or indeed relevant to, the question whether a call to an ISP is subject to the reciprocal compensation requirements of section 251(b)(5).[38] The court noted that the Commission had not applied its definition of "termination" to its analysis of the scope of section 251(b)(5),[39] and the court distinguished cases upon which the Commission relied in its end-to-end analysis because they involve continuous communications switched by interexchange carriers (IXCs), as opposed to ISPs, the latter of which are not telecommunications providers.[40] As an "independent reason" to vacate, the court also held that the Commission had failed to address how its conclusions "fit . . . within the governing statute."[41] In particular, the court found that the Commission had failed to explain why ISP-bound traffic was not "telephone exchange service," as defined in the Act.[42]

17. In a public notice released June 23, 2000, the Commission sought comment on the issues raised by the court's remand.[43] The *Public Notice* specifically requested that parties comment on the jurisdictional nature of ISP-bound traffic, the scope of the reciprocal compensation requirement of section 251(b)(5), and the relevance of the concepts of "termination," "telephone exchange service," "exchange access service," and "information access."[44] It invited parties to update the record by responding to any *ex parte* presentations filed after the close of the reply period on April 27, 1999. It also sought comment on any new or innovative intercarrier compensation arrangements for ISP-bound traffic that parties may have considered or entered into during the pendency of the proceeding.

IV. DISCUSSION

A. Background

18. The nature and character of communications change over time. Over the last decade communications services have been radically altered by the advent of the Internet and the

[36] *See Bell Atlantic*, 206 F.3d 1.

[37] *Bell Atlantic*, 206 F.3d at 5.

[38] *Bell Atlantic*, 206 F.3d at 5; *see also id.* at 8 (the Commission had not "supplied a real explanation for its decision to treat end-to-end analysis as controlling" with respect to the application of section 251(b)(5)).

[39] *See Bell Atlantic*, 206 F.3d at 6-7.

[40] *See Bell Atlantic*, 206 F.3d at 6-7.

[41] *Bell Atlantic*, 206 F.3d at 8.

[42] *Bell Atlantic*, 206 F.3d at 8-9; 47 U.S.C. § 153(47) (defining "telephone exchange service").

[43] *Public Notice*, 15 FCC Rcd 11311.

[44] *Id.; see also* 47 U.S.C. § 251(g); 47 U.S.C. § 153(20).

nature of Internet communications. Indeed, the Internet has given rise to new forms of communications such as e-mail, instant messaging, and other forms of digital, IP-based services. Many of these new services and formats have been layered over and integrated with the existing public telephone systems. Most notably, Internet service providers have come into existence in order to facilitate mass market access to the Internet. A consumer with access to a standard phone line is able to communicate with the Internet, because an ISP converts the analog signal to digital and converts the communication to the IP protocol. This allows the user to access the global Internet infrastructure and communicate with users and websites throughout the world. In a narrowband context, the ISP facilitates access to this global network.

19. The Commission has struggled with how to treat Internet traffic for regulatory purposes, given the bevy of its rules premised on the architecture and characteristics of the mature public switched telephone network. For example, Internet consumers may stay on the network much longer than the design expectations of a network engineered primarily for voice communications. Additionally, the "bursty" nature of packet-switched communications skews the traditional assumptions of per minute pricing to which we are all accustomed. The regulatory challenges have become more acute as Internet usage has exploded.[45]

20. The issue of intercarrier compensation for Internet-bound traffic with which we are presently wrestling is a manifestation of this growing challenge. Traditionally, telephone carriers would interconnect with each other to deliver calls to each other's customers. It was generally assumed that traffic back and forth on these interconnected networks would be relatively balanced. Consequently, to compensate interconnecting carriers, mechanisms like reciprocal compensation were employed, whereby the carrier whose customer initiated the call would pay the other carrier the costs of using its network.

21. Internet usage has distorted the traditional assumptions because traffic to an ISP flows exclusively in one direction, creating an opportunity for regulatory arbitrage and leading to uneconomical results. Because traffic to ISPs flows one way, so does money in a reciprocal compensation regime. It was not long before some LECs saw the opportunity to sign up ISPs as customers and collect, rather than pay, compensation because ISP modems do not generally call anyone in the exchange. In some instances, this led to classic regulatory arbitrage that had two troubling effects: (1) it created incentives for inefficient entry of LECs intent on serving ISPs exclusively and not offering viable local telephone competition, as Congress had intended to facilitate with the 1996 Act; (2) the large one-way flows of cash made it possible for LECs serving ISPs to afford to pay their own customers to use their services, potentially driving ISP rates to consumers to uneconomical levels. These effects prompted the Commission to consider the nature of ISP-bound traffic and to examine whether there was any flexibility under the statute to modify and address the pricing mechanisms for this traffic, given that there is a federal statutory provision authorizing reciprocal compensation.[46] In the *Declaratory Ruling,* the Commission

[45] *See* Digital Economy 2000, U.S. Department of Commerce (June 2000) ("Three hundred million people now use the Internet, compared to three million in 1994.")

[46] 47 U.S.C. § 251(b)(5).

concluded that Internet-bound traffic was jurisdictionally interstate and, thus, not subject to section 251(b)(5).

22. In *Bell Atlantic*, the court of appeals vacated the *Declaratory Ruling* and remanded the case to the Commission to determine whether ISP-bound traffic is subject to statutory reciprocal compensation requirements. The court held that the Commission failed to explain adequately why LECs did not have a duty to pay reciprocal compensation under section 251(b)(5) of the Act and remanded the case to the Commission.

B. Statutory Analysis

23. In this section, we reexamine our findings in the *Declaratory Ruling* and conclude that ISP-bound traffic is not subject to the reciprocal compensation requirement in section 251(b) because of the carve-out provision in section 251(g), which excludes several enumerated categories of traffic from the universe of "telecommunications" referred to in section 251(b)(5). We explain our rationale and the interrelationship between these two statutory provisions in more detail below. We further conclude that section 251(i) affirms the Commission's role in continuing to develop appropriate pricing and compensation mechanisms for traffic -- such as Internet-bound traffic -- that travels over convergent, mixed, and new types of network architectures.

1. Introduction

24. In the *Local Competition Order*, the Commission determined that the reciprocal compensation provisions of section 251(b)(5) applied only to what it termed "local" traffic rather than to the transport and termination of interexchange traffic.[47] In the subsequent *Declaratory Ruling,* the Commission focused its discussion on whether ISP-bound traffic terminated within a local calling area such as to be properly considered "local" traffic. To resolve that issue, the Commission focused predominantly on an end-to-end jurisdictional analysis.

25. On review, the court accepted (without necessarily endorsing) the Commission's view that traffic was either "local" or "long distance" but faulted the Commission for failing to explain adequately why ISP-bound traffic was more properly categorized as long distance, rather than local. The Commission had attempted to do so by employing an end-to-end jurisdictional analysis of ISP traffic, rather than by evaluating the traffic under the statutory definitions of "telephone exchange service" and "exchange access." After acknowledging that the Commission "has historically been justified in relying on" end-to-end analysis for determining whether a communication is jurisdictionally interstate, the court stated: "But [the Commission] has yet to provide an explanation of why this inquiry is relevant to discerning whether a call to an ISP should fit within the local call model of two collaborating LECs or the long-distance model of a long-distance carrier collaborating with two LECs."[48] After reviewing the manner in which the Commission analyzed the parameters of section 251(b)(5) traffic in the *Declaratory Ruling*, the

[47] *Local Competition Order*, 11 FCC Rcd at 16012.

[48] *Bell Atlantic*, 206 F.3d at 5.

court found that the central issue was "whether a call to an ISP is local or long distance."[49] The court noted further that "[n]either category fits clearly."[50]

26. Upon further review, we find that the Commission erred in focusing on the nature of the service (*i.e.*, local or long distance) and in stating that there were only two forms of telecommunications services -- telephone exchange service and exchange access -- for purposes of interpreting the relevant scope of section 251(b)(5).[51] Those services are the only two expressly defined by the statute. The court found fault in the Commission's failure to analyze communications delivered by a LEC to an ISP in terms of these definitions.[52] Moreover, it cited the Commission's own confusing treatment of ISP-bound traffic as local under the ESP exemption and interstate for jurisdictional purposes.[53]

27. Part of the ambiguity identified by the court appears to arise from the ESP exemption, a long-standing Commission policy that affords one class of entities using interstate access -- information service providers -- *the option* of purchasing interstate access services on a flat-rated basis from intrastate local business tariffs, rather than from interstate access tariffs used by IXCs. Typically, information service providers have used this exemption to their advantage by choosing to pay local business rates, rather than the tariffed interstate access charges that other users of interstate access are required to pay.[54] In fending off challenges from those who argued that information service providers must be subject to access charges because they provide interexchange service, the Commission has often tried to walk the subtle line of arguing that the service provided by the LEC to the information service provider is an access service, but can justifiably be treated as akin to local telephone exchange service for purposes of the rates the LEC may charge. This balancing act reflected the historical view that there were only two kinds of intercarrier compensation: one for local telephone exchange service, and a second (access charges) for long distance services. Attempting to describe a hybrid service (the nature being an access service, but subject to a compensation mechanism historically limited to local service) was always a bit of mental gymnastics.

28. The court opinion underscores a tension between the jurisdictional nature of ISP-bound traffic, which the Commission has long held to be interstate, and the alternative compensation mechanism that the ESP exemption has permitted for this traffic. The court seems to recognize that, if an end-to-end analysis were properly applied to this traffic, this traffic would be predominantly interstate, and consequently "long distance." Yet it also questions whether this

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[49] *Id.*

[50] *Id.*

[51] *Id.* at 8.

[52] *Id.* at 8-9.

[53] *Id.*

[54] Significantly, however, the compensation mechanism effected for this predominantly interstate access traffic is the result of a federal mandate, which requires states to treat ISP-bound traffic for compensation purposes in a manner similar to local traffic if ISPs so request. *See infra* note 105.

traffic should be considered "local" for purposes of section 251(b)(5) in light of the ESP exemption, by which the Commission has allowed information service providers at their option to be treated for compensation purposes (but *not* for jurisdictional purposes) as end-users.

29. The court also expresses consternation over what it perceives as an inconsistency in the Commission's reasoning. On the one hand, the court observes, the Commission has argued that calls to ISPs are predominantly interstate for jurisdictional purposes because they terminate at the ultimate destination of the traffic in a distant website or e-mail server (*i.e.,* the "one call theory"). On the other hand, the court notes, the Commission has defended the ESP exemption by analogizing an ISP to a high-volume business user, such as a pizza parlor or travel agent, that has different usage patterns and longer call holding times than the average customer.[55] The court questioned whether any such differences should not, as some commenters argued, lend support to treating this traffic as "local" for purposes of section 251(b)(5). As discussed in further detail below, while we continue to believe that retaining the ESP exemption is important in order to facilitate growth of Internet services, we conclude in section IV.C.1, *infra*, that reciprocal compensation for ISP-bound traffic distorts the development of competitive markets.

30. We respond to the court's concerns, and seek to resolve these tensions, by reexamining the grounds for our conclusion that ISP-bound traffic falls outside the scope of section 251(b)(5). A more comprehensive review of the statute reveals that Congress intended to exempt certain enumerated categories of service from section 251(b)(5) when the service was provided to interexchange carriers or information service providers. The exemption focuses not only on the nature of the service, but on to whom the service is provided. For services that qualify, compensation is based on rules, regulations, and policies that preceded the 1996 Act and not on section 251(b)(5), which was minted by the Act. As we explain more fully below, the service provided by LECs to deliver traffic to an ISP constitutes, at a minimum, "information access" under section 251(g) and, thus, compensation for this service is not governed by section 251(b)(5), but instead by the Commission's policies for this traffic and the rules adopted under its section 201 authority.[56]

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[55] *Access Charge Reform Order*, 12 FCC Rcd at 16134 ("Internet access does generate different usage patterns and longer call holding times than average voice usage.").

[56] Some critics of the Commission's order may contend that we rely here on the same reasoning that the court rejected in *Bell Atlantic*. We acknowledge that there is a superficial resemblance between the Commission's previous order and this one: Here, as before, the Commission finds that ISP-bound traffic falls outside the scope of section 251(b)(5)'s reciprocal compensation requirement and within the Commission's access charge jurisdiction under section 201(b). The rationale underlying the two orders, however, differs substantially. Here the Commission bases its conclusion that ISP-bound traffic falls outside section 251(b)(5) on its construction of sections 251(g) and (i) -- not, as in the previous order, on the theory that section 251(b)(5) applies only to "local" telecommunications traffic and that ISP-bound traffic is interstate. Furthermore, to the extent the Commission continues to characterize ISP-bound traffic as interstate for purposes of its section 201 authority, it has sought in this Order to address in detail the *Bell Atlantic* court's concerns.

2. Section 251(g) Excludes Certain Categories of Traffic from the Scope of "Telecommunications" Subject to Section 251(b)(5)

a. Background

31. Section 251(b)(5) imposes a duty on all local exchange carriers to "establish reciprocal compensation arrangements for the transport and termination of telecommunications."[57] On its face, local exchange carriers are required to establish reciprocal compensation arrangements for the transport and termination of *all* "telecommunications" they exchange with another telecommunications carrier, without exception. The Act separately defines "telecommunications" as the "transmission, between or among points specified by the user, of information of the user's choosing, without change in the form or content of the information as sent and received."[58]

32. Unless subject to further limitation, section 251(b)(5) would require reciprocal compensation for transport and termination of *all* telecommunications traffic, -- *i.e.*, whenever a local exchange carrier exchanges telecommunications traffic with another carrier. Farther down in section 251, however, Congress explicitly exempts certain telecommunications services from the reciprocal compensation obligations. Section 251(g) provides:

> On or after the date of enactment of the Telecommunications Act of 1996, each local exchange carrier . . . 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 [Federal Communications] Commission, until such restrictions and obligations are explicitly superseded by regulations prescribed by the Commission after such date of enactment.[59]

33. The meaning of section 251(g) is admittedly not transparent. Indeed, section 251(g) clouds any plain reading of section 251(b)(5). Nevertheless, the Commission believes the two provisions can be read together consistently and in a manner faithful to Congress's intent.[60]

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[57] 47 U.S.C. § 251(b)(5).

[58] 47 U.S.C. § 153(43).

[59] 47 U.S.C. § 251(g) (emphasis added).

[60] *See AT&T Corp. v. Iowa Utils. Bd.*, 525 U.S. 366, 397 (1999)("It would be a gross understatement to say that the Telecommunications Act of 1996 is not a model of clarity. It is in many important respects a model of ambiguity or indeed even self-contradiction. . . . But Congress is well aware that the ambiguities it chooses to produce in a statute will be resolved by the implementing agency. . . . We can only enforce the clear limits that the 1996 Act contains.").

b. Discussion

34. We conclude that a reasonable reading of the statute is that Congress intended to exclude the traffic listed in subsection (g) from the reciprocal compensation requirements of subsection (b)(5).[61] Thus, the statute does not mandate reciprocal compensation for "exchange access, information access, and exchange services for such access" provided to IXCs and information service providers. Because we interpret subsection (g) as a carve-out provision, the focus of our inquiry is on the universe of traffic that falls within subsection (g) and *not* the universe of traffic that falls within subsection (b)(5). This analysis differs from our analysis in the *Local Competition Order*, in which we attempted to describe the universe of traffic that falls within subsection (b)(5) as all "local" traffic. We also refrain from generically describing traffic as "local" traffic because the term "local," not being a statutorily defined category, is particularly susceptible to varying meanings and, significantly, is not a term used in section 251(b)(5) or section 251(g).

35. We agree with the court that the issue before us requires more than just a jurisdictional analysis. Indeed, as the court recognized, the 1996 Act changed the historic relationship between the states and the federal government with respect to pricing matters.[62] Instead, we focus upon the statutory language of section 251(b) as limited by 251(g). We believe this approach is not only consistent with the statute, but that it resolves the concerns expressed by the court in reviewing our previous analysis. Central to our modified analysis is the recognition that 251(g) is properly viewed as a limitation on the scope of section 251(b)(5) and that ISP-bound traffic falls under one or more of the categories set forth in section 251(g). For that reason, we conclude that ISP-bound traffic is not subject to the reciprocal compensation provisions of section 251(b)(5). We reach that conclusion regardless of the compensation mechanism that may be in place for such traffic under the ESP exemption.

36. We believe that the specific provisions of section 251(g) demonstrate that Congress did not intend to interfere with the Commission's pre-Act authority over "nondiscriminatory interconnection . . . obligations (including receipt of compensation)"[63] with respect to "exchange access, information access, and exchange services for such access" provided to IXCs or information service providers. We conclude that Congress specifically exempted the

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[61] In the *Declaratory Ruling*, the Commission did not explain the relevance of section 251(g) nor discuss the categories of traffic exempted from reciprocal compensation by that provision, at least until the Commission should act otherwise. Reflecting this omission in the underlying order, the *Bell Atlantic* court does not mention the relationship of sections 251(g) and 251(b)(5), nor the enumerated categories of services referenced by subsection (g). Rather, the court focuses its review on the possible categorization of ISP-bound traffic as "local," terminology we now find inappropriate in light of the more express statutory language set forth in section 251(g).

[62] *Bell Atlantic*, 206 F.3d at 6; *see also AT&T Corp. v. Iowa Utils. Bd.*, 525 U.S. at 377-87.

[63] Authority over rates (or "receipt of compensation") is a core feature of "equal access and nondiscriminatory interconnection" obligations. Indeed, one of the Commission's primary goals when designing an access charge regime was to ensure that access users were treated in a nondiscriminatory manner when interconnecting with LEC networks in order to transport interstate communications. *See National Ass'n of Regulatory Util. Comm'nrs v. FCC*, 737 F.2d 1095, 1101-1108, 1130-34 (D.C. Cir. 1984), *cert. denied*, 469 U.S. 1227 (1985)(*NARUC v. FCC*).

services enumerated under section 251(g) from the newly imposed reciprocal compensation requirement in order to ensure that section 251(b)(5) is not interpreted to override either existing or future regulations prescribed by the Commission.[64] We also find that ISP-bound traffic falls within at least one of the three enumerated categories in subsection (g).

37. This limitation in section 251(g) makes sense when viewed in the overall context of the statute. All of the services specified in section 251(g) have one thing in common: they are all access services or services associated with access.[65] Before Congress enacted the 1996 Act, LECs provided access services to IXCs and to information service providers in order to connect calls that travel to points – both interstate and intrastate – beyond the local exchange. In turn, both the Commission and the states had in place access regimes applicable to this traffic, which they have continued to modify over time. It makes sense that Congress did not intend to disrupt these pre-existing relationships.[66] Accordingly, Congress excluded all such access traffic from the purview of section 251(b)(5).

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[64] This view is consistent with previous Commission orders construing section 251(g). The Commission recognized in the *Advanced Services Remand Order*, for example, that section 251(g) preserves the requirements of the AT&T Consent Decree (*see United States v. AT&T*, 552 F. Supp. 131 (D.D.C. 1982)(hereinafter AT&T Consent Decree or Modification of Final Judgment ("MFJ"), but that order does not conclude that section 251(g) preserves *only* MFJ requirements. Deployment of Wireline Services Offering Advanced Telecommunications Capability, CC Docket No. 98-147 et al., Order on Remand, 15 FCC Rcd 385, 407 (1999)(*Advanced Services Remand Order*). Indeed, the ultimate issue addressed in that part of the order was *not* the status or scope of section 251(g) as a carve-out provision at all, but rather the question -- irrelevant for our purposes here -- whether "information access" is a category of service that is mutually exclusive of "exchange access," as the latter term is defined in section 3(16) of the Act. *See id.* at 407-08; *see also infra* para. 42 & note 76. By contrast, when the Commission first addressed the scope of the reciprocal compensation obligations of section 251(b)(5) in the *Local Competition Order*, it expressly cited section 251(g) in support of the decision to exempt from those obligations the tariffed interstate access services provided by all LECs (not just Bell companies subject to the MFJ) to interexchange carriers. 11 FCC Rcd at 16013. The *Bell Atlantic* court did not take issue with the Commission's earlier conclusion that section 251(b)(5) is so limited. 206 F.3d at 4. The interpretation we adopt here -- that section 251(g) exempts from section 251(b)(5) information access services provided to information service providers, as well as access provided to IXCs – thus is fully consistent with the Commission's initial construction of section 251(g), in the *Local Competition Order,* as extending beyond the MFJ to *our own* access rules and policies.

[65] The term "exchange service" as used in section 251(g) is not defined in the Act or in the MFJ. Rather, the term "exchange service" is used in the MFJ as part of the definition of the term "exchange access," which the MFJ defines as "the provision of exchange services for the purpose of originating or terminating interexchange telecommunications." *United States v. AT&T*, 552 F. Supp. at 228. Thus, the term "exchange service" appears to mean, in context, the provision of services in connection with *interexchange* communications. Consistent with that, in section 251(g), the term is used as part of the longer phrase "exchange services for such [exchange] access to interexchange carriers and information service providers." The phrasing in section 251(g) thus parallels the MFJ. All of this indicates that the term "exchange service" is closely related to the provision of exchange access and information access.

[66] Although section 251(g) does not itself compel this outcome with respect to *intrastate* access regimes (because it expressly preserves only *the Commission's* traditional policies and authority over *interstate* access services), it nevertheless highlights an ambiguity in the scope of "telecommunications" subject to section 251(b)(5) -- demonstrating that the term must be construed in light of other provisions in the statute. In this regard, we again conclude that it is reasonable to interpret section 251(b)(5) to exclude traffic subject to parallel intrastate access (continued....)

38. At least one court has already affirmed the principle that the standards and obligations set forth in section 251 are not intended automatically to supersede the Commission's authority over the services enumerated under section 251(g). This question arose in the Eighth Circuit Court of Appeals with respect to the access that LECs provide to IXCs to originate and terminate interstate long-distance calls. Citing section 251(g), the court concluded that the Act contemplates that "LECs will continue to provide exchange access to IXCs for long-distance service, and continue to receive payment, under the *pre-Act* regulations and rates."[67] In *CompTel,* the IXCs had argued that the interstate access services that LECs provide properly fell within the scope of "interconnection" under section 251(c)(2), and that, notwithstanding the carve-out of section 251(g), access charges therefore should be governed by the cost-based standard of section 252(d)(1), rather than determined under the Commission's section 201 authority. The Eighth Circuit rejected that argument, holding that access service does not fall within the scope of section 251(c)(2), and observing that "it is clear from the Act that Congress did *not* intend all access charges to move to cost-based pricing, at least not immediately."[68] Neither the court nor the parties in *CompTel* distinguished between the situation in which *one LEC* provides access service (directly linking the end-user to the IXC) and the situation here in which *two LECs* collaborate to provide access to either an information service provider or IXC. In both circumstances, by its underlying rationale, *CompTel* serves as precedent for establishing that pre-existing regulatory treatment of the services enumerated under section 251(g) are carved out from the purview of section 251(b).

39. Accordingly, unless and until the Commission by regulation should determine otherwise, Congress preserved the pre-Act regulatory treatment of all the access services enumerated under section 251(g). These services thus remain subject to Commission jurisdiction under section 201 (or, to the extent they are *intra*state services, they remain subject to the jurisdiction of state commissions), whether those obligations implicate pricing policies as in *CompTel* or reciprocal compensation.[69] This analysis properly applies to the access services that incumbent LECs provide (either individually or jointly with other local carriers) to connect subscribers with ISPs for Internet-bound traffic. Section 251(g) expressly preserves the Commission's rules and policies governing "access . . . to information service providers" in the same manner as rules and policies governing access to IXCs.[70] As we discuss in more detail

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regulations, because "it would be incongruous to conclude that Congress was concerned about the effects of potential disruption to the interstate access charge system, but had no such concerns about the effects on analogous intrastate mechanisms." *Local Competition Order*, 11 FCC Rcd at 15869.

[67] *CompTel*, 117 F.3d at 1073 (emphasis added). The court continued that the Commission would be free under section 201 to alter its traditional regulatory treatment of interstate access service in the future, but that the standards set out in sections 251 and 252 would *not* be controlling. *Id.*

[68] *CompTel*, 117 F.3d at 1072 (emphasis added).

[69] For further discussion of the jurisdictionally interstate nature of ISP-bound traffic, *see infra* paras. 55-64. *See also NARUC v. FCC*, 737 F.2d at 1136 (determining that traffic to ESPs may properly constitute interstate access traffic); Access Billing Requirements for Joint Service Provision, CC Docket 87-579, Memorandum Opinion and Order, 4 FCC Rcd 7183 (1989).

[70] The Commission has historically dictated the pricing policies applicable to services provided by LECs to information service providers, although those policies differ from those applicable to LEC provision of access (continued....)

below, ISP-bound traffic falls under the rubric of "information access," a legacy term carried over from the MFJ.[71]

40. By its express terms, of course, section 251(g) permits the Commission to supersede pre-Act requirements for interstate access services. Therefore the Commission may make an affirmative determination to adopt rules that subject such traffic to obligations different than those that existed pre-Act. For example, consistent with that authority, the Commission has previously made the affirmative determination that certain categories of interstate access traffic should be subject to section 251(c)(4).[72] Similarly, in implementing section 251(c)(3), the Commission has required incumbent LECs to unbundle certain network elements used in the provision of xDSL-based services.[73] In this instance, however, for the reasons set forth below,[74] we decline to modify the restraints imposed by section 251(g) and instead continue to regulate ISP-bound traffic under section 201.

41. Some may argue that, although the Commission did not analyze subsection (g) in the *Declaratory Ruling,* a passing reference to section 251(g) in one paragraph of the Commission's brief filed with the court in that proceeding suggests that the argument we make here has been specifically rejected by the court. We disagree. Because our analysis of subsection (g) was not raised in the order, the court, under established precedent, probably did not consider

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services to IXCs. Prior to the 1996 Act, it was the Commission that determined that ESPs either may purchase their interstate access services from interstate tariffs or (at their discretion) pay a combination of local business line rates, the *federal* subscriber line charges associated with those business lines, and, where appropriate, the *federal* special access surcharge. *See* note 105, *infra*. We conclude that section 251(g) preserves our ability to continue to dictate the pricing policies applicable to this category of traffic. We do not believe, moreover, that section 251(g) extends only to those specific carriers providing service on February 7, 1996. At the very least, subsection (g) is ambiguous on this point. On the one hand, the first sentence of this provision states that its terms apply to "each local exchange carrier, to the extent that it provides wireline services," without regard to whether it may be a BOC or a competitive LEC. 47 U.S.C. § 251(g). On the other hand, that same sentence refers to restrictions and obligations applicable to "such carrier" prior to February 8, 1996. *Id.* We believe that the most reasonable interpretation of that sentence, in this context, is that subsection (g) was intended to preserve pre-existing regulatory treatment for the enumerated *categories* of carriers, rather than requiring disparate treatment depending upon whether the LEC involved came into existence before or after February 1996.

[71] *See United States v. AT&T,* 552 F. Supp. at 229; *Advanced Services Remand Order*, 15 FCC Rcd at 406-08.

[72] *See* Deployment of Wireline Services Offering Advanced Telecommunications Capability, CC Docket No. 98-147, Second Report and Order, 14 FCC Rcd 19237 (1997), *petition for review pending, Ass'n of Communications Enterprises v. FCC*, D.C. Circuit No. 00-1144. In effect, we have provided for concurrent authority under that provision and section 201 by permitting a party to purchase the same service under filed tariffs or to proceed under interconnection arrangements to secure resale services.

[73] *See* Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, CC Docket No. 96-98, Third Report and Order and Fourth Further Notice of Proposed Rulemaking, 15 FCC Rcd 3696, 3775 (1999). *See also Advanced Services Remand Order,* 15 FCC Rcd at 385, 386. We emphasize that these two examples are illustrative and may not be the only instances where the Commission chooses to supersede pre-Act requirements for interstate access services.

[74] *See infra* paras. 67-71.

the argument when rendering its decision.[75] Indeed, subsection (g) is not mentioned in the court's opinion.

3. ISP-Bound Traffic Falls within the Categories Enumerated in Section 251(g)

42. Having determined that section 251(g) serves as a limitation on the scope of "telecommunications" embraced by section 251(b)(5), the next step in our inquiry is to determine whether ISP-bound traffic falls within one or more of the categories specified in section 251(g): exchange access, information access, and exchange services for such access provided to IXCs and information service providers. Regardless of whether this traffic falls under the category of "exchange access" -- an issue pending before the D.C. Circuit in a separate proceeding[76] - - we conclude that this traffic, at a minimum, falls under the rubric of "information access," a legacy term imported into the 1996 Act from the MFJ, but not expressly defined in the Communications Act.

a. Background

43. Section 251(g) by its terms indicates that, in the provision of exchange access, information access, and exchange services for such access to IXCs and information service providers, various pre-existing requirements and obligations "including receipt of compensation" are preserved, whether these obligations stem from "any court order, *consent decree*, or regulation, order or policy of the Commission." (Emphasis added.) Similarly, in discussing this provision, the Joint Explanatory Statement of the Committee of Conference explicitly refers to preserving the obligations under the "AT&T Consent Decree."[77]

b. Discussion

44. We conclude that Congress's reference to "information access" in section 251(g) was intended to incorporate the meaning of the phrase "information access" as used in the AT&T Consent Decree.[78] The ISP-bound traffic at issue here falls within that category because it is

[75] *See, e.g., SEC v. Chenery Corp.*, 318 U.S. 80, 88 (1943).

[76] *See Worldcom, Inc. v. FCC*, No. 00-1022 et al. (D.C. Cir.). In that proceeding, the Commission has argued that the category previously labeled "information access" under the MFJ is a subset of those services now falling under the category "exchange access" as set forth in section 3(16) of the Act, 47 U.S.C. 153(16), while incumbent LECs and others have argued that the two categories are mutually exclusive. We need not reargue here whether "information access" is a subset of "exchange access" or whether instead they are mutually exclusive categories. The only issue relevant to our section 251(g) inquiry in this case is whether ISP-bound traffic falls, at a minimum, within the legacy category of "information access." Both the Commission and incumbent LECs have agreed that the access provided to ISPs satisfies the definition of information access.

[77] *Joint Explanatory Statement of the Committee of Conference*, S. Conf. Rep. No. 230, 104th Cong., 2d Session at 123 (February 1, 1996).

[78] *United States v. AT&T*, 552 F. Supp. at 196, 229.

traffic destined for an information service provider.[79] Under the consent decree, "information access" was purchased by "information service providers" and was defined as "the provision of specialized exchange telecommunications services . . . in connection with the origination, termination, transmission, switching, forwarding or routing of telecommunications traffic to or from the facilities of a provider of information services."[80] We conclude that this definition of "information access" was meant to include all access traffic that was routed by a LEC "to or from" providers of information services, of which ISPs are a subset.[81] The record in this proceeding also supports our interpretation.[82] When Congress passed the 1996 Act, it adopted new terminology. The term "information access" is not, therefore, part of the new statutory framework. Because the legacy term "information access" in section 251(g) encompasses ISP-bound traffic, however, this traffic is excepted from the scope of the "telecommunications" subject to reciprocal compensation under section 251(b)(5).

45. We recognize, as noted earlier, that based on the rationale of the *Declaratory Ruling*, the court indicated that the question whether this traffic was "local or interstate" was critical to a determination of whether ISP-bound traffic should be subject to reciprocal compensation.[83] We believe that the court's assessment was a result of our statement in

[79] *See* Letter from Gary L. Phillips, SBC, to Jon Nuechterlein, Deputy General Counsel, FCC, at 9 (Dec. 14, 2000)(stating that section 251(g) applies by its very terms to "information access").

[80] *United States v. AT&T*, 552 F. Supp. at 196, 229.

[81] This finding is consistent with our past statements on the issue. In the *Non-Accounting Safeguards Order*, we found that the access that LECs provide to enhanced service providers, including ISPs, constitutes "information access" as the MFJ defines that term. Implementation of the Non-Accounting Safeguards of Sections 271 and 272 of the Communications Act, CC Docket No. 96-149, First Report and Order and Further Notice of Proposed Rulemaking, 11 FCC Rcd 21905, 22024 & n.621 (1996). Although we subsequently overruled our statement in that order that ISPs do not also purchase "exchange access" under section 3(16), we have not altered our finding that the access provided to enhanced service providers (including ISPs) is "information access." *Advanced Services Remand Order*, 15 FCC Rcd at 404-05.

[82] *See, e.g.*, Letter from Gary L. Phillips, SBC, to Jon Nuechterlein, Deputy General Counsel, FCC, at 9 (Dec. 14, 2000). Some have argued that "information access" includes only certain specialized functions unique to the needs of enhanced service providers and does not include basic telecommunications links used to provide enhanced service providers with access to the LEC network. *See, e.g.*, Brief of WorldCom, Inc., D.C. Circuit No. 00-1002, *et al.*, filed Oct. 3, 2000, at 16 n.12. The MFJ definition of information access, however, includes the telecommunications links used for the "origination, termination, [and] transmission" of information services, *and* "*where necessary*, the provision of network signalling" and other functions. *United States v. AT&T*, 552 F. Supp. at 229 (emphasis added). Others have argued that the "information access" definition engrafts a geographic limitation that renders this service category a subset of telephone exchange service. *See* Letter from Richard Rindler, Swindler, Berlin, to Magalie Roman Salas, Secretary, FCC, at 3 (Apr. 12, 2001). We reject that strained interpretation. Although it is true that "information access" is necessarily initiated "in an exchange area," the MFJ definition states that the service is provided "*in connection with* the origination, termination, transmission, switching, forwarding or routing of telecommunications traffic to or from the facilities of a provider of information services" *United States v. AT&T*, 552 F. Supp. at 229 (emphasis added). Significantly, the definition does not further require that the transmission, once handed over to the information service provider, terminate within the same exchange area in which the information service provider first received the access traffic.

[83] *Bell Atlantic*, 206 F.3d at 5.

paragraph nine of the *Declaratory Ruling* that "when two carriers collaborate to complete a *local call*, the originating carrier is compensated by its end user and the terminating carrier is entitled to reciprocal compensation pursuant to section 251(b)(5) of the Act."[84] We were mistaken to have characterized the issue in that manner, rather than properly (and more naturally) interpreting the scope of "telecommunications" within section 251(b)(5) as being limited by section 251(g). By indicating that all "local calls," however defined, would be subject to reciprocal compensation obligations under the Act, we overlooked the interplay between these two inter-related provisions of section 251 -- subsections (b) and (g). Further, we created unnecessary ambiguity for ourselves, and the court, because the statute does not define the term "local call," and thus that term could be interpreted as meaning either traffic subject to local *rates* or traffic that is *jurisdictionally* intrastate. In the context of ISP-bound traffic, as the court observed, our use of the term "local" created a tension that undermined the prior order because the ESP exemption permitted ISPs to purchase access through local business tariffs,[85] yet the jurisdictional nature of this traffic has long been recognized as interstate.

46. For similar reasons, we modify our analysis and conclusion in the *Local Competition Order*.[86] There we held that "[t]ransport and termination of *local* traffic for purposes of reciprocal compensation are governed by sections 251(b)(5) and 251(d)(2)." We now hold that the telecommunications subject to those provisions are all such telecommunications not excluded by section 251(g). In the *Local Competition Order*, as in the subsequent *Declaratory Ruling*, use of the phrase "local traffic" created unnecessary ambiguities, and we correct that mistake here.

47. We note that the exchange of traffic between LECs and commercial mobile radio service (CMRS) providers is subject to a slightly different analysis. In the *Local Competition Order*, the Commission noted its jurisdiction to regulate LEC-CMRS interconnection under section 332 of the Act[87] but decided, at its option, to apply sections 251 and 252 to LEC-CMRS interconnection.[88] At that time, the Commission declined to delineate the precise contours of or the relationship between its jurisdiction over LEC-CMRS interconnection under sections 251 and 332,[89] but it made clear that it was not rejecting section 332 as an independent basis for jurisdiction.[90] The Commission went on to conclude that section 251(b)(5) obligations extend to traffic transmitted between LECs and CMRS providers, because the latter are telecommunications

[84] *Declaratory Ruling*, 14 FCC Rcd at 3695 (emphasis added).

[85] This is the compensation mechanism chosen by the ISPs. *See* note 105, *infra*.

[86] *Local Competition Order*, 11 FCC Rcd at 1033-34.

[87] 47 U.S.C. § 332; *Local Competition Order*, 11 FCC Rcd at 16005-06.

[88] *Local Competition Order*, 11 FCC Rcd at 16005-06; *see also Iowa Utils. Bd. v. FCC*, 120 F.3d at 800 n. 21 (finding that the Commission had jurisdiction under section 332 to issue rules regarding LEC-CMRS interconnection, including reciprocal compensation rules).

[89] We seek comment on these issues in the *NPRM*.

[90] *Local Competition Order*, 11 FCC Rcd at 16005.

carriers.[91] The Commission also held that reciprocal compensation, rather than interstate or intrastate access charges, applies to LEC-CMRS traffic that originates and terminates within the same Major Trading Area (MTA).[92] In so holding, the Commission expressly relied on its "authority under section 251(g) to preserve the current interstate access charge regime" to ensure that interstate access charges would be assessed only for traffic "currently subject to interstate access charges,"[93] although the Commission's section 332 jurisdiction could serve as an alternative basis to reach this result. Thus the analysis we adopt in this Order, that section 251(g) limits the scope of section 251(b)(5), does not affect either the application of the latter section to LEC-CMRS interconnection or our jurisdiction over LEC-CMRS interconnection under section 332.

4. Section 251(i) Preserves the Commission's Authority to Regulate Interstate Access Services

48. Congress also included a "savings provision" – subpart (i) – in section 251, which provides that "[n]othing in this section shall be construed to limit or otherwise affect the Commission's authority under section 201."[94] Under section 201, the Commission has the authority to regulate the *interstate* access services that LECs provide to connect end-users with IXCs or information service providers to originate and terminate calls that travel across state lines.

49. We conclude that subpart (i) provides additional support for our finding that Congress has granted us the authority on a going-forward basis to establish a compensation regime for ISP-bound traffic.[95] When read as a whole, the most natural reading of section 251 is as follows: subsection (b) sets forth reciprocal compensation requirements for the transport and termination of "telecommunications"; subsection (g) excludes certain access services (including ISP-bound traffic) from that requirement; and subsection (i) ensures that, on a going-forward basis, the Commission has the authority to establish pricing for, and otherwise to regulate, interstate access services.

50. When viewed in the overall context of section 251, subsections (g) and (i) serve compatible, but different, purposes. Subsection (g) preserves rules and regulations that existed at the time Congress passed the 1996 Act, and thus functions primarily as a "backward-looking" provision (although it does grant the Commission the authority to supersede existing regulations). In contrast, we interpret section 251(i) to be a "forward-looking" provision. Thus, subsection (i) expressly affirms the Commission's role in an evolving telecommunications marketplace, in which Congress anticipates that the Commission will continue to develop appropriate pricing and

[91] *Id.* at 16016.

[92] *Id.* at 16016-17.

[93] *Id.* at 16017.

[94] 47 U.S.C. § 251(i).

[95] *See also* Letter from Gary L. Phillips, SBC, to Jon Nuechterlein, Deputy General Counsel, FCC, at 8 (Dec. 14, 2000).

compensation mechanisms for traffic that falls within the purview of section 201. This reading of section 251 is consistent with the notion that section 251 generally broadens the Commission's duties, particularly in the pricing context.[96]

51. We expect that, as new network architectures emerge, the nature of telecommunications traffic will continue to evolve. As we have already observed, since Congress passed the 1996 Act, customer usage patterns have changed dramatically; carriers are sending traffic over networks in new and different formats; and manufacturers are adding creative features and developing innovative network architectures. Although we cannot anticipate the direction that new technology will take us, we do expect the dramatic pace of change to continue. Congress clearly did not expect the dynamic, digital broadband driven telecommunications marketplace to be hindered by rules premised on legacy networks and technological assumptions that are no longer valid. Section 251(i), together with section 201, equips the Commission with the tools to ensure that the regulatory environment keeps pace with innovation.

5. ISP-Bound Traffic Falls Within the Purview of the Commission's Section 201 Authority

52. Having found that ISP-bound traffic is excluded from section 251(b)(5) by section 251(g), we find that the Commission has the authority pursuant to section 201 to establish rules governing intercarrier compensation for such traffic. Under section 201, the Commission has long exercised its *jurisdictional* authority to regulate the interstate access services that LECs provide to connect callers with IXCs or ISPs to originate or terminate calls that travel across state lines. Access services to ISPs for Internet-bound traffic are no exception. The Commission has held, and the Eighth Circuit has recently concurred, that traffic bound for information service providers (including Internet access traffic) often has an interstate component.[97] Indeed, that court observed that, although some traffic destined for information service providers (including ISPs) may be intrastate, the interstate and intrastate components cannot be reliably separated.[98] Thus, ISP traffic is properly classified as interstate,[99] and it falls under the Commission's section 201 jurisdiction.[100]

53. In its opinion remanding this proceeding, the court appeared to acknowledge that the end-to-end analysis was appropriate for determining the scope of the Commission's jurisdiction under section 201, stating that "[t]here is no dispute that the Commission has

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[96] For example, section 251 has expanded upon our historic functions by providing us with the authority to set the framework for pricing rules applicable to unbundled network elements, purchased under interconnection agreements.

[97] *Southwestern Bell Tel. Co. v. FCC*, 153 F.3d 523, 543 (8th Cir. 1998) (affirming the jurisdictionally mixed nature of ISP-bound traffic).

[98] *Id.*

[99] *See, e.g., Louisiana PSC v. FCC*, 476 U.S. 355, 375 n.4.

[100] *See* Letter from John W. Kure, Qwest, to Magalie Roman Salas, Secretary, FCC (Dec. 8, 2000)(attaching *A Legal Roadmap for Implementing a Bill and Keep Rule for All Wireline Traffic*, at 10-11)(*Qwest Roadmap).*

historically been justified in relying on this method when determining whether a particular communication is jurisdictionally interstate."[101] The court nevertheless found that we had not supplied a logical nexus between the jurisdictional end-to-end analysis (which delineates the contours of our section 201 authority) and our interpretation of the scope of section 251(b)(5). In that regard, the court appeared not to question the Commission's longstanding assertion of jurisdiction over ESP traffic, of which Internet-bound traffic is a subset.[102] It did, however, unambiguously question whether, for purposes of interpreting section 251(b)(5), the jurisdictional end-to-end analysis was dispositive. Accordingly, the court explained its basis for remand as follows: "Because the Commission has not supplied a real explanation for its decision to treat end-to-end analysis as controlling [in interpreting the scope of section 251(b)(5)] . . . we must vacate the ruling and remand the case."[103]

54. As explained above, we no longer construe section 251(b)(5) using the dichotomy set forth in the *Declaratory Ruling* between "local" traffic and interstate traffic. Rather, we have clarified that the proper analysis hinges on section 251(g), which limits the reach of the reciprocal compensation regime mandated in section 251(b). Thus our discussion no longer centers on the jurisdictional inquiry set forth in the underlying order. Nonetheless, we take this opportunity to respond to questions raised by the court regarding the differences between ISP-bound traffic (which we have always held to be predominantly interstate for jurisdictional purposes) and intrastate calls to "communications-intensive business end user[s],"[104] such as travel agencies and pizza parlors.

55. Contrary to the arguments made by some IXCs, the Commission has been consistent in its jurisdictional treatment of ISP-bound traffic. For compensation purposes, in order to create a regulatory environment that will allow new and innovative services to flourish, the Commission has exempted enhanced service providers (including ISPs) from paying for interstate access service at the usage-based rates charged to IXCs.[105] The ESP exemption was and remains an affirmative *exercise* of federal regulatory authority over interstate access service under section 201, and, in affirming pricing under that exemption, the D.C. Circuit expressly

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[101] *Bell Atlantic*, 206 F.3d at 5; *see Qwest Roadmap* at 4.

[102] The D.C. Circuit itself has long recognized that ESPs use interstate access. *See, e.g., NARUC v. FCC*, 737 F.2d at 1136.

[103] *Bell Atlantic*, 206 F.3d. at 8.

[104] *Bell Atlantic*, 206 F.3d at 7.

[105] As noted, the Commission has permitted ESPs to pay local business line rates from intrastate tariffs for ILEC-provided access service, in lieu of interstate carrier access charges. *See, e.g., MTS/WATS Market Structure Order*, 97 FCC 2d at 715; *ESP Exemption Order*, 3 FCC Rcd at 2635 n.8, 2637 n.53. ESPs also pay the *federal* subscriber lines charges associated with those business lines and, where appropriate, the *federal* special access surcharge. The subscriber line charge (SLC) recovers a portion of the cost of a subscriber's line that is allocated, pursuant to jurisdictional separations, to the interstate jurisdiction. *See* 47 C.F.R. § 69.152 (defining SLC); 47 C.F.R. Part 36 (jurisdictional separations). The special access surcharge recovers for use of the local exchange when private line/PBX owners "circumvent the conventional long-distance network and yet achieve interstate connections beyond those envisioned by the private line service." *NARUC v. FCC*, 737 F.2d at 1138. *See* 47 C.F.R. § 69.115.

recognized that ESPs use *interstate* access service.[106] Moreover, notwithstanding the ESP exemption, the Commission has always *permitted* enhanced service providers, including ISPs, to purchase their interstate access out of interstate tariffs -- thus underscoring the Commission's consistent view that the link LECs provide to connect subscribers with ESPs is an interstate access service.[107]

56. We do not believe that the court's decision to remand the *Declaratory Ruling* reflects a finding that such traffic constitutes two calls, rather than a single end-to-end call, for jurisdictional purposes. The court expressly acknowledged that "the end-to-end analysis applied by the Commission here is one that it has traditionally used to determine whether a call is within its interstate jurisdiction."[108] The court also said that "[t]here is no dispute that the Commission has historically been justified in relying on this method when determining whether a particular communication is jurisdictionally interstate."[109] And the court appeared to suggest, at least for the sake of argument, that the Commission had not misapplied that analysis *as a jurisdictional matter* in finding that ISP-bound traffic was interstate.[110] We do recognize, however, that the court was concerned by how one would categorize this traffic under our *prior* interpretation of section 251(b)(5), which focused on whether or not ISP-bound calls were "local." That inquiry arguably implicated the compensation mechanism for the traffic (which included a local component), as well as the meaning of the term "termination" in the specific context of section 251(b); but neither of these issues is germane to our assertion of jurisdiction here under our section 201 authority.

57. For jurisdictional purposes, the Commission views LEC-provided access to enhanced services providers, including ISPs, on the basis of the end points of the communication, rather than intermediate points of switching or exchanges between carriers (or other providers).[111]

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[106] With judicial approval, the Commission initially adopted this access service pricing policy in order to avoid rate shock to a fledgling enhanced services industry. *NARUC v. FCC*, 737 F.2d at 1136-37. In the decision affirming this pricing policy, the court expressly recognized that ESPs use interstate access service. *Id.* at 1136 (enhanced service providers "may, at times, heavily use exchange access"). The Commission recently decided to retain this policy, largely because it found that it made little sense to mandate, for the first time, the application of existing non-cost-based interstate access rates to enhanced services just as the Commission was reforming the access charge regime to eliminate implicit subsidies and to move such charges toward competitive levels. *Access Charge Reform Order*, 12 FCC Rcd at 16133, *aff'd, Southwestern Bell Telephone Co.*, 153 F.3d at 541-42.

[107] *See, e.g., MTS/WATS Market Structure Order*, 97 FCC 2d at 711-12, 722; Filing and Review of Open Network Architecture Plans, CC Docket No. 88-2, Memorandum Opinion and Order, 4 FCC Rd 1, 141 (1988), *aff'd, California v. FCC*, 4 F.3d 1505 (9th Cir. 1993) (*ONA Plans Order*); GTE Telephone Operating Cos., CC Docket No. 98-79, Memorandum Opinion and Order, 13 FCC Rcd 22466 (1998).

[108] *Bell Atlantic*, 206 F.3d at 3.

[109] *Id. at 5.*

[110] *See, e.g., id.* at 6, 7 (accepting, *arguendo*, that ISP-bound traffic is like IXC-bound traffic for jurisdictional purposes).

[111] *See, e.g., BellSouth MemoryCall*, 7 FCC Rcd at 1620 (voicemail is interstate because "there is a continuous path of communications across state line between the caller and the voice mail service"); *ONA Plans Order*, 4 FCC (continued....)

Thus, in the *ONA Plans Order*, the Commission emphasized that "when an enhanced service is interstate (that is, when it involves communications or transmissions between points in different states on an end-to-end basis), the underlying basic services are subject to [our jurisdiction]."[112] Consistent with that view, when end-to-end communications involving enhanced service providers cross state lines, the Commission has categorized the link that the LEC provides to connect the end-user with an enhanced service provider as interstate access service.[113] Internet service providers are a class of ESPs. Accordingly, the LEC-provided link between an end-user and an ISP is properly characterized as *interstate* access.[114]

58. Most Internet-bound traffic traveling between a LEC's subscriber and an ISP is indisputably interstate in nature when viewed on an end-to-end basis. Users on the Internet are interacting with a global network of connected computers. The consumer contracts with an ISP to provide access to the Internet. Typically, when the customer wishes to interact with a person, content, or computer, the customer's computer calls a number provided by the ISP that is assigned to an ISP modem bank. The ISP modem answers the call (the familiar squelch of computers handshaking). The user initiates a communication over the Internet by transmitting a command. In the case of the web, the user requests a webpage. This request may be sent to the computer that hosts the webpage. In real time, the web host may request that different pieces of that webpage, which can be stored on different servers across the Internet, be sent, also in real time, to the user. For example, on a sports page, only the format of the webpage may be stored at the host computer in Chicago. The advertisement may come from a computer in California (and it may be a different advertisement each time the page is requested), the sports scores may come from a computer in New York City, and a part of the webpage that measures Internet traffic and records the user's visit may involve a computer in Virginia. If the user decides to buy something from this webpage, say a sports jersey, the user clicks on the purchase page and may be transferred to a secure web server in Maryland for the transaction. A single web address frequently results in the return of information from multiple computers in various locations

(Continued from previous page)
Rcd at 141 (an enhanced service is subject to FCC authority if it is interstate, "that is, when it involves communications or transmissions between points in different states on an end-to-end basis").

[112] *ONA Plans Order*, 4 FCC Rcd at 141; *see also id.*, Memorandum Opinion and Order on Reconsideration, 5 FCC Rcd 3084, 3088-89 (1990), *aff'd, California v. FCC*, 4 F.3d 1505 (9th Cir. 1993)(rejecting claim that basic service elements, consisting of features and functions provided by telephone company's local switch for benefit of enhanced service providers and others, are separate *intra*state offerings even when used in connection with end-to-end transmissions).

[113] *See, e.g., MTS/WATS Market Structure Order*, 97 FCC 2d at 711 ("[a]mong the variety of users of access service are ... enhanced service providers"); Amendment of Part 69 of the Commission's Rules Relating to Enhanced Service Providers, CC Docket No. 87-215, Notice of Proposed Rulemaking, 2 FCC Rcd 4305, 4305, 4306 (1987) (noting that enhanced service providers use "exchange access service"); *ESP Exemption Order*, 3 FCC Rcd at 2631 (referring to "certain classes of exchange access users, including enhanced service providers").

[114] *See, e.g., Access Charge Reform Order*, 12 FCC Rcd at 16131-32; GTE Telephone Operating Cos.,13 FCC Rcd at 22478. *Cf. Bell Atlantic*, 206 F.3d at 4, 6-7.

globally. These different pieces of the webpage will be sent to the user over different network paths and assembled on the user's display.[115]

59. The "communication" taking place is between the dial-up customer and the global computer network of web content, e-mail authors, game room participants, databases, or bulletin board contributors. Consumers would be perplexed to learn regulators believe they are communicating with ISP modems, rather than the buddies on their e-mail lists. The proper focus for identifying a communication needs to be the user interacting with a desired webpage, friend, game, or chat room, not on the increasingly mystifying technical and mechanical activity in the middle that makes the communication possible.[116] ISPs, in most cases, provide services that permit the dial-up Internet user to communicate directly with some distant site or party (other than the ISP) that the caller has specified.

60. ISP service is analogous, though not identical, to long distance calling service. An AT&T long distance customer contracts with AT&T to facilitate communications to out-of-state locations. The customer uses the local network to reach AT&T's facilities (its point of presence). By dialing "1" and an area code, the customer is in essence addressing his call to an out of state party and is instructing his LEC to deliver the call to his long distance carrier, and instructing the long distance carrier to pick up and carry that call to his intended destination. The caller on the other end will pick up the phone and respond to the caller. The communication will be between these two end-users. This analogy is not meant to prove that ISP service is identical to long distance service, but is used merely to bolster, by analogy, the reasonableness of not characterizing an ISP as the destination of a call, but as a facilitator of communication.

61. Moreover, as the local exchange carriers have correctly observed, the technical configurations for establishing dial-up Internet connections are quite similar to certain network configurations employed to initiate more traditional long-distance calls.[117] In most cases, an ISP's customer first dials a seven-digit number to connect to the ISP server before connecting to a website. Long-distance service in some network configurations is initiated in a substantially similar manner. In particular, under "Feature Group A" access, the caller first dials a seven-digit number to reach the IXC, and then dials a password and the called party's area code and number to complete the call. Notwithstanding this dialing sequence, the service the LEC provides is considered *interstate* access service, not a separate local call.[118] Internet calls operate in a similar manner: after reaching the ISP's server by dialing a seven-digit number, the caller selects a website (which is identified by a 12-digit Internet address, but which often is, in effect, "speed dialed" by clicking an icon) and the ISP connects the caller to the selected website. Such calling

[115] Of course, the Internet provides applications other than the World Wide Web, such as e-mail, games, chat sites, or streaming media, which have different technical characteristics but all of which involve computers in multiple locations, often across state and national boundaries.

[116] *See Qwest Roadmap* at 4-5, 9-10.

[117] *See, e.g.,* Verizon Remand Reply at 9 (Internet traffic is indistinguishable from Feature Group A access service).

[118] *See Local Competition Order*, 11 FCC Rcd at 15935 n. 2091 (describing "Feature Group A" access service); *see also MCI Telecomm. Corp. v. FCC*, 566 F.2d 365, 367 n.3 (D.C. Cir. 1977), *cert. denied*, 434 U.S. 1040 (1978).

should yield the same jurisdictional result as the analogous calls to IXCs using "Feature Group A" access.

62. Commission precedent also rejects the two-call theory in the context of calls involving enhanced services. In *BellSouth MemoryCall*, the Commission preempted a state commission order that had prohibited BellSouth from expanding its voice mail service -- an enhanced service -- beyond its existing customers.[119] In doing so, it rejected claims by the state that the Commission lacked jurisdiction to preempt because, allegedly, out-of-state calls to the voice mail service really constituted two calls: an *inter*state call from the out-of-state caller to the telephone company switch that routes the call to the intended recipient's location, and a separate *intra*state call that forwards the communication from the switch to the voice mail apparatus in the event that the called party did not answer.[120] The Commission explained that, whether a basic telecommunications service is at issue, or whether an enhanced service rides on the telephone company's telecommunications service, the Commission's jurisdiction does not end at the local switchboard, but continues to the ultimate destination of the call.[121]

63. The Internet communication is not analogous to traditional telephone exchange services. Local calls set up communication between two parties that reside in the same local calling area. Prior to the introduction of local competition, that call would never leave the network of the incumbent LEC. As other carriers were permitted to enter the local market, a call might cross two or more carriers' networks simply because the two parties to the communication subscribed to two different local carriers. The two parties intending to communicate, however, remained squarely in the same local calling area. An Internet communication is not simply a local call from a consumer to a machine that is lopsided, that is, a local call where one party does most of the calling, or most of the talking. ISPs are service providers that technically modify and translate communication, so that their customers will be able to interact with computers across the global Internet.[122]

64. The court in *Bell Atlantic* noted that FCC litigation counsel had differentiated ISP-bound traffic from ordinary long-distance calls by stating that the former "is really like a call to a local business" -- such as a pizza delivery firm, a travel reservation agency, a credit card verification firm, or a taxicab company -- "that then uses the telephone to order wares to meet the need."[123] We find, however, that this citation to a former litigation position does not require us to alter our analysis. First, the Commission itself has never analogized ISP-bound traffic in the manner cited in the agency's brief in *Southwestern Bell*. Indeed, in the particular order that the

[119] *BellSouth MemoryCall*, 7 FCC Rcd at 1619.

[120] *Id.* at 1620.

[121] *Id.* at 1621.

[122] It is important to note that a dial-up call to an ISP will not even be required when broadband services arrive. Those connections will be always on and there will be no phone call in any traditional sense. Indeed, the only initiating event will be the end-user interacting with other Internet content or users. Thus, increasingly, notions of two calls become meaningless.

[123] *Bell Atlantic*, 206 F.3d at 8 (citing FCC Brief at 76, *Southwestern Bell v. FCC*, 153 F.3d 523).

Commission was defending in *Southwestern Bell*, the Commission distinguished ISP-bound traffic from other access traffic on *other* grounds -- *e.g.*, call direction and call holding times[124] -- which have no arguable bearing on whether the traffic is one interstate call (as the Commission has always held) or two separate calls (one of which allegedly is intrastate) as some parties have contended. Second, the cited portion of the Commission's brief was not addressing jurisdiction at all. Rather, the brief was responding to a claim that the ESP exemption *discriminated* against IXCs and in favor of ISPs.[125] Finally, in the very case in which litigation counsel made the cited analogy, the Eighth Circuit affirmed the Commission's consistent view that ISP-bound traffic is, as a *jurisdictional* matter, predominantly interstate.[126] In any event, to the extent that our prior briefs could be read to conceptualize the nature of ISP service as local, akin to intense users of local service, we now embrace a different conceptualization that we believe more accurately reflects the nature of ISP service.

65. For the foregoing reasons, consistent with our longstanding precedent, we find that we continue to have jurisdiction under section 201, as preserved by section 251(i), to provide a compensation mechanism for ISP-bound traffic.

C. Efficient Intercarrier Compensation Rates and Rate Structures

66. Carriers currently recover the costs of call transport and termination through some combination of carrier access charges, reciprocal compensation, and end-user charges, depending upon the applicable regulatory regime. Having concluded that ISP-bound traffic is not subject to the reciprocal compensation obligations of section 251(b)(5), we must now determine, pursuant to our section 201 authority, what compensation mechanism is appropriate when carriers collaborate to deliver calls to ISPs. In the companion *NPRM*, we consider the desirability of adopting a uniform intercarrier compensation mechanism, applicable to all traffic exchanged among telecommunications carriers, and, in that context, we intend to examine the merits of a bill and keep regime for all types of traffic, including ISP-bound traffic. In the meantime, however, we must adopt an interim intercarrier compensation rule to govern the exchange of ISP-bound traffic, pending the outcome of the *NPRM*. In particular, we must decide whether to impose (i) a "calling-party's-network-pays" (CPNP) regime, like reciprocal compensation, in which the calling party's network pays the network serving the ISP; (ii) a bill and keep regime in which all networks recover costs from their end-user customers and are obligated to deliver calls that originate on the networks of interconnecting carriers; or (iii) some other cost recovery mechanism. As set forth more fully below, our immediate goal in adopting an interim compensation mechanism is to address the market distortions created by the prevailing intercarrier compensation regime, even as we evaluate in a parallel proceeding what longer-term intercarrier compensation mechanisms are appropriate for this and other types of traffic.

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[124] *Access Charge Reform Order*, 12 FCC Rcd at 16133-34.

[125] *See* FCC Brief at 75-76, *Southwestern Bell v. FCC*, 153 F.3d 523.

[126] *Southwestern Bell v. FCC*, 153 F.3d at 534.

1. CPNP Regimes Have Distorted the Development of Competitive Markets

67. For the reasons detailed below, we believe that a bill and keep approach to recovering the costs of delivering ISP-bound traffic is likely to be more economically efficient than recovering these costs from originating carriers. In particular, requiring carriers to recover the costs of delivering traffic to ISP customers directly from those customers is likely to send appropriate market signals and substantially eliminate existing opportunities for regulatory arbitrage. As noted above, we consider issues related to the broader application of bill and keep as an intercarrier compensation regime in conjunction with the *NPRM* that we are adopting concurrently with this Order. In this Order, however, we adopt an interim compensation mechanism for the delivery of ISP-bound traffic that addresses the regulatory arbitrage opportunities present in the existing carrier-to-carrier payments by limiting carriers' opportunity to recover costs from other carriers and requiring them to recover a greater share of their costs from their ISP customers.

68. In most states, reciprocal compensation governs the exchange of ISP-bound traffic between local carriers.[127] Reciprocal compensation is a CPNP regime in which the originating carrier pays an interconnecting carrier for "transport and termination," *i.e.,* for transport from the networks' point of interconnection and for any tandem and end-office switching.[128] The central problem with any CPNP regime is that carriers recover their costs not only from their end-user customers, but also from *other carriers.*[129] Because intercarrier compensation rates do not reflect the degree to which the carrier can recover costs from its end-users, payments from other carriers may enable a carrier to offer service to its customers at rates that bear little relationship to its actual costs, thereby gaining an advantage over its competitors. Carriers thus have the incentive to seek out customers, including but not limited to ISPs, with high volumes of incoming traffic that will generate high reciprocal compensation payments.[130] To the extent that carriers offer these customers below cost retail rates subsidized by intercarrier compensation, these customers do not receive accurate price signals. Moreover, because the originating LEC typically charges its customers averaged rates, the originating end-user receives inaccurate price signals as the costs associated with the intercarrier payments are recovered through rates averaged across all of the originating carrier's end-users. Thus no subscriber faces a price that fully reflects the intercarrier

[127] In the *Declaratory Ruling,* we stated that, pending adoption of a federal rule governing intercarrier compensation for ISP-bound traffic, state commissions would determine whether reciprocal compensation was due for such traffic. *Declaratory Ruling,* 14 FCC Rcd at 3706. Since that time, most, though not all, states have ordered the payment of reciprocal compensation for ISP-bound traffic.

[128] 47 C.F.R. § 51.703(a).

[129] Recovery from other carriers is premised on the economic assumption that the carrier whose customer originates the call has "caused" the transport and termination costs associated with that call, and the originating carrier should, therefore, reimburse the interconnecting carrier for "transport and termination." The companion *NPRM* evaluates the validity of that assumption and tentatively concludes that it is an incorrect premise.

[130] *Cf. Local Competition Order,* 11 FCC Rcd at 16043 (symmetrical termination payments to paging providers based on ILECs' costs "might create uneconomic incentives for paging providers to generate traffic simply in order to receive termination compensation").

payments. An ISP subscriber with extensive Internet usage may, for example, cause her LEC to incur substantial reciprocal compensation obligations to the LEC that serves her ISP, but that subscriber receives no price signals reflecting those costs because they are spread over all of her LEC's customers.

69. The resulting market distortions are most apparent in the case of ISP-bound traffic due primarily to the one-way nature of this traffic, and to the tremendous growth in dial-up Internet access since passage of the 1996 Act. Competitive carriers, regardless of the nature of their customer base, exchange traffic with the incumbent LECs at rates based on the incumbents' costs.[131] To the extent the traffic exchange is roughly balanced, as is typically the case when LECs exchange voice traffic, it matters little if rates reflect costs because payments in one direction are largely offset by payments in the other direction. The rapid growth in dial-up Internet use, however, created the opportunity to serve customers with large volumes of exclusively *incoming* traffic. And, for the reasons discussed above, the reciprocal compensation regime created an incentive to target those customers with little regard to the costs of serving them – because a carrier would be able to collect some or all of those costs from *other* carriers that would themselves be unable to flow these costs through to their own customers in a cost-causative manner.

70. The record is replete with evidence that reciprocal compensation provides enormous incentive for CLECs to target ISP customers. The four largest ILECs indicate that CLECs, on average, terminate eighteen times more traffic than they originate, resulting in annual CLEC reciprocal compensation billings of approximately two billion dollars, ninety percent of which is for ISP-bound traffic.[132] Verizon states that it sends CLECs, on average, twenty-one times more traffic than it receives, and some CLECs receive more than forty times more traffic than they originate.[133] Although there may be sound business reasons for a CLEC's decision to serve a particular niche market, the record strongly suggests that CLECs target ISPs in large part because of the availability of reciprocal compensation payments.[134] Indeed, some ISPs even seek to become CLECs in order to share in the reciprocal compensation windfall, and, for a small

[131] 47 C.F.R. § 51.705 (an incumbent LEC's rates for transport and termination shall be established on the basis of the forward-looking economic costs of such offerings); 47 C.F.R. § 51.711 (subject to certain exceptions, rates for transport and termination shall be symmetrical and equal to those that the incumbent LEC assesses upon other carriers for the same services).

[132] Letter from Robert T. Blau, BellSouth, to Magalie Roman Salas, Secretary, FCC (November 6, 2000); *see also* Verizon Remand Comments at 2 (Verizon will be billed more than one billion dollars in 2000 for Internet-bound calls); Letter from Richard J. Metzger, Focal, to Deena Shetler, Legal Advisor to Commissioner Gloria Tristani, FCC (Jan. 11, 2001)(ILECs owed $1.98 billion in reciprocal compensation to CLECs in 2000).

[133] Verizon Remand Comments at 11, 21. Verizon also cites extreme cases of CLECs that terminate in excess of *eight thousand* times more traffic than they originate. *Id.* at 21. *See also* Letter from Robert T. Blau, BellSouth; Melissa Newman, Qwest; Priscilla Hill-Ardoin, SBC; and Susanne Guyer, Verizon, to Dorothy Attwood, Chief, Common Carrier Bureau, FCC (Nov. 9, 2000).

[134] *See, e.g.,* Verizon Remand Comments at 15 (citing case of CLEC offer of free long distance service to dial-up Internet customers, an offer it did not extend to its customers that accessed the Internet via cable modem or DSL service); SBC Remand Comments at 45 (citing examples of CLEC offering free service to ISPs that collocated in its switching centers and CLECs offering to share reciprocal compensation revenues with ISPs).

number of entities, this revenue stream provided an inducement to fraudulent schemes to generate dial-up minutes.[135]

71. For these reasons, we believe that the application of a CPNP regime, such as reciprocal compensation, to ISP-bound traffic undermines the operation of competitive markets.[136] ISPs do not receive accurate price signals from carriers that compete, not on the basis of the quality and efficiency of the services they provide, but on the basis of their ability to shift costs to other carriers. Efficient prices result when carriers offer the lowest possible rates based on the costs of the service they provide to ISPs, not when they can price their services without regard to cost. We are concerned that viable, long-term competition among efficient providers of local exchange and exchange access services cannot be sustained where the intercarrier compensation regime does not reward efficiency and may produce retail rates that do not reflect the costs of the services provided. As we explain in greater detail in the companion *NPRM*, we believe that a compensation regime, such as bill and keep, that requires carriers to recover more of their costs from end-users may avoid these problems.

72. We acknowledge that we did not always hold this view. In the *Local Competition Order*, the Commission concluded that state commissions may impose bill and keep arrangements for traffic subject to section 251(b)(5) *only* when the flow of traffic between interconnected carriers is roughly balanced and is expected to remain so.[137] The Commission reasoned that "bill-and-keep arrangements are not economically efficient because they distort carriers' incentives, encouraging them to overuse competing carriers' *termination* facilities by seeking customers that primarily *originate* traffic."[138] The concerns about the opportunity for cost recovery and economic efficiency are not present, however, to the extent that traffic between carriers is balanced and payments from one carrier will be offset by payments from the other carrier. In these circumstances, the Commission found that bill and keep arrangements may minimize administrative burdens and transaction costs.[139]

73. Since that time, we have observed the development of competition in the local exchange market, and we now believe that the Commission's concerns about economic inefficiencies associated with bill and keep missed the mark, particularly as applied to ISP-bound traffic. The Commission appears to have assumed, at least implicitly, that the calling party was the sole cost causer of the call, and it may have overstated any incentives that a bill and keep regime creates to target customers that primarily originate traffic. A carrier must provide originating switching functions and must recover the costs of those functions from the originating end-user, not from other carriers. Originating traffic thus lacks the same opportunity for cost-shifting that reciprocal compensation provides with respect to serving customers with

[135] *See, e.g.*, Verizon Remand Comments at 17-18.

[136] The *NPRM* that we adopt in conjunction with this Order seeks comment on the degree to which a modified CPNP regime might address these concerns.

[137] *Local Competition Order*, 11 FCC Rcd at 16054-55; *see also* 47 C.F.R. § 51.713(b).

[138] *Local Competition Order*, 11 FCC Rcd at 16055 (emphases added).

[139] *Id.* at 16055.

disproportionately incoming traffic. Indeed, it has become apparent that the obligation to pay reciprocal compensation to interconnecting carriers may give rise to uneconomic incentives. As the current controversy about ISP-bound traffic demonstrates, reciprocal compensation encourages carriers to overuse competing carriers' *origination* facilities by seeking customers that *receive* high volumes of traffic.

74. We believe that a bill and keep regime for ISP-bound traffic may eliminate these incentives and concomitant opportunity for regulatory arbitrage by forcing carriers to look only to their ISP customers, rather than to other carriers, for cost recovery. As a result, the rates paid by ISPs and, consequently, their customers should better reflect the costs of services to which they subscribe. Potential subscribers should receive more accurate price signals, and the market should reward efficient providers.[140] Although we do not reach any firm conclusions about bill and keep as a permanent mechanism for this or any other traffic, our evaluation of the record evidence to date strongly suggests that bill and keep is likely to provide a viable solution to the market distortions caused by the application of reciprocal compensation to ISP-bound traffic. We take that observation into account, below, as we fashion an interim compensation mechanism for this traffic.

75. Bill and keep also may address the problem regulators face in setting intercarrier compensation rates that correlate to the costs carriers incur to carry traffic that originates on other networks. The record suggests that market distortions appear to have been exacerbated by the prevalence of excessively high reciprocal compensation rates. Many CLECs argue that the current traffic imbalances between CLECs and ILECs are the product of greediness on the part of ILECs that insisted on above-cost reciprocal compensation rates in the course of negotiating or arbitrating initial interconnection agreements.[141] CLECs argue that, because these rates were artificially high, they naturally responded by seeking customers with large volumes of incoming traffic. If the parties or regulatory bodies merely set cost-based rates and rate structures, they argue, arbitrage opportunities and the resulting windfalls would disappear.[142] They note that reciprocal compensation rates have fallen dramatically as initial agreements expire and the parties negotiate new agreements.[143]

76. We do not believe that the solution to the current problem is as simple as the CLECs suggest.[144] We seek comment in the accompanying *NPRM* on the potential for a modified

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[140] We also note that bill and keep arrangements are common among entities providing Internet backbone services, where the larger carriers engage in so-called "peering" arrangements.

[141] Time Warner Remand Comments at 15-16.

[142] Time Warner Remand Comments at 16. Some parties suggest that a bifurcated rate structure (a call set-up charge and a minute of use charge) would ensure appropriate cost recovery. *See* Sprint Remand Comments at 2-4. We seek comment on this approach in the *NPRM*.

[143] *See infra* note 158.

[144] We note that many CLECs expressed the same view following adoption of the *Declaratory Ruling* in 1999, yet the problems persist. *See, e.g.,* Cox Reply Comments at 6 (If termination "rates are too high, this is entirely at the ILEC's behest, and should be remedied in the next round of negotiations.").

CPNP regime, such as the CLECs advocate, to solve some of the problems we identify here. We are convinced, however, that intercarrier payments for ISP-bound traffic have created severe market distortions. Although it would be premature to institute a full bill and keep regime before resolving the questions presented in the *NPRM*,[145] in seeking to remedy an exigent market problem, we cannot ignore the evidence we have accumulated to date that suggests that a bill and keep regime has very fundamental advantages over a CPNP regime for ISP-bound traffic. Contrary to the view espoused by CLECs, we are concerned that the market distortions caused by applying a CPNP regime to ISP-bound traffic cannot be cured by regulators or carriers simply attempting to "get the rate right." A few examples may illustrate the vexing problems regulators face. Reciprocal compensation rates have been determined on the basis of the ILEC's average costs of transport and termination. These rates do not, therefore, reflect the costs incurred by any particular carrier for providing service to a particular customer. This encourages carriers to target customers that are, on average, less costly to serve, and reap a reciprocal compensation windfall. Conversely, new entrants lack incentive to serve customers that are, on average, more costly to serve, even if the new entrant is the most efficient provider. It is not evident that this problem can be remedied by setting reciprocal compensation rates on the basis of the costs of carrier serving the called party (or, in the case of ISP-bound traffic, the CLEC that serves the ISP).[146] Apart from our reluctance to require new entrants to perform cost studies, it is entirely impracticable, if not impossible, for regulators to set different intercarrier compensation rates for each individual carrier, and those rates still might fail to reflect a carrier's costs as, for example, the nature of its customer base evolves. Furthermore, most states have adopted per minute reciprocal compensation rate structures. It is unlikely that any minute-of-use rate that is based on average costs and depends upon demand projections will reflect the costs of any given carrier to serve any particular customer. To the extent that transport and termination costs are capacity-driven, moreover, virtually any minute-of-use rate will overestimate the cost of handling an additional call whenever a carrier is operating below peak capacity.[147] Regulators and carriers have long struggled with problems associated with peak-load pricing.[148] Finally, and most important, the fundamental problem with application of reciprocal compensation to ISP-bound traffic is that the intercarrier payments fail altogether to account for a carrier's opportunity to recover costs from its ISP customers. Modifications to intercarrier rate levels or rate structures suggested by CLECs do not address carriers' ability to shift costs from their own customers onto other carriers and their customers.

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[145] A number of questions must be resolved before we are prepared to implement fully a bill and keep regime where most costs are recovered from end-users. (We say most, not all, costs are recovered from end-users because a bill and keep regime may include intercarrier charges for transport between networks.) These questions include, for example, the allocation of transport costs between interconnecting carriers and the effect on retail prices of adopting a bill and keep regime that is not limited to ISP-bound traffic. We seek comment on these and other issues in the accompanying intercarrier *NPRM*.

[146] *Cf.* Verizon Remand Reply Comments at 14-15.

[147] The problem of putting a per minute price tag, in the form of intercarrier payments, where no per minute cost exists is exacerbated in the case of local exchange carriers that, in most cases, recover costs from their end-users on a flat-rated basis.

[148] *See, e.g., Local Competition Order*, 11 FCC Rcd at 16028-29.

2. Intercarrier Compensation for ISP-bound Traffic

77. We believe that a hybrid mechanism that establishes relatively low per minute rates, with a cap on the total volume of traffic entitled to such compensation, is the most appropriate interim approach over the near term to resolve the problems associated with the current intercarrier compensation regime for ISP-bound traffic. Our primary goal at this time is to address the market distortions under the current intercarrier compensation regimes for ISP-bound traffic. At the same time, we believe it prudent to avoid a "flash cut" to a new compensation regime that would upset the legitimate business expectations of carriers and their customers. Subsequent to the Commission's *Declaratory Ruling*, many states have required the payment of reciprocal compensation for ISP-bound traffic, and CLECs may have entered into contracts with vendors or with their ISP customers that reflect the expectation that the CLECs would continue to receive reciprocal compensation revenue. We believe it appropriate, in tailoring an interim compensation mechanism, to take those expectations into account while simultaneously establishing rates that will produce more accurate price signals and substantially reduce current market distortions. Therefore, pending our consideration of broader intercarrier compensation issues in the *NPRM*, we impose an interim intercarrier compensation regime for ISP-bound traffic that serves to limit, if not end, the opportunity for regulatory arbitrage, while avoiding a market-disruptive "flash cut" to a pure bill and keep regime. The interim regime we establish here will govern intercarrier compensation for ISP-bound traffic until we have resolved the issues raised in the intercarrier compensation *NPRM*.

78. Beginning on the effective date of this Order, and continuing for six months, intercarrier compensation for ISP-bound traffic will be capped at a rate of $.0015/minute-of-use (mou). Starting in the seventh month, and continuing for eighteen months, the rate will be capped at $.0010/mou. Starting in the twenty-fifth month, and continuing through the thirty-sixth month or until further Commission action (whichever is later), the rate will be capped at $.0007/mou. In addition to the rate caps, we will impose a cap on total ISP-bound minutes for which a LEC may receive this compensation. For the year 2001, a LEC may receive compensation, pursuant to a particular interconnection agreement, for ISP-bound minutes up to a ceiling equal to, on an annualized basis, the number of ISP-bound minutes for which that LEC was entitled to compensation under that agreement during the first quarter of 2001, plus a ten percent growth factor. For 2002, a LEC may receive compensation, pursuant to a particular interconnection agreement, for ISP-bound minutes up to a ceiling equal to the minutes for which it was entitled to compensation under that agreement in 2001, plus another ten percent growth factor. In 2003, a LEC may receive compensation, pursuant to a particular interconnection agreement, for ISP-bound minutes up to a ceiling equal to the 2002 ceiling applicable to that agreement.[149]

79. We understand that some carriers are unable to identify ISP-bound traffic. In order to limit disputes and avoid costly efforts to identify this traffic, we adopt a rebuttable presumption that traffic delivered to a carrier, pursuant to a particular contract, that exceeds a 3:1 ratio of terminating to originating traffic is ISP-bound traffic that is subject to the compensation

[149] This interim regime affects only the intercarrier *compensation* (*i.e.*, the rates) applicable to the delivery of ISP-bound traffic. It does not alter carriers' other obligations under our Part 51 rules, 47 C.F.R. Part 51, or existing interconnection agreements, such as obligations to transport traffic to points of interconnection.

mechanism set forth in this Order. Using a rebuttable presumption in this context is consistent with the approach that numerous states have adopted to identify ISP-bound traffic or "convergent" traffic (including ISP traffic) that is subject to a lower reciprocal compensation rate.[150] A carrier may rebut the presumption, for example, by demonstrating to the appropriate state commission that traffic above the 3:1 ratio is in fact local traffic delivered to non-ISP customers. In that case, the state commission will order payment of the state-approved or state-arbitrated reciprocal compensation rates for that traffic. Conversely, if a carrier can demonstrate to the state commission that traffic it delivers to another carrier is ISP-bound traffic, even though it does not exceed the 3:1 ratio, the state commission will relieve the originating carrier of reciprocal compensation payments for that traffic, which is subject instead to the compensation regime set forth in this Order. During the pendency of any such proceedings, LECs remain obligated to pay the presumptive rates (reciprocal compensation rates for traffic below a 3:1 ratio, the rates set forth in this Order for traffic above the ratio), subject to true-up upon the conclusion of state commission proceedings.

80. We acknowledge that carriers incur costs in delivering traffic to ISPs, and it may be that in some instances those costs exceed the rate caps we adopt here. To the extent a LEC's costs of transporting and terminating this traffic exceed the applicable rate caps, however, it may recover those amounts from its own end-users.[151] We also clarify that, because the rates set forth above are *caps* on intercarrier compensation, they have no effect to the extent that states have ordered LECs to exchange ISP-bound traffic either at rates below the caps we adopt here or on a

[150] *See* Texas Public Utility Commission, Docket No. 21982, Proceeding to Examine Reciprocal Compensation Pursuant to Section 252 of the Federal Telecommunications Act of 1996, at 36 (July 12, 2000)(applying a blended tandem switching rate to traffic up to a 3:1 (terminating to originating) ratio; traffic above that ratio is presumed to be convergent traffic and is compensated at the end office rate unless the terminating carrier can prove tandem functionality); New York Public Service Commission, Op. No. 99-10, Proceeding on Motion of the Commission to Reexamine Reciprocal compensation, Opinion and Order, at 59-60 (Aug. 26, 1999) (traffic above a 3:1 ratio is presumed to be convergent traffic and is compensated at the end office rate unless the terminating carrier can demonstrate "that [the terminating] network and service are such as to warrant tandem-rate compensation"); Massachusetts Dept. of Telecommunications and Energy, D.T.E. 97-116-C, at 28-29 n.31 (May 19, 1999) (requiring reciprocal compensation for traffic that does not exceed a 2:1 (terminating to originating) ratio as a proxy to distinguish ISP-bound traffic from voice traffic; carriers may rebut that presumption).

[151] We note that CLEC end-user recovery is generally not regulated. As non-dominant carriers, CLECs can charge their end-users what the market will bear. Access Charge Reform, CC Docket No. 96-262, Sixth Report and Order, 15 FCC Rcd 12962, 13005 (2000) (*CALLS Order*)("Competitive LECs are not regulated by the Commission and are not restricted in the same manner as price caps LECs in how they recover their costs."). Accordingly, we permit CLECs to recover any additional costs of serving ISPs from their ISP customers. ILEC end-user charges, however, are generally regulated by the Commission, in the case of interstate charges, or by state commissions, for intrastate charges. Pursuant to the ESP exemption, ILECs will continue to serve their ISP customers out of intrastate business tariffs that are subject to state regulation. As the Commission said in 1997, if ILECs feel that these rates are so low as to preclude cost recovery, they should seek relief from their state commissions. *Access Charge Reform Order*, 12 FCC Rcd at 16134 ("To the extent that some intrastate rate structures fail to compensate incumbent LECs adequately for providing service to customers with *high volumes of incoming calls*, incumbent LECs may address their concerns to state regulators." (emphasis added)).

bill and keep basis (or otherwise have not required payment of compensation for this traffic).[152] The rate caps are designed to provide a transition toward bill and keep or such other cost recovery mechanism that the Commission may adopt to minimize uneconomic incentives, and no such transition is necessary for carriers already exchanging traffic at rates below the caps. Moreover, those state commissions have concluded that, at least in their states, LECs receive adequate compensation from their own end-users for the transport and termination of ISP-bound traffic and need not rely on intercarrier compensation.

81. Finally, a different rule applies in the case where carriers are not exchanging traffic pursuant to interconnection agreements prior to adoption of this Order (where, for example, a new carrier enters the market or an existing carrier expands into a market it previously had not served). In such a case, as of the effective date of this Order, carriers shall exchange ISP-bound traffic on a bill-and-keep basis during this interim period. We adopt this rule for several reasons. First, our goal here is to address and curtail a pressing problem that has created opportunities for regulatory arbitrage and distorted the operation of competitive markets. In so doing, we seek to confine these market problems to the maximum extent while seeking an appropriate long-term resolution in the proceeding initiated by the companion *NPRM*. Allowing carriers in the interim to expand into new markets using the very intercarrier compensation mechanisms that have led to the existing problems would exacerbate the market problems we seek to ameliorate. For this reason, we believe that a standstill on any expansion of the old compensation regime into new markets is the more appropriate interim answer.[153] Second, unlike those carriers that are presently serving ISP customers under existing interconnection agreements, carriers entering new markets to serve ISPs have not acted in reliance on reciprocal compensation revenues and thus have no need of a transition during which to make adjustments to their prior business plans.

82. The interim compensation regime we establish here applies as carriers re-negotiate expired or expiring interconnection agreements. It does not alter existing contractual obligations, except to the extent that parties are entitled to invoke contractual change-of-law provisions. This Order does not preempt any state commission decision regarding compensation for ISP-bound traffic for the period prior to the effective date of the interim regime we adopt here. Because we now exercise our authority under section 201 to determine the appropriate intercarrier compensation for ISP-bound traffic, however, state commissions will no longer have authority to address this issue. For this same reason, as of the date this Order is published in the Federal Register, carriers may no longer invoke section 252(i) to opt into an existing interconnection agreement with regard to the rates paid for the exchange of ISP-bound traffic.[154] Section 252(i)

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[152] Thus, if a state has ordered all LECs to exchange ISP-bound traffic on a bill and keep basis, or if a state has ordered bill and keep for ISP-bound traffic in a particular arbitration, those LECs subject to the state order would continue to exchange ISP-bound traffic on a bill and keep basis.

[153] *See American Public Communications Council v. FCC*, 215 F.3d 51 (D.C. Cir. 2000)("Where existing methodology or research in a new area of regulation is deficient, the agency necessarily enjoys broad discretion to attempt to formulate a solution to the best of its ability on the basis of available information.").

[154] 47 U.S.C. § 252(i) (requiring LECs to "make available any interconnection, service, or network element provided under an agreement approved under this section" to "any other requesting telecommunications carrier"). This Order will become effective 30 days after publication in the Federal Register. We find there is good cause under 5 U.S.C. § 553(d)(3), however, to prohibit carriers from invoking section 252(i) with respect to rates paid for (continued....)

applies only to agreements arbitrated or approved by state commissions pursuant to section 252; it has no application in the context of an intercarrier compensation regime set by this Commission pursuant to section 201.[155]

83. This interim regime satisfies the twin goals of compensating LECs for the costs of delivering ISP-bound traffic while limiting regulatory arbitrage. The interim compensation regime, as a whole, begins a transition toward what we have tentatively concluded, in the companion *NPRM*, to be a more rational cost recovery mechanism under which LECs recover more of their costs from their own customers. This compensation mechanism is fully consistent with the manner in which the Commission has directed incumbent LECs to recover the costs of serving ESPs, including ISPs.[156] The three-year transition we adopt here ensures that carriers have sufficient time to re-order their business plans and customer relationships, should they so choose, in light of our tentative conclusions in the companion *NPRM* that bill and keep is the appropriate long-term intercarrier compensation regime. It also affords the Commission adequate time to consider comprehensive reform of all intercarrier compensation regimes in the *NPRM* and any resulting rulemaking proceedings. Both the rate caps and the volume limitations reflect our view that LECs should begin to formulate business plans that reflect decreased reliance on revenues from intercarrier compensation, given the trend toward substantially lower rates and the strong possibility that the *NPRM* may result in the adoption of a full bill and keep regime for ISP-bound traffic.

84. We acknowledge that there is no exact science to setting rate caps to limit carriers' ability to draw revenue from other carriers, rather than from their own end-users. Our adoption of the caps here is based on a number of considerations. First, rates that produce meaningful reductions in intercarrier payments for ISP-bound traffic must be at least as low as rates in existing interconnection agreements. Second, although we make no finding here regarding the actual costs incurred in the delivery of ISP-bound traffic, there is evidence in the record to suggest that technological developments are reducing the costs incurred by carriers in handling all sorts of traffic, including ISP-bound traffic.[157] Third, although the process has proceeded too

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the exchange of ISP-bound traffic upon publication of this Order in the Federal Register, in order to prevent carriers from exercising opt in rights during the thirty days after Federal Register publication. To permit a carrier to opt into a reciprocal compensation rate higher than the caps we impose here during that window would seriously undermine our effort to curtail regulatory arbitrage and to begin a transition from dependence on intercarrier compensation and toward greater reliance on end-user recovery.

[155] In any event, our rule implementing section 252(i) requires incumbent LECs to make available "[i]ndividual interconnection, service, or network element arrangements" to requesting telecommunications carriers only "for a reasonable period of time." 47 C.F.R. § 51.809(c). We conclude that any "reasonable period of time" for making available rates applicable to the exchange of ISP-bound traffic expires upon the Commission's adoption in this Order of an intercarrier compensation mechanism for ISP-bound traffic.

[156] *Access Charge Reform Order*, 12 FCC Rcd at 16133-34.

[157] *See, e.g.*, Letter from David J. Hostetter, SBC, to Magalie Roman Salas, Secretary, FCC (Feb. 14, 2001), Attachment (citing September 2000 Morgan Stanley Dean Witter report that discusses utilization of lower cost switch technology); Donny Jackson, "One Giant Leap for Telecom Kind?," *Telephony*, Feb. 12, 2001, at 38 (discussing cost savings associated with replacing circuit switches with packet switches); Letter from Gary L. Phillips, SBC, to Magalie Roman Salas, Secretary, FCC (Feb. 16, 2001) (attaching press release from Focal (continued....)

slowly to address the market distortions discussed above, we note that negotiated reciprocal compensation rates continue to decline as ILECs and CLECs negotiate new interconnection agreements. Finally, CLECs have been on notice since the 1999 *Declaratory Ruling* that it might be unwise to rely on the continued receipt of reciprocal compensation for ISP-bound traffic, thus many have begun the process of weaning themselves from these revenues.

85. The rate caps adopted herein reflect all these considerations. The caps we have selected approximate the downward trend in intercarrier compensation rates reflected in recently negotiated interconnection agreements. In these agreements, carriers have agreed to rates, like those we adopt here, that decline each year of a three-year contract term, and at least one agreement reflects different rates for balanced and unbalanced traffic.[158] For example, the initial rate cap of $.0015/mou approximates the rates applicable this year in agreements Level 3 has negotiated with Verizon and SBC.[159] The $.0010/mou rate that applies during most of the three-year interim period reflects a proposal by ALTS, the trade association representing CLECs, for a transition plan pursuant to which intercarrier compensation payments for ISP-bound traffic would decline to $.0010/mou.[160] Similarly, the $.0007/mou rate reflects the average rate applicable in 2002 under Level 3's agreement with SBC.[161] We conclude, therefore, that the rate caps constitute a reasonable transition toward the recovery of costs from end-users.

86. We impose an overall cap on ISP-bound minutes for which compensation is due in order to ensure that growth in dial-up Internet access does not undermine our efforts to limit

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Communications announcing planned deployment of next-generation switching technology "at a fraction of the cost of traditional equipment"); *see also infra* para. 93.

[158] The Commission takes notice of the following interconnection agreements: (1) Level 3 Communications and SBC Communications (effective through May 2003): This 13-state agreement has two sets of rates. For balanced traffic, the rate is $.0032/mou. For traffic that is out of balance by a ratio exceeding 3:1, the rate starts at $.0018/mou, declining to a weighted average rate of $.0007/mou by June 1, 2002. *See* PR Newswire, WL PRWIRE 07:00:00 (Jan. 17, 2001); Letter from John T. Nakahata, Harris, Wiltshire & Grannis, to Magalie Roman Salas, Secretary, FCC, Attachment (Jan. 19, 2001). (2) ICG Communications and BellSouth (retroactively effective to Jan. 1, 2000): This agreement provides for rates to decline over three years, from $0.002/mou to $0.00175/mou to $0.0015/mou. *See* Communications Daily, 2000 WL 4694709 (Mar. 15, 2000). (3) KMC Telecom and BellSouth: This agreement provides for a rate of $0.002/mou in 2000, $0.00175/mou in 2001, $0.0015/mou in 2002. *See* Business Wire, WL 5/18/00 BWIRE 12:50:000 (May 18, 2000). (4) Level 3 Communications and Verizon (formerly Bell Atlantic) (effective Oct. 14, 1999): This agreement governs all of the former Bell Atlantic/NYNEX states. The applicable rate declines over the term of the agreement from $.003/mou in 1999 to rates in 2001 of $.0015/mou for balanced traffic and $.0012/mou where the traffic imbalance exceeds a 10:1 ratio. *See* Letter from Joseph J. Mulieri, Bell Atlantic, to Magalie Roman Salas, Secretary, FCC (Nov. 22, 1999)(attaching agreement); *see also* Letter from John T. Nakahata, Harris, Wiltshire & Grannis, to Magalie Roman Salas, Secretary, FCC, at 2 (Jan. 4, 2001)(reciprocal compensation rate in most recent Level 3 – Verizon agreement is now $.0012/mou in all states except New York, where the rate is $.0015/mou).

[159] In the Level 3 – SBC agreement, the applicable rate is $.0018/mou for traffic that exceeds a 3:1 ratio; in the Level 3 – Verizon agreement, the applicable rate is $.0015/mou for balanced traffic and $.0012/mou for traffic that exceeds a 10:1 ratio. *See supra* note 158.

[160] *See* Letter from Jonathan Askin, ALTS, to Magalie Roman Salas, Secretary, FCC, at 3 (Dec. 19, 2000).

[161] *See supra* note 158.

intercarrier compensation for this traffic and to begin, subject to the conclusion of the *NPRM* proceedings, a smooth transition toward a bill and keep regime. A ten percent growth cap, for the first two years, seems reasonable in light of CLEC projections that the growth of dial-up Internet minutes will fall in the range of seven to ten percent per year.[162] We are unpersuaded by the ILECs' projections that dial-up minutes will grow in the range of forty percent per year,[163] but adoption of a cap on growth largely moots this debate. If CLECs have projected growth in the range of ten percent, then limiting intercarrier compensation at that level should not disrupt their customer relationships or their business planning. Nothing in this Order prevents any carrier from serving or indeed expanding service to ISPs, so long as they recover the costs of additional minutes from their ISP customers. The caps merely ensure that growth in minutes above the caps is based on a given carrier's ability to provide efficient and quality service to ISPs, rather than on a carrier's desire to reap an intercarrier compensation windfall.

87. We are not persuaded by arguments proffered by CLECs that requiring them to recover more of their costs from their ISP customers will render it impossible for CLECs profitably to serve ISPs or will lead to higher rates for Internet access.[164] First, as noted above, this compensation mechanism is fully consistent with the manner in which this Commission has directed ILECs to recover the costs of serving ISPs.[165] Moreover, the evidence in the record does not demonstrate that CLECs cannot compete for ISP customers in the growing number of states that have adopted bill and keep for ISP-bound traffic or that the cost of Internet access has increased in those states. Second, next-generation switching and other technological developments appear to be contributing to a decline in the costs of serving ISPs (and other customers).[166] Third, if reciprocal compensation merely enabled CLECs to recover the costs of serving ISPs, CLECs should be indifferent between serving ISPs and other customers. Instead, CLECs have not contradicted ILEC assertions that more than ninety percent of CLEC reciprocal compensation billings are for ISP-bound traffic,[167] suggesting that there may be a considerable margin between current reciprocal compensation rates and the actual costs of transport and

[162] *See, e.g.,* Letter from Jonathan Askin, ALTS, to Magalie Roman Salas, Secretary, FCC (Dec. 18, 2000) (offering evidence that dial-up traffic per household will grow only 7%/year from 1998 to 2003 and that dial-up household penetration will decline between 2000 and 2003); Letter from Jonathan Askin, ALTS, to Magalie Roman Salas, Secretary, FCC (Jan. 9, 2001)(citing, *inter alia*, Merrill Lynch estimate of 7% annual increased Internet usage per user between 1999 and 2003, and PricewaterhouseCoopers' study suggesting that Internet usage per user declined from 1999 to 2000).

[163] *See, e.g.,* Letter from Robert T. Blau, BellSouth, to Dorothy Attwood, Chief, Common Carrier Bureau, FCC (Dec. 22, 2000) (forecasting 42% annual growth in total Internet access minutes between 2000 and 2003); *but see* Dan Beyers, "Internet Use Slipped Late Last Year," Washingtonpost.com, Feb. 22, 2001, at E10 (noting decline in average time spent online in 2000).

[164] *See, e.g.,* Time Warner Remand Comments at 4-5; Centennial Remand Comments at 2, 6-7.

[165] *Access Charge Reform Order*, 12 FCC Rcd at 16134; *MTS/WATS Market Structure Order*, 97 FCC 2d at 720-721.

[166] *See infra* para. 93.

[167] *See* Letter from Robert T. Blau, BellSouth, *et al.*, to Dorothy Attwood, Chief, Common Carrier Bureau, FCC, at 4 (Nov. 3, 2000); SBC Remand Comments at 42, 51, 57.

termination.[168] Finally, there is reason to believe that our failure to act, rather than the actions we take here, would lead to higher rates for Internet access, as ILECs seek to recover their reciprocal compensation liability, which they incur on a minute-of-use basis, from their customers who call ISPs.[169] Alternatively, ILECs might recover these costs from all of their local customers, including those who do not call ISPs.[170] There is no public policy rationale to support a subsidy running from all users of basic telephone service to those end-users who employ dial-up Internet access.[171]

88. We also are not convinced by the claim of CLECs that limiting intercarrier compensation for ISP-bound traffic will result in a windfall for the incumbent LECs.[172] The CLECs argue that the incumbents' local rates are set to recover the costs of originating and terminating calls and that the ILECs avoid termination costs when their end-users call ISP customers served by CLECs. The record does not establish that ILECs necessarily avoid costs when they deliver calls to CLECs,[173] and CLECs have not demonstrated that ILEC end-user rates are designed to recover from the originating end-user the costs of delivering calls to ISPs. The ILECs point out that, in response to their complaints about the costs associated with delivering traffic to ISPs, the Commission has directed them to seek permission from state regulators to raise the rates they charge *the ISPs*, an implicit acknowledgement that ILECs may not recover all of their costs from the originating end-user.[174]

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[168] We do not suggest that it costs CLECs less to serve ISPs than other types of customers. New switching technologies make it less costly to serve *all* customers. If, however, costs are lower than prevailing reciprocal compensation rates, then CLECs are likely to target customers, such as ISPs, with predominantly incoming traffic, in order to maximize the resulting profit.

[169] *See, e.g.,* Verizon Remand Comments at 16.

[170] *Id.*

[171] Most CLECs assert that they compete with ILECs on service, not price, and that the rates they charge to ISPs are comparable to the ILEC rates for the same services. *See, e.g.,* Time Warner Remand Comments at 5. We acknowledge, however, that any CLECs that use reciprocal compensation payments to offer below cost service to ISPs may be unable to continue that practice under the compensation regime we adopt here. We reiterate that we see no public policy reason to maintain a subsidy running from ILEC end-users to ISPs and their customers.

[172] *See, e.g.,* Letter from Robert W. McCausland, Allegiance Telecom; Kelsi Reeves, Time Warner Telecom; Richard J. Metzger, Focal, R. Gerard Salemme, XO Communications; and Heather B. Gold, Intermedia; to Dorothy Attwood, Chief, Common Carrier Bureau, FCC, at 6 (Oct. 20, 2000).

[173] *See, e.g.,* SBC Remand Reply Comments at 31-32 (explaining how an ILEC may incur additional switching and transport costs when its end-user customer calls an ISP served by a CLEC).

[174] *See Access Charge Reform Order*, 12 FCC Rcd at 16134; *see also MTS/WATS Market Structure Order*, 97 FCC 2d at 721 (the local business line rate paid by ISPs subsumes switching costs). Moreover, most states have adopted price cap regulation of local rates, in which case rates do not necessarily correlate to cost in the manner the CLECs suggest. *See* "Price Caps Standard Form of Telco Regulation in 70% of States," Communications Daily, 1999 WL 7580319 (Sept. 8, 1999).

3. Relationship to Section 251(b)(5)

89. It would be unwise as a policy matter, and patently unfair, to allow incumbent LECs to benefit from reduced intercarrier compensation rates for ISP-bound traffic, with respect to which they are net payors,[175] while permitting them to exchange traffic at state reciprocal compensation rates, which are much higher than the caps we adopt here, when the traffic imbalance is reversed.[176] Because we are concerned about the superior bargaining power of incumbent LECs, we will not allow them to "pick and choose" intercarrier compensation regimes, depending on the nature of the traffic exchanged with another carrier. The rate caps for ISP-bound traffic that we adopt here apply, therefore, *only* if an incumbent LEC offers to exchange all traffic subject to section 251(b)(5)[177] at the same rate. Thus, if the applicable rate cap is $.0010/mou, the ILEC must offer to exchange section 251(b)(5) traffic at that same rate. Similarly, if an ILEC wishes to continue to exchange ISP-bound traffic on a bill and keep basis in a state that has ordered bill and keep, it must offer to exchange all section 251(b)(5) traffic on a bill and keep basis.[178] For those incumbent LECs that choose *not* to offer to exchange section 251(b)(5) traffic subject to the same rate caps we adopt for ISP-bound traffic, we order them to exchange ISP-bound traffic at the state-approved or state-arbitrated reciprocal compensation rates reflected in their contracts.[179] This "mirroring" rule ensures that incumbent LECs will pay the same rates for ISP-bound traffic that they receive for section 251(b)(5) traffic.

90. This is the correct policy result because we see no reason to impose different rates for ISP-bound and voice traffic. The record developed in response to the *Intercarrier Compensation NPRM* and the *Public Notice* fails to establish any inherent differences between the costs on any one network of delivering a voice call to a local end-user and a data call to an ISP.[180]

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[175] The four largest incumbent LECs – SBC, BellSouth, Verizon, and Qwest – estimate that they owed over $2 billion in reciprocal compensation for ISP-bound traffic in 2000. *See, e.g.,* Letter from Robert T. Blau, BellSouth, to Dorothy Attwood, Chief, Common Carrier Bureau, FCC (Jan. 16, 2001).

[176] More calls are made from wireless phones to wireline phones than vice-versa. The ILECs, therefore, are net recipients of reciprocal compensation from wireless carriers.

[177] Pursuant to the analysis we adopt above, section 251(b)(5) applies to telecommunications traffic between a LEC and a telecommunications carrier other than a CMRS provider that is not interstate or intrastate access traffic delivered to an IXC or an information service provider, and to telecommunications traffic between a LEC and a CMRS provider that originates and terminates within the same MTA. *See supra* § IV.B.

[178] If, however, a state has ordered bill and keep for ISP-bound traffic only with respect to a particular interconnection agreement, as opposed to state-wide, we do not require the incumbent LEC to offer to exchange all section 251(b)(5) traffic on a bill and keep basis. This limitation is necessary so that an incumbent is not required to deliver all section 251(b)(5) in a state on a bill and keep basis even though it continues to pay compensation for most ISP-bound traffic in that state. *See, e.g.,* Letter from John W. Kure, Qwest, to Magalie Roman Salas, Secretary, FCC (April 2, 2001)(citing, for example, Washington state, where 16% of ISP-bound traffic is subject to bill and keep). In those states, the rate caps we adopt here will apply to ISP-bound traffic that is not subject to bill and keep under the particular interconnection agreement if the incumbent LEC offers to exchange all section 251(b)(5) traffic subject to those rate caps.

[179] ILECs may make this election on a state-by-state basis.

[180] Many commenters argue that there is, in fact, no difference between the cost and network functions involved in terminating ISP-bound calls and the cost and functions involved in terminating other calls to users of the public (continued....)

Assuming the two calls have otherwise identical characteristics (*e.g.*, duration and time of day), a LEC generally will incur the same costs when delivering a call to a local end-user as it does delivering a call to an ISP.[181] We therefore are unwilling to take any action that results in the establishment of separate intercarrier compensation rates, terms, and conditions for local voice and ISP-bound traffic.[182] To the extent that the record indicates that per minute reciprocal compensation rate levels and rate structures produce inefficient results, we conclude that the problems lie with this recovery mechanism in general and are not limited to any particular type of traffic.

91. We are not persuaded by commenters' claims that the rates for delivery of ISP-bound traffic and local voice traffic should differ because delivering a data call to an ISP is inherently less costly than delivering a voice call to a local end-user. In an attached declaration to Verizon's comments, William Taylor argues that reciprocal compensation rates may reflect switching costs associated with both originating and terminating functions, despite the fact that ISP traffic generally flows in only one direction.[183] If correct, however, this observation suggests a need to develop rates or rate structures for the transport and termination of *all* traffic that exclude costs associated solely with originating switching.[184] Mr. Taylor similarly argues that ISP-bound calls generally are longer in duration than voice calls, and that a per-minute rate structure applied to calls of longer duration will spread the fixed costs of these calls over more minutes, resulting in lower per-minute costs, and possible over recovery of the fixed costs incurred.[185] Any possibility of over recovery associated with calls (to ISPs or otherwise) of longer than average duration can be eliminated through adoption of rate structures that provide

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switched telephone network. *See, e.g.,* AOL Comments at 10-12 ("there is absolutely no technical distinction, and therefore no cost differences, between the way an incumbent LEC network handles ISP-destined traffic and the way it handles other traffic within the reciprocal compensation framework."); AT&T Comments at 10-11 ("[T]here is no economic justification for subjecting voice and data traffic to different compensation rules." "ILECs have not demonstrated, and cannot demonstrate, that the costs of transporting and terminating data traffic differ categorically from the costs of transporting and terminating ordinary voice traffic."); Choice One Comments at 8 ("[C]osts do not vary significantly based on whether data or voice traffic is being transmitted."); Corecomm Reply at 2 (network functions are identical whether a carrier is providing service to an ISP or any other end-user); Cox Comments at 7 & Exhibit 2, Statement of Gerald W. Brock at 2 ("None of the distinctions between ISP calls and average calls relate to a cost difference for handling the calls."); MediaOne Comments at 4 (LECs incur the same costs for terminating calls to an ISP as they do for terminating any other local calls); Time Warner Comments at 9 ("[A]ll LECs perform the same functions when transporting and delivering calls to ISP end-users as they do when transporting and delivering calls to other end-users. When LECs perform the same functions, they incur the same costs."); Letter from Donald F. Shepheard, Time Warner Telecom, to Dorothy Attwood, Chief, Common Carrier Bureau, FCC (Feb. 28, 2001)(disputing claim that CLEC switching costs are as low as the ILECs argue).

[181] *See, e.g.,* Cox Comments at Exhibit 2, Statement of Gerald W. Brock at 2.

[182] *See, e.g.,* Intermedia Comments at 3-4 (arguing that the rates for transport and termination of ISP-bound traffic must be identical to the rates established for the transport and termination of local traffic).

[183] *See* Verizon Remand Comments, Declaration of William E. Taylor at 14, 17.

[184] *See* Time Warner Remand Reply Comments, Exhibit 1, Declaration of Don J. Wood at 14. *See also* Letter from John W. Kure, Qwest, to Magalie Roman Salas, Secretary, FCC, Attachment at 7-8 (Oct. 26, 2000).

[185] *See* Verizon Remand Comments, Declaration of William E. Taylor at 14-15.

for recovery of per-call costs on a per-call basis, and minute-of-use costs on a minute-of-use basis.[186] We also are not convinced that ISP-bound calls have a lower load distribution (*i.e.*, number and duration of calls in the busy hour as a percent of total traffic), and that these calls therefore impose lower additional costs on a network.[187] It is not clear from the record that there is any "basis to speculate that the busy hour for calls to ISPs will be different than the CLEC switch busy hour,"[188] especially when the busy hour is determined by the flow of both voice and data traffic.

92. Nor does the record demonstrate that CLECs and ILECs incur different costs in delivering traffic that would justify disparate treatment of ISP-bound traffic and local voice traffic under section 251(b)(5). Ameritech maintains that it costs CLECs less to deliver ISP-bound traffic than it costs incumbent LECs to deliver local traffic because CLECs can reduce transmission costs by locating their switches close to ISPs.[189] The proximity of the ISP or other end-user to the delivering carrier's switch, however, is irrelevant to reciprocal compensation rates.[190] The Commission concluded in the *Local Competition Order* that the non-traffic sensitive cost of the local loop is not an "additional" cost of terminating traffic that a LEC is entitled to recover through reciprocal compensation.[191]

93. SBC argues that CLECs should not be entitled to symmetrical reciprocal compensation rates for the delivery of ISP-bound traffic, because CLECs do not provide end office switching functionality to their ISP customers and therefore do not incur the same costs that ILECs incur when delivering local voice traffic. Specifically, SBC claims that the switching functionality that CLECs provide to ISPs is more like a trunk-to-trunk connection than the switching functionality normally provided at end offices.[192] SBC also claims that CLECs are able to reduce the costs of delivering ISP-bound traffic by using new, less expensive switches that do not perform the functions necessary for both the origination and delivery of two-way voice traffic.[193] Similarly, GTE asserts that new technologies and system architectures make it possible for some CLECs to reduce costs by entirely avoiding circuit-switching on calls "to selected

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[186] *See* Time Warner Remand Reply Comments, Exhibit 1, Declaration of Don J. Wood at 10-11. Time Warner also disputes that the "average duration of calls to ISPs has been accurately measured to date." *Id.* at 11.

[187] *See* Verizon Remand Comments, Declaration of William E. Taylor at 17-18.

[188] *See* Time Warner Remand Reply Comments, Exhibit 1, Declaration of Don J. Wood at 14-15.

[189] *See* Letter from Gary L. Phillips, Ameritech, to Magalie Roman Salas, Secretary, FCC, Attachment at 5 (Sept. 14, 1999). *See also* SBC Remand Comments at 32-33 (referring to Global NAPS Comments, Exhibit 1, Statement of Fred Goldstein at 6, which describes CLEC reduction of loop costs through collocation); Letter from Melissa Newman, U S West, to Magalie Roman Salas, Secretary, FCC, Attachment at 8 (Dec. 2, 1999).

[190] *See* Time Warner Remand Reply Comments, Exhibit 1, Declaration of Don J. Wood at 25.

[191] *See Local Competition Order*, 11 FCC Rcd at 16025.

[192] SBC Remand Comments at 33.

[193] SBC Remand Comments at 33-34 (referring, *inter alia*, to "managed modem" switches).

telephone numbers."[194] CLECs respond, however, that they are in fact using the same circuit switching technology used by ILECs to terminate the vast portion of Internet traffic.[195] In any event, it is not evident from any of the comments in the record that the apparent efficiencies associated with new system architectures apply exclusively to data traffic, and not to voice traffic as well. ILECs and CLECs alike are free to deploy new technologies that provide more efficient solutions to the delivery of certain types of traffic,[196] and these more efficient technologies will, over time, be reflected in cost-based reciprocal compensation rates. The overall record in this proceeding does not lead us to conclude that any system architectures or technologies widely used by LECs result in material differences between the cost of delivering ISP-bound traffic and the cost of delivering local voice traffic, and we see no reason, therefore, to distinguish between voice and ISP traffic with respect to intercarrier compensation.

94. Some CLECs take this argument one step further. Whatever the merits of bill and keep or other reforms to intercarrier compensation, they say, any such reform should be undertaken only in the context of a comprehensive review of *all* intercarrier compensation regimes, including the interstate access charge regime.[197] First, we reject the notion that it is inappropriate to remedy some troubling aspects of intercarrier compensation until we are ready to solve all such problems. In the most recent of our access charge reform orders, we recognized that it is "preferable and more reasonable to take several steps in the right direction, even if incomplete, than to remain frozen" pending "a perfect, ultimate solution."[198] Moreover, it may

[194] GTE Comments at 7-8 (noting the existence of SS7 bypass devices that can avoid circuit switching and arguing that competitive LEC networks are far less complex and utilize fewer switches than incumbent LEC networks); GTE Reply Comments at 16 (compensating competitive LECs based on an incumbent LEC's costs inflates the revenue that competitive LECs receive); Letter from W. Scott Randolph, GTE, to Magalie Roman Salas, Secretary, FCC, Attachment (Dec. 8, 1999 (new generation traffic architectures may use SS7 Gateways instead of more expensive circuit-switched technology).

[195] *See, e.g.,* Letter from John D. Windhausen, Jr., ALTS, and H. Russell Frisby, Jr., CompTel, to Kyle Dixon, Legal Advisor, Chairman Michael Powell, FCC, at 4-5 (March 16, 2001)(Focal is testing two softswitches, but as of now all ISP-bound traffic terminated by Focal uses traditional circuit switches; Allegiance Telecom has a single softswitch in its network; Advanced Telecom Group, Inc. is in the testing phase of softswitch deployment; Pac-West Telecomm, Inc., does not have any softswitches in its network; e.spire uses only circuit switches to terminate ISP-bound traffic);Time Warner Remand Reply Comments, Exhibit 1, Declaration of Don J. Wood at 27 (Time Warner is "deploying fully functional end office switches"); Letter from Donald F. Shepheard, Time Warner, to Dorothy Attwood, Chief, Common Carrier Bureau, FCC, at 3 (February 28, 2001)(Time Warner "does not provide managed modem services." Like the ILECs, Time Warner "has an extensive network of circuit switched technology" and has only just begun to deploy softswitches); Letter from Teresa Marrero, AT&T, to Magalie Roman Salas, Secretary, FCC, at 1 (April 11, 2001)("Virtually all of AT&T's ISP-bound traffic is today terminated using full circuit switches.").

[196] *See* Time Warner Remand Reply Comments, Exhibit 1, Declaration of Don J. Wood at 28; *see also* Letter from Donald F. Shepheard, Time Warner, to Dorothy Attwood, Chief, Common Carrier Bureau, FCC, at 3 (Feb. 28, 2001)("if softswitch technology will lower carriers' costs, then all carriers, including the ILECs[,] will have incentive to deploy them"); Letter from John D. Windhausen, Jr., ALTS, and H. Russell Frisby, Jr., CompTel, to Dorothy Attwood, Chief, Common Carrier Bureau, FCC, at 4 (February 16, 2001)(same).

[197] *See, e.g.,* Letter from Karen L. Gulick, Harris, Wiltshire & Grannis, to Magalie Roman Salas, Secretary, FCC, at 1 (Dec. 22, 2000).

[198] *See CALLS Order*, 15 FCC Rcd at 12974.

make sense to begin reform by rationalizing intercarrier compensation between competing providers of telecommunications services, to encourage efficient entry and the development of robust competition, rather than waiting to complete reform of the interstate access charge regime that applies to incumbent LECs, which was created in a monopoly environment for quite different purposes. Second, the interim compensation scheme we adopt here is fully consistent with the course the Commission has pursued with respect to access charge reform. A primary feature of the *CALLS Order* is the phased elimination of the PICC and CCL, [199] two intercarrier payments we found to be inefficient, in favor of greater recovery from end-users through an increased SLC, an end-user charge.[200] Finally, like the *CALLS Order*, the interim regime we adopt here "provides relative certainty in the marketplace" pending further Commission action, thereby allowing carriers to develop business plans, attract capital, and make intelligent investments.[201]

D. Conclusion

95. In this Order, we strive to balance the need to rationalize an intercarrier compensation scheme that has hindered the development of efficient competition in the local exchange and exchange access markets with the need to provide a fair and reasonable transition for CLECs that have come to depend on intercarrier compensation revenues. We believe that the interim compensation regime we adopt herein responds to both concerns. The regime should reduce carriers' reliance on carrier-to-carrier payments as they recover more of their costs from end-users, while avoiding a "flash cut" to bill and keep which might upset legitimate business expectations. The interim regime also provides certainty to the industry during the time that the Commission considers broader reform of intercarrier compensation mechanisms in the *NPRM* proceeding. Finally, we hope this Order brings an end to the legal confusion resulting from the Commission's historical treatment of ISP-bound traffic, for purposes of jurisdiction and compensation, and the statutory obligations and classifications adopted by Congress in 1996 to promote the development of competition for all telecommunications services. We believe the analysis set forth above amply responds to the court's mandate that we explain how our conclusions regarding ISP-bound traffic fit within the governing statute.[202]

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[199] The PICC, or presubscribed interexchange carrier charge, and the CCLC, carrier common line charge, are charges levied by incumbent LECs upon IXCs to recover portions of the interstate-allocated cost of subscriber loops. *See* 47 C.F.R. §§ 69.153, 69.154.

[200] *CALLS Order*, 15 FCC Rcd at 12975 (permitting a greater proportion of the local loop costs of primary residential and single-line business customers to be recovered through the SLC).

[201] *CALLS Order*, 15 FCC Rcd at 12977 (The CALLS proposal is aimed to " bring lower rates and less confusion to consumers; and create a more rational interstate rate structure. This, in turn, will support more efficient competition, more certainty for the industry, and permit more rational investment decisions.").

[202] *Bell Atlantic*, 206 F.3d at 8.

V. PROCEDURAL MATTERS

A. Final Regulatory Flexibility Analysis

96. As required by the Regulatory Flexibility Act (RFA),[203] an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the *Declaratory Ruling and NPRM*.[204] The Commission sought and received written comments on the IRFA. The Final Regulatory Flexibility Analysis (FRFA) in this Order on Remand and Report and Order conforms to the RFA, as amended.[205] To the extent that any statement contained in this FRFA is perceived as creating ambiguity with respect to our rules, or statements made in preceding sections of this Order on Remand and Report and Order, the rules and statements set forth in those preceding sections shall be controlling.

1. Need for, and Objectives of, this Order on Remand and Report and Order

97. In the *Declaratory Ruling*, we found that we did not have an adequate record upon which to adopt a rule regarding intercarrier compensation for ISP-bound traffic, but we indicated that adoption of a rule would serve the public interest.[206] We sought comment on two alternative proposals, and stated that we might issue new rules or alter existing rules in light of the comments received.[207] Prior to the release of a decision, the Court of Appeals for the District of Columbia Circuit vacated certain provisions of the *Declaratory Ruling* and remanded the matter to the Commission.[208]

98. This Order on Remand and Report and Order addresses the concerns of various parties to this proceeding and responds to the court's remand. The Commission exercises jurisdiction over ISP-bound traffic pursuant to section 201, and establishes a three-year interim intercarrier compensation mechanism for the exchange of ISP-bound traffic that applies if incumbent LECs offer to exchange section 251(b)(5) traffic at the same rates. During this interim period, intercarrier compensation for ISP-bound traffic is subject to a rate cap that declines over the three-year period, from $.0015/mou to $.0007/mou. The Commission also imposes a cap on the total ISP-bound minutes for which a LEC may receive this compensation under a particular interconnection agreement equal to, on an annualized basis, the number of ISP-bound minutes for which that LEC was entitled to receive compensation during the first quarter of 2001, increased

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[203] *See* 5 U.S.C. § 603.

[204] *Declaratory Ruling*, 14 FCC Rcd at 3710-13.

[205] *See* 5 U.S.C. § 604. The Regulatory Flexibility Act, 5 U.S.C. § 601 *et. seq.*, was amended by the "Small Business Regulatory Enforcement Fairness Act of 1996" (SBREFA), which was enacted as Title II of the Contract With America Advancement Act of 1996, Pub.L. No. 104-121, 110 Stat. 847 (1996) (CWAAA).

[206] *Declaratory Ruling and Intercarrier Compensation NPRM*, 14 FCC Rcd at 3707.

[207] *Declaratory Ruling and Intercarrier Compensation NPRM*, 14 FCC Rcd at 3711.

[208] *See Bell Atlantic*, 206 F.3d 1.

by ten percent in each of the first two years of the transition. If an incumbent LEC does not offer to exchange all section 251(b)(5) traffic subject to the rate caps set forth herein, the exchange of ISP-bound traffic will be governed by the reciprocal compensation rates approved or arbitrated by state commissions.

2. Summary of Significant Issues Raised by the Public Comments in Response to the IRFA

99. The Office of Advocacy, U.S. Small Business Administration (Office of Advocacy) submitted two filings in response to the IRFA.[209] In these filings, the Office of Advocacy raises significant issues regarding our description, in the IRFA, of small entities to which our rules will apply, and the discussion of significant alternatives considered and rejected. Specifically, the Office of Advocacy argues that the Commission has failed accurately to identify all small entities affected by the rulemaking by refusing to characterize small incumbent local exchange carriers (LECs), and failing to identify small ISPs, as small entities.[210] We note that, in the IRFA, we stated that we excluded small incumbent LECs from the definitions of "small entity" and "small business concern" because such companies are either dominant in their field of operations or are not independently owned and operated.[211] We also stated, however, that we would nonetheless, out of an abundance of caution, include small incumbent LECs in the IRFA, and did so.[212] Small incumbent LECs and other relevant small entities are included in our present analysis as described below.

100. The Office of Advocacy also states that Internet service providers (ISPs) are directly affected by our actions, and therefore should be included in our regulatory flexibility analysis. We find, however, that rates charged to ISPs are only indirectly affected by our actions. We have, nonetheless, briefly discussed the effect on ISPs in the primary text of this Order.[213]

101. Last, the Office of Advocacy also argues that the Commission has failed to adequately address significant alternatives that accomplish our stated objective and minimize any significant economic impact on small entities.[214] We note that, in the IRFA, we described the nature and effect of our proposed actions, and encouraged small entities to comment (including giving comment on possible alternatives). We also specifically sought comment on the two alternative proposals for implementing intercarrier compensation – one that resolved intercarrier compensation pursuant to the negotiation and arbitration process set forth in Section 252, and

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[209] Office of Advocacy, U.S. Small Business Administration *ex parte*, May 27, 1999; Office of Advocacy, U.S. Small Business Administration *ex parte*, June 14, 1999.

[210] Office of Advocacy, U.S. Small Business Administration *ex parte*, May 27, 1999, at 1-3; Office of Advocacy, U.S. Small Business Administration *ex parte*, June 14, 1999, at 2-3.

[211] *Declaratory Ruling and Intercarrier Compensation NPRM*, 14 FCC Rcd at 3711.

[212] *Declaratory Ruling and Intercarrier Compensation NPRM*, 14 FCC Rcd at 3711.

[213] *See supra* paras. 87-88.

[214] Office of Advocacy, U.S. Small Business Administration *ex parte*, June 14, 1999, at 3.

another that would have had us adopt a set of federal rules to govern such intercarrier compensation.[215] We believe, therefore, that small entities had a sufficient opportunity to comment on alternative proposals.

102. NTCA also filed comments, not directly in response to the IRFA, urging the Commission to fulfill its obligation to consider small telephone companies.[216] Some commenters also raised the issue of small entity concerns over increasing Internet traffic and the use of Extended Area Service (EAS) arrangements.[217] We are especially sensitive to the needs of rural and small LECs that handle ISP-bound traffic, but we find that the costs that LECs incur in *originating* this traffic extends beyond the scope of the present proceeding and should not dictate the appropriate approach to compensation for *delivery* of ISP-bound traffic.

3. Description and Estimate of the Number of Small Entities to Which Rules Will Apply

103. The rules we are adopting apply to local exchange carriers. To estimate the number of small entities that would be affected by this economic impact, we first consider the statutory definition of "small entity" under the RFA. The RFA generally defines "small entity" as having the same meaning as the term "small business," "small organization," and "small governmental jurisdiction."[218] In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act, unless the Commission has developed one or more definitions that are appropriate to its activities.[219] Under the Small Business Act, a "small business concern" is one that: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) meets any additional criteria established by the SBA.[220] The SBA has defined a small business for Standard Industrial Classification (SIC) categories 4812 (Radiotelephone Communications) and 4813 (Telephone Communications, Except Radiotelephone) to be small entities when they have no more than 1,500 employees.[221]

104. The most reliable source of information regarding the total numbers of certain common carrier and related providers nationwide, as well as the numbers of commercial wireless entities, appears to be data the Commission publishes annually in its Carrier Locator report, derived from filings made in connection with the Telecommunications Relay Service (TRS).[222]

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[215] *Declaratory Ruling [IRFA]*, 14 FCC Rcd at 3711 (para. 39); *see also Declaratory Ruling*, 14 FCC Rcd at 3707-08 (paras. 30-31).

[216] NTCA Comments at vi, 15.

[217] *See, e.g.*, ICORE Comments at 1-7; IURC Comments at 7; Richmond Telephone Company Comments at 1-8.

[218] 5 U.S.C. § 601(6).

[219] 5 U.S.C. § 601(3) (incorporating by reference the definition of "small business concern" in 5 U.S.C. § 632).

[220] 15 U.S.C. § 632.

[221] 13 C.F.R. § 121.201.

[222] FCC, Carrier Locator: Interstate Service Providers, Figure 1 (Jan. 2000) (*Carrier Locator*).

According to data in the most recent report, there are 4,144 interstate carriers.[223] These carriers include, *inter alia*, incumbent local exchange carriers, competitive local exchange carriers, competitive access providers, interexchange carriers, other wireline carriers and service providers (including shared-tenant service providers and private carriers), operator service providers, pay telephone operators, providers of telephone toll service, wireless carriers and services providers, and resellers.

105. We have included small incumbent local exchange carriers (LECs) in this regulatory flexibility analysis. As noted above, a "small business" under the RFA is one that, *inter alia*, meets the pertinent small business size standard (*e.g.*, a telephone communications business having 1,500 or fewer employees), and "is not dominant in its field of operation."[224] The SBA's Office of Advocacy contends that, for RFA purposes, small incumbent LECs are not dominant in their field of operation because any such dominance is not "national" in scope.[225] We have therefore included small incumbent LECs in this regulatory flexibility analysis, although we emphasize that this action has no effect on the Commission's analyses and determinations in other, non-RFA contexts.

106. Total Number of Telephone Companies Affected. The United States Bureau of the Census (the Census Bureau) reports that, at the end of 1992, there were 3,497 firms engaged in providing telephone services, as defined therein, for at least one year.[226] This number contains a variety of different categories of carriers, including local exchange carriers, interexchange carriers, competitive access providers, cellular carriers, mobile service carriers, operator service providers, pay telephone operators, PCS providers, covered SMR providers, and resellers. It seems certain that some of those 3,497 telephone service firms may not qualify as small entities or small incumbent LECs because they are not "independently owned and operated."[227] For example, a PCS provider that is affiliated with an interexchange carrier having more than 1,500 employees would not meet the definition of a small business. It seems reasonable to conclude, therefore, that fewer than 3,497 telephone service firms are small entity telephone service firms or small incumbent LECs that may be affected by the decisions and rule changes adopted in this proceeding.

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[223] *Carrier Locator* at Fig. 1.

[224] 5 U.S.C. § 601(3).

[225] Office of Advocacy, U.S. Small Business Administration *ex parte*, May 27, 1999, at 1-3; Office of Advocacy, U.S. Small Business Administration *ex parte*, June 14, 1999, at 2-3. The Small Business Act contains a definition of "small business concern," which the RFA incorporates into its own definition of "small business." *See* 15 U.S.C. § 632(a) (Small Business Act); 5 U.S.C. § 601(3) (RFA). SBA regulations interpret "small business concern" to include the concept of dominance on a national basis. 13 C.F.R. § 121.102(b). Since 1996, out of an abundance of caution, the Commission has included small incumbent LECs in its regulatory flexibility analyses. *See, e.g.*, Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, CC Docket, 96-98, First Report and Order, 11 FCC Rcd 15499, 16144-45 (1996).

[226] United States Department of Commerce, Bureau of the Census, 1992 Census of Transportation, Communications, and Utilities: Establishment and Firm Size, at Firm Size 1-123 (1995) (*1992 Census*).

[227] 15 U.S.C. § 632(a)(1).

107. *Wireline Carriers and Service Providers.* The SBA has developed a definition of small entities for telephone communications companies other than radiotelephone companies. The Census Bureau reports that there were 2,321 such telephone companies in operation for at least one year at the end of 1992.[228] According to the SBA's definition, a small business telephone company other than a radiotelephone company is one employing no more than 1,500 persons.[229] All but 26 of the 2,321 non-radiotelephone companies listed by the Census Bureau were reported to have fewer than 1,000 employees. Thus, even if all 26 of those companies had more than 1,500 employees, there would still be 2,295 non-radiotelephone companies that might qualify as small entities or small incumbent LECs. Although it seems certain that some of these carriers are not independently owned and operated, we are unable at this time to estimate with greater precision the number of wireline carriers and service providers that would qualify as small business concerns under the SBA's definition. Consequently, we estimate that there are fewer than 2,295 small entity telephone communications companies other than radiotelephone companies that may be affected by the decisions and rule changes adopted in this proceeding.

108. *Local Exchange Carriers, Interexchange Carriers, Competitive Access Providers, Operator Service Providers, and Resellers.* Neither the Commission nor the SBA has developed a definition particular to small LECs, interexchange carriers (IXCs), competitive access providers (CAPs), operator service providers (OSPs), or resellers. The closest applicable definition for these carrier-types under the SBA rules is for telephone communications companies other than radiotelephone (wireless) companies.[230] According to our most recent TRS data, there are 1,348 incumbent LECs and 212 CAPs and competitive LECs.[231] Although it seems certain that some of these carriers are not independently owned and operated, or have more than 1,500 employees, we are unable at this time to estimate with greater precision the number of these carriers that would qualify as small business concerns under the SBA's definition. Consequently, we estimate that there are fewer than 1,348 incumbent LECs and fewer than 212 CAPs and competitive LECs that may be affected by the decisions and rule changes adopted in this proceeding.

4. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

109. The rule we are adopting imposes direct compliance requirements on interconnected incumbent and competitive LECs, including small LECs. In order to comply with this rule, these entities will be required to exchange their ISP-bound traffic subject to the rules we are adopting above.

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[228] *1992 Census* at Firm Size 1-123.

[229] 13 C.F.R. § 121.201, Standard Industrial Classification (SIC) Code 4813.

[230] 13 C.F.R. § 121.201, SIC Code 4813.

[231] *Carrier Locator* at Fig. 1.

5. Steps Taken to Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered

110. In the *Declaratory Ruling and Intercarrier Compensation NPRM* the Commission proposed various approaches to intercarrier compensation for ISP-bound traffic.[232] During the course of this proceeding the Commission considered and rejected several alternatives.[233] None of the significant alternatives considered would appear to succeed as much as our present rule in balancing our desire to minimize any significant economic impact on relevant small entities, with our desire to deal with the undesirable incentives created under the current reciprocal compensation regime that governs the exchange of ISP-bound traffic in most instances. We also find that for small ILECs and CLECs the administrative burdens and transaction costs of intercarrier compensation will be minimized to the extent that LECs begin a transition toward recovery of costs from end-users, rather than other carriers.

111. Although a longer transition period was considered by the Commission, it was rejected because a three-year period was considered sufficient to accomplish our policy objectives with respect to all LECs.[234] Differing compliance requirements for small LECs or exemption from all or part of this rule is inconsistent with our policy goal of addressing the market distortions attributable to the prevailing intercarrier compensation mechanism for ISP-bound traffic and beginning a smooth transition to bill-and-keep.

Report to Congress: The Commission will send a copy of this Order on Remand and Report and Order, including this FRFA, in a report to be sent to Congress pursuant to the Congressional Review Act.[235] In addition, the Commission will send a copy of this Order on Remand and Report and Order, including the FRFA, to the Chief Counsel for Advocacy of the Small Business Administration. A copy of this Order on Remand and Report and Order and FRFA (or summaries thereof) will also be published in the Federal Register.[236]

VI. ORDERING CLAUSES

112. Accordingly, IT IS ORDERED, pursuant to Sections 1, 4(i) and (j), 201-209, 251, 252, 332, and 403 of the Communications Act, as amended, 47 U.S.C. §§ 151, 154(i), 154(j), 201-209, 251, 252, 332, and 403, and Section 553 of Title 5, United States Code, 5 U.S.C. § 553, that this Order on Remand and Report and Order and revisions to Part 51 of the Commission's rules, 47 C.F.R. Part 51, ARE ADOPTED. This Order on Remand and Report and Order and the rule revisions adopted herein will be effective 30 days after publication in the Federal Register except that, for good cause shown, as set forth in paragraph 82 of this Order, the

[232] *Declaratory Ruling*, 14 FCC Rcd at 3707-10.

[233] *See supra* paras. 67-76 (rejecting application of a reciprocal compensation mechanism to ISP-bound traffic).

[234] We note, however, that the interim regime we adopt here governs for 36 months or until further action by the Commission, *whichever is longer.*

[235] 5 U.S.C. § 801(a)(1)(A).

[236] *See* 5 U.S.C. § 604(b).

provision of this Order prohibiting carriers from invoking section 252(i) of the Act to opt into an existing interconnection agreement as it applies to rates paid for the exchange of ISP-bound traffic will be effective immediately upon publication of this Order in the Federal Register.

113. IT IS FURTHER ORDERED that the Commission's Consumer Information Bureau, Reference Information Center, SHALL SEND a copy of this Order on Remand and Report and Order, including the Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

FEDERAL COMMUNICATIONS COMMISSION

Magalie Roman Salas
Secretary

Appendix A
List of Commenters in CC Docket Nos. 96-98, 99-68

Comments Filed in Response to the June 23, 2000 Public Notice

Advanced TelCom Group, Inc.; e.spire Communications, Inc.; Intermedia Communications, Inc.; KMC Telecom, Inc.; Nextlink Communications, Inc.; The Competitive Telecommunications Association
Alliance for Public Technology
Association of Communications Enterprises
Association for Local Telecommunications Services
AT&T Corp. (AT&T)
BellSouth Corporation
Cablevision Lightpath, Inc.
California State and California Public Utilities Commission
Centennial Communications Corp. (Centennial)
Florida Public Service Commission
Focal Communications Corporation, Allegiance Telecom, Inc., and Adelphia Business Solutions, Inc.
General Services Administration
Global NAPs, Inc.
ICG Telecom Group, Inc.
Keep America Connected; National Association of the Deaf; National Association of Development Organizations; National Black Chamber of Commerce; New York Institute of Technology; Ocean of Know; Telecommunications for the Deaf, Inc.; United States Hispanic Chamber of Commerce
Massachusetts Department of Telecommunications & Energy
Missouri Public Service Commission
National Consumers League
National Exchange Carrier Association, Inc.
New York Department of Public Service
Pac-West Telecomm, Inc.
Pennsylvania Office of Consumer Advocate
Prism Communications Services, Inc.
Qwest Corporation
RCN Telecom Services, Inc. and Connect Communications Corporation
RNK, Inc.
Rural Independent Competitive Alliance
SBC Communications, Inc. (SBC)
Sprint Corporation (Sprint)
Texas Public Utility Commission
Time Warner Telecom Inc. (Time Warner)
United States Telecom Association
Verizon Communications (Verizon)
Western Telephone Integrated Communications, Inc.
WorldCom, Inc.

Reply Comments Filed in Response to the June 23, 2000 Public Notice

Adelphia Business Solutions, Inc.; Allegiance TeleCom, Inc., Focal Communications Corporation, and RCN Telcom Services, Inc.
AT&T Corp.
BellSouth Corporation
Cablevision Lightpath, Inc.
Cincinnati Bell Telephone Company
Commercial Internet Exchange Association
Converscent Communications, LLC
Covad Communication Company
Duckenfield, Pace
e.spire Communications, Inc., Intermedia Communications Inc., KMC Telecom, Inc., NEXTLINK Communications, Inc., The Association for Local Telecommunications Services, and The Competitive Telecommunications Association
General Services Administration
Global NAPs, Inc.
ICG Telecom Group, Inc.
Keep America Connected; National Association of Development Organizations; National Black Chamber of Commerce; New York Institute of Technology; United States Hispanic Chamber of Commerce
Pac-West Telecomm, Inc.
Prism Communications Services, Inc.
Qwest Corporation
Riter, Josephine
SBC Communications, Inc. (SBC)
Sprint Corporation
Time Warner Telecom Inc. (Time Warner)
US Internet Industry Association
United States Telecom Association
Verizon Communications (Verizon)
Western Telephone Integrated Communications, Inc.
WorldCom, Inc.

Comments Filed in Response to the February 26, 1999 Notice of Proposed Rulemaking

Airtouch Paging
America Online, Inc. (AOL)
Ameritech
Association for Local Telecommunications Services
AT&T Corp. (AT&T)
Baldwin, Jesse
Bardsley, June
Bell Atlantic Corporation
BellSouth Corporation
Cablevision Lightpath, Inc.
California Public Utilities Commission
Choice One Communications (Choice One)
Cincinnati Bell Telephone Company
Commercial Internet eXchange Association
Competitive Telecommunications Association)
Corecomm Limited
Cox Communications, Inc. (Cox)
CT Cube, Inc. & Leaco Rural Telephone Cooperative, Inc.
CTSI, Inc.
Florida Public Service Commission
Focal Communications Corporation
Frontier Corporation
General Communication, Inc.
General Services Administration
Global NAPs Inc.
GST Telecom, Inc.
GTE Services Corporation (GTE)
GVNW Consulting, Inc.
Hamilton, Dwight
ICG Communications
ICORE, Inc.
Indiana Utility Regulatory Commission
Information Technology Association of America
Intermedia Communications Inc. (Intermedia)
Keep America Connected; Federation of Hispanic Organizations of the Baltimore Metropolitan Area, Inc; Latin American Women and Supporters; League of United Latin American Citizens; Massachusetts Assistive Technology Partnership; National Association of Commissions for Women; National Association of Development Organizations; National Hispanic Council on Aging; New York Institute of Technology; Resources for Independent Living; Telecommunications Advocacy Project; The Child Health Foundation; The National Trust for the Development of African American Men; United Homeowners Association; United Seniors Health Cooperative
KMC Telecom Inc.
Lewis, Shawn
Lloyd, Kimberly, D.

MCI WorldCom, Inc.
MediaOne Group (Media One)
Miner, George
Missouri Public Service Commission
National Telephone Cooperative Association
New York State Department of Public Service
Pennsylvania Public Utility Commission
Personal Communications Industry Assoc.
Public Utility Commission of Texas
Prism Communications Services, Inc.
RCN Telecom Services, Inc.
Reinking, Jerome C.
Richmond Telephone Company
RNK Inc.
SBC Communications
Schaefer, Karl W.
Sefton, Tim
Shook, Ofelia E.
Sprint Corporation
John Staurulakis, Inc.
Telecommunications Resellers Association
Telephone Association of New England
Thomas, William J.
Time Warner Telecom Inc. (Time Warner)
United States Telephone Association
Verio Inc.
Vermont Public Service Board
Virgin Islands Telephone Corporation
Wisconsin State Telecommunications Association

Reply Comments Filed in Response to the February 26, 1999 Notice of Proposed Rulemaking

Airtouch Paging
Ameritech
Association for Local Telecommunications Services
AT&T Corp.
Bell Atlantic Corporation
BellSouth Corporation and BellSouth Telecommunications, Inc.
Competitive Telecommunications Association
Corecomm Limited (CoreComm)
Cox Communications, Inc. (Cox)
Focal Communications Corporation
General Services Administration
Global NAPs Inc.
GST Telecom Inc.
GTE Services Corporation (GTE)
GVNW Consulting, Inc.

ICG Communications, Inc
Illinois Commerce Commission
Intermedia Communications Inc.
KMC Telecom Inc.
MCI WorldCom, Inc.
National Exchange Carrier Association, Inc.
National Telephone Cooperative Association
Network Plus, Inc.
New York State Department of Public Services
Pac-West Telecomm., Inc.
Pennsylvania Public Utility Commission
Personal Communications Industry Association
Prism Communications Services, Inc.
Public Service Commission of Wisconsin
RCN Telecom Services
RNK Telecom
SBC Communications, Inc.
Sprint Corporation
Supra Telecommunications & Information Systems, Inc.
TDS Telecommunications Corporation
Time Warner Telecom
United States Telephone Association
US West Communications, Inc.
Verio Inc.
Virgin Islands Telephone Corporation
Wyoming Public Service Commission

Appendix B – Final Rules

AMENDMENTS TO THE CODE OF FEDERAL REGULATIONS

Part 51, Subpart H, of Title 47 of the Code of Federal Regulations (C.F.R.) is amended as follows:

1. The title of part 51, Subpart H, is revised to read as follows:

Subpart H--Reciprocal Compensation for Transport and Termination of Telecommunications Traffic

2. Section 51.701(b) is revised to read as follows:

(a) **§ 51.701 Scope of transport and termination pricing rules.**

*****

(b) *Telecommunications traffic.* For purposes of this subpart, telecommunications traffic means:

(1) Telecommunications traffic exchanged between a LEC and a telecommunications carrier other than a CMRS provider, except for telecommunications traffic that is interstate or intrastate exchange access, information access, or exchange services for such access (*see* FCC 01-131, paras. 34, 36, 39, 42-43); or
(2) Telecommunications traffic exchanged between a LEC and a CMRS provider that, at the beginning of the call, originates and terminates within the same Major Trading Area, as defined in § 24.202(a) of this chapter.

3. Sections 51.701(a), 51.701(c) through (e), 51.703, 51.705, 51.707, 51.709, 51.711, 51.713, 51.715, and 51.717 are each amended by striking "local" before "telecommunications traffic" each place such word appears.

FILED
2001 DEC 20 PM 2:54
SECRETARY OF STATE
TALLAHASSEE, FLORIDA

ARTICLES OF MERGER

of

UNIVERSALCOM, INC.
(a Florida corporation)

with and into

NEWSOUTH COMMUNICATIONS CORP.
(a Delaware corporation),
being the surviving corporation

In accordance with Section 252 of the Delaware General Corporation Law (the "DGCL") and Sections 607.1105 and 607.1109 of the Florida Business Corporation Act (the "FBCA"), the undersigned do hereby certify:

1. The Agreement and Plan of Merger between UniversalCom, Inc. ("UCI") and NewSouth Communications Corp. ("NCC") is attached hereto as Exhibit A (the "Plan of Merger").

2. The merger of UCI with and into NCC shall become effective on December 31, 2001, at 11:59 PM, Eastern Time, after the filing with the Department of State of the State of Florida (the "Department of State") of these Articles of Merger.

3. The Plan of Merger was duly approved and adopted by the board of directors and the sole shareholder of UCI on December 18, 2001, pursuant to the FBCA. The Plan of Merger was duly approved and adopted by the board of directors and the sole shareholder of NCC on December 18, 2001, pursuant to DGCL.

4. The address of the registered office of NCC, the surviving corporation, in the State of Delaware is 1209 Orange Street, Wilmington, Delaware 19801 and its registered agent at such address is The Corporation Trust Company.

5. NCC hereby appoints the Secretary of State of the State of Florida as its agent for service of process in a proceeding to enforce any obligation or the rights of dissenting shareholders of UCI and agrees to promptly pay to the dissenting shareholders of UCI amounts, if any, to which they are entitled under Section 607.1302 of the FBCA.

EFFECTIVE DATE
12-31-01

IN WITNESS WHEREOF, the undersigned have executed these Articles of Merger as of the 18th day of December, 2001.

NewSouth Communications Corp.

By: _____
Kevin Hendricks,
Vice President and Secretary

UniversalCom, Inc.

By: _____
Kevin Hendricks,
Vice President and Secretary

Exhibit A

[See attached Plan of Merger]

AGREEMENT AND PLAN OF MERGER
of
UNIVERSALCOM, INC.
(a Florida corporation)
with and into
NEWSOUTH COMMUNICATIONS CORP.
(a Delaware corporation)

I.

MERGER; CONSTITUENT ENTITIES

UniversalCom, Inc., a Florida corporation ("UCI"), shall merge with and into NewSouth Communications Corp., a Delaware corporation (the "Company"), as permitted by Section 252 of the Delaware General Corporation Law and Sections 607.1101-607.1109 of the Florida Business Corporation Act.

II.

SURVIVING ENTITY

The Company shall be the surviving corporation (the "Surviving Corporation") of the Merger, and the Company's name shall remain "NewSouth Communications Corp."

III.

CERTIFICATE OF INCORPORATION AND BYLAWS

The Certificate of Incorporation of the Company as it exists immediately prior to the Merger shall be the Certificate of Incorporation of the Surviving Corporation, and the Bylaws of the Company as they exist immediately prior to the Merger shall be the Bylaws of the Surviving Corporation.

IV.

DIRECTORS AND OFFICERS

Upon the effectiveness of the Merger, the directors and officers of the Company immediately prior to the Merger shall remain the respective directors and officers of the Surviving Corporation after the Merger, holding office in accordance with the Bylaws of the Company.

V.

MANNER AND BASIS OF CONVERTING OWNERSHIP INTERESTS

Upon the Merger becoming effective in accordance with Article VII below, by virtue of the Merger and without any action on the part of any stockholder of UCI, each share of common stock held by each stockholder of UCI that is outstanding immediately prior to the effectiveness of the Merger shall be automatically converted into one share of common stock of the Company. All shares of capital stock of the Company outstanding immediately prior to the Merger will remain outstanding upon the Merger becoming effective.

VI.

LOCATION AND AVAILABILITY OF AGREEMENT OF MERGER

The Agreement and Plan of Merger is on file with NewSouth Communications Corp. at its principal place of business, located at Two N. Main St., Greenville, SC 29601. A copy of the Agreement and Plan of Merger will be furnished by NewSouth Communications Corp., on request and without cost, to any stockholder of UCI or the Company.

VII.

EFFECTIVE DATE

The Merger shall become effective on December 31, 2001, at 11:59 PM, Eastern Time, after the filing with the Secretary of State of the State of Delaware of the Certificate of Merger and the filing with the Department of State of the State of Florida of the Articles of Merger.

[Signature on Following Page]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement and Plan of Merger to be signed in their respective names and on their respective behalf on this 18th day of December, 2001.

UNIVERSALCOM, INC.

By: _____
Kevin Hendricks,
Vice President and Secretary

NEWSOUTH COMMUNICATIONS CORP.

By: _____
Kevin Hendricks,
Vice President and Secretary

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	)	
	)	
MCImetro Access Transmission Services	)	
LLC Petition for Preemption of the	)	CC Docket No. 02-283
Jurisdiction of the New York Public Service	)	
Commission Pursuant to Section 252(e)(5) of	)	
the Communications Act of 1934, as	)	
Amended	)	
	)	

MEMORANDUM OPINION AND ORDER

Adopted: November 26, 2002 **Released: November 26, 2002**

By the Chief, Common Carrier Bureau:

I. INTRODUCTION

1. This Memorandum Opinion and Order addresses the petition of MCImetro Access Transmission Services LLC (MCImetro) for preemption of the jurisdiction of the New York Public Service Commission (New York commission) with respect to a dispute concerning the interpretation and enforcement of its interconnection agreement with Verizon New York, Inc. (Verizon).[1] Specifically, MCImetro seeks preemption of the jurisdiction of the New York commission pursuant to section 252(e)(5) of the Communications Act of 1934, as amended (the Act).[2]

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[1] Petition of MCImetro Access Transmission Services LLC Pursuant to Section 252(e)(5) of the Communications Act for Expedited Preemption of the Jurisdiction of the New York Public Service Commission Regarding Interpretation and Enforcement of Interconnection Agreement, CC Docket No. 02-283 (filed Sept. 6, 2002) (MCImetro Petition); *see Pleading Cycle Established for Comments on Petition of MCImetro Access Transmission Services LLC Pursuant to Section 252(e)(5) of the Communications Act for Expedited Preemption of the Jurisdiction of the New York Public Service Commission Regarding Interpretation and Enforcement of Interconnection Agreement*, CC Docket No. 02-283, Public Notice, DA-02-2298 (rel. Sept. 17, 2002) (Sept. 17 Public Notice). On October 2, 2002, Verizon and the NY DPS filed comments. On October 9, 2002, MCImetro and Verizon filed reply comments.

[2] 47 U.S.C. § 252(e)(5). Section 252 was added to the Communications Act of 1934 by the Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996 Act), *codified at* 47 U.S.C. §§ 151 *et seq*. Hereafter, all citations to the 1996 Act will be in accordance with its codification in Title 47 of the United States Code.

2. Section 252(e)(5) requires the Commission to preempt the jurisdiction of a state commission in any proceeding or matter in which the state commission "fails to act to carry out its responsibility under [section 252]."[3] Section 252 of the Act sets forth the procedures by which telecommunications carriers may request and obtain interconnection, services, or unbundled network elements from an incumbent local exchange carrier (LEC).[4]

3. In its petition, MCImetro alleges that the New York commission's failure to resolve its interconnection dispute with Verizon constitutes a "failure to act" triggering this Commission's section 252(e)(5) duty to preempt the jurisdiction of the New York commission. For the reasons set forth below, we grant MCImetro's petition.

II. BACKGROUND

4. MCImetro, a competitive LEC in New York, and Verizon, the incumbent LEC in New York, have a contractual dispute over the treatment of reciprocal compensation for traffic bound for Internet service providers (ISPs) (ISP-bound traffic) under the terms of their 1997 interconnection agreement, and in light of the New York commission's 1999 Order addressing this issue and this Commission's April 2001 *ISP Remand Order*.[5] Specifically, MCImetro seeks resolution of the following three issues: (1) whether any provision of the interconnection agreement allows Verizon unilaterally to withhold reciprocal compensation payments due pursuant to the agreement and the New York commission orders; (2) whether the *ISP Remand Order* constitutes a change of law under paragraph 8.2 of the agreement triggering the obligation to amend the agreement; and (3) if any amendment is required, what is the effective date of the amendment under paragraph 20.16 of the agreement.[6]

5. Neither MCImetro nor Verizon sought resolution of their dispute by the New York commission;[7] however, Verizon earlier had filed six petitions with the New York commission seeking resolution of contractual disputes with other competitive LECs regarding reciprocal compensation for ISP-bound traffic.[8] On August 7, 2002, the New York Department of Public Service (NY DPS), which functions as the New York commission staff, issued a letter

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[3] 47 U.S.C. § 252(e)(5).

[4] *See generally* 47 U.S.C. § 252.

[5] *See* MCImetro Petition. *See also* MCImetro September 17, 2002 Erratum (attaching a complete copy of *Proceeding on Motion of the Commission to Reexamine Reciprocal Compensation*, Case No. 99-C-0529, Opinion and Order (New York Commission Aug. 26, 1999)); *In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996 and Intercarrier Compensation for ISP-Bound Traffic*, CC Docket Nos. 96-98, 99-68, Order on Remand and Report and Order, 16 FCC Rcd 9151 (rel. Apr. 27, 2001), *remanded*, 288 F.3d 429 (D.C. Cir. 2002) (*ISP Remand Order*).

[6] MCImetro Petition at iv and 6 n.18.

[7] *See* MCImetro Petition at 6, 8.

[8] *See* MCImetro Petition at iii and 6.

to Verizon in these six proceedings stating that the New York commission "will not address the six dispute resolution petitions" and that "because adequate, alternative forums exist, the Department will not address any future petitions addressing contract interpretations of reciprocal compensation for Internet-bound traffic."[9]

6. Relying on this language, on September 6, 2002, MCImetro filed a petition for preemption with this Commission alleging that the New York commission "failed to act" to resolve its reciprocal compensation dispute with Verizon.[10] On September 17, 2002, the Commission issued a public notice requesting comment on MCImetro's petition.[11]

7. On October 2, 2002, Verizon and the NY DPS filed comments. Verizon asks that the "Commission preempt and at the same time summarily reject MCImetro's position on the merits."[12] In its comments, the NY DPS explains that MCImetro's petition for preemption "arises from New York's decision to refrain from immersing itself in an MCI and Verizon dispute over the reciprocal compensation provisions of their interconnection agreement."[13] Although the NY DPS does not object to resolution of this matter by the Commission, it does oppose section 252(e)(5) preemption as the jurisdictional basis for Commission review.[14] Verizon and MCImetro filed reply comments on October 9, 2002.

III. DISCUSSION

8. We conclude that the circumstances presented by MCImetro require us to assume the jurisdiction of the New York commission. Section 252(e)(5) directs the Commission to preempt the jurisdiction of a state commission in any proceeding or matter in which a state "fails to act to carry out its responsibility under [section 252]."[15] The Commission's rules address the context of a state's "failure to act" with respect to a state's mediation and arbitration

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[9] Letter of Janet Hand Deixler, Secretary, New York DPS, to Gayton P. Gomez, Esq., Verizon New York, Inc., dated Aug. 7, 2002, MCImetro Petition, Exhibit 1 (NY DPS Aug. 7, 2002 letter).

[10] *See* MCImetro Petition.

[11] *See* Sept. 17, 2002 Public Notice.

[12] Verizon Comments at 1.

[13] NY DPS Comments at 1. The NY DPS further explains that the "NYPSC chose not to review the interconnection dispute because it involved contract interpretation questions turning on the FCC's use of the term 'reciprocal compensation.'" *Id.*

[14] Specifically, the NY DPS states that "[w]hile NYPSC has no objection to the FCC attempting to resolve this contract dispute, we would take issue with a holding that New York had a statutory § 252 duty to determine Verizon's and MCI's contractual intent regarding the term 'reciprocal compensation.'" *Id.* NY DPS requests that the Commission resolve this dispute pursuant to its section 208 authority. *See id.* at 2. *See also* 47 U.S.C. § 208.

[15] 47 U.S.C. § 252(e)(5).

responsibilities pursuant to section 252.[16] In the *Starpower Preemption Order*, the Commission further determined that a dispute involving interpretation and enforcement of an interconnection agreement also falls within a state's responsibilities under section 252.[17] Specifically, the Commission stated: "In applying Section 252(e)(5), we must first determine whether a dispute arising from interconnection agreements and seeking interpretation and enforcement of those agreements is within the states' responsibility under section 252. We conclude that it is."[18] In *Starpower*, the Commission granted a petition for section 252(e)(5) preemption because the Virginia commission declined to take jurisdiction over contractual disputes involving reciprocal compensation of ISP-bound traffic.[19]

9. We find that MCImetro's petition falls squarely within Commission precedent, presents no novel questions of fact, law or policy and, therefore, we resolve this petition pursuant to our delegated authority.[20] Following the Commission's guidance in the *Starpower Preemption Order*, we find that the New York commission has "failed to act" with regard to the interconnection dispute between MCImetro and Verizon. As in *Starpower*, the state commission

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[16] Section 51.801(b) provides: "For purposes of this part, a state commission fails to act if the state commission fails to respond, within a reasonable time, to a request for mediation, as provided for in section 252(a)(2) of the Act, or for a request for arbitration, as provided for in section 252(b) of the Act, or fails to complete an arbitration within the time limits established in section 252(b)(4)(c) of the Act." 47 C.F.R. §51.801(b).

[17] *In the Matter of Starpower Communications, LLC, Petition for Preemption of Jurisdiction of the Virginia State Corporation Commission Pursuant to Section 252(e)(5) of the Telecommunications Act of 1996*, CC Docket No. 00-52, *Memorandum Opinion and Order*, 15 FCC Rcd 11277, 11279, para. 6 (2000) (*Starpower Preemption Order*). Although the Commission has taken a clear position on this issue, the New York Commission disagrees with this reading of its obligations under section 252. *See* NY DPS Comments at 1-2. Further, though federal courts of appeal have divided on this issue, a majority of circuits has recognized that states have authority pursuant to section 252 to resolve disputes arising out of interconnection agreements. *See Global Naps, Inc. v. FCC,* 291 F.3d 832, 838 (D.C. Cir. 2002); *MCI Telecommunications Corporation v. Bell Atlantic-Pennsylvania*, 271 F.3d 491, 511 (3rd Cir. 2001), *cert. denied sub nom. Pennsylvania Public Utilities Commission v. MCI Telecommunications*, 2002 WL 554458 (U.S. Oct. 7, 2002); *Southwestern Bell Telephone Co. v. Brooks Fiber Communications of Oklahoma, Inc.*, 235 F.3d 493, 496-97 (10th Cir. 2000); *Southwestern Bell Telephone Co. v. Connect Communications Corp.*, 225 F.3d 942, 946 (8th Cir. 2000); *Southwestern Bell Telephone Co. v. Public Utility Commission of Texas*, 208 F.3d 475, 480 (5th Cir. 2000); *Illinois Bell Telephone Company v. WorldCom Technologies, Inc.*, 179 F.3d 566, 570-71 (7th Cir. 1999). *But see BellSouth Telecommunications, Inc., et al. v. MCIMetro Access Transmission Services, Inc*, 278 F.3d 1223, 1232-35 (11th Cir. 2002), *vacated pending rehearing en banc*, 297 F.3d 1276 (11th Cir. July 17, 2002) (holding that states lack authority under federal statute to resolve disputes arising from interconnection agreements); *Bell Atlantic Maryland v. MCI WorldCom*, 240 F.3d 279 (4th Cir. 2001), *vacated on other grounds and remanded sub nom. Verizon Maryland Inc. v. Public Service Commission of Maryland*, 122 S.Ct. 1753 (2002) (holding that states have authority under state law to address disputes arising from interconnection agreements).

[18] *See Starpower Preemption Order*, 15 FCC Rcd at 11279 para. 6.

[19] *See Starpower Preemption Order*, 15 FCC Rcd at 11280, para. 7. *See also In the Matter of Cox Virginia Telecom, Inc. Petition for Preemption of Jurisdiction of the Virginia State Corporation Commission Pursuant to Section 252(e)(5) of the Telecommunications Act of 1996*, CC Docket No. 00-126, Memorandum Opinion and Order, 15 FCC Rcd 17958 (CCB 2000).

[20] *See* 47 C.F.R. §§ 0.91, 0.291

in this case has expressly declined to interpret or enforce the terms of an interconnection agreement. Specifically, both the August 7, 2002 letter to Verizon and the October 2, 2002 comments filed by the NY DPS in this proceeding unequivocally express an intent not to act to resolve the parties' interconnection dispute regarding reciprocal compensation for ISP-bound traffic. In its August 7, 2002 letter to Verizon, the New York DPS states: "because adequate, alternative forums exist, the Department will not address any future petitions addressing contract interpretations of reciprocal compensation for Internet-bound traffic."[21] Additionally, in its October 2, 2002 comments filed in this proceeding, the New York DPS explains that MCImetro's petition "arises from New York's decision to refrain from immersing itself in an MCI and Verizon dispute over the reciprocal compensation provisions of their interconnection agreement."[22] The New York DPS further explains that the "NYPSC chose not to review the interconnection dispute because it involved contract interpretation questions turning on the FCC's use of the term 'reciprocal compensation.'"[23] Therefore, we conclude that the New York commission has "failed to act to carry out its responsibility" under section 252. Accordingly, the Act compels us to assume the jurisdiction of the New York commission and resolve the outstanding interconnection dispute.

10. The NY DPS requests that "rather than review MCI's claim under § 252(e)(5), which authorizes FCC preemption of state responsibilities, the Commission should exercise its § 208 authority" to resolve the parties' interconnection dispute.[24] Verizon disputes the applicability of section 208 to this dispute and opposes the NY DPS's request.[25] Because we find that the statute, our implementing rules and Commission precedent compel us to preempt the jurisdiction of the state commission in this case, we do not address the New York commission's suggestion that we resolve this dispute pursuant to our section 208 authority.

11. MCImetro may now file with the Commission for resolution of the interconnection dispute identified in MCImetro's September 6, 2002 petition.[26] Upon receiving the appropriate filings from MCImetro, the Commission may only proceed to resolve the

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[21] NY DPS Aug. 7, 2002 letter at 1-2.

[22] NY DPS Comments at 1. Because the NY DPS's October 2, 2002 comments specifically contemplate the dispute between MCImetro and Verizon, we rely upon the NY DPS's statements in these comments as evidence of the New York Commission's "failure to act" in this case. We note that, generally, we rely upon explicit orders of the state commission as evidence of a failure to act.

[23] *Id.*

[24] *Id.* at 2.

[25] Specifically, Verizon states that "[s]ection 208(a) permits persons to complain to the Commission about conduct by carriers 'in contravention of the provisions [of the Act].'" Verizon Reply Comments at 1-2. Verizon asserts that "MCImetro does not make such a claim, just a claim that Verizon breached its contract," thus, MCImetro's claim "is not the proper subject of a section 208 complaint." *Id.* at 2.

[26] Any filing that MCImetro makes must meet the requirements of the Commission's rules governing the filing of formal complaints. *See* 47 C.F.R. § 1.720 *et seq.*

questions that the New York commission would have resolved had it chosen to act.[27] Specifically, the Commission may only resolve the following three issues: (1) whether any provision of the interconnection agreement allows Verizon unilaterally to withhold reciprocal compensation payments due pursuant to the agreement and the New York commission orders; (2) whether the *ISP Remand Order* constitutes a change of law under paragraph 8.2 of the agreement triggering the obligation to amend the agreement; and (3) if any amendment is required, what is the effective date of the amendment under paragraph 20.16 of the agreement.[28] We strongly encourage the parties to contact the Market Disputes Resolution Division of the Enforcement Bureau before filing to discuss how the proceedings before the Commission might best be handled. We also reiterate the finding in the *Local Competition Order* that the Commission retains exclusive jurisdiction over any proceeding or matter over which it assumes responsibility under section 252(e)(5).[29] Similarly, these proceedings before the Commission and any judicial review thereof shall be the exclusive remedies available to the parties.[30]

IV. CONCLUSION

12. For the foregoing reasons, we grant MCImetro's petition for Commission preemption of jurisdiction over its dispute with Verizon and invite MCImetro to file for resolution of this dispute under 47 C.F.R. § 1.720 *et seq.*

V. ORDERING CLAUSE

13. Accordingly, IT IS ORDERED that, pursuant to section 252 of the Communications Act of 1934, as amended, 47 U.S.C. § 252, and sections 0.91, 0.291 and 51.801(b) of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291 and 51.801(b), the petition for Commission preemption of jurisdiction filed by MCImetro on September 6, 2002, IS GRANTED.

FEDERAL COMMUNICATIONS COMMISSION

William F. Maher, Jr.
Chief, Wireline Competition Bureau

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[27] *See* 47 C.F.R. § 51.801 (providing that the Commission "assume[s] the responsibility of the state commission under section 252 of the Act with respect to the proceeding or matter"). *See also Starpower Preemption Order*, 15 FCC Rcd at 11281, para. 9.

[28] MCImetro Petition at iv and 6 n.18.

[29] *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, CC Docket 96-98, First Report and Order, 11 FCC Rcd 15499, 16129, para. 1289 (1996) (*Local Competition Order*).

[30] 47 U.S.C. § 252(e)(6).

-----Original Message-----
From: Clayton, John W.
Sent: Friday, December 13, 2002 4:14 PM
To: 'jjennings@newsouth.com'
Cc: Cheek, William E.; Feeney, Kathryn L.; Luehring, Janette W.; Masterton, Susan S.
Subject: New South / Universal Com Reciprocal Compensation Issues

Mr. Jennings:

During the past week Sprint has completed an internal review of the ISP-Bound Traffic / Reciprocal Compensation disputes between NewSouth and Sprint. The first dispute involves the rates paid by Sprint for reciprocal compensation under the Universal Com contract. The second dispute involves what minutes of use should be included in calculating the growth cap. A discussion of each dispute and Sprint's position regarding each follows:

Rate Dispute

On January 24, 2002 Sprint sent notices to both Universal Com and NewSouth that Sprint was making an offer under the FCC's Order to exchange all local and ISP traffic at the lower FCC rates. The Sprint letters further advised that each CLEC had the option of rejecting Sprint's offer, in which case traffic below the 3:1 ratio would be exchanged at the rates in the contract and the traffic above 3:1 would be exchanged at the lower FCC rates. The Sprint letters also provided that if CLECs wanted to accept Sprint's offer no further action was necessary, but that if CLECs wanted to reject Sprint's offer a notice of rejection was required. Sprint received notice from NewSouth that it was rejecting Sprint's offer. No notice was received from Universal Com.

It is Sprint's position that the parties continue to operate under two separate agreements and that the letter from NewSouth rejecting Sprint's offer to exchange all local and ISP traffic at the FCC rates was not an effective rejection for Universal Com. Both the Universal Com contract and Florida statutes provide that NewSouth, as Universal Com's successor in interest, became responsible for the obligations of Universal Com. Sprint sent letters to both NewSouth and Universal Com stating that it was opting into the FCC's interim compensation regime and that if a response was not provided, Sprint would deem the CLEC had accepted Sprint's offer and all traffic would be exchanged at the lower FCC rate. Sprint received a letter from NewSouth stating that, "NewSouth hereby rejects Sprint's offer regarding reciprocal compensation contained in

your January 24, 2002 letter". The rejection from NewSouth did not mention Universal Com nor did it indicate that more than one contract was involved. Since NewSouth continued to fulfill Universal Com's obligations under the contract rather than terminating the contract, NewSouth was obligated to reject Sprint's offer under the Universal Com contract. Until Sprint receives official notice under the Universal Com contract that Sprint's offer is rejected, Universal Com will be paid at the lower FCC rates.

Growth Cap Dispute

NewSouth claims that Universal Com's minutes of use should be combined with NewSouth's in order to determine the 3:1 ratio.

The FCC Order provides that compensation for ISP-bound Traffic in 2001 will be capped by the number of ISP-bound minutes for which the CLEC was entitled to compensation under the agreement during the first quarter of 2001, annualized, plus an additional ten percent growth factor. For 2002, an additional ten percent growth factor is applied to the 2001 capped minutes. Since NewSouth did not merge with Universal Com until December 2001, it cannot include Universal Com's minutes to establish the baseline. In addition, until NewSouth takes the appropriate steps to terminate the Universal Com contract, it cannot combine the minutes of use from both companies on a going forward basis to determine the 3:1 ratio or for application of the growth cap.

In conclusion, until Sprint receives official notice of Universal Com's rejection under the contract, Sprint is only obligated to pay FCC rates for all local and ISP traffic, subject to the growth cap. Since NewSouth did not merge with Universal Com until December 2001, it cannot include Universal Com's minutes to establish the baseline. In addition, until NewSouth takes the appropriate steps to terminate the Universal Com contract, it cannot combine the minutes of use from both companies on a going forward basis to determine the 3:1 ratio or the growth cap.

In the event you have questions or wish to discuss further please contact Kathryn Feeney (913/315-7858) and she will ensure appropriate internal resources are made available.

John Clayton
Sprint
Director Wholesale Services
913/315-7839

-----Original Message-----
From: Jake Jennings
Sent: Monday, January 06, 2003 5:02 PM
To: 'John.Clayton@mail.sprint.com'
Cc: Amy Gardner
Subject: RE: New South / Universal Com Reciprocal Compensation Issues

Mr. Clayton:

Thank you for your correspondence of December 13, 2002 in which you articulate Sprint's position on the dispute between Sprint and NewSouth concerning reciprocal compensation for ISP-Bound traffic. For the reasons set forth below, NewSouth disagrees with your conclusion that there has not been an effective rejection of Sprint's offer to exchange of all traffic at the FCC rates. With respect to the growth cap, NewSouth is entitled to use the Universal Com first quarter 2001 ISP minutes as a baseline to grow minutes that continue to be exchanged under the Sprint/Universal Com contract, as explained below.

Level of Compensation for ISP-Bound Traffic

NewSouth disagrees with Sprint's contention that NewSouth's rejection of Sprint's offer to exchange all local and ISP-bound traffic was not an effective rejection for traffic formerly exchanged with Universal Com. As Sprint was well aware, Universal Com merged into NewSouth Communications Corp. That merger became effective December 31, 2001. As of that date, Universal Com ceased to exist as NewSouth was the surviving entity, per the duly filed plan of merger. NewSouth also succeeded to Universal Com's rights, benefits and obligations under the Universal Com interconnection agreement with Sprint. (See e.g.,, Agreement at section 30, ("This Agreement shall be binding upon, and inure to the benefit of, the Parties hereto and their respective successors. . .")).

On January 24, 2002, Sprint sent a letter to Universal Com stating its offer to exchange all traffic in the state of Florida at the lower FCC rates, and requiring Universal Com affirmatively to opt out of Sprint's proposed compensation plan. At the time of Sprint's letter, Universal Com no longer existed and NewSouth was the only corporate entity that could respond to Sprint's letter. Moreover, NewSouth had fully succeeded to Universal Com's rights under the interconnection agreement and NewSouth was thus the appropriate party to reject Sprint's offer. There is nothing in the Universal Com contract that required NewSouth to provide notice to Sprint that it was acting as Universal Com's successor. Even though notice was not required by the terms of the interconnection agreement, Sprint was on notice that NewSouth was acquiring Universal Com. Moreover, NewSouth has been performing under the interconnection agreement by, among other things,

remitting payment to Sprint for services and elements acquired under that agreement.
Thus, when NewSouth wrote to Sprint on February 8, 2002 in response to Sprint's January 24, 2002 letter rejecting Sprint's offer to exchange all traffic at the FCC rates, that rejection was fully effective for the traffic exchanged under the Universal Com interconnection agreement. There was no requirement or reason for NewSouth to specifically identify Universal Com given that Universal Com had been fully merged into NewSouth and no longer existed as a separate legal entity. Nor was there any reason to specifically identify the Universal Com interconnection agreement. NewSouth's February 8 notice referenced the "interconnection agreement between the two parties," and NewSouth, as Universal Com's successor, effectively had replaced Universal Com as one of the two parties to the interconnection agreement with Sprint.

NewSouth Is Entitled to Universal Com's 2001 ISP Minutes

We believe some clarification may be required with respect to the growth cap issue. Sprint contends that NewSouth may not "combine" Universal Com's" minutes with NewSouth minutes in order to determine compensable ISP minutes. Sprint further contends that, because NewSouth did not merge with Universal Com until December 2001, NewSouth cannot include Universal Com's first quarter 2001 minutes to establish the baseline for growth of ISP minutes eligible for compensation.
It is not quite clear what it means to "combine" Universal Com minutes with NewSouth minutes. NewSouth effectively has two interconnection agreements with Sprint in the state of Florida - one which NewSouth negotiated with Sprint, and the Universal Com interconnection agreement with respect to which NewSouth is Universal Com's successor. NewSouth is entitled to grow compensable ISP-bound minutes up to the FCC-imposed caps separately with respect to each agreement.

Under the FCC's interim compensation mechanism, "a LEC may receive compensation, pursuant to a particular interconnection agreement, for ISP-bound minutes up to a ceiling equal to, on an annualized basis, the number of ISP-bound minutes for which that LEC was entitled to compensation under that agreement during the first quarter of 2001, plus a ten percent growth factor. For 2002, a LEC may receive compensation, pursuant to a particular interconnection agreement, for ISP-bound minutes up to a ceiling equal to the minutes for which it was entitled to compensation under that agreement in 2001, plus another ten percent growth factor. In 2003, a LEC may receive compensation, pursuant to a particular interconnection agreement, for ISP-bound minutes up to a ceiling equal to the 2002 ceiling applicable to that agreement." (FCC Order at 78.)(emphasis added).

Following NewSouth's acquisition of Universal Com on December 31, 2002, NewSouth has maintained the Universal Com interconnection agreement, which, as Sprint, notes, neither party has sought to terminate. NewSouth acquired Universal Com's switch and has continued to bill Sprint reciprocal compensation for minutes of use terminated by that switch at the rates set forth in the original Universal Com interconnection agreement. Those minutes of use and charges are separate from minutes of use terminated by NewSouth's switch (not acquired from Universal Com) in Florida which are billed under the interconnection agreement that NewSouth negotiated with

Sprint.

NewSouth is seeking reciprocal compensation "pursuant to a particular interconnection agreement," (i.e., the Universal Com agreement). Sprint does not dispute that Universal Com was "entitled to compensation" under that agreement in the first quarter of 2001. Those minutes form the baseline for subsequent growth, under the FCC's growth cap, for ISP-bound minutes eligible for compensation, pursuant to that agreement. As Universal Com's successor, NewSouth is as entitled to grow eligible ISP minutes under the Universal Com agreement to the same extent as Universal Com.

In sum, in determining the 3:1 ratio and the growth cap, there are two separate calculations in the state of Florida. One calculation under the Universal Com agreement and another under the agreement negotiated between Sprint and NewSouth.

No Waiver of Rights

Nothing herein should be viewed as NewSouth's acknowledgement or agreement that Sprint's opt out mechanism constituted an appropriate method of implementing the FCC's interim compensation mechanism for ISP traffic, or that other aspects of Sprint's proposal contained in its January 24, 2002 letter is consistent with the letter and spirit of the interim compensation mechanism as set forth in the FCC's April 2001 order. NewSouth reserves all rights to challenge Sprint's mechanism in any appropriate forum..

MINTZ LEVIN COHN FERRIS GLOVSKY AND POPEO PC

Washington
Boston
New York
Reston
New Haven

701 Pennsylvania Avenue, N.W.
Washington, D.C. 20004
202 434 7300
202 434 7400 fax
www.mintz.com

Michael H. Pryor

Direct dial 202-434-7465
mhpryor@mintz.com

February 24, 2003

VIA E-MAIL AND CERTIFIED MAIL

John Clayton
Director, Wholesale Services
Sprint-Florida, Inc.
6480 Sprint Parkway
Overland Park, KS 66251

RE: NewSouth-Sprint Billing Dispute

Dear Mr. Clayton,

We have been retained by NewSouth Communications Corp. ("NewSouth") in relation to the billing dispute between NewSouth and Sprint-Florida, Inc. ("Sprint") governing the appropriate compensation rate for the transport and termination of traffic that originates on Sprint's network. The genesis of this dispute is Sprint's letter of January 24, 2002, in which Sprint offered to exchange all local and ISP-bound traffic at the lower, graduated rates adopted by the Federal Communications Commission ("FCC") in its *ISP Order*[1/] ("Sprint Offer Letter"). Although Sprint's Offer Letter was addressed to Universal Com, Inc. ("Universal Com") that entity no longer existed as of the date of the letter.

As NewSouth had informed Sprint, Universal Com had been merged into NewSouth effective December 31, 2001. As a result of the merger, NewSouth succeeded to the rights of Universal Com under the Interconnection and Resale Agreement for the State of Florida between Universal Com and Sprint dated January 27, 1998 ("the Agreement"). On February 8, 2002, NewSouth, on behalf of itself and the former Universal Com, rejected Sprint's offer via letter.[2/] NewSouth's timely rejection of Sprint's offer results in the Parties remaining subject to the compensation rates contained in the Agreement. Thus, the provisions of the Agreement govern this dispute.

1/ *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996; Intercarrier Compensation for ISP-Bound Traffic*, 16 FCC Rcd 9151 (2001) ("*ISP Order*"), *remanded, WorldCom, Inc. v. FCC*, 288 F.3d 429 (D.C. Cir. 2002) (remanding, but not vacating, the *ISP Order* because the FCC had no basis to rely on Section 251(g) for its determinations), *petition for reh'g en banc denied, petition for cert. pending.*

2/ NewSouth reiterated this rejection on September 30, 2002 and again on February 14, 2003.

On December 13, 2002, Sprint, via email correspondence from John Clayton, described its position on the dispute. NewSouth responded on January 6, 2003 via an email from Jake E. Jennings, Vice President of Regulatory Affairs for NewSouth. To date, NewSouth has received no response from Sprint to NewSouth's January 6 email correspondence. Pursuant to Sections 22.2 and 22.3 of the Agreement, if a dispute is not resolved within thirty days after the designation of amounts as disputed, the Parties must escalate the dispute to "a designated representative that has authority to settle the dispute." Under the contract, the designated representatives must meet as often as they reasonably deem necessary to resolve the dispute and all reasonable requests for relevant information shall be honored. If the Parties are unable to resolve the dispute after an additional thirty days of negotiations, either Party may petition the Florida Public Service Commission ("Commission") for resolution of "any dispute arising out of or relating to this Agreement that the Parties themselves cannot resolve."

NewSouth hereby invokes the dispute escalation provision set forth in Section 22.3. Indeed, it appears that the exchange of correspondence between Mr. Clayton and Mr. Jennings satisfies the requirement for designating higher-level management. As thirty days have elapsed since Mr. Jennings' email without a response from Sprint, this issue may be ripe for submission to the Commission.

In addition to the points raised in Mr. Jennings' January 6, 2003 correspondence, a review of the record of this dispute reveals that Sprint has clearly and materially violated the contract between Universal Com and Sprint. Under Section 22.2 of the contract, "[i]f any portion of an amount due to a Party ("the billing Party") under this Agreement is subject to a bona fide dispute between the Parties, the Party billed (the "Non-Paying Party") shall within thirty days (30) days of its receipt of the invoice containing such disputed amounts give notice to the Billing Party of the amounts it disputes ("Disputed Amounts") and include in such notice the specific details and reasons for disputing each item. The Non-Paying Party shall pay when due all undisputed amounts to the Billing Party. The balance of the Disputed Amount shall thereafter be paid with appropriate late charges, if appropriate, upon final determination of such dispute."

The record we have reviewed shows that Sprint has failed to both timely pay undisputed amounts and failed to timely notify NewSouth of its dispute, even though NewSouth provided Sprint with bills each month in a timely manner. Sprint did not notify NewSouth that it was disputing the amounts billed by NewSouth for reciprocal compensation for February 2002-March 2002 until September 9, 2002. On that date, NewSouth received an email containing dispute claim forms dated August 15, 2002 for invoice dates of March (for February usage) and April (for March usage). Similarly, NewSouth did not receive Sprint's notification for disputes for reciprocal compensation for May 2002-August 2002 invoices (for April through July usage) until October 10, 2002. Nor does NewSouth have any record of disputes for September and October 2002 invoices, although Sprint has withheld significant payments rightfully due to NewSouth for those months. If Sprint believes that it has timely submitted disputes for these invoices, we request, pursuant to Section 22.3 of the Agreement, that Sprint provide evidence of such notices. In the absence of any such evidence, Sprint cannot lawfully dispute the bills for February, March, April, May, June, July, August, September or October 2002. NewSouth thus demands payment in full for those months. Moreover, Sprint's payments were not timely made

and thus NewSouth demands appropriate late fees. Sprint's failure to pay or submit dispute notices in a timely manner constitutes grounds for payment of withheld amounts that are in addition to NewSouth's timely rejection of Sprint's Offer Letter.

Although we remain hopeful that the Parties can resolve this matter quickly, without resorting to Commission intervention, NewSouth is prepared to submit this matter to the Commission as Sprint has unjustifiably withheld significant sums from NewSouth. Your prompt attention to this matter is appreciated.

Sincerely,

Michael H. Pryor
Angela F. Collins

Counsel for
NewSouth Communications Corp.

cc: Field Service Manager (via certified mail)
Sprint-Florida, Inc.

Jake Jennings
NewSouth Communications Corp.

Sprint

6450 Sprint Parkway
Overland Park, KS 66251

Janette W. Luehring
Attorney
Mailstop: KSOPHN0212-2A511
Phone: 913-315-8525
FAX: 913-315-0752

March 11, 2003

Michael H. Pryor
Angela F. Collins
Mintz Levin Cohn Ferris Glovsky and
Popeo PC
701 Pennsylvania Ave., N.W.
Washington, DC 20004

Re: NewSouth-Sprint Billing Dispute

Dear Mr. Pryor and Ms. Collins:

I am responding to your February 24, 2003 letter to John Clayton on behalf of your client NewSouth Communications Corp. ("NewSouth") regarding the billing dispute between NewSouth and Sprint – Florida, Incorporated ("Sprint"). New South maintains that Sprint was aware that Universal Com, Inc. ("UCI") no longer existed; however, Sprint does not have any record of notice to that effect, and NewSouth has not provided any evidence that Sprint was notified even though Sprint has requested this from NewSouth. The only notice Sprint received regarding the NewSouth merger came from UCI. This notice advised that UCI was going to become a wholly-owned subsidiary of NewSouth, but that there would be no name change immediately following the merger. Sprint was never subsequently notified of a name change or a change of address for the notification provision under the UCI agreement, nor did Sprint receive any notice that either the UCI or NewSouth agreement should be terminated.

In fact, after the merger NewSouth continued to operate under the separate UCI and NewSouth agreements. Because both agreements are still active, and because as far as Sprint was aware UCI continued to operate under that name as a subsidiary of NewSouth, Sprint believed both entities were still operating under their respective names. As a result, Sprint sent letters to both NewSouth and UCI in which Sprint offered to implement the FCC interim compensation regime, including to exchange all local and ISP-bound traffic at the lower, graduated rates adopted by the Federal Communications Commission ("FCC") in its ISP Order ("Sprint's Offer Letters"). Sprint's Offer Letters were sent to the address specified in the notice provision in each

agreement. The February 8, 2002 letter that NewSouth sent rejecting Sprint's offer refers only to the NewSouth agreement, but there is no mention in that letter of a rejection of Sprint's offer under the UCI agreement. If NewSouth intended to reject Sprint's offer for both NewSouth and UCI in its letter of February 8, 2002, the letter should have clearly stated that it applied to both agreements. Because NewSouth chose to continue operating under two agreements after its merger, it is Sprint's position that NewSouth was obligated to respond to Sprint's offer letter under both agreements.

We do not view Mr. Jennings' January 6, 2003 letter as an escalation of the dispute under the agreement. That letter was the first time NewSouth indicated that it agreed with Sprint's position on the issue of how to apply the growth cap and the 3:1 ratio. Mr. Jennings' letter did not request a response or suggest that the parties engage in negotiations in an effort to resolve the remaining dispute, which as you know was required by Section 22.2 of the Parties' agreement.

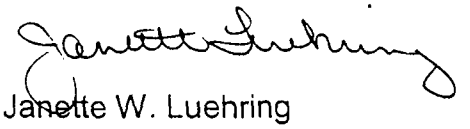
Your letter advises that "a review of the record" reveals that Sprint clearly and materially violated the agreement between UCI and Sprint. Sprint's records show that Sprint only exceeded the thirty days on three invoices, not six as your letter indicated. Sprint's records also contradict your statement that NewSouth provided Sprint with bills each month in a timely manner. Sprint received the April, May and June usage invoices on September 13, 2002. Sprint clearly disputed these invoices within thirty days after receiving them. Sprint also disagrees with your statement that Sprint did not dispute two invoices. Sprint's records show that both of the invoices in question were disputed on November 20, 2002, which was within 30 days of Sprint's receipt of them. Sprint believes that it has substantially complied with the dispute notification requirements in the Parties' agreement.

Sprint further believes that even if it did not technically comply with all of the provisions that allowed it to properly withhold payment of disputed amounts, Sprint did not waive any of its rights to assert any substantive claim that the amounts NewSouth has billed are in violation of Federal Law. The FCC's ISP Order provides that ISP bound traffic will be exchanged at the lower, graduated rates when the ILEC has offered to exchange all local and ISP-bound traffic at those lower, graduated rates. Sprint's Offer Letters did just that; however, Sprint continues to receive billing from UCI for ISP-bound traffic at the contract rates, which is in clear violation of the ISP Order. In addition, NewSouth wants Sprint to pay billed amounts that Mr. Jennings' January 6, 2003 letter admits are incorrect solely because Sprint did not dispute them in a timely manner.

Like NewSouth, Sprint remains hopeful that the Parties can resolve this matter quickly, without resorting to Commission intervention. However, for the reasons stated above, Sprint will not agree to pay the admittedly incorrect sums billed by UCI. Sprint also disagrees that the dispute is ripe for submission to the Commission, since NewSouth has not followed the dispute resolution process and attempted to settle this dispute through good faith negotiations, as required by the agreement.

Sprint remains willing to enter into settlement negotiations to resolve this dispute or to abide by the escalation procedures set forth in the Parties' agreement. Thank you for your attention to this matter.

Sincerely,



Janette W. Luehring

MINTZ LEVIN
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Washington
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Michael H. Pryor

Direct dial (202) 434-7365
mhpryor@mintz.com

March 17, 2003

Via Facsimile (913) 315-3752, and
Certified Mail/Return-Receipt Requested

Janette W. Luehring, Esq.
6450 Sprint Parkway
Overland Park, Kansas 66251

Re: *NewSouth-Sprint Billing Dispute*

Dear Ms. Luehring:

This responds to your letter of March 11, 2003 concerning the ongoing dispute between NewSouth Communications Corp. ("NewSouth") and Sprint-Florida Incorporated ("Sprint").

Under the dispute resolution provisions of the Interconnection and Resale Agreement between Universal Com, Inc., and Sprint ("Agreement" or "UCI/Sprint Agreement"), if the parties are unable to resolve disputed issues in the normal course, each party must appoint a designated representative at a higher level of management that has authority to settle the dispute. These representatives must meet as often as they reasonably deem necessary and negotiate in good faith to resolve the dispute. Obviously, the parties have been unable to resolve in the normal course the disputes between Sprint and NewSouth regarding the appropriate reciprocal compensation payments due under the Agreement. NewSouth reasonably viewed Mr. Clayton's December 13, 2002, email letter to Mr. Jennings as Sprint's designation of a higher level employee and the initiation of the dispute resolution provisions of the Agreement. Mr. Jennings is NewSouth's designated representative.

Whether the dispute resolution provisions of the Agreement have been triggered (and NewSouth believes that they have), NewSouth welcomes Sprint's offer to enter into settlement discussions to resolve the ongoing disputes. Such discussions should proceed under the ambit of the Agreement's dispute resolution provisions, which, as noted,

requires that designated representatives with settlement authority meet to attempt to resolve disputes. Given the length of time that this dispute has already been ongoing, NewSouth requests that such discussions begin immediately.

NewSouth proposes that Mr. Jennings and Sprint's designated representative, with counsel, meet at the end of next week. Mr. Jennings is available March 26, 27 or 28th. As Mr. Jennings will be unavailable during the first two weeks of April, NewSouth requests that the designated representatives meet at the end of next week to avoid further delay. NewSouth too hopes that the parties can quickly reach an agreement to avoid the necessity of filing an action before the appropriate authorities. NewSouth, however, is not prepared to engage in protracted discussions before filing an action given the length of time that Sprint has withheld amounts NewSouth reasonably believes it is owed.

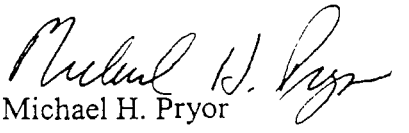
NewSouth proposes that the designated representatives address two overarching issues. First, as of October 2001, there was unpaid carry-over balance of $283,485.17 which Sprint owed UCI for the termination of local traffic. This amount still has not been paid. NewSouth requests that Sprint's designated representative be prepared to discuss the basis of Sprint's dispute for this amount and provide any evidence in Sprint's possession to substantiate the basis of its dispute.

Second, the designated representatives must address the appropriate rates and total amounts owed to NewSouth for the termination of Sprint-originated local traffic, including ISP-bound traffic, since February 2002. With respect to this issue, NewSouth does not believe that it is productive to continue point-by-point written responses to each other's positions. Suffice it to say that NewSouth obviously does not agree with the points raised in your March 11, 2003 letter. One point must be specifically addressed, however. You suggest that NewSouth has somehow admitted that sums were erroneously billed to Sprint. There has been no such admission. Mr. Jennings' January 6, 2003 letter sought to respond to certain assertions made by Mr. Clayton concerning the methodology for determining the three-to-one ratio and the growth cap. As Mr. Jennings' letter made clear, however, NewSouth does not agree that Sprint's January 24, 2002 "offer" letter was an appropriate mechanism to implement the Federal Communications Commission's interim compensation mechanism.

In fact, the Commission's interim compensation scheme is only applicable on a prospective basis to new or renegotiated agreements. The compensation scheme has no application to existing agreements, such as the UCI/Sprint Agreement. In order to apply the interim compensation scheme to the UCI/Sprint Agreement, the parties must amend this agreement or renegotiate a new agreement. As neither has occurred, Sprint's contractual obligation to compensate NewSouth (which succeeded to UCI's rights under the Agreement) for the termination of local traffic per the rates and terms of the Agreement have not changed. (NewSouth is prepared promptly to negotiate and enter into such an amendment in order to apply the interim compensation scheme going forward).

NewSouth is prepared to discuss these issues with Sprint's designated representative as early as next week. NewSouth proposes that the representatives meet at NewSouth offices at Two N. Main Street, NewSouth Center, Greeenville, South Carolina. At your earliest convenience, please contact me or Mr. Jennings to arrange the specific date, time and location of the meeting.

Very truly yours,



Michael H. Pryor

cc: John Clayton (via e-mail)
Jake E. Jennings (via e-mail)
Sprint-Florida, Incorporated
Attn: Field Supervisor Manager (via certified mail)

WDC 328745v1

-----Original Message-----
From: Lisa.Sulzen@mail.sprint.com [mailto:Lisa.Sulzen@mail.sprint.com]
Sent: Monday, September 09, 2002 12:17 PM
To: Tammy Couch
Subject: UniversalCom Invoices

Tammy,

NewSouth will be receiving a Sprint check # 0006501665, dated 9/4/02 for $366,195.85. This amount applies to the October 2001 through April 2002 invoices. Also attached is disputes forms for several of the invoices:

Should you have questions, please contact me at 913-794-1635 or Alison Stickel at 913-794-1634.

Thanks and have a great day!
Lisa Sulzen
LTD Access Verification
Phone - (913) 794-1635
Fax - (913) 794-0109
Mailstop: KSOPHF0202-2B364
Email: Lisa.Sulzen@mail.sprint.com

Sprint
LTD-Access Verification
6200 Sprint Parkway, M/S# KSOPHF0202
Overland Park, KS 66251

DISPUTE CLAIM NOTIFICATION

Carrier:	Newsouth Comm. (UniversalCom, Inc.)	**Dispute Claim Date:**	8/15/2002
Ban:		**Dispute Amount:**	$ 35,602.30
Invoice #:	3012002		
Invoice Date:	3/1/2002	**Contact:**	Tammy Couch
Invoice $:	$ 49,364.30	**Phone #:**	864-762-5155
		Fax #:	
Analyst:	**Lisa Sulzen**	**E-Mail:**	Tcouch@newsouth.com
Phone #:	**913-794-1635**	**Address:**	2 N. Main Street
Fax #:	**913-794-0109**		Greenville, SC 29601
E-Mail:	**Lisa.Sulzen@mail.sprint.com**		

Comments: **Effective February 1, 2002 - Sprint adopted the FCC order changing the rates to $0.0010 per minute for all local traffic and ISP traffic in Florida. That changes the Local Usage charges for the February 1 - 28, 2002 invoice from $49,364.30 to $13,762.00.**

The Local Usage rate will need to be updated from $0.003587 to $0.0010 on the next invoice.

Please Respond Within 30 Days

Sprint
LTD-Access Verification
6200 Sprint Parkway, M/S# KSOPHF0202
Overland Park, KS 66251

DISPUTE CLAIM NOTIFICATION

Carrier:	Newsouth Comm. (UniversalCom, Inc.)	**Dispute Claim Date:**	8/15/2002
Ban:		**Dispute Amount:**	$ 48,296.78
Invoice #:	4012002		
Invoice Date:	4/1/2002	**Contact:**	Tammy Couch
Invoice $:	$ 66,965.81	**Phone #:**	864-762-5155
		Fax #:	
Analyst:	**Lisa Sulzen**	**E-Mail:**	Tcouch@newsouth.com
Phone #:	**913-794-1635**	**Address:**	2 N. Main Street
Fax #:	**913-794-0109**		Greenville, SC 29601
E-Mail:	**Lisa.Sulzen@mail.sprint.com**		

Comments: **Effective February 1, 2002 - Sprint adopted the FCC order changing the rates to $0.0010 per minute for all local traffic and ISP traffic in Florida. That changes the Local Usage charges for the March 1 - 31, 2002 invoice from $66,965.81 to $18,669.03.**

The Local Usage rate will need to be updated from $0.003587 to $0.0010 on the next invoice.

Please Respond Within 30 Days

Sprint
LTD-Access Verification
6200 Sprint Parkway, M/S# KSOPHF0202
Overland Park, KS 66251

DISPUTE CLAIM NOTIFICATION

Carrier:	UniversalCom, Inc.	**Dispute Claim Date:**	10/10/02
Ban:		**Dispute Amount:**	$ 60,977.31
Invoice #:	5012002		
Invoice Date:	5/1/02	**Contact:**	Tammy Couch
Invoice $:	$ 80,512.81	**Phone #:**	864-762-5155
		Fax #:	
Analyst:	**Lisa Sulzen**	**E-Mail:**	Tcouch@newsouth.com
Phone #:	**913-794-1635**	**Address:**	2 N. Main Street
Fax #:	**913-794-0109**		Greenville, SC 29601
E-Mail:	**Lisa.Sulzen@mail.sprint.com**		

Comments: **UniversalCom has exceeded the ISP cap for 2002. Paying $19,535.50 for the eligible ISP MOU - 19,535,499.**

Disputing - $60,977.31

Sprint has no record of UniversalCom's decline, therefore all traffic must be billed at $0.0010.

Please Respond Within 30 Days

Sprint
LTD-Access Verification
6200 Sprint Parkway, M/S# KSOPHF0202
Overland Park, KS 66251

DISPUTE CLAIM NOTIFICATION

Carrier:	UniversalCom, Inc.	**Dispute Claim Date:**	10/10/02
Ban:		**Dispute Amount:**	$ 54,008.91
Invoice #:	5012002		
Invoice Date:	6/1/02	**Contact:**	Tammy Couch
Invoice $:	$ 58,587.34	**Phone #:**	864-762-5155
		Fax #:	
Analyst:	**Lisa Sulzen**	**E-Mail:**	Tcouch@newsouth.com
Phone #:	**913-794-1635**	**Address:**	2 N. Main Street
Fax #:	**913-794-0109**		Greenville, SC 29601
E-Mail:	**Lisa.Sulzen@mail.sprint.com**		

Comments: **UniversalCom has exceeded the ISP cap for 2002. Paying $4,578.43 for the eligible Voice MOU.**

Disputing - $54,008.91

Sprint has no record of UniversalCom's decline, therefore all traffic must be billed at $0.0010.

Please Respond Within 30 Days

Sprint
LTD-Access Verification
6200 Sprint Parkway, M/S# KSOPHF0202
Overland Park, KS 66251

DISPUTE CLAIM NOTIFICATION

Carrier:	UniversalCom, Inc.	**Dispute Claim Date:**	10/10/02
Ban:		**Dispute Amount:**	$ 62,705.17
Invoice #:	6012002		
Invoice Date:	6/1/02	**Contact:**	Tammy Couch
Invoice $:	$ 67,235.16	**Phone #:**	864-762-5155
		Fax #:	
Analyst:	**Lisa Sulzen**	**E-Mail:**	Tcouch@newsouth.com
Phone #:	**913-794-1635**	**Address:**	2 N. Main Street
Fax #:	**913-794-0109**		Greenville, SC 29601
E-Mail:	**Lisa.Sulzen@mail.sprint.com**		

Comments: **UniversalCom has exceeded the ISP cap for 2002. Paying $4,529.99 for the eligible Voice MOU.**

Disputing - $62,705.17

Sprint has no record of UniversalCom's decline, therefore all traffic must be billed at $0.0010.

Please Respond Within 30 Days

Sprint
LTD-Access Verification
6200 Sprint Parkway, M/S# KSOPHF0202
Overland Park, KS 66251

DISPUTE CLAIM NOTIFICATION

Carrier:	UniversalCom, Inc.	**Dispute Claim Date:**	10/10/02
Ban:		**Dispute Amount:**	$ 72,697.46
Invoice #:	8012002		
Invoice Date:	7/1/02	**Contact:**	Tammy Couch
Invoice $:	$ 78,258.24	**Phone #:**	864-762-5155
		Fax #:	
Analyst:	**Lisa Sulzen**	**E-Mail:**	Tcouch@newsouth.com
Phone #:	**913-794-1635**	**Address:**	2 N. Main Street
Fax #:	**913-794-0109**		Greenville, SC 29601
E-Mail:	**Lisa.Sulzen@mail.sprint.com**		

Comments: **UniversalCom has exceeded the ISP cap for 2002. Paying $5,560.78 for the eligible Voice MOU.**

Disputing - $72,697.46

Sprint has no record of UniversalCom's decline, therefore all traffic must be billed at $0.0010.

Please Respond Within 30 Days

-----Original Message-----
From: Lisa.Sulzen@mail.sprint.com [mailto:Lisa.Sulzen@mail.sprint.com]
Sent: Thursday, December 12, 2002 10:37 AM
To: Tammy Couch
Subject: Universal Com Invoice

Attached is the dispute form for invoice #11012002. Universal Com will be receiving a Sprint check # 0006948409, dated 12/11/02 for $4327.90.

Should you have questions, please let me know or Alison Stickel at 913-794-1634.

Thanks and Happy Holidays!
Lisa Sulzen
LTD Access Verification
Phone - (913) 794-1635
Fax - (913) 794-0109
Mailstop: KSOPHF0202-2B364
Email: Lisa.Sulzen@mail.sprint.com

<<Dispute Claim Form_11012002_Oct_Usage.xls>>

Sprint
LTD-Access Verification
6200 Sprint Parkway, M/S# KSOPHF0202
Overland Park, KS 66251

DISPUTE CLAIM NOTIFICATION

Carrier: UniversalCom, Inc.
Ban:
Invoice #: 11012002
Invoice Date: 11/1/2002 (rec'd 11/27/02)
Invoice $: $ 81,071.26

Analyst: **Lisa Sulzen**
Phone #: **913-794-1635**
Fax #: **913-794-0109**
E-Mail: **Lisa.Sulzen@mail.sprint.com**

Dispute Claim Date: 12/9/2002
Dispute Amount: $ 76,743.36

Contact: Tammy Couch
Phone #: 864-762-5155
Fax #:
E-Mail: Tcouch@newsouth.com
Address: 2 N. Main Street
Greenville, SC 29601

Comments: **UniversalCom has exceeded the ISP cap for 2002. Paying $4,327.90 for the eligible Voice MOU.**

Disputing - $76,743.36

Sprint has no record of UniversalCom's decline, therefore all traffic must be billed at $0.0010.

Please Respond Within 30 Days

-----Original Message-----
From: Lisa.Sulzen@mail.sprint.com [mailto:Lisa.Sulzen@mail.sprint.com]
Sent: Tuesday, February 04, 2003 10:35 AM
To: Tammy Couch
Subject: Universal Com Invoice

Tammy,

Wanted to let you know that UniversalCom will be receiving a Sprint chekc#0007182375, for $3823.15 dated 1/31/03.. Attached is the dispute form for the November Usage invoice that Sprint received January 16, 2003.

Thanks and Have a Great Day!
Lisa Sulzen
LTD Access Verification
Phone - (913) 794-1635
Fax - (913) 794-0109
Mailstop: KSOPHF0202-2B364
Email: Lisa.Sulzen@mail.sprint.com

Sprint
LTD-Access Verification
6200 Sprint Parkway, M/S# KSOPHF0202
Overland Park, KS 66251

DISPUTE CLAIM NOTIFICATION

Carrier: UniversalCom, Inc.
Ban:
Invoice #: 11012002
Invoice Date: 12/01/2002 (rec'd 1/16/03)
Invoice $: $ 79,274.29

Analyst: **Lisa Sulzen**
Phone #: **913-794-1635**
Fax #: **913-794-0109**
E-Mail: **Lisa.Sulzen@mail.sprint.com**

Dispute Claim Date: 01/28/2003
Dispute Amount: $ 75,451.14

Contact: Tammy Couch
Phone #: 864-762-5155
Fax #:
E-Mail: Tcouch@newsouth.com
Address: 2 N. Main Street
Greenville, SC 29601

Comments: **UniversalCom has exceeded the ISP cap for 2002. Paying $3,823.15 for the eligible Voice MOU.**

Disputing - $75,451.14

Sprint has no record of UniversalCom's decline, therefore all traffic must be billed at $0.0010.

Please Respond Within 30 Days

-----Original Message-----
From: Lisa.Sulzen@mail.sprint.com [mailto:Lisa.Sulzen@mail.sprint.com]
Sent: Thursday, February 13, 2003 3:08 PM
To: Tammy Couch
Subject: UniversalCom Invoice

Tammy,

Wanted to let you know that UniversalCom will be receiving a Sprint chekc#0007280969, for $2524.11 dated 2/12/03.. Attached is the dispute form for the December Usage invoice that Sprint received January 27, 2003.

Thanks and Have a Great Day!
Lisa Sulzen
LTD Access Verification
Phone - (913) 794-1635
Fax - (913) 794-0109
Mailstop: KSOPHF0202-2B364
Email: Lisa.Sulzen@mail.sprint.com

**** PLEASE NOTE - EFFECTIVE MONDAY, FEBRUARY 17TH, 2003:

NEW ADDRESS AND NEW MAILSTOP: PLEASE UPDATE

SPRINT
ATTN: LTD ACCESS VERIFICATION
6500 SPRINT PARKWAY, BLDG. 12 - KSOPHL0412-4B560
OVERLAND PARK, KS 66251

Sprint
LTD-Access Verification
6200 Sprint Parkway, M/S# KSOPHF0202
Overland Park, KS 66251

DISPUTE CLAIM NOTIFICATION

Carrier:	UniversalCom, Inc.	**Dispute Claim Date:**	2/10/2003
Ban:		**Dispute Amount:**	$ 64,156.29
Invoice #:	12012002		
Invoice Date:	12/1/2002 (rec'd 1/27/03)	**Contact:**	Tammy Couch
Invoice $:	$ 66,680.40	**Phone #:**	864-762-5155
		Fax #:	
Analyst:	**Lisa Sulzen**	**E-Mail:**	Tcouch@newsouth.com
Phone #:	**913-794-1635**	**Address:**	2 N. Main Street
Fax #:	**913-794-0109**		Greenville, SC 29601
E-Mail:	**Lisa.Sulzen@mail.sprint.com**		

Comments: **UniversalCom has exceeded the ISP cap for 2002. Paying $2,524.11 for the eligible Voice MOU.**

Disputing - $64,156.29

Sprint has no record of UniversalCom's decline, therefore all traffic must be billed at $0.0010.

Please Respond Within 30 Days

Subject: FW: UniversalCom's Invoices - #1012003 & #3012003

-----Original Message-----
From: Sulzen, Lisa A [CC] [mailto:Lisa.Sulzen@mail.sprint.com]
Sent: Monday, May 05, 2003 1:46 PM
To: Tammy Couch
Subject: UniversalCom's Invoices - #1012003 & #3012003

Attached are the dispute forms for UniversalCom's invoices # 1012003 and # 3012003.

<<Dispute Claim Form_Feb Usage_3012003.xls>> <<Dispute Claim Form_Jan Usage_1012003.xls>>

Should you have any questions - please let me know or Alison Stickel at 913-315-5415.

Thanks and Have a Great Day!
Lisa Sulzen
Access Verification
Phone - (913) 315-5545
Fax - (913) 315-0205
Mailstop: KSOPHL0412-4B560
Email: Lisa.Sulzen@mail.sprint.com

Sprint
LTD-Access Verification
6500 Sprint Parkway, M/S# KSOPHL0412
Overland Park, KS 66251

DISPUTE CLAIM NOTIFICATION

Carrier:	Universal Com	**Dispute Claim Date:**	4/29/2003
Ban:		**Dispute Amount:**	$ 38,616.60
Invoice #:	1012003		
Invoice Date:	1/1/2003 (rec'd 4/3/03)	**Contact:**	Tammy Couch
Invoice $:	$ 53,543.78	**Phone #:**	864-762-5155
		Fax #:	
Analyst:	**Lisa Sulzen**	**E-Mail:**	Tcouch@newsouth.com
Phone #:	**913-315-5545**	**Address:**	2 N. Main Street
Fax #:	**913-315-0205**		Greenville, SC 29601
E-Mail:	**Lisa.Sulzen@mail.sprint.com**		

Comments: **Effective February 1, 2002 - Sprint adopted the FCC order changing the rates to $0.0010 per minute for all local traffic and ISP traffic in Florida. That changes the Local Usage charges for the January 1 - 31, 2003 invoice from $53,543.78 to $14,927.18.**

The Local Usage rate will need to be updated from $0.003587 to $0.0010 on the next invoice.

Please Respond Within 30 Days

Sprint
LTD-Access Verification
6500 Sprint Parkway, M/S# KSOPHL0412
Overland Park, KS 66251

DISPUTE CLAIM NOTIFICATION

Carrier:	Universal Com	**Dispute Claim Date:**	4/29/2003
Ban:		**Dispute Amount:**	$ 38,305.44
Invoice #:	3012003		
Invoice Date:	2/1/2003 (rec'd 3/25/03)	**Contact:**	Tammy Couch
Invoice $:	$ 53,112.34	**Phone #:**	864-762-5155
		Fax #:	
Analyst:	**Lisa Sulzen**	**E-Mail:**	Tcouch@newsouth.com
Phone #:	**913-315-5545**	**Address:**	2 N. Main Street
Fax #:	**913-315-0205**		Greenville, SC 29601
E-Mail:	**Lisa.Sulzen@mail.sprint.com**		

Comments: **Effective February 1, 2002 - Sprint adopted the FCC order changing the rates to $0.0010 per minute for all local traffic and ISP traffic in Florida. That changes the Local Usage charges for the February 1 - 28, 2003 invoice from $53,112.34 to $14,806.90.**

The Local Usage rate will need to be updated from $0.003587 to $0.0010 on the next invoice.

Please Respond Within 30 Days

Subject: FW: UniversalCom's Invoice - 4012003

-----Original Message-----
From: Sulzen, Lisa A [CC] [mailto:Lisa.Sulzen@mail.sprint.com]
Sent: Thursday, May 15, 2003 7:18 PM
To: Tammy Couch
Subject: UniversalCom's Invoice - 4012003

Attached is the dispute form for Invoice # 4012003, dated 4/1/03. Please note Sprint didn't receive this invoice until 4/23/03 for the March 03 Usage.

<<Dispute Claim Form_Mar03 Usage_4012003.xls>>

Should you have any questions, please contact me or Alison Stickel at 913-315-5415.

Thanks and Have a Great Day!
Lisa Sulzen
Access Verification
Phone - (913) 315-5545
Fax - (913) 315-0205
Mailstop: KSOPHL0412-4B560
Email: Lisa.Sulzen@mail.sprint.com

Sprint
LTD-Access Verification
6500 Sprint Parkway, M/S# KSOPHL0412
Overland Park, KS 66251

DISPUTE CLAIM NOTIFICATION

Carrier:	Universal Com	**Dispute Claim Date:**	5/6/2003
Ban:		**Dispute Amount:**	$ 29,429.15
Invoice #:	4012003		
Invoice Date:	4/1/2003 (rec'd 4/23/03)	**Contact:**	Tammy Couch
Invoice $:	$ 40,804.94	**Phone #:**	864-762-5155
		Fax #:	
Analyst:	**Lisa Sulzen**	**E-Mail:**	Tcouch@newsouth.com
Phone #:	**913-315-5545**	**Address:**	2 N. Main Street
Fax #:	**913-315-0205**		Greenville, SC 29601
E-Mail:	**Lisa.Sulzen@mail.sprint.com**		

Comments: **Effective February 1, 2002 - Sprint adopted the FCC order changing the rates to $0.0010 per minute for all local traffic and ISP traffic in Florida. That changes the Local Usage charges for the March 1 - 31, 2003 invoice from $40,804.94 to $11,375.79.**

The Local Usage rate will need to be updated from $0.003587 to $0.0010 on the next invoice.

Please Respond Within 30 Days

* * * DETAIL OF USAGE CHARGES FOR OFFICE SGBHFLXARS0 * * *

USAGE BILLING CYCLE MAY 08 02 THRU JUN 07 02

LOCAL

EATP 100 %

RATE CATEGORY	QUANTITY	RATE	AMOUNT
END OFFICE			
LOCAL SWITCH CALL DURATION			
AN 17598			
TERMINATING MINUTES	11,422	.0035870	40.97
LOC SW CALL DURATION SUBTOTAL	11,422		40.97
TOTAL END OFFICE CHARGES			40.97
TOTAL LOCAL USAGE CHARGES FOR OFFICE SGBHFLXARS0			90.85
TOTAL USAGE CHARGES FOR OFFICE SGBHFLXARS0			601.33

* * * DETAIL OF USAGE CHARGES FOR OFFICE SGBHFLXARS0 * * *

USAGE BILLING CYCLE JUN 08 02 THRU JUL 07 02

LOCAL

EATP 100 %

RATE CATEGORY	QUANTITY	RATE	AMOUNT
END OFFICE			
LOCAL SWITCH CALL DURATION			
AN 17598			
TERMINATING MINUTES	10,985	.0035870	39.40
LOC SW CALL DURATION SUBTOTAL	10,985		39.40
TOTAL END OFFICE CHARGES			39.40
TOTAL LOCAL USAGE CHARGES FOR OFFICE SGBHFLXARS0			87.37

* * * DETAIL OF USAGE CHARGES FOR OFFICE SGBHFLXARS0 * * *

USAGE BILLING CYCLE JUL 08 02 THRU AUG 07 02

LOCAL

EATP 100 %

RATE CATEGORY	QUANTITY	RATE	AMOUNT
END OFFICE			
LOCAL SWITCH CALL DURATION			
AN 17598			
TERMINATING MINUTES	12,087	.0035870	43.36
LOC SW CALL DURATION SUBTOTAL	12,087		43.36
TOTAL END OFFICE CHARGES			43.36
TOTAL LOCAL USAGE CHARGES FOR OFFICE SGBHFLXARS0			96.14
TOTAL USAGE CHARGES FOR OFFICE SGBHFLXARS0			578.21

* * * DETAIL OF USAGE CHARGES FOR OFFICE SGBHFLXARSQ_ * * *

USAGE BILLING CYCLE AUG 08 02 THRU SEP 07 02

LOCAL

EATP 100 %

RATE CATEGORY	QUANTITY	RATE	AMOUNT
END OFFICE			
LOCAL SWITCH CALL DURATION			
AN 17598 TERMINATING MINUTES	11,874	.0035870	42.59
LOC SW CALL DURATION SUBTOTAL	11,874		42.59
TOTAL END OFFICE CHARGES			42.59
TOTAL LOCAL USAGE CHARGES FOR OFFICE SGBHFLXARS0			94.44
TOTAL USAGE CHARGES FOR OFFICE SGBHFLXARS0			537.05

* * * DETAIL OF USAGE CHARGES FOR OFFICE SGBHFLXARS0 * * *

USAGE BILLING CYCLE SEP 08 02 THRU OCT 07 02

LOCAL

EATP 100 %

RATE CATEGORY	QUANTITY	RATE	AMOUNT
END OFFICE			
LOCAL SWITCH CALL DURATION			
AM 17598 TERMINATING MINUTES	10,103	.0035870	36.24
LOC SW CALL DURATION SUBTOTAL	10,103		36.24
TOTAL END OFFICE CHARGES			36.24
TOTAL LOCAL USAGE CHARGES FOR OFFICE SGBHFLXARS0			80.31
TOTAL USAGE CHARGES FOR OFFICE SGBHFLXARS0			539.60

* * * DETAIL OF USAGE CHARGES FOR OFFICE SGBHFLXARS0 * * *

USAGE BILLING CYCLE OCT 08 02 THRU NOV 07 02

LOCAL

EATP 100 %

RATE CATEGORY	QUANTITY	RATE	AMOUNT
END OFFICE			
LOCAL SWITCH CALL DURATION			
AN 17598 TERMINATING MINUTES	8,549	.0035870	30.66
LOC SW CALL DURATION SUBTOTAL	8,549		30.66
TOTAL END OFFICE CHARGES			30.66
TOTAL LOCAL USAGE CHARGES FOR OFFICE SGBHFLXARS0			68.00
TOTAL USAGE CHARGES FOR OFFICE SGBHFLXARS0			539.60

SPRINT/LOCAL TELECOMMUNICATIONS DIVISION

BILL NO 274 R49-5002 759
INVOICE NO R495002759-03008
BILL DATE JAN 8, 2003
ACNA DES PAGE 191

* * * DETAIL OF USAGE CHARGES FOR OFFICE SGBHFLXARS0 * * *

USAGE BILLING CYCLE DEC 06 02 THRU JAN 07 03

LOCAL

EATP 100 %

RATE CATEGORY	QUANTITY	RATE	AMOUNT
END OFFICE			
LOCAL SWITCH CALL DURATION			
AN 17598			
TERMINATING MINUTES	6,826	.0035870	24.48
LOC SW CALL DURATION SUBTOTAL	6,826		24.48
TOTAL END OFFICE CHARGES			24.48
TOTAL LOCAL USAGE CHARGES FOR OFFICE SGBHFLXARS0			53.45
TOTAL USAGE CHARGES FOR OFFICE SGBHFLXARS0			486.08

Invoice Month	Usage Month	Invoice Number	Amount	Payment Amount	Difference	Date Paid	Date Disputed	Notes		
2-Mar	February Usage	30102002	$ 49,364.30	$ 14,188.50	$ 35,175.80	9/10/2002	9/9/2002 via email			
2-Apr	March Usage	4012002	$ 66,965.81	$ 18,669.03	$ 48,296.78	9/10/2002	9/9/2002 via email			
2-May	April Usage	5012002	$ 80,512.81	$ 19,535.50	$ 60,977.31	11/4/2002	10/10/2002			
2-Jun	May Usage	6012002	$ 58,587.34	$ 4,578.43	$ 54,008.91	11/4/2002	10/10/2002	wrong invoice # on Sprint dispute		
2-Jul	June Usage	7012002	$ 67,235.16	$ 4,529.99	$ 62,705.17	11/4/2002	10/10/2002	wrong invoice # on Sprint dispute		
2-Aug	July Usage	8012002	$ 78,258.24	$ 5,660.78	$ 72,597.46	11/4/2002	10/10/2002			
2-Sep	August Usage	9012002	$ 71,942.34	$ 3,952.49	$ 67,989.85	11/27/2002				
2-Oct	September Usage	10012002	$ 63,879.32	$ 3,809.03	$ 60,070.29	11/27/2002				
2-Nov	October Usage	11012002	$ 81,071.26	$ 4,327.90	$ 76,743.36	12/17/2002	12/12/2002 via email			
2-Dec	November Usage	12012002	$ 79,274.29	$ 3,823.15	$ 72,920.21	2/4/2003	2/4/2003 via email	wrong invoice # on Sprint dispute		
3-Jan	December Usage	1012003	$ 66,680.40	$ 2,524.11	$ 64,156.29	2/18/2003	2/13/2003 via email	wrong invoice # on Sprint dispute		
3-Feb	January Usage	2012003	$ 53,543.78	$ 14,927.18	$ 38,616.60	5/9/2003	5/05/2003 via email	wrong invoice # on Sprint dispute		
3-Mar	February Usage	3012003	$ 53,112.34	$ 14,806.90	$ 38,305.44	5/9/2003	5/05/2003 via email			
3-Apr	March Usage	4012003	$ 40,804.94	$ 11,375.79	$ 29,429.15		5/15/2003 via email			
3-May	April Usage	5012003	$ 37,086.06							

Sprint.

William E. Cheek
President Wholesale Markets

Local Telecommunications Division
6450 Sprint Parkway
Mailstop: KSOPHM0316-3B925
Overland Park, KS 66251
Voice 913 315 6026
Fax 913 315 0627

January 24, 2002

President
Universal Com, Incorporated
185 Stahlman Avenue
Destin, FL 32541

Dear Customer:

On April 18, 2001, the Federal Communications Commission (FCC) adopted an order addressing charges carriers may bill to and collect from each other for ISP-bound traffic. This letter is Sprint's notice to you that, effective February 1, 2002, it is offering to implement the rates contained in the FCC Order in the state of Florida. In addition, this letter is your official notice, to the extent such notice is required under the terms of our Interconnection Agreement(s), that Sprint is offering those rates to you.

By making this offer under the FCC's Order, Sprint is offering to exchange all local and ISP-bound traffic with companies, with whom Sprint has an agreement for reciprocal compensation at other than Bill & Keep, at the rate of $0.0010 per minute from February 1, 2002 through June 14, 2003; and the rate of $0.0007 from June 15, 2003 through June14, 2004 or until further FCC action. If the current compensation arrangement between your company and Sprint is Bill & Keep that arrangement will continue.

In the event you do not accept Sprint's offer, then, unless ISP traffic can be accurately identified, Sprint will exchange local and ISP-bound traffic with minutes eligible for compensation at our current contract rates up to a ratio of 3:1, and at the rates identified in the preceding paragraph for all other traffic eligible for compensation.

Regardless of accepting or declining Sprint's offer, ISP-bound minutes are capped for 2001 at 110% of the total first quarter 2001 minutes of ISP-bound traffic eligible for compensation under the terms of our current interconnection agreement, annualized. The volume of ISP-bound minutes eligible for compensation in 2002 is capped at 110% of the total eligible minutes in 2001. The volume of ISP-bound minutes for compensation in 2003 may not exceed the 2002 total. In the event you were not exchanging ISP-bound traffic pursuant to an interconnection agreement with Sprint, or if for any reason you were not entitled to compensation for ISP-bound traffic during first quarter 2001, then you will not be entitled to compensation for ISP-bound traffic under this Order.

Please note that effective February 1, 2002, Sprint will not pay any amounts invoiced by you in Florida that exceed the applicable rate caps or payment limits as described above

As stated, Sprint is implementing this order effective February 1, 2002. If you accept Sprint's offer to exchange all traffic at symmetrical and reciprocal prices as outlined herein no further action is needed on your part although a formal letter of acceptance is recommended. In the event you wish to decline this offer, please notify Sprint no later than February 8, 2002. If notice

of your decision to reject the offer is received by February 8, 2002 Sprint will treat that notice, for billing purposes, as if it were effective February 1, 2002. If notice of your decision to reject the offer is received after February 8, 2002, the effective date of billing based on your rejection will be the first of the month following receipt.

Please send notice of your acceptance or rejection of Sprint's offer to:

Director – Local Markets
Sprint
Mailstop KSOPHM0310-3A453
6480 Sprint Parkway
Overland Park, KS 66251

An example of the effects of accepting or rejecting Sprint's offer is attached to this letter. Because we anticipate that all parties will experience temporary billing difficulties in implementing the order you are encouraged to work with your assigned account manager to understand how the order will be applied.

Sincerely,

Bill E Check

William E. Check
President Wholesale Markets

cc: John Clayton

EXAMPLE – FOR ILLUSTRATIVE PURPOSES ONLY

1. **In the event you accept Sprint's offer the following billing will occur for traffic exchanged after February 1, 2002:**

   Example 1

   - Traffic originated by Sprint is 5,000 minutes
   - Traffic originated by your company is 10,000 minutes
   - You will bill Sprint 5,000 minutes X $0.001
   - Sprint will bill you 10,000 minutes X $0.001

   Example 2

   - Traffic originated by Sprint is 50,000 minutes
   - Traffic originated by your company is 10,000 minutes
   - You will bill Sprint 50,000 minutes X $0.001
   - Sprint will bill you 10,000 minutes X $0.001

2. **In the event you decline Sprint's offer, and ISP traffic cannot be separately identified, the following billing will occur:**

   Example 1

   - Traffic originated by Sprint is 5,000 minutes
   - Traffic originated by your company is 10,000 minutes
   - You will bill Sprint 5,000 minutes X existing contract rate
   - Sprint will bill you 10,000 minutes X existing contract rate

   Example 2

   - Traffic originated by Sprint is 50,000 minutes
   - Traffic originated by your company is 10,000 minutes
   - You will bill Sprint 30,000 minutes X existing contract rate
   - You will bill Sprint 20,000 minutes X $0.001
   - Sprint will bill you 10,000 minutes X existing contract rate

ORDER NO. 77578

IN THE MATTER OF THE PETITION OF VERIZON MARYLAND, INC. FOR A DECLARATORY RULING AND FOR AN ORDER APPROVING AMENDMENTS TO INTERCONNECTION AGREEMENTS.	* * * *	BEFORE THE PUBLIC SERVICE COMMISSION OF MARYLAND CASE NO. 8914

On August 17, 2001, Verizon Maryland, Inc ("Verizon") filed a Petition for Declaratory Ruling and an Order Approving Amendments to Interconnection Agreements. ("Petition"). In this Petition, Verizon requests that the Commission declare that the new rates for Internet-bound traffic established in the Federal Communications Commission's ("FCC") *Order* on *Remand*[1] apply as of June 14, 2001. This declaration would only pertain to Verizon's existing interconnection agreements that have change of law provisions.

Verizon also contends that several competitive local exchange carriers ("CLECs") have failed to respond to Verizon's repeated offers to negotiate amendments regarding the FCC's recent Order. Verizon asks that the Commission direct these CLECs to make Verizon's proposed amendment part of their interconnection agreements.

In the *Order on Remand*, the FCC determined that Internet-bound traffic is a form of interstate access traffic that is not subject to the reciprocal compensation obligations of the Telecommunications Act of 1996 ("1996 Act"). *Id.* ¶¶ 30, 39, 42-47. For carriers not already exchanging such traffic or not entitled to compensation for such traffic under the

[1] Order on Remand and Report and Order, *Intercarrier Compensation for ISP-Bound Traffic*, cc Docket Nos. 96-98, 99-68, FCC 01-131 (rel. April 27, 2001) ("*Order on Remand*"). The FCC's *Order on Remand* established a new reciprocal compensation structure for Internet-bound calls.

terms of their interconnection agreements, the FCC ordered that the "bill and keep" compensation system must apply as of the *Order on Remand's* effective date. *Id.* ¶ 81. For carriers entitled to payment for Internet-bound traffic under their agreements prior to the effective date of the new rules, the FCC stated that the new rate regime should be implemented through contractual change-of-law provisions. *Id.* ¶ 82.

Verizon argues that when an interconnection agreement provides for modification of its terms and conditions to reflect changes in applicable law, such modifications are effective as of the effective date of those changes in law.[2] Verizon also argues that applying the FCC rates as of the effective date of the *Order on Remand* under the change-of-law provisions in interconnection agreements is consistent with past practice in Maryland. According to Verizon, a number of competitive local exchange carriers ("CLECs") are refusing to negotiate the required amendment or deliberately dragging out negotiations.

Several CLECs responded to Verizon's Petition.[3] For example, WorldCom, Inc. ("WorldCom")[4] disputes Verizon's contention that it is not negotiating in good faith. WorldCom also claims that any negotiated amendment would not go into effect until that amendment is approved by the Commission rather than becoming effective on the date of the *Order on Remand* as argued by Verizon. WorldCom also argues that the change of law provision in its interconnection agreement with Verizon is not invoked by the *Order on Remand.* WorldCom also requested that the Commission sanction Verizon for withholding

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[2] Petition at page 5.

[3] CLECs filing a response include WorldCom, Inc. and Allegiance Telecom of Maryland, Inc. Joint comments were filed by the Competitive Telecommunications Association, Core Communications, Inc., e.spire Communications, Inc., KMC Telecom Holdings, Inc., SniP Link LLC and XO Communications. ("Joint CLEC Parties").

[4] WorldCom filed on behalf of MCImetro Access Transmission Services LLC and MCI WorldCom Communications (formerly MFS Intelenet of Maryland).

reciprocal compensation payments. WorldCom asks that the Commission require Verizon to remit withheld payments and to cease and desist withholding such payments. WorldCom also requests that the Commission impose a fine on Verizon of $25,000 per day.

The Commission Staff ("Staff") also filed a response to Verizon's Petition. Staff recommends that the Commission deny Verizon's request and order Verizon to negotiate amendments to its interconnection agreements to reflect the new rates for Internet-bound traffic. According to Staff, the new rates would become effective upon approval of the Commission or upon the negotiated effective date.

Specifically, Staff recommends dismissal of Verizon's Petition because the claims are too individualized to issue such a ruling. The Staff noted that the interconnection agreements have different change of contract provisions, which may require different orders. Staff expressly notes that merely having a provision called a change of law provision may be insufficient to grant the relief Verizon requests in its Petition. Staff also disagreed with Verizon's analysis of the effective date. According to Staff, if the effective date of a negotiated amendment was required to be the same as the effective date of the *Order on Remand*, the FCC would have stated so expressly.

In its Reply, Verizon contends that its central legal premise has not been challenged by the CLECs. This premise is that the FCC's new rate regime should apply as of June 14, 2001 because the terms of the agreements, including the change-of-law provisions, evidence the parties intent to conform their agreements and conduct to changes in law. Verizon also claims that the CLECS do not dispute their obligation to negotiate amendments in a timely manner and in good faith. According to Verizon, in light of their

failure to meet this obligation, the FCC's new rates should apply as of June 14, 2001. Verizon also argues that the CLECs do not dispute that applying the FCC's new rates as of June 14, 2001 is consistent with past practice in Maryland and industry norms. Finally, according to Verizon, the CLEC's failed to respond to Verizon's argument that delaying the implementation date will create serious harm to competition.

DISCUSSION

On April 27, 2001, the FCC released its *Order on Remand* establishing a new rate regime for Internet Service Provider (ISP) traffic. The FCC declared that ISP-bound traffic constitutes "information access" and thus is not subject to the reciprocal compensation requirement of §251 (b)(5) of the 1996 Act. The FCC concluded that it has the authority under Section 201 of the 1996 Act to regulate ISP-bound calls and to establish inter-carrier compensation rules for such calls.

Under the FCC plan, reciprocal compensation rates for ISP-bound traffic are subject to declining rate caps over a 36-month period. Traffic exceeding a three-to-one ratio of terminating to originating traffic is presumed, unless proven otherwise, to be ISP-bound traffic subject to the FCC's rate structure. After the 36-month period, bill-and-keep compensation would apply to such traffic instead of reciprocal compensation.

While the new rate regime went into effect on June 14, 2001 for carriers entering into new or renegotiated interconnection agreements, the FCC clearly envisioned prospective application of the new rates for existing interconnection agreements. The FCC stated:

> "The interim compensation regime we establish here applies as carriers renegotiate expired or expiring

> interconnection agreements. It does not alter existing contractual obligation, except to the extent that parties are entitled to invoke contractual change-of-law provisions. This Order does not preempt any state commission decision regarding compensation for ISP-bound traffic for the period prior to the effective date of the interim regime we adopt here."[5]

The conclusion that the FCC expected only prospective application of the *Order on Remand* is further supported by the FCC's statement that "as of the date this Order is published in the Federal Register, carriers may no longer invoke section 252(i) to opt into an existing interconnection agreement with regard to the rates paid for the exchange of ISP-bound traffic."[6] If the *Order on Remand* automatically became effective for all interconnection agreements as of June 14, 2001, the FCC would not have found it necessary to place this restriction on the opt in provision. Carriers opting in after June 14, would have also opted in to the FCC's new ISP rate regime.

Thus, the *Order on Remand* clearly is not self-executing for existing interconnection agreements. Instead, the FCC provides that its interim compensation regime will apply prospectively as carriers renegotiate such agreements. The FCC *Order on Remand* also provides that a party may change the terms of an existing agreement if permitted to do so by a change-of-law provision. The FCC was not directing that agreements be amended pursuant to change-of-law provisions, the agency merely recognized that some agreements may have applicable change-of-law provisions. While individual change-of-law provisions may provide that an agreement shall be deemed to have been amended automatically if the law changes, this is not necessarily the case in every instance.

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[5] *Order on Remand*, ¶ 82.
[6] *Id.* at ¶ 82.

Thus, Verizon's argument that declaring the FCC's new rates apply as of the effective date of the *Order on Remand* is consistent with controlling legal authority and sound public policy is simply erroneous. The FCC has determined otherwise and found that this aspect of its rate regime should be prospective only. This Commission cannot reach a contrary determination. If Verizon does not agree with the prospective nature of the FCC *Order on Remand*, its only recourse is to petition the FCC or the courts.

Verizon also asks this Commission to order those CLECs who have refused or delayed negotiating an amendment to the interconnection agreement to adopt Verizon's proposed amendment. The Commission is becoming increasingly concerned with the amount of time and resources it is forced to expend on this one issue. However, in this instance, the Commission agrees with Staff that the claims are too individualized for such a generic ruling. Interconnection agreements contain differing change of law contract provisions. The specific wording of each change of law contract provision may require the Commission to reach a different result. Furthermore, Verizon's request appears to be based, in part, on allegations that the carriers have not negotiated in good faith. However, the question of whether an individual carrier has negotiated in good faith is a factual determination which cannot be made in the context of a declaratory ruling.

The Commission finds that the issue of reciprocal compensation for ISP calls has dragged on far too long. In an effort to expedite this matter and hopefully achieve a final resolution, all CLECs listed in Exhibit 9 of Verizon's Request for Declaratory Ruling (Attachment A) are directed to respond to Verizon's proposed amendment within seven days of the issuance of this Order. This response shall take the form of either (1) a declaration that the issue has been resolved and thus no further action is necessary; (2)

acceptance of the Verizon amendment; (3) proposed alternative language with an explanation regarding why this alternative should be adopted by the Commission; or (4) an explanation of why no amendment is necessary or appropriate given the specific language of the individual interconnection agreement. The Commission expects that these filings will be limited to the issues set forth above.

Verizon shall have seven days to respond to the CLEC filings. After receipt of these filings, the Commission shall determine what proceedings, if any, are necessary to resolve the individual issues expeditiously.

Finally, the Commission must address WorldCom's request that Verizon be sanctioned for withholding reciprocal compensation payments. The Commission denies this request. It is inappropriate to consider a request for sanctions, which requires evidentiary support, within the context of a Declaratory Ruling. Furthermore, WorldCom requested that Verizon be fined $25,000 per day for this alleged violation. However, the Commission's fining authority is limited to penalties of $10,000 per day.

IT IS, THEREFORE, this 28th day of February, in the year Two-Thousand and Two, by the Public Service Commission of Maryland,

ORDERED: (1) That Verizon Maryland, Inc's request that the Public Service Commission declare that the new rates established in the Federal Communications Commission's *Order on Remand* apply as of the effective date of that Order is denied;

(2) That Verizon Maryland, Inc's request that the Public Service Commission order those competitive local exchange carriers listed in Exhibit 9 to adopt Verizon's proposed amendment is denied;

(3) That all carriers listed in Exhibit 9 shall respond to Verizon's proposed amendment within seven days of the issuance of this Order;

(4) Verizon shall have seven days to respond to the carriers filings; and

(5) WorldCom, Inc's request for sanctions is denied.

By Direction of the Commission,

Felecia L. Greer
Executive Secretary

ALJ/JAR/tcg **Mailed 1/24/2002**

Decision 02-01-062 January 23, 2002

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Verizon California, Inc. (U 1002 C) Complainant, vs. Pac-West Telecomm, Inc., Defendant.	(ECP) Case 01-10-036 (Filed October 15, 2001)

ORDER DENYING THE COMPLAINT OF VERIZON CALIFORNIA INC. AGAINST PAC-WEST TELECOMM, INC.

Summary

In this decision, we deny the complaint of Verizon California Inc. (Verizon) against Pac-West Telecomm, Inc. (Pac-West). The complaint challenged an Administrative Law Judge's (ALJ) Ruling prohibiting Verizon from unilaterally implementing new rates established by the Federal Communications Commission (FCC) for delivery of Internet-bound telephone traffic. Verizon is directed to pay Pac-West all amounts improperly withheld within three business days of this decision.

Procedural Background

This matter comes before the Commission pursuant to the dispute resolution procedures set forth in Article 13 of the Verizon/Pac-West Interconnection Agreement, dated June 21, 1996 (Agreement). Article 13

provides that if Verizon and Pac-West are unable to resolve a dispute arising under the Agreement, either party may invoke the dispute resolution procedure set forth in Commission Decision (D.) 95-12-056. Under the procedure, in the event of a dispute over terms of an interconnection agreement, the parties must first try to resolve the matter informally at the executive level. If that is unsuccessful, a party may file a motion seeking mediation before an ALJ. If mediation fails, the ALJ then directs the parties to file pleadings and rules on the dispute. If either party disagrees with that ruling, the party may contest the ruling by filing a formal complaint[1] with the Commission. *See* D.95-12-056, Ordering Paragraph 11; 63 CPUC2d 700, 749-50.

In accord with the process, on August 1, 2001, Pac-West filed[2] a motion for dispute resolution. On September 27, 2001, the assigned ALJ issued a ruling in favor of Pac-West. On October 15, 2001, Verizon filed this complaint. Pac-West responded on November 9, 2001. Identifying the question at issue to be one of law rather than that of fact, the parties waived evidentiary hearings. The presiding ALJ in this proceeding held oral argument on November 26, 2001.

The Federal Communications Commission Order and the ALJ Ruling

On April 27, 2001, the FCC released its *Order on Remand*[3] establishing a new intercarrier rate structure for Internet service provider (ISP) traffic. The

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[1] The complaint is processed in accordance with the expedited complaint procedures of Rule 13.2 of the Commission's Rules of Practice and Procedure (Rules), as modified by D.95-12-056.

[2] The motion was filed in the docket of D.95-12-056, Rulemaking (R.) 95-04-043 and Investigation 95-04-044 as well as in R.00-02-005.

[3] In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, CC Docket No. 96-98 and Intercarrier Compensation

Footnote continued on next page

order was published in the Federal Register on May 15, 2001, and became effective on June 14, 2001. In its Order, the FCC declared that ISP-bound traffic constitutes "information access" and thus is not subject to the reciprocal compensation requirement of Section 251(b)(5) of the Communications Act[4] (the Act). The FCC concluded that it has the authority under Section 201 of the Act to regulate ISP-bound calls and to set the intercarrier compensation rules for such calls.

Under the FCC plan, reciprocal compensation rates for ISP-bound traffic are subject to declining rate caps over a 36-month period. Traffic exceeding a three-to-one ratio of terminating to originating traffic is presumed, unless proven otherwise, to be ISP-bound traffic subject to the FCC's rate structure. After the 36-month period, bill-and-keep compensation would apply to such traffic instead of reciprocal compensation.

While the new rate structure went into effect on June 14, 2001, for carriers entering into new or renegotiated interconnection agreements, the FCC envisioned prospective application of the new rates for existing interconnection agreements. The FCC held:

> "The interim compensation regime we establish here applies as carriers renegotiate expired or expiring interconnection agreements. It does not alter existing contractual obligations, except to the extent that parties are entitled to invoke contractual change-of-law provisions. This Order does not preempt any state commission decision regarding

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for ISP-Bound Traffic, CC Docket No. 99-68, Order on Remand and Report and Order (released April 27, 2001) (*Order on Remand*).

[4] 47 U.S.C.§ 251(b)(5), as amended by the Telecommunications Act of 1996.

> compensation for ISP-bound traffic for the period prior to the effective date of the interim regime we adopt here."[5]

Verizon notified Pac-West by letter dated May 14, 2001 that the FCC Order constituted a material change of law, and advised it would "not pay any amounts invoiced by [Pac-West] that exceed the applicable rate caps or payment limits" prescribed by the Order, effective June 14, 2001. Before the ALJ presiding over the dispute resolution, Verizon argued that the FCC plan "is self-effect[uat]ing by operation of the provisions of Pac-West's interconnection agreement, including its change-of-law provisions."[6] Verizon identified the relevant change-of-law provision in the Agreement to be:

> "This Agreement shall at all times be subject to such changes or modifications by the California Public Utilities Commission (CPUC or Commission) or Federal Communication [sic] Commission as either may, from time to time, direct [sic] the exercise its jurisdiction. If any such modifications render the Agreement inoperable or create any ambiguity or requirement for further amendment to the Agreement, the Parties will negotiate in good faith to agree upon any necessary amendments to the Agreement."[7]

The ALJ Ruling distilled the essence of the Verizon/Pac-West dispute to be whether the Agreement contains a "change of law provision" that would authorize Verizon, without any other triggering event, to impose on Pac-West the intercarrier rate structure set out in the FCC Order. It found the language in

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[5] Order on Remand, ¶ 82.

[6] *Response to Pac-West Motion*, R.00-02-005 (June 27, 2001). *See also*, Verizon Complaint, Exhibit F: Verizon Letter to Pac-West, dated June 21, 2001.

[7] *Telecommunications Facility Interconnection Agreement*, dated as of June 21, 1996.

question, which appears in the preamble to the Agreement, to suggest " a statement of jurisdiction more than it does a change of law."[8] More importantly, the Ruling noted, the preamble paragraph looks to a change or modification of the interconnection agreement when the FCC directs it. Regarding the existing pact, the FCC's "direction" is to make the change in ISP-bound rates when the two carriers renegotiate their agreement. The ALJ Ruling held that by the express terms of the Agreement, Verizon is not free on its own to amend the terms of its agreement with Pac-West until notice of cancellation and renegotiation. The FCC Order is not self-executing for existing interconnection agreements.

Verizon's Complaint and Pac-West's Response

Contesting the ALJ Ruling, Verizon insists that the language in the second introductory paragraph of the Agreement is "the first substantive provision" and a "classic change-of-law provision" within the meaning of the FCC's Order. Verizon Complaint, ¶ 39 at 18. It argues that Pac-West may have distracted and confused the ALJ with selective quotes from the Order and last-minute comparisons between the general change-of-law provisions in the Agreement and more specific ones drafted years later. Verizon further maintains that Pac-West's refusal to agree to Verizon's wording of amendments incorporating the Order, and countering with submission of its own preferred language, is evidence of Pac-West's failure to negotiate in good faith and determination to delay the Order's implementation. Verizon emphasizes the good public policy objective of the FCC's action, and urges the Commission to look to the plain meaning of the Order and the Agreement.

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[8] *Administrative Law Judge's Ruling Granting Motion of Pac-West Telecomm, Inc.* at 5.

Pac-West responds that the "[p]reamble paragraph is not a change of law provision," and Verizon may not unilaterally impose the rate structure set forth in the FCC Order upon it until such time as the Agreement expires or is replaced with a new interconnection agreement. Citing California case law, Pac-West asserts that language in a preamble "cannot create any right beyond those arising from the operative terms of the document".[9] It notes that the Agreement contains a specific operative provision (Section 9.02), which includes language very similar to that in the preamble, but expressly excludes any reference to FCC decisions, and applies to Commission decisions only. Pac-West contends that the language in the preamble paragraph is merely a general jurisdictional statement, while Section 9.02 is a substantive contractual provision binding both parties with respect to changes ordered by the Commission, but not the FCC.

It submits that nothing in the FCC Order authorizes any party to impose the Order unilaterally if the effective interconnection agreement provides to the contrary, or requires written amendments. Article 16 of the Verizon/Pac-West Agreement requires "[a]ny amendment, modification, or supplement" be in writing. Pac-West argues that under the instant dispute resolution process, Verizon bears a heavy burden of proof in this proceeding that it has not met. Finally, Pac-West asks the Commission to adopt and approve the ALJ Ruling in its entirety, and explicitly order Verizon to make immediate payment of all amounts owed; notwithstanding any intentions to further appeal or seek rehearing of this matter.

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[9] Pac-West Response at 12, footnote 23: "*See Westland Water District v. United States*, 850 F. Supp. 1388, 1406 (E.D. Ca.1994), citing *Abraham Zion Corp. v. Leblow*, 761 F.2d 93, 103 (2d Cir. 1985); *see also Patmont Motor Werks v. Gateway Marine Inc.*, 1997 U.S. Dist. LEXIS 20877 at *16 (N.D. Ca. 1997)."

Discussion

The language of the preamble paragraph in the Verizon/Pac-West agreement does not constitute a change-of-law provision within the meaning of the FCC's Order. As the ALJ Ruling spelled out, the question is not *whether* the agreement here is subject to the FCC rates – clearly it is. The question is *when* this interconnection agreement will be subject to those rates.

We note, as Pac-West points out, that Section 9.02 of the Agreement includes specific language that binds both parties regarding changes ordered by this Commission, but excludes any reference to FCC decisions. We disagree with Verizon's argument that California law requires the preamble paragraph to be given effect over Section 9.02 of the Agreement. Such an interpretation would nullify the explicit language of not only Section 9.02, which expressly excludes FCC orders from its scope, but also Section 16, which requires that amendments to the agreement be in writing.[10]

The FCC Order provides that the Agreement will be subject to its restructured rates at the time "carriers renegotiate expired or expiring interconnection agreements." To find otherwise, requires the Commission to adopt an interpretation of the Agreement that is unreasonable and strained at best. Instead, we adopt and approve the ALJ Ruling in its entirety.

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[10] Still, Verizon is not without options. It is free to terminate the Agreement pursuant to Section 9.02 and renegotiate a satisfactory replacement interconnection agreement within 125 days from the date of termination. Or, it can trigger 47 U.S.C. § 252, as amended by the Federal Telecommunications Act of 1996, and obtain a Commission-adopted arbitrated replacement agreement within nine months.

Comments on Draft Decision

While not required by Public Utilities Code Section 311(g) and Rule 77.7 of the Rules, the draft decision of ALJ Reed in this matter was mailed to the parties in order to provide a complete record. Comments were filed on December 27, 2001, and reply comments were filed on January 2, 2002. We have reviewed the comments, and taken them into account, as appropriate, in finalizing this order.

IT IS ORDERED that:

1. Verizon California Inc. (Verizon) shall not be entitled without agreement by Pac-West Telecomm, Inc. (Pac-West) or appropriate order by this Commission or by the Federal Communications Commission (FCC) to apply the FCC rate caps to Internet service provider (ISP)-bound traffic in lieu of reciprocal compensation rates specified under Section 8.01(2) of the *Telecommunications Facility Interconnection Agreement*, dated as of June 21, 1996 (interconnection agreement).

2. Verizon shall pay in full the reciprocal compensation charges specified under Section 8.01(2) of the interconnection agreement for all ISP-bound traffic for as long as the interconnection agreement is in effect and is not modified by written amendment or by appropriate direction of the FCC or this Commission.

3. Within three business days following the issuance of this order, Verizon shall pay Pac-West all amounts as required by the interconnection agreement it has withheld from Pac-West based upon its position that it has implemented the FCC's Order on Remand and Report and Order in Common Carrier Docket Nos. 96-98 and 99-68, together with interest thereon at the three-month commercial paper rate.

4. This proceeding is closed.

This order is effective today.

Dated January 23, 2002, at San Francisco, California.

LORETTA M. LYNCH
President
HENRY M. DUQUE
RICHARD A. BILAS
CARL W. WOOD
GEOFFREY F. BROWN
Commissioners

H

United States District Court,
D. Maryland,
Northern Division.

VERIZON MARYLAND INC., f/k/a BELL ATLANTIC-MARYLAND, INC. Plaintiff,
v.
RCN TELECOM SERVICES, INC., f/k/a RCN Telecom Services of Maryland Inc., et al., Defendants.

No. CIV.S-99-2061.

March 5, 2003.

Incumbent local exchange carrier (ILEC) brought action against state public service commission (PSC), PSC commissioners, in their official capacities, and competing local exchange carriers (CLECs), challenging PSC's ruling that calls made by its customers to internet service providers (ISP) serviced by CLECs were local traffic subject to reciprocal compensation under ILEC's interconnection agreements. Parties cross-moved for summary judgment. The United States District Court for the District of Maryland dismissed complaint. The Court of Appeals, 240 F.3d 279, affirmed. After granting ILEC's petition for writ of certiorari, the Supreme Court vacated the Court of Appeals' judgment, 535 U.S. 635, 122 S.Ct. 1753, 152 L.Ed.2d 871, and remanded. Following remand from the Court of Appeals, parties cross-moved for summary judgment. The District Court, Smalkin, J., held that: (1) jurisdiction existed over ILEC's preemption claims; (2) even if Telecommunications Act's judicial review provision created private cause of action, it did not encompass claim that PSC misapplied state contract law in interpreting interconnection agreement; (3) federal common law does not govern the interpretation of interconnection agreements; (4) federal jurisdiction did not exist under theory of protective jurisdiction; (5) federal question jurisdiction did not exist over claim alleging misapplication of state law; (6) PSC did not violate federal law by ordering ILEC to pay reciprocal compensation pursuant to interconnection agreement; and (7) PSC's order did not violate federal law by requiring ILEC to pay reciprocal compensation pursuant to interconnection agreements that were arbitrated or based on ILEC's statement of generally available terms (SGAT).

Summary judgment for defendants.

West Headnotes

[1] **Federal Courts** 241
170Bk241 Most Cited Cases

Statute providing for federal question jurisdiction authorizes district courts to hear only those claims in which a well-pleaded complaint establishes either that federal law creates the cause of action or that plaintiff's right to relief necessarily depends on resolution of a substantial question of federal law. 28 U.S.C.A. § 1331.

[2] **Telecommunications** 263
372k263 Most Cited Cases

Claim asserted by incumbent local exchange carrier (ILEC), that order of state public service commission (PSC) violated Telecommunications Act and related agency rulings by requiring payment of reciprocal compensation for calls made by ILEC's customers to internet service providers (ISP) serviced by competing local exchange carriers (CLECs) whenever issue was arbitrated or CLEC adopted ILEC's statement of generally available terms (SGAT) as part of interconnection agreement, was ripe for judicial review after CLEC allegedly elected to adopt SGAT when entering into interconnection agreement with ILEC and agreement was approved by PSC. Communications Act of 1934, § 252(e)(6), (i), as amended, 47 U.S.C.A. § 252(e)(6), (i).

[3] **Telecommunications** 263
372k263 Most Cited Cases

Regardless of whether judicial review provision of Telecommunications Act created private cause of action, district court had jurisdiction over preemption claims in which incumbent local exchange carrier (ILEC) alleged that order of state public service commission (PSC) requiring payment of reciprocal compensation for calls to internet service providers (ISPs) violated Telecommunications Act and related rulings, and in which ILEC alleged that PSC order violated Act and rulings by requiring reciprocal compensation for ISP- bound calls whenever issue was arbitrated or competing local exchange carrier (CLEC) adopted ILEC's statement of generally available terms (SGAT) as part of interconnection agreement. 28 U.S.C.A. § 1331; Communications Act of 1934, § 252(e)(6), as amended, 47 U.S.C.A. § 252(e)(6).

[4] **Telecommunications** 263

372k263 Most Cited Cases

Even if judicial review provision of Telecommunications Act created private cause of action, it did not comprehend claim in which incumbent local exchange carrier (ILEC) essentially alleged that state public service commission (PSC) misapplied state contract law when it interpreted terms of ILEC's voluntarily negotiated interconnection agreement as requiring ILEC to pay reciprocal compensation for its customers' calls to internet service providers (ISPs) serviced by competing local exchange carrier (CLEC), notwithstanding ILEC's contention that Act created federal cause of action whenever state commission misinterpreted parties' intentions under interconnection agreement, which was based on erroneous identification of terms of voluntarily negotiated interconnection agreement as "requirements" of Act. Communications Act of 1934, § § 251(b, c), 252(a)(1), (b), (e)(6), as amended, 47 U.S.C.A. § § 251(b, c), 252(a)(1), (b), (e)(6).

[5] Telecommunications 263
372k263 Most Cited Cases

To the extent that judicial review provision of Telecommunications Act confers federal cause of action on local exchange carrier (LEC) aggrieved by state commission's determination of parties' intent under voluntarily negotiated interconnection agreement, it strictly limits that cause of action to review of commission's action for compliance with requirements of Telecommunications Act. Communications Act of 1934, § § 251, 252(e)(6), as amended, 47 U.S.C.A. § § 251, 252(e)(6).

[6] Telecommunications 263
372k263 Most Cited Cases

So long as state, rather than federal or federalized, law governs the interpretation of interconnection agreements, neither Telecommunications Act nor any other federal law creates a cause of action that would support jurisdiction under federal question statute. 28 U.S.C.A. § 1331; Communications Act of 1934, § 252(e)(6), as amended, 47 U.S.C.A. § 252(e)(6).

[7] Telecommunications 263
372k263 Most Cited Cases

Federal common law did not govern interpretation of interconnection agreements between incumbent local exchange carriers (ILECs) and competing local exchange carriers (CLECs) mandated under Telecommunications Act, and therefore claim by ILEC that state public service commission (PSC) misinterpreted terms of ILEC's interconnection agreement with CLEC did not satisfy "arising under" requirement for federal question jurisdiction. 28 U.S.C.A. § 1331; Communications Act of 1934, § 251, 252, as amended, 47 U.S.C.A. § § 251, 252.

[8] Federal Courts 191
170Bk191 Most Cited Cases

Absent evidence of congressional intent to make contractual rights and duties federal in nature, even causes of action based on an alleged breach of a federally-mandated contract provision present only state-law claims.

[9] Federal Courts 433
170Bk433 Most Cited Cases

Only when there is a significant conflict between some federal policy or interest and the use of state law should a court fashion a federal rule of decision; otherwise, matters left unaddressed in a comprehensive and detailed federal regulatory scheme are presumably left subject to the disposition provided by state law.

[10] States 18.81
360k18.81 Most Cited Cases

[10] Telecommunications 323
372k323 Most Cited Cases

[10] Telecommunications 337.1
372k337.1 Most Cited Cases

Because all terms of tariff for long-distance telephone service are de jure federal regulations, federal law defines entire contractual relationship between the parties; thus, state contract law cannot apply to interpretation of a tariff, and a suit to enforce a tariff arises under federal law.

[11] Telecommunications 267
372k267 Most Cited Cases

Federal common law does not govern the interpretation of interconnection agreements entered into by incumbent and competing local exchange carriers (LECs) pursuant to Telecommunications Act. Communications Act of 1934, § § 251, 252, as amended, 47 U.S.C.A. § § 251, 252.

[12] **Telecommunications** 263
372k263 Most Cited Cases

Theory of "protective jurisdiction" did not apply to confer federal jurisdiction over claim in which incumbent local exchange carrier (ILEC) alleged that state public service commission (PSC) misapplied state contract law when interpreting terms of interconnection agreement, on grounds that federal court availability was necessary to protect important federal interests in case substantively governed by state law; statute governing federal question jurisdiction could not serve as the "law of the United States" providing basis for claim, and even if judicial review provision of Telecommunications Act both created cause of action and conferred federal jurisdiction, that jurisdiction extended only so far as federal cause of action, which in turn extended only to review of PSC's decision for compliance with federal law, and not to state-law contract claim. 28 U.S.C.A. § 1331; Communications Act of 1934, § 252(e)(6), as amended, 47 U.S.C.A. § 252(e)(6).

[13] **Telecommunications** 263
372k263 Most Cited Cases

Federal question jurisdiction did not exist over claim in which incumbent local exchange carrier (ILEC) challenged state public service commission's (PSC) interpretation of interconnection agreement, on grounds that substantial, disputed question of federal law was necessary element of claim, when PSC found no indication that interconnection agreement was intended to incorporate evolving standards of federal law. 28 U.S.C.A. § 1331.

[14] **Telecommunications** 263
372k263 Most Cited Cases

Given its original jurisdiction over related preemption claims asserted by incumbent local exchange carrier (ILEC), district court had authority, under supplemental jurisdiction statute, to exercise jurisdiction over claim in which ILEC challenged underlying order of state public service commission (PSC) requiring ILEC to pay reciprocal compensation for its customers' calls to internet service providers (ISPs) serviced by competing local exchange carrier (CLEC) on grounds that PSC misapplied state contract law in interpreting ILEC's interconnection agreement with CLEC, which was encompassed by Maryland statute granting parties in interest right to seek judicial review of PSC order. 28 U.S.C.A. § 1367(a); West's Ann.Md.Code, Public Utility Companies, § 3-202.

[15] **Telecommunications** 14
372k14 Most Cited Cases

On review pursuant to Telecommunications Act, district court would review de novo conclusions of federal law of state public service commission (PSC), but substantial evidence or arbitrary and capricious standard governed review of PSC's findings of fact or determinations of policy. Communications Act of 1934, § 252(e)(6), as amended, 47 U.S.C.A. § 252(e)(6).

[16] **States** 18.81
360k18.81 Most Cited Cases

[16] **Telecommunications** 267
372k267 Most Cited Cases

Even if Telecommunications Act and related regulatory rulings did not require incumbent local exchange carrier (ILEC) to pay reciprocal compensation for its customers' calls to internet service providers (ISPs) serviced by competing local exchange carrier (CLEC), they did not, during time period at issue, preclude ILEC and CLECs from agreeing, in interconnection agreements, to pay reciprocal compensation for such calls, and therefore federal law did not preclude state public service commission (PSC), which found that ILEC had agreed to make such payments, from ordering ILEC to adhere to its contractual obligations. Communications Act of 1934, § § 251, 252(a)(1), as amended, 47 U.S.C.A. § § 251, 252(a)(1).

[17] **Telecommunications** 267
372k267 Most Cited Cases

Decision of state public service commission (PSC) to require incumbent local exchange carrier (ILEC) to pay reciprocal compensation for its customers' calls to internet service providers (ISPs) serviced by competing local exchange carriers (CLECs) pursuant to interconnection agreements which were arbitrated or based on ILEC's statement of generally available terms (SGAT) and which were approved during relevant time period did not violate either Telecommunications Act nor related regulatory rulings. Communications Act of 1934, § § 251(d)(3), 252(e)(3), 261(b, c), as amended, 47 U.S.C.A. § § 251(d)(3), 252(e)(3), 261(b, c).

[18] **Federal Courts** 14.1
170Bk14.1 Most Cited Cases

District court's exercise of supplemental jurisdiction was not warranted to the extent that it existed over claim in which incumbent local exchange carrier (ILEC) alleged that state public service commission (PSC) misapplied state contract law when PSC interpreted interconnection agreement as requiring ILEC to pay reciprocal compensation for its customers' calls to internet service providers (ISPs) serviced by competing local exchange carrier. 28 U.S.C.A. § 1367(a, c); West's Ann.Md.Code, Public Utility Companies, § § 3-203, 3- 204(a).

[19] Federal Courts 43
170Bk43 Most Cited Cases

Federal court may be obligated not to decide a state-law claim when the principles of abstention dictate.

[20] Federal Courts 269
170Bk269 Most Cited Cases

[20] Federal Courts 272
170Bk272 Most Cited Cases
Judgments.

Ex Parte Young doctrine, excepting from Eleventh Amendment sovereign immunity claims under federal law for prospective injunctive relief against state officials, does not apply to state-law claims. U.S.C.A. Const.Amend. 11.

[21] Administrative Law and Procedure 651
15Ak651 Most Cited Cases

Under Maryland law, once the statutory mode of appeal has been exhausted, no further right remains in a party to secure review of a final decision of an agency.

[22] Administrative Law and Procedure 482
15Ak482 Most Cited Cases

Under Maryland law, the power of an administrative agency to rehear and reconsider must be exercised within a reasonable time, and before an appeal from its original order has been lodged in the courts.

[23] Administrative Law and Procedure 482
15Ak482 Most Cited Cases

The action of an agency in reopening a matter beyond its power is void under Maryland law.

***472** James P. Garland, Miles and Stockbridge PC, Baltimore, MD, Mark L. Evans, Sean A. Lev, Aaron M. Panner, Kellogg Huber Hansen Todd and Evans LLC, Washington, DC, for Plaintiff.

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Chan Park, Akin Gump Strauss Hauer and Feld LLP, McLean, VA, for Movant.

MEMORANDUM OPINION

SMALKIN, District Judge.

The plaintiff, Verizon Maryland Inc. ("Verizon"), formerly known as Bell Atlantic-Maryland, Inc., filed an amended complaint against the defendants alleging that the Public Service Commission of Maryland ("PSC") issued an order that violates the Telecommunications Act of 1996 ("the 1996 Act"), Pub.L. 104-104, 110 Stat. 56 (codified as amended in scattered sections of 47 U.S.C.). Now before the Court are the cross-motions for summary judgment of: (1) the plaintiff Verizon; (2) defendants Catherine I. Riley, Claude M. Ligon, J. Joseph Curran III, Gail C. McDonald, and Ronald Guns, all in their official capacities as members of the PSC (collectively, "the commissioners"); (3) defendant RCN Telecom Services, Inc. ("RCN Telecom"); (4) defendant Starpower Communications, LLC ("Starpower"); (5) defendant TCG-Maryland; (6) defendant Global NAPS, Inc. ("Global"); and (7) intervenor-defendants MCI WorldCom Communications, Inc., and MCImetro Access Transmission Services LLC (collectively, "WorldCom"). The issues have been fully briefed by the parties, and no oral hearing is necessary. Local

Rule 105.6 (D.Md.).

BACKGROUND

Congress enacted the 1996 Act to promote competition in local telecommunications markets. *See AT & T Corp. v. Iowa Utils. Bd.*, 525 U.S. 366, 371, 119 S.Ct. 721, 142 L.Ed.2d 835 (1999). Toward that end, the 1996 Act imposes various obligations on incumbent local exchange carriers ("ILECs"), including a duty to share their networks with competing local exchange carriers ("CLECs"). *See* 47 U.S.C. § 251(c). When a CLEC seeks access to the market, the ILEC must "provide ... interconnection with" its network. *Id.* § 251(c)(2). The carriers must then "establish reciprocal compensation arrangements for the transport and termination of telecommunications." *Id.* § 251(b)(5).

An ILEC "may negotiate and enter into a binding agreement" with a CLEC to fulfill the duties imposed by § 251(b) and (c), but "without regard to the standards set forth in" those provisions. *Id.* § 252(a)(1). The parties must negotiate in good faith. *Id.* § 251(c)(1). If private negotiations fail, either party may petition ***473** the relevant state commission to arbitrate open issues. *Id.* § 252(b).

An ILEC may also prepare and file with a state commission a statement of generally available terms ("SGAT") that the ILEC offers to CLECs to comply with the requirements of § § 251 and 252. *Id.* § 252(f)(1). If an ILEC submits a SGAT, the state commission must review it and either approve or disapprove it. *Id.* § 252(f)(3)-(4). The state commission may not approve a SGAT unless it meets certain requirements of the 1996 Act. *Id.* § 252(f)(2). The state commission may also establish and enforce requirements of state law in its review of a SGAT. *Id.* The submission or approval of a SGAT, however, does not relieve an ILEC of its duty to negotiate the terms and conditions of an agreement under § 251. *Id.* § 252(f)(5). Nevertheless, an ILEC and a CLEC may adopt the terms and conditions of an approved SGAT as their interconnection agreement. *Id.* § 252(i).

Once an interconnection agreement is in place, whether negotiated, mediated, or arbitrated, the parties must submit it to the state commission for approval or rejection. *Id.* § 252(e)(1). The state commission must ensure that each agreement is consistent with certain requirements of the 1996 Act, but may also enforce requirements of state law, such as intrastate quality service standards. *Id.* § 252(e)(2), (3). A state commission may reject a voluntarily negotiated agreement only if the agreement discriminates against a carrier not a party, or if its implementation "is not consistent with the public interest, convenience, and necessity." *Id.* § 252(e)(2)(A). A state commission may reject an agreement adopted by arbitration only if the agreement fails to meet the requirements of § § 251 and 252(d) and FCC regulations issued thereunder. *Id.* § 252(e)(2)(B). A party aggrieved by a "determination" of a state commission under § 252 may bring an action in federal district court "to determine whether the agreement or statement meets the requirements" of § § 251 and 252. *Id.* § 252(e)(6).

In this case, Verizon, the ILEC in Maryland, negotiated an interconnection agreement (the "WorldCom agreement") with MFS Intelenet of Maryland, Inc., later acquired by intervenor-defendant WorldCom. The PSC approved the agreement on October 9, 1996. Neither party sought review in federal district court (or elsewhere). Three other defendant CLECs--RCN Telecom, Starpower, and TCG-Maryland--all subsequently entered into voluntary agreements with Verizon in relevant part substantively identical to the WorldCom agreement. The PSC approved them all; no one sought review. Adopting Verizon's PSC-approved SGAT, Global, another defendant CLEC, entered into an agreement with Verizon in August 2000. On or around May 9, 2001, the PSC approved the Global-Verizon agreement.

Sometime after the PSC approved the WorldCom agreement, a dispute arose between Verizon and WorldCom over the terms of the reciprocal compensation arrangement. The agreement required reciprocal compensation for "local traffic." WorldCom agreement ¶ ¶ 1.44, 1.61, 5.7. When a Verizon customer would place a local call to a WorldCom customer, the caller would be using part of WorldCom's network, and Verizon would have to compensate WorldCom for such usage. The agreement set the rates of compensation. As it happened, several customers of WorldCom were internet service providers ("ISPs"), offering modem-based internet access to their own customers. The customers of the ISPs, through their computers, placed telephone calls to their ISPs, which then connected them to the internet. Needless to say, these ISP-bound calls tended to be longer than average local ***474** calls, and many of the ISPs' customers used Verizon as their local telephone service provider. Thus, if this ISP- bound traffic were "local," Verizon would have to pay reciprocal compensation to WorldCom; if nonlocal, no

reciprocal compensation would be due.

Around April 1997, Verizon informed WorldCom that it would no longer pay reciprocal compensation for telephone calls made by Verizon's customers to ISPs serviced by WorldCom. Verizon claimed that such calls were not "local traffic" because the ISPs were connecting customers to distant websites. WorldCom disputed Verizon's claim and filed a complaint with the PSC. On September 11, 1997, the PSC found in favor of WorldCom, ordering Verizon "to timely forward all future interconnection payments owed [WorldCom] for telephone calls placed to an ISP" and to pay WorldCom any reciprocal compensation that it had withheld pending resolution of the dispute. Am. Compl., Ex. D (the "*First WorldCom Order* "). Verizon appealed to a Maryland state court, which affirmed the PSC's order. *Bell Atl.-Md., Inc. v. Pub. Serv. Comm'n,* Civ. No. 178260 (Md. Cir. Ct. Montgomery County Mar. 26, 1998).

Subsequently, the FCC issued a ruling that categorized ISP-bound calls as nonlocal, but concluded that, absent a federal compensation mechanism, state commissions could construe interconnection agreements as requiring reciprocal compensation. *See* IN RE IMPLEMENTATION OF THE LOCAL COMPETITION PROVISIONS OF THE TELECOMMUNICATIONS ACT OF 1996, 1999 WL 98037, 14 F.C.C.R. 3689 (1999) (the "*ISP Order* "), vacated and remanded, *Bell Atl. Tel. Cos. v. FCC,* 206 F.3d 1 (D.C.Cir.2000). [FN1] Verizon filed a new complaint with the PSC, arguing that the *ISP Order* dictated that Verizon no longer had to provide reciprocal compensation for ISP-bound traffic. In a 3-to-2 decision, the PSC rejected Verizon's argument, concluding as a matter of state contract law that Verizon and WorldCom had agreed to treat ISP-bound calls as local traffic, subject to reciprocal compensation. *See* Am. Compl., Ex. A (the "*Second WorldCom Order* ").

FN1. On remand, the FCC issued another ruling. *See In re Implementation of Local Competition Provisions in Telecommunications Act of 1996,* 16 F.C.C.R. 9151, 2001 WL 455869 (2001) (the "*ISP Remand Order* "). Although the *ISP Remand Order* no longer characterized ISP- bound calls as nonlocal, it nevertheless concluded that the 1996 Act did not require reciprocal compensation for such calls. It also established a transitional, prospective regime for intercarrier compensation, to take effect as pre-existing contracts expire. *See ISP Remand Order,* 16 F.C.C.R. at 9186-97 (¶ ¶ 77-94), 2001 WL 455869. Without vacating this ruling, the D.C. Circuit has remanded it to the FCC for reconsideration. *See WorldCom, Inc. v. FCC,* 288 F.3d 429 (D.C.Cir.2002).

Verizon filed an action in this Court to review the *Second WorldCom Order,* citing 47 U.S.C. § 252(e)(6) and 28 U.S.C. § 1331 as bases for jurisdiction. The original complaint named as defendants the PSC, its individual members in their official capacities, WorldCom, and five other CLECs. On motion of the PSC, this Court dismissed the complaint, holding that the doctrine of sovereign immunity precluded its exercise of subject-matter jurisdiction under either § 252(e)(6) or § 1331. A divided panel of the Fourth Circuit affirmed. *See Bell Atl.-Md., Inc. v. MCI Worldcom, Inc.,* 240 F.3d 279 (4th Cir.2001). Verizon petitioned the Supreme Court for a writ of certiorari.

On December 12, 2001, the Supreme Court granted certiorari in the matter of the *Second WorldCom Order. Verizon Maryland Inc. v. Public Service Comm'n of Maryland,* 534 U.S. 1072, 122 S.Ct. 679, 151 L.Ed.2d 591 (2001). Then, without ***475** dissent, it vacated the judgment of the Fourth Circuit. *See Verizon Md. Inc. v. Pub. Serv. Comm'n,* 535 U.S. 635, 122 S.Ct. 1753, 152 L.Ed.2d 871 (2002). The Court ruled, first, that a federal district court has subject-matter jurisdiction to entertain a claim that a state commission order interpreting and enforcing an interconnection agreement violates federal law. *Id.* at 1758. Although the Court declined to resolve the question whether § 252(e)(6) authorizes such review, it "agree[d] ... that even if § 252(e)(6) does not *confer* jurisdiction, it at least does not *divest* the district courts of their authority under 28 U.S.C. § 1331 to review the [PSC]'s order for compliance with federal law." *Id.*

Next, the Court held that the doctrine of sovereign immunity does not bar Verizon's claim because the (countervailing) doctrine of *Ex Parte Young,* 209 U.S. 123, 28 S.Ct. 441, 52 L.Ed. 714 (1908), permits Verizon to proceed against the commissioners of the PSC in their official capacities. *Id.* at 1760. The Court asserted that Verizon's "prayer for injunctive relief--that state officials be restrained from enforcing an order in contravention of controlling federal law--clearly satisfies" the requirements of an *Ex Parte Young* suit. *Id.* It noted that Verizon's prayer for declaratory relief "seeks a declaration of the *past,* as

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May 21, 2001

RE: Order on Remand

On April 18, 2001, the Federal Communications Commission ("FCC") adopted an order addressing the charges that carriers may bill to and collect from each other connection with their exchange of dial-up Internet traffic. See, *Order on Remand a Report and Order*, CC Docket Nos. 96-98, 99-68 (adopted April 18, 2001) (the "Order"). This letter is intended to advise you of the key provisions of the Order, a to notify you of steps that Verizon is taking to implement the Order. Because the Order may have a material effect on your operations, please read this letter caref

In the Order, the FCC determines that Internet traffic is interstate exchange acces traffic □ specifically, information access traffic □ and that such traffic is not subjec payment of reciprocal compensation under Section 251(b)(5) of the Communicati Act. In addition, the FCC reconfirms its prior analysis that led to its earlier ruling th Internet traffic is not "local" traffic because a call to the Internet is one, continuous call and not two separate calls. In order to limit the regulatory arbitrage opportunit that has existed in those states where reciprocal compensation has been paid on Internet traffic prior to adoption of the Order, the FCC exercises its authority unde Section 201 of the Communications Act to prescribe an alternative, transitional intercarrier compensation regime for Internet traffic.

In order to give effect to the Order, and to ensure its continued compliance with applicable law, Verizon will implement the following practices on the effective date the rate-affecting provisions of the Order (*i.e.*, thirty days after publication in the Federal Register):

- To the extent Verizon is exchanging dial-up Internet traffic and traffic prope compensable under Section 251(b)(5) with you in a given state over faciliti obtained under a particular interconnection agreement or local interconnec tariff, Verizon will presume, as an initial matter, that any such traffic that exceeds a 3:1 ratio of terminating to originating traffic is Internet traffic (and therefore interstate exchange access traffic). Either party may seek to rebu this presumption by

  demonstrating to the appropriate state regulatory commission that traffic below this ratio is in fact Internet traffic, or that traffic above this ratio is non-Internet traffic that is subject to reciprocal compensation pursuant to Section 251(b)(5) of the Act. During the pendency of any such proceedings, traffic above the 3:1 ratio will continue to be governed by the intercarrier compensation regime set forth in the Order, and upon conclusion of such proceedings, compensation paid between the parties will be subject to true-up, if appropriate.

- Initially, and continuing for six months after the effective date of the Order, intercarrier compensation rate for Internet traffic will be capped at $.0015 p

minute of use. Starting in the seventh month, and continuing for eighteen months, the rate will be capped at $.001 per minute of use. Starting in the twenty-fifth month, and continuing through the thirty-sixth month or until further FCC action (whichever is later), the rate will be capped at $.0007 pe minute of use. If state law has previously required payment on Internet traf at a rate lower than the applicable rate caps established in the Order, or ha previously required a lower rate structure for Internet traffic, such as "bill an keep," then that lower rate or rate structure may apply under the terms of t Order.

- The amount of Internet traffic on which Verizon will pay intercarrier compensation to you in 2001 in a given state may not exceed 110% of the total number of Internet-bound minutes for which you were entitled to compensation under your interconnection agreement or local interconnecti tariff in that state in the first quarter of 2001, annualized. (The volume of compensable Internet traffic in 2002 may not exceed 110% of the 2001 compensable Internet traffic volume originated on Verizon□s network in a given state, and in 2003 may not exceed the 2002 compensable volume originated on Verizon□s network in that state.) Accordingly, if you were no exchanging Internet traffic with Verizon in the first quarter of this year, or if any reason you were not entitled under your interconnection agreement or local interconnection tariff to compensation on Internet traffic during that period, then you will not be entitled to compensation for Internet traffic und the Order.

- Verizon will pay properly invoiced intercarrier compensation charges on dia up Internet traffic that originates on Verizon□s network on or after the effective date of the Order up to the rate caps and payment limits authorize by the Order, as described above. **You are hereby put on notice, to the extent such notice is required, that Verizon will not pay any amounts invoiced by you that exceed the applicable rate caps or payment limit as described above.**

- With respect to those states in which the state regulatory commission or an court of competent jurisdiction has previously determined that you are entit to receive compensation for Internet traffic under the terms of your interconnection agreement, the Order recognizes Verizon□s right to invoke the change of law provisions set forth in that agreement. Without waiving it position that neither Section 251(b)(5) nor your current interconnection agreement or any relevant tariff obligates Verizon to pay or continue payin reciprocal compensation on Internet traffic, **Verizon hereby gives written notice, to the extent such notice is required, that the Order constitute material change of law in the aforementioned states. Verizon hereby invokes any and all rights it may have under your interconnection agreement or otherwise with respect to government orders affecting obligations to you or other changes in law, including, where applicab the right to terminate any provision of your interconnection agreemen that imposes obligations on Verizon that are no longer required unde applicable law.**

The Order requires Verizon to offer all CLECs and CMRS providers an optional reciprocal compensation rate plan for termination of non-Internet traffic subject to Section 251(b)(5). Under this optional plan, such traffic exchanged between Veriz and a Local Exchange Carrier or CMRS provider in a given state will be subject to compensation at the same rate applicable to Internet traffic in that state under the terms of the Order. The terms and conditions applicable to this optional rate plan available from your account manager or your designated Verizon Contract Negotiator, and will take effect no earlier than the date that is thirty days after publication of the Order in the Federal Register.

Because we anticipate that all parties will experience temporary billing difficulties implementing the Order, you are encouraged to work with your assigned Verizon

Account Manager to understand how the terms of the Order will be applied to you each of the Verizon states in which you do business.

Accessible

Date: **May 12, 2003**

Number: **CLEC03-142**

Effective Date: **June 1st, 2003**

Category: **Interconnection**

Subject: **(BUSINESS PROCESSES) Notice of Offer in Conjunction with the Adoption of FCC's Interim ISP Terminating Compensation Plan by SBC Texas - TX**

Related Letters: **N/A**

Attachment: **N/A**

States Impacted: **Texas**

Response Deadline:

Contact: **Account Manager**

Conference Call/Meeting: **N/A**

As provided by the FCC's Order on Remand and Report and Order in CC Dockets No. 96-98 and 99-68, *In the Matter of the Local Competition Provisions in the Telecommunications Act of 1996; Intercarrier Compensation for ISP-bound Traffic* (the "ISP Compensation Order"), which was remanded in *WorldCom, Inc. v. FCC*, No. 01-1218 (D.C. Cir. 2002), Southwestern Bell Telephone, L.P. d/b/a SBC Texas ("SBC Texas") hereby offers to exchange all Section 251(b)(5) traffic on and after June 1, 2003 in accordance with the rates, terms and conditions of the FCC's ISP terminating compensation plan in the state Texas. SBC Texas makes this offer for all Section 251(b)(5) traffic and ISP-bound traffic exchanged in Texas, as ordered by the FCC in paragraph 89 of the ISP Compensation Order.

To effectuate an acceptance of this offer in Texas, an amendment to your Interconnection Agreement will be required. Your attention is directed to the following website, where a Reciprocal Compensation Amendment for ISP-Bound Traffic and Federal Communications Act Section 251(b)(5) Traffic (Adopting FCC's Interim ISP Terminating Compensation Plan) ("Amendment") per state, in accordance with the requirements of the FCC's interim ISP terminating compensation plan contained in the ISP Compensation Order, may be accessed for your review:

https://clec.sbc.com/clec/shell.cfm?section=115

If you choose to accept this offer in Texas, complete the Order Notification form also available on the website with complete and accurate information, and fax the completed and signed form to SBC Contract Management at 1-800-404-4548 to order a signature ready version of the Amendment for the applicable state that SBC Contract Management will prepare for execution by your company. Your execution and delivery of the Amendment to the following address shall

constitute an acceptance of the offer contained in this Accessible Letter for that state. Please deliver two original, signed copies of the Amendment to the following address for proper execution and filing:

Contract Management
311 South Akard
9th Floor
Dallas, TX 75202

If you fax the Order Notification form to SBC Contract Management, as provided above, on or before **June 1, 2003**, and if the Amendment is executed by your company and the appropriate signed originals are received by SBC Contract Management on or before **June 9, 2003**, as provided above, the Amendment will become effective on June 1, 2003,[1] conditioned upon state commission approval; otherwise, the Amendment will become effective ten (10) days after approval by the state commission or after the Amendment is deemed to have been approved by such commission.

If you have any questions, please do not hesitate to contact your SBC Account Manager.

[1] However, the rates will not be implemented in the billing system until after state commission approval, at which time the rates billed by the Parties beginning June 1, 2003, will be subject to true-up.

NewSouth communications®

February 8, 2002

VIA Facsimile 913-315-0627 and US Mail

Mr. William E. Cheek
President Wholesale Markets
Mr. John Clayton
Director – Local Markets
Sprint
Mailstop KSOPHM0310-3A453
6480 Sprint Parkway
Overland Park, KS 66251

Dear Mr. Cheek,
Dear Mr. Clayton;

NewSouth Communications Corp. hereby rejects Sprint's offer regarding reciprocal compensation contained in your letter dated January 24, 2002.

Be advised that NewSouth will continue to adhere to the terms & conditions contained in the current interconnection agreement between the two parties.

Sincerely,

Jake E. Jennings
Vice President of Regulatory Affairs
Direct: 864-672-5877
Fax: 864-672-5105
Email: jjennings@newsouth.com

-----Original Message-----

From: Marion Gray
Sent: Monday, September 30, 2002 12:33 PM
To: Alison Stickel (E-mail)
Cc: Tammy Couch; Jake Jennings
Subject: Recip Comp Billing Dispute

Allison-

I have reviewed the billing dispute for recip comp billed to Sprint by NewSouth in Florida. Please be advised that we rejected, via letter to Bill Cheek on 2/8/02, the new local rate of $0.0010 per minute to be effective 2/1/02. Rather, we elected to exchange traffic at our present contact rates up to a ratio of 3:1.

Attached is an analysis of minutes billed in the state of Florida from February through August 2002. Only in the month of February did the minutes billed by NewSouth to Sprint exceed the 3:1 cap. Therefore, we cannot honor this dispute and request payment for the balance due on our invoices at our contracted rates.

Please do not hesitate to contact me if you have any questions.

Marion Gray
Director of Finance
NewSouth Communications Corp.
(864) 672-5492 voice
(864) 672-5300 fax

Sprint Recip Comp Dispute Anal...

NewSouth communications®

February 14, 2003

Via Facsimile and Overnight Mail

Director – Local Markets
Sprint
Mailstop KSOPHM0310-3A453
6480 Sprint Parkway
Overland Park, KS 66251

RE: ***Rejection of Sprint January 24, 2002 Offer Letter for NewSouth Communications Corp. and the former Universal Com, Inc.***

To Whom It May Concern:

NewSouth Communications Corp. ("NewSouth") hereby delivers its *third* rejection of Sprint's January 24, 2002 offer ("Sprint Offer Letter") to exchange all local and ISP-bound traffic at the graduated rates established by the Federal Communications Commission ("FCC"). Although NewSouth has previously rejected Sprint's Offer Letter on two separate occasions – via letter on February 8, 2002 and via electronic mail on September 30, 2002 – Sprint has continued to withhold reciprocal compensation payments lawfully owed to NewSouth since March 2002 under the erroneous notion that NewSouth's rejections were not effective for the former entity known as Universal Com, Inc. ("Universal Com").[1/]

For avoidance of any further doubt, NewSouth, on behalf of itself and the former Universal Com., hereby rejects Sprint's Offer Letter dated January 24, 2002. Accordingly, under the terms of the Sprint Offer Letter, the effective date of this rejection is the first month following receipt of this letter.

Nothing herein should be interpreted as NewSouth's acknowledgement or agreement that NewSouth's prior rejections, as described above, were not effective as of the date of rejection and binding upon Sprint at that time. In addition, NewSouth reserves all its rights and remedies under the Parties' interconnection agreements to recover those payments unlawfully withheld by Sprint.

Sincerely,

Jake E. Jennings
Vice President, Regulatory Affairs

cc: John Clayton (via e-mail)
Sprint, Director – Wholesale Services

[1/] Although Sprint's Offer Letter was addressed to Universal Com, that entity no longer existed as of the date of the letter. Universal Com merged into NewSouth effective December 31, 2001. As a result of the merger, NewSouth succeeded to the rights of Universal Com under the Interconnection and Resale Agreement for the State of Florida between Universal Com and Sprint dated January 27, 1998.

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Greenville, South Carolina 29601
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