WOMBLE CARLYLE SANDRIDGE & RICE
A PROFESSIONAL LIMITED LIABILITY COMPANY

One Atlantic Center
1201 West Peachtree Street
Suite 3500
Atlanta, GA 30309
Telephone: (404) 872-7000
Fax: (404) 888-7490
Web site: www.wcsr.com

ORIGINAL

Loretta A. Cecil
Direct Dial: (404) 888-7387
Direct Fax: (404) 870-4826
E-mail: lcecil@wcsr.com

June 19, 2003

VIA FEDERAL EXPRESS

Mrs. Blanca S. Bayo
Director, Division of the Commission Clerk
and Administrative Services
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399

Re: Petition by AT&T Communications of the Southern States, LLC And TCG South Florida for Arbitration of Interconnection Agreement with Sprint-Florida, Incorporated Under the Telecommunications Act of 1996
Docket No.: ~~020396~~-TP
030296-TP

Dear Mrs. Bayo:

Please find enclosed for filing in your office the original and fifteen (15) copies of Direct Testimony of David L. Talbott filed by AT&T Communications of the Southern States, LLC and TCG of South Florida (collectively "AT&T")

Please stamp two (2) copies of the Testimony in the usual manner and return to us via our courier.

If you have any questions, please do not hesitate to contact me at 404-888-7437.

AUS
CAF
CMP
COM 3 + original
CTR
ECR
GCL 1
OPC
MMS
SEC 1
OTH

Sincerely yours,

Loretta A. Cecil / HR

Loretta A. Cecil

Enclosure(s)

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Direct Testimony of David L. Talbott was furnished via electronic delivery and First-Class U. S. Mail to the following parties of record on this 19th day of June, 2003:

Ben Poag/Susan Masterton
Sprint Telecommunications, Inc.
1313 Blairstone Road
Tallahassee, FL 32301-3021

Janet Luehring, Esq.
Sprint Telecommunications, Inc.
6480 Sprint Parkway
Overland Park, KS 66251

Mitch Menezes, Esq.
AT&T
1875 Lawrence Street
Suite 1575
Denver, CO 80202-1847

Roxanne Douglas, Esq.
AT&T
1200 Peachtree Street, NE
Suite 8100
Atlanta, GA 30309

David Eppsteiner, Esq.
AT&T
Suite 8100
1200 Peachtree Street, NE
Atlanta, GA 30309

Loretta A. Cecil /JHR
Loretta A. Cecil, Esq.

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Petition of AT&T Communications of the Southern States, LLC and TCG South Florida For Arbitration of Certain Items and Conditions of a Proposed Interconnection Agreement with Sprint-Florida, Inc. Pursuant to 47 U.S.C. § 252	)	DOCKET NO.: 030296-TP FILED: JUNE 19, 2003

DIRECT TESTIMONY OF

DAVID L. TALBOTT

ON BEHALF OF

AT&T COMMUNICATIONS OF THE SOUTHERN STATES, LLC

AND TCG SOUTH FLORIDA

June 19, 2003

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INTRODUCTION

Q. MR. TALBOTT, PLEASE STATE YOUR FULL NAME, PRESENT POSITION, AND BUSINESS ADDRESS.

A. My name is David L. Talbott. I am employed by AT&T Corp. ("AT&T") in the Local Services Access Management group in AT&T Network Services as a District Manager. My business address is 3737 Parke Drive, Edgewater, Maryland 21037.

Q. WHAT ARE YOUR RESPONSIBILITIES IN YOUR PRESENT POSITION?

A. My current responsibilities are the development and negotiation of interconnection agreements between AT&T and incumbent local exchange carriers ("ILECs") under the Telecommunications Act of 1996 ("Act"),[1] focusing on network interconnection and inter-carrier compensation issues.

Q. WHAT IS YOUR EDUCATIONAL BACKGROUND?

A. I graduated from the University of Maryland – College Park in 1975 with a Bachelor of Arts Degree from the Communications Department.

[1] *Telecommunications Act of 1996*, Pub. L. No. 104-104, 110 Stat. 56.

Q. WHAT IS YOUR EXPERIENCE IN THE TELECOMMUNICATIONS INDUSTRY?

A. I started with AT&T Long Lines Department in 1976. From 1979 through 1988, I held various management positions in engineering related to the design and implementation of private line services. From 1988 through 1998, I was responsible for developing and managing numerous business relationships between AT&T and selected competitive access providers and alternate local exchange carriers ("ALECs"). These responsibilities required resolving both technical and business issues, including the interconnection of the respective networks and compensation arrangements.

During 1999, I was the Business Development Manager for AT&T's Internet Protocol Cable Telephony Project. These responsibilities included the assessment of the technical capabilities of selected vendors and contracting the best-qualified vendors to assist AT&T in its development of Internet Protocol cable telephony technology.

As mentioned above, most recently I have been involved in negotiating various interconnection agreements between AT&T and ILECs.

Q. HAVE YOU APPEARED AS A WITNESS IN REGULATORY PROCEEDINGS?

A. Yes. I have provided testimony before the Federal Communications Commission ("FCC"), the California Public Utilities Commission, the Connecticut Department of Public Utility Control, the Delaware Public Service Commission, the Florida Public Service Commission, the Georgia Public Service Commission, the Kansas Corporation Commission, the Maryland Public Service Commission, the Michigan Public Service Commission, the New York State Public Service Commission, the New Jersey Board of Public Utilities, the North Carolina Utilities Commission, the Public Utilities Commission of Ohio, the Texas Public Utility Commission, and the Wisconsin Public Service Commission.

Q. ARE YOU THE ONLY WITNESS FILING DIRECT TESTIMONY IN THIS PROCEEDING ON BEHALF OF AT&T COMMUNICATIONS OF THE SOUTHERN STATES, LLC AND TCG SOUTH FLORIDA?

A. Yes. My testimony addresses all of the Issues which are pending in this proceeding. Additionally, throughout my testimony, I will collectively refer to AT&T Communications of the Southern States, LLC and TCG South Florida as "AT&T."

OVERVIEW OF NETWORK INTERCONNECTION AND COMPENSATION ISSUES

Q. PLEASE SUMMARIZE THE IMPORTANCE OF NETWORK INTERCONNECTION AND COMPENSATION ISSUES IN A COMPETITIVE TELECOMMUNICATIONS INDUSTRY.

A. Network interconnection and compensation raise fundamental issues regarding interconnection of ALECs and ILECs networks, including the number and location of the point(s) of interconnection ("POI") and how, or even whether, such carriers will compensate each other for the transport and termination of traffic originating on the other carrier's network.

Obviously, AT&T and other ALECs face enormous challenges in competing with Sprint and other ILECs which possess massive numbers of customers and ubiquitous networks. However, the most frequently overlooked competitive advantage that the ILECs possess is the paradigm of how a local telephone network should look and operate. Regulators reasonably should not expect or require AT&T or any other ALEC to deploy new networks that duplicate the network architecture of the ILEC networks. Such a mandate would be economically disastrous for ALECs and would severely hinder the development of competition in Florida. Even Sprint, if it were to rebuild its network from a clean slate, would likely not deploy the

same network architecture today. Rather, it would develop an architecture that takes advantage of the costs and benefits of the latest switching and transport technology. Yet with Sprint's network architecture proposal, Sprint is asking this Commission to apply a traditional telephony paradigm in determining how emerging networks should be interconnected with its network.

Of course, the insidious property of any paradigm is that the observer does not even realize that he or she is viewing the world through the skewed lens of the held paradigm. Thus, the Commission should be aware of and resist Sprint's efforts to apply a traditional telephony paradigm as the basis for resolution of the various network interconnection and compensation issues raised in this arbitration, because this perspective imposes substantial unnecessary additional costs on AT&T and other ALECs. Instead the Commission should make decisions that accommodate the substantially different strategies, network designs, and economic constraints of AT&T and other ALECs in order to promote the development of a healthy, efficient, competitive environment in Florida. Any relaxation or revision of such decision only will further entrench Sprint's position in the marketplace.

Q. PLEASE COMPARE SPRINT'S NETWORK WITH AT&T'S NETWORK.

A. Sprint's network has been deployed over the past several decades to provide ubiquitous service across its certificated territory. It is a multi-layer or tiered network. Sprint's hierarchical or layered network was deployed when there were significant distance limitations on local loop technology, resulting in many switches deployed in the neighborhoods. Therefore, Sprint has many end office switches spread out over its service area and installed in the neighborhoods populated by its customers. These end office switches are interconnected by an overlaying network of tandem switches. When certain volume levels are achieved and it is cost effective, Sprint establishes high usage trunks that directly link end office switches (bypassing the tandems). As I understand it, Sprint, like other ILECs, finds the use of tandem switches to be the least costly method of interconnecting many end offices until certain traffic thresholds are achieved between two end offices, and only then is it more efficient for Sprint to directly connect the two end offices.

On the other hand, facilities-based ALECs, such as AT&T, which enter a market with few or no customers, are faced with the considerable challenge of how and where to profitably deploy transport facilities and switching systems, considering the relatively

low density of customers and traffic volume forecasted over the planning period. One area of technological advancement that has made facilities-based market entry a possibility is the substantial decrease in the cost of high-capacity fiber-optic facility systems. In fact, some economists assert that distance has become an irrelevant factor in telephony markets and that this trend will also eventually affect local telephony.[2] Accordingly, AT&T's switches[3] are deployed to take advantage of the efficiencies of today's transport technology. This allows AT&T to reduce somewhat the negative economics associated with deploying a network for an initially small customer base.

Currently, AT&T has a menu of options that it can use to economically connect end users located relatively far from a switch. These options include: (1) high capacity fiber optic rings to commercial buildings and multiple dwelling units; (2) hybrid fiber coax plant being deployed by AT&T's cable TV properties; (3) UNE loop resale through AT&T collocation in Sprint end offices; and (4) dedicated high-capacity facilities (in some cases using special access services purchased from Sprint, but more appropriately through

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[2] *In Re: Generic Proceeding on Point of Interconnection and Virtual FX Issues*, Direct Testimony of Lee L. Selwyn on behalf of Global NAPs, Inc., GA PSC Docket No. 13542-U, April 3, 2001, at Page 36.

[3] Although AT&T switches normally provide both an end office and tandem function and are really multi-function switches, I will refer to them in my testimony simply as "switches."

combinations of unbundled network elements or ("UNEs")). Due to the very high initial cost of switching platforms (as compared to the lower incremental cost of high-capacity facility systems), AT&T has chosen to deploy fewer switches and more transport on the end-user side of the switch. Even where AT&T has determined the need for multiple switches within a local access transport area ("LATA"), they are often collocated within the same building to reduce real estate costs and to rely upon centralized technical staff.

Consistent with AT&T's network architecture, there are certain LATAs in which AT&T has not deployed a switch physically within the LATA. AT&T has agreed that in such cases it will establish at least one physical point of presence ("POP") and one POI[4] within the LATA, and AT&T will provide all of the facilities (for both originating and terminating traffic) between its switch and such POP. Where AT&T has not deployed a switch within a LATA, the POP will be treated as if it were an AT&T switch (i.e., AT&T has virtually extended its switching functionality into the LATA to the POP). Therefore, AT&T's network architecture proposal provides a switch (or switching presence) in every Sprint LATA to which AT&T offers local services.

[4] As will be discussed in more detail later in my testimony, POI means the point at which the two networks are interconnected for the mutual exchange of traffic.

Although AT&T's and Sprint's networks are similar in the sense that the two networks cover comparable geographic areas, a key distinction between the two networks is that while Sprint deploys tandems to interconnect multiple switches spread throughout the geographic area (and then grows into dedicated high usage trunk groups between such switches), AT&T deploys a single switch combined with long transport on the end-user side of the switch. This is because this combination is less costly than adding a new switch in each part of a market.

As explained in more detail below, Sprint's network interconnection proposal requires AT&T to adapt its network design to Sprint's network. This proposal would result in AT&T losing the benefits of its efficient network architecture and incurring higher network costs. Also, Sprint's proposal would shift to AT&T a portion of the transport costs that Sprint is required to lawfully bear under the Act. AT&T's network interconnection proposal, on the other hand, is neutral to network design in that it requires each Party, regardless of network design, to be responsible for all of the costs of its own originating traffic.

THE ISSUES IN THIS PROCEEDING:

ISSUE 1: POINT OF INTERCONNECTION. What are each Party's rights and obligations with respect to establishing a POI to the other Party's network and delivery of its originating traffic to such POI? (Network Interconnection, Part E, Sections 1.1 thru 1.1.6, 3.2, 4.1.3 thru 4.1.3.4 and 4.1.4.1)

AT&T's Position: Sprint, as an ILEC, is obligated to provide interconnection at any technically feasible point on its network (in accordance with Section 251(c)(2) of the Act), whereas AT&T, as an ALEC, has an obligation to interconnect directly or indirectly with another telecommunications carrier (in accordance with Section 251(a)(1) of the Act). Each Party is obligated to deliver traffic originating on its network to the POI, and it is impermissible for an originating carrier to assess charges to the terminating carrier for the transport of the originating carrier's traffic to the POI.

Sprint's Position: Pursuant to state and federal laws and regulations, AT&T is entitled to designate one or more POIs in a LATA on Sprint's network for the mutual exchange of Sprint-originated and AT&T-originated traffic. Sprint does not agree that it may be required to establish POIs on AT&T's network.[5]

Q. PLEASE DEFINE THE TERMS THAT ARE IMPORTANT TO ISSUE 1.

A. In order to adequately address Issue 1, it is necessary to define three terms: (1) "interconnection," (2) "point(s) of interconnection" ("POI"), and (3) "reciprocal compensation."

[5] Sprint Response at Page 2.

"Interconnection" is the physical linking of two networks for the exchange of traffic.[6]

"Point(s) of Interconnection," or POI, are the location(s) where the Parties exchange their traffic. Sprint's POI and AT&T's POI may be at the same location or at different locations, depending in part on whether two-way or one-way trunks are used. Because AT&T and Sprint have agreed to use one-way trunks for the interconnection of intraLATA traffic, their respective POIs may be at different locations.

The originating carrier can bring its traffic to a POI for interconnection in a variety of ways. It can provide the facilities itself, lease interconnection facilities from third parties, or lease interconnection facilities from the other Party.

"Reciprocal compensation" is an arrangement between two carriers in which each of the two carriers receives compensation from the other carrier for the transport and termination of telecommunications traffic that originates on the network of the other carrier. Reciprocal compensation is broken down into two parts – the transport portion, which is transmission and any necessary tandem switching from the

[6] In the Matter of Implementation of the Local Competition Provision in the Telecommunications Act of 1996, *First Report and Order*, 11 FCC Rcd. 15499, 172, 176 (1996) ("*Local Competition Order*").

POI to the terminating carrier's end office switch that directly serves the called party – and the termination portion, which involves the switching of the traffic at the terminating carrier's end office switch or equivalent facility and delivery of that traffic to the called party's premises.[7]

Q. PLEASE EXPLAIN THE SIGNIFICANCE OF THE POI.

A. Under applicable law, each carrier is responsible for delivering its originating traffic to the applicable POI. Between the originating customer and the POI, the costs of delivering such traffic to the POI generally are known as the "origination" costs, and the facilities that bring the traffic to that point are the interconnection facilities.[8] From the POI to the terminating customer, the terminating carrier must assume operational responsibility to take that traffic to the designated end user, and the originating carrier must pay the terminating carrier for the costs of that carriage. These costs incurred by the terminating carrier associated with terminating traffic after it reaches the POI generally are known as the "termination" costs. If traffic is subject to Section 251(b)(5)[9] of the Act, the originating carrier compensates the terminating carrier for that delivery pursuant to reciprocal

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[7] *See*, specifically, See 47 C.F.R. § 51.701(c)(d).

[8] Interconnection facilities are the physical transmission channels that transport traffic between the AT&T and Sprint switches that are used for local and intraLATA toll traffic.

[9] For a more detailed discussion of what constitutes Section 251(b)(5) traffic which is subject to reciprocal compensation, please see my testimony regarding Issue 9 in this proceeding.

compensation obligations which are set forth in 47 C.F.R. § 51.701.[10] If the traffic is not subject to Section 251(b)(5) of the Act, then access charges rather than reciprocal compensation charges apply. In this Issue 1, we are discussing each carrier's obligations with respect to originating, transporting and terminating 251(b)(5) traffic.

As is apparent from the foregoing discussion of "interconnection," "point(s) of interconnection," and "reciprocal compensation," by selecting a particular POI location, a carrier affects both the amount of reciprocal compensation it pays the other carrier as well as its own network costs.

Q. HOW IS THE POI LOCATION SELECTED?

A. The Act, various orders and rules of the FCC provide that ALECs may interconnect at any technically feasible point. Specifically, 47 C.F.R. § 51.305(a)(2) obligates Sprint to allow interconnection by AT&T, as the ALEC, at any technically feasible point. More specifically, in its *Local Competition Order*, the FCC explained:

> The interconnection obligation of Section 251(c)(2), discussed in this section, allows *competing carriers to choose the most efficient points at which to exchange traffic with incumbent LECs, thereby*

[10] Again, as discussed above, reciprocal compensation is broken down into two parts – the transport portion which is transmission and any necessary tandem switching from the POI to the terminating carrier's end office switch that directly serves the called party - and the termination portion, which involves the switching of the traffic at the terminating carrier's end office switch or equivalent facility and delivery of that traffic to the called parties premises. See, 47 C.F.R. § 51.701(c)(d).

> *lowering the competing carriers' costs of, among other things, transport and termination of traffic.*[11]

The FCC identified the Act as the source of these differing obligations:

> Section 251(c)(2) does not impose on non-incumbent LECs the duty to provide interconnection. The obligations of LECs that are not incumbent LECs are generally governed by Sections 251(a) and (b), not section 251(c). Also, the statute itself imposes different obligations on incumbent LECs and other LECs (i.e., Section 251(b) imposed obligations on all LECs while Section 251(c) obligations are imposed only on incumbent LECs).[12]

Q. DOES THE ACT ENTITLE AN ALEC TO SELECT A SINGLE POI OR MORE?

A. Section 251(c)(2) gives an ALEC the right to select where it wants to interconnect, a right which enables it to establish, if it wishes, as few as one POI per LATA or as many as may be technically feasible. In other words, Section 251(c)(2) allows ALECs to grow their businesses economically without having to duplicate an ILEC's existing network.

Q. CAN AN ILEC ALSO SELECT ITS POI?

A. No. Selection of the POI is a right reserved for ALECs, not ILECs. There is no concurrent right for any ILEC to select a POI. If Congress had wanted ILECs to have the ability to designate interconnection points, and thus have ALECs bear the same duty in establishing

[11] *Local Competition Order* at ¶172.
[12] Id. ¶220.

interconnection points that ILECs have, it would have specifically granted ILECs that right as it did for non-incumbent carriers in Section 251(c)(2). That right, however, is not specified for ILECs and clearly is not included in an ILEC's interconnection obligations set forth in Section 251(c)(2). Sprint may not assume some authority that is not provided for in the Act.

Sprint, on the other hand, takes the position that AT&T should be obligated to provide interconnection to Sprint for Sprint's originated traffic only at certain locations that may not even be on AT&T's network (such as at a Sprint switch location), even though the Act does not provide Sprint with the unilateral right to specify point(s) of interconnection for its traffic.

Q. YOU STATED THAT THE COSTS OF INTERCONNECTION FACILITIES ARE TO BE BORNE BY THE ORIGINATING CARRIER. WHAT SUPPORT DO YOU HAVE FOR THAT STATEMENT?

A. FCC rules and orders support this statement. For example, 47 C.F.R. § 51.703(b) provides:

> A LEC may not access charges on any other telecommunications carrier for local telecommunications traffic that originates on the LEC's network.

Further, 47 C.F.R. § 51.709(b) reads:

> The rate of a carrier providing transmission facilities dedicated to the transmission of traffic between two carriers' networks shall recover only the costs of the proportion of that trunk capacity used by an interconnecting carrier to send traffic that will terminate on the providing carrier's network.

Moreover, in its *Local Competition Order*, the FCC addressed this fundamental rule that each party bears responsibility for the costs of transporting its own traffic. Specifically, the FCC explained:

> The amount an interconnecting carrier pays for dedicated transport is to be proportional to its relative use of the dedicated facility. For example, if the providing carrier provides one-way trunks that the inter-connecting carrier uses exclusively for sending terminating traffic to the providing carrier, then the inter-connecting carrier is to pay the providing carrier, then the inter-connecting carrier is to pay the providing carrier a rate that recovers the full forward-looking economic cost of those trunks. *The inter-connecting carrier, however, should not be required to pay the providing carrier for one-way trunks in the opposite direction, which the providing carrier owns and uses to send its own traffic to the inter-connecting carrier.*[13]

This basic principle relating to the originating carrier's obligations to bring its originating traffic to the POI also has been affirmed in numerous FCC Orders. In fact, most recently in the *InterCarrier Compensation NPRM*, the FCC confirmed that this principle is set forth in its current rules. It stated: "Under our current rules, the

[13] *Local Competition Order* at ¶1062 (emphasis added).

originating telecommunications carrier bears the costs of transporting traffic to its point of interconnection with the terminating carrier."[14]

Q. PLEASE DESCRIBE SPRINT'S NETWORK INTERCONNECTION PROPOSAL.

A. Sprint is obligated under Section 251(c)(2) of the Act to provide AT&T interconnection at any technically feasible point on its network for the completion of AT&T's traffic. For this purpose, Sprint's network includes not only Sprint's switch locations, but also those locations where Sprint has deployed its own transmission facilities (e.g., AT&T locations where Sprint has deployed its transmission facilities). In Part E, Section 1.1, Sprint has agreed that AT&T may designate a POI(s) in each LATA on Sprint's network, but such POI has to be for the *mutual* exchange of both AT&T and Sprint originating traffic. This is fundamentally improper because AT&T does not have the same obligation to provide interconnection to Sprint for delivery of Sprint's originating traffic to AT&T. AT&T is not bound by any of the requirements set forth in Section 251(c), including Section 251(c)(2), and, therefore is not obligated to provide interconnection for Sprint's traffic at any technically feasible point on AT&T's network or at the same POI on Sprint's network. Rather, AT&T, as a non-incumbent

[14] *Development a Unified Intercarrier Compensation Regime*, Notice of Proposed Rule Making, FCC Docket 01-92, April 27, 2001 at ¶170, ("*InterCarrier Compensation NPRM*").

carrier, is simply required by Section 251(a)(1) to "interconnect directly or indirectly with the facilities and equipment of other telecommunications carriers."

Consistent with this requirement, AT&T's proposed language found in Part E, Section 1.1.1, provides that it will deliver its traffic to a technically feasible point on Sprint's network, including without limitation, tandems, end offices, outside plant facilities, and customer premises. For Sprint-originated traffic, in Part E, Section 1.1.3, AT&T provides Sprint with the opportunity to designate an independent POI for Sprint-originated traffic as long as Sprint and AT&T mutually agree to the location of that POI. Failing mutual agreement, AT&T proposes that the Sprint POI would default to the location of AT&T's switch(es) in the LATA serving the terminating AT&T end-user. This default POI, absent mutual agreement, satisfies AT&T's obligation under Section 251(a)(1) "to interconnect directly or indirectly with the facilities and equipment of other carriers." By contrast, Sprint's assertion that it may unilaterally dictate the point(s) of interconnection for Sprint's originating traffic would impermissibly extend to AT&T, as the ALEC, Section 251(c)(2) obligations, which Congress meant to apply solely to ILECs.

Q. PLEASE EXPLAIN THE REASON WHY SPRINT'S PROPOSAL TO PLACE AN OBLIGATION ON AT&T TO PROVIDE INTERCONNECTION TO SPRINT ON SPRINT'S NETWORK IS WRONG.

A. Where two local exchange carriers ("LECs") use a two-way trunking arrangement, a single POI for both Parties' traffic is the only possible POI arrangement. Explained another way, if the Parties use a single transmission path for traffic in both directions, then both Parties must, by necessity, interconnect at the same POI, and thereby "mutually" exchange traffic at that point.

However, AT&T and Sprint have agreed to not use two-way trunking for local traffic. Rather, the Parties have agreed to interconnect using one-way trunks. Each Party uses a different transmission path to deliver its traffic to the other Party's switch. This enables each Party to choose a POI independent of the other Party's choice, and therefore the "mutual" exchange of traffic may occur at different points of the network. This provides the maximum flexibility to both AT&T and Sprint, and also provides the possibility for each Party to lower its interconnection and reciprocal compensation costs independent of the other Party's choice. AT&T favors one-way trunking for just these reasons.

The question then arises, why would Sprint want to give up this flexibility and be tied to the same POI that AT&T chooses for its traffic? The answer is that Sprint's real motivation is not engineering flexibility, but to escape its financial obligation to bear the costs of transporting its traffic to AT&T's terminating switch.

Q. DOES AT&T'S PROPOSED LANGUAGE PROVIDE SPRINT WITH THE OPTION TO SELECT A DIFFERENT POINT(S) OF INTERCONNECTION WITH AT&T FOR THE DELIVERY OF SPRINT'S ORIGINATING TRAFFIC TO AT&T?

A. Yes. AT&T's proposed language provides Sprint five (5) methods of interconnection and different locations by which it may interconnect to deliver its originating traffic to AT&T. This is well beyond what the Act requires of AT&T.

Q. WHAT ARE THE FIVE (5) SPECIFIC OPTIONS AND INTERCONNECTION LOCATIONS THAT AT&T OFFERS TO SPRINT IN AT&T'S PROPOSED LANGUAGE?

A. First, pursuant to Part E, Section 3.2.1, Sprint may avail itself of a license to use AT&T space (i.e., a "Space License"). AT&T proposes terms under which it would license space to Sprint so that Sprint may place its equipment in AT&T space to deliver its traffic to AT&T.

Second, pursuant to Part E, Section 3.2.2, Sprint may obtain dedicated transport provided by AT&T in its special access tariffs. AT&T makes such services generally available to all Florida customers, including Sprint. However, as AT&T does not have a ubiquitous network, such services are offered only where facilities are available. AT&T could provision such facilities to numerous locations in Florida.

Third, pursuant to Part E, Section 3.2.3, Sprint may obtain facilities provided by a source other than AT&T, or by third parties. Certain carriers may have obtained space in AT&T's central offices and in Sprint's offices and have network facilities between these points. Sprint may obtain transport facilities from such carriers on a contract basis or tariffed basis.

Fourth, pursuant to Part E, Section 3.2.4, where AT&T and Sprint both have central office space within the same building or in different buildings within cabling distance, Sprint may interconnect by placing a cable between the AT&T and Sprint premises.

Fifth, pursuant to Part E, Section 3.2.5, Sprint may establish a mid-span fiber meet arrangement with AT&T.

Q. ARE THERE ANY PRACTICAL IMPEDIMENTS TO HAVING SPRINT INTERCONNECT TO AT&T AT THE SAME POINT(S) THAT AT&T INTERCONNECTS TO SPRINT?

A. Yes. The two (2) options AT&T most frequently uses to interconnect to ILECS are (1) collocation and (2) special access services obtained from ILECs. In both of these situations, AT&T could suffer significant harm under Sprint's proposal if Sprint is allowed unilaterally to select such AT&T facilities for its interconnection requirements.

Q. PLEASE EXPLAIN HOW AT&T COULD BE HARMED IN THE EVENT THAT SPRINT WERE ENABLED TO UNILATERALLY SELECT ITS POI AT AN AT&T COLLOCATION SPACE.

A. Collocation space is by far the most expensive space AT&T has in its network. AT&T has often ordered small collocation arrangements because of the large expense of collocating on Sprint's premises. In small collocations, and others where capacity is confined, the number of trunks and lines that may be provisioned are limited by the space within the cage. In those collocations that are limited in capacity, any Sprint trunks (i.e., a circuit carrying traffic originating on Sprint's network to AT&T) that AT&T would be forced to provide to Sprint for its traffic would result in fewer AT&T customer lines that could be provisioned through that collocation. In this way, Sprint could

exhaust the capacity of AT&T's smaller or otherwise capacity-constricted collocations.

AT&T obtains collocation space within Sprint end offices to utilize UNEs (e.g., loop UNEs), not to accept Sprint's traffic for termination. The Act empowers AT&T to decide how it uses the expensive collocation space that it has obtained from Sprint. AT&T should not be, indeed cannot be, forced to surrender it to Sprint at Sprint's discretion. Were it required to do so, AT&T would be forced to expend its collocation resources to serve Sprint's needs, rather than the needs of Florida customers that want AT&T's local exchange services.

Q. PLEASE EXPLAIN HOW AT&T COULD BE HARMED IN THE EVENT THAT SPRINT WERE ENABLED TO UNILATERALLY SELECT ITS POI AT A SPRINT OFFICE WHERE AT&T HAS OBTAINED SPECIAL ACCESS SERVICES OR LEASED UNE FACILITIES TO BRING ITS TRAFFIC TO SPRINT.

A. Where AT&T has not obtained collocation space in an ILEC office or serving wire center, AT&T most frequently delivers its traffic to the ILEC by using special access services.[15] In such circumstances,

[15] Special access facilities are substantially more expensive than comparable UNE dedicated transport. AT&T would be forced into this arrangement where AT&T has not constructed network into Sprint's operating territory, because ILECs are not required to provide unbundled dedicated transport between two ILEC territories.

AT&T has not installed its own facilities into Sprint's premises, and therefore the POIs that AT&T uses to deliver its traffic in such circumstances are not on the AT&T network. Rather, such AT&T POIs are on Sprint's network because the special access is a service riding on Sprint's network facilities.

Under Sprint's proposal, Sprint would be able to force AT&T to accept Sprint's traffic at such Sprint locations. To service that Sprint traffic, AT&T would be required to obtain additional special access services from Sprint back to AT&T's switch location. To add insult to injury, under Sprint's scheme Sprint would compensate AT&T at the much lower reciprocal compensation rates for the transport that AT&T would be providing for Sprint's traffic, using expensive special access services. This price squeeze is in direct conflict with 47 C.F.R. § 51-703(b) which prohibits any LEC from assessing charges to another carrier for telecommunications that originates on the LEC's network.

In such circumstances, just as Sprint is seeking to have AT&T deliver its originating traffic to a point on Sprint's network (which AT&T agrees it will do), Sprint should accept a reciprocal obligation to deliver Sprint's traffic to a point on AT&T's network. Sprint's POI to deliver its traffic to AT&T should be on AT&T's network. A Sprint POI location on its own network and not on AT&T's network should only

be allowed with AT&T's agreement.[16] Otherwise, AT&T would be harmed because AT&T would have to bear the cost of transporting Sprint's traffic.

Sprint should not be permitted to create a situation where AT&T is forced to buy facilities from Sprint at special access rates to carry Sprint's own traffic to AT&T's network. Accordingly, the requirement that AT&T provide interconnection at a point on Sprint's network should be rejected by the Commission.

Q. HAS THE FCC PREVIOUSLY ADDRESSED THIS ISSUE?

A. Yes. The FCC's statements on this issue are clear. In its order approving Southwestern Bell Telephone Company's ("SWBT") application for interLATA authority in Texas, the FCC made clear that this provision gives competing local providers the options to the most efficient points within each LATA.[17] As the FCC explained:

> New entrants may select the most efficient points at which to exchange traffic with incumbent LECs, thereby lowering the competing carriers' costs of, among other things, transport and termination.

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[16] As an alternative to Sprint delivering its traffic to the AT&T network, where AT&T leases special access facilities for network interconnection, AT&T would agree to the "mutual" POI provided that Sprint compensate AT&T for the usage of such facilities at the tariffed rate by which AT&T obtained such facilities.

[17] *In Re: Application by SBC Communications, Inc., Southwestern Bell Telephone Company, And Southwestern Bell Communications Services, Inc. d/b/a Southwestern Bell Long Distance Pursuant to Section 271 of the Telecommunications Act of 1996 To Provide In-Region, InterLATA Services in Texas*, Memorandum Report and Order, CC No. 00-65, ¶ 78 (rel. June 30, 2000) ("Texas 271 Order").

The FCC was very specific:

> Section 251, and our implementing rules, require an incumbent LEC to allow a competitive LEC to interconnect at any technically feasible point. (citing *Local Competition Order* ¶¶ 172, 209.)[18]

However, the FCC has not limited competitive LECs to only one point of interconnection either.

Q. HAVE THERE ALSO BEEN STATE COMMISSION DECISIONS AND COURT DECISIONS ON THIS ISSUE?

A. Yes. Many federal district courts also have rejected as inconsistent with Section 251(c)(2), the ILECs' efforts to require competing carriers to establish POIs in each local calling area.[19] A district court in Colorado held that under the Act and the FCC regulations, "it is the [ALEC's] choice, subject to technically feasibility, to determine the most efficient number of interconnection points, and the location of those points."[20]

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[18] The FCC made a similar pronouncement in its January 22, 2001 Order granting in-region interLATA authority to SWBT for Kansas and Oklahoma. *Memorandum and Order*, FCC 01-29, *Joint Application by SBC Communications, Inc., Southwestern Bell Telephone Company and Southwestern Bell Communications Services, Inc., d/b/a Southwestern Bell Long Distance for Provision of In-region, interLATA service in Kansas and Oklahoma*, CC Docket 00-217 (January 22, 2001) ("Kansas and Oklahoma Order").

[19] *See, e.g., US West Communications, Inc., v. Minnesota Public Utilities Commission, et al.*, No. 97-913 ADMAJB, slip op. at 33-34 (D. Minn. 1999) (rejecting US West's argument that section 251(c)(2) requires at least one point of interconnection in each local calling exchange served by US West).

[20] *US West Communications, Inc. v. Hix, et al.*, No. C97-D-152, (D. Colo, June 23, 2000) at 3.

It also is instructive to note that Sprint's position on this Issue 1 is similar to the position Southwestern Bell ("SWBT") took in its interconnection arbitration with AT&T in Texas.[21] In that case, initially, the Texas PUC ruled that AT&T was responsible for all transport costs (after an initial fourteen (14) miles) for delivering SWBT's originating traffic to the AT&T designated POI, if the POI was located outside the SWBT local calling area. However, the Texas PUC subsequently acknowledged its error in light of the FCC's ruling in its *Virginia Arbitration Order.*[22] Nevertheless, SWBT continued to defend the Texas PUC decision. Ultimately, the matter was appealed and subsequently the district court granted AT&T's motion for summary judgment. Specifically, the Court found that the Texas PUC's order violated the FCC's reciprocal compensation rule (47 C.F.R. § 51.703(b)) and AT&T's right to establish one POI per LATA.

Moreover, numerous state commissions that have considered this issue in an AT&T arbitration have rejected the ILECs' positions and instead have ruled in AT&T's favor regarding selection of the POI. For

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[21] *Petition of Southwestern Bell Telephone Company for Arbitration with ATTCI Communications of Texas, L.P., TCG Dallas, and Teleport Communications, Inc. Pursuant to section 252(B)(1) of the federal Communications Act of 1996*, Public Utility Commission of Texas, Docket No. 22315.

[22] *In the Matter of the Petition of ATTCI Communications of Virginia, Inc., pursuant to Section 252(e)(5) of the Communications Act for Preemption of the Jurisdiction of the Virginia State Corporation Commission Regarding Interconnection Disputes with Verizon Virginia, Inc.*, Memorandum Opinion and Order, CC Docket No. 00-251, released July 17, 2002. ("*Virginia Arbitration Order*")

example, the Indiana Commission recently adopted AT&T's network architecture proposal, requiring Ameritech to interconnect at the AT&T switch location and permitting AT&T to interconnect at any technically feasible point on Ameritech's network.[23]

The Indiana Commission based its decision upon statutory, policy and equity grounds. The Commission relied on the Act, which imposes an obligation upon an ILEC to allow AT&T to connect at any technically feasible point on its network, but includes no reciprocal compensation for AT&T. Additionally, the efficiency inherent in AT&T's proposal and the control it gives each party over its own network also was a factor in the Indiana Commission's decision to adopt AT&T's interconnection proposal.[24]

Thus, the FCC, district courts, and state commissions have consistently interpreted the Act to allow ALECs to interconnect at any technically feasible interconnection point chosen by the ALEC and have denied attempts by ILECs to have ALECs bear the costs to transport ILEC traffic. These agencies and tribunals find support for their decisions in both the language of the Act and the pro-

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[23] *Petition for Arbitration of Interconnection Rates, Terms and Conditions and Related Arrangements with Indiana Bell Telephone Company, Inc., d/b/a Ameritech Indiana Pursuant to Section 252(b) of the Telecommunications Act of 1996,* Decision Cause No. 40571-INT-03 at 19.

[24] Id., at 20-21.

competitive policies underlying the Act. The right of a ALEC to choose its interconnection point furthers the pro-competitive objective of the Act by allowing ALECs to choose among the most economically efficient means of interconnection, and, in particular, allowing ALECs to reduce their cost of transport and termination.

Q. DID NOT THE FCC RECENTLY REJECT A SIMILAR ARGUMENT BY VERIZON IN THE FCC'S VIRGINIA ARBITRATION ORDER?

A. Yes. The FCC recently decided this issue in its *Virginia Arbitration Order.*

Q. ON WHAT BASIS DID THE FCC REJECT VERIZON POI PROPOSAL IN THE VIRGINIA ARBITRATION ORDER.

A. The FCC correctly rejected Verizon's "Virtual Geographically Relevant Interconnection Points" or "VGRIP" and adopted AT&T's POI. The FCC found that AT&T's language "... more closely conform[s] to the Commission's current rules governing points of interconnection and reciprocal compensation than Verizon's proposals." The FCC explained that:

> Under the Commission's rules, competitive LECs may request interconnection at any technically feasible point.[25] This includes the right to request a single point of interconnection in a LATA. The Commission's rules implementing the reciprocal

[25] The FCC cited U.S.C. § 251(c)(2) and 47 C.F.R. § 51.305(a)(2) for its support in this position.

> compensation provisions in Section 252(d)(2)(A) prevent any LEC from assessing charges on another telecommunications carrier for telecommunications traffic that originates on the LEC's network.[26] Furthermore, under these rules, to the extent an incumbent LEC delivers to the point of interconnection its own originating traffic that is subject to reciprocal compensation, the incumbent LEC is required to bear financial responsibility for that traffic."[27]

Precisely the same findings and rationale should form the basis for the Commission's decision in this proceeding.

Q. DID THE LANGUAGE ADOPTED BY THE FCC IN THE VIRGINIA ARBITRATION REQUIRE VERIZON TO ESTABLISH A SEPARATE POI AT AT&T'S SWITCH LOCATION UNLESS THE PARTIES MUTUALLY AGREED OTHERWISE?

A. Yes. AT&T is proposing virtually the same POI language in this proceeding as was adopted by the FCC in its *Virginia Arbitration Order*. Moreover, the FCC understood that interconnecting LECs may not utilize the same POI for the delivery of their respective traffic and that ALECs and ILECs have different obligations in this respect under the Act.[28]

[26] The FCC cited 47 C.F.R. § 51.703(b) for support of this position.
[27] *Virginia Arbitration Order* at ¶52.
[28] See, *Virginia Arbitration Order* at ¶71 and footnote 200.

Q. HAS THIS COMMISSION DECIDED THE POI AND RELATED ISSUES BEFORE?

A. Yes. This Commission addressed POI and related issues in the most recent AT&T and BellSouth arbitration where the Commission agreed with AT&T's regarding selection of the POI. The Commission found that AT&T should be permitted to designate the interconnection point(s) in each LATA for the mutual exchange of traffic with both Parties assuming financial responsibility for bringing their traffic to the AT&T designated interconnection point.[29]

This Commission also addressed POI and related issues in its *Florida Reciprocal Compensation Order*. AT&T and ALEC witnesses provided the same extensive authority to support POI and related issues. As the Commission held:

> ALECs have the exclusive right to unilaterally designate a single POI for the mutual exchange of traffic at any technically feasible location on an incumbent's network within the LATA.[30]

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[29] *In Re: Petition by AT&T Communications of the Southern States, Inc. d/b/a AT&T for Arbitration of Certain Terms and Conditions of a Proposed Agreement with BellSouth Telecommunications, Inc. Pursuant to 47 U.S.C. Section 252*, Florida PSC Docket No. 000731-TP, FL PSC Order No. PSC-01-1402-FOF-TP, June 28, 2001, at Page 46, ("*Florida Arbitration Order*").

[30] *In Re: Investigation into Appropriate Methods to Compensate Carriers for Exchange of Traffic Subject to Section 251 of the Telecommunications Act of 1996*, Florida PSC Docket No. 000075-TP, FL PSC Order PSC-02-1248-FOF-TP, September 10, 2002, at Page 25, ("*Florida Reciprocal Compensation Order*").

As to the originating carrier's obligations, this Commission found that:

> " . . . an originating carrier has the responsibility for delivery its traffic to the point(s) of interconnection designated by the ALECs in each LATA for the mutual exchange of traffic.[31]

Finally, the Commission also held that:

> " . . . an originating carrier is precluded by FCC rules from charging a terminating carrier for the cost of transport or for the facilities used to transport the originating carrier's traffic from its source to the point(s) of interconnection in a LATA. These rules require an originating carrier to compensate the terminating carrier for transport and termination of traffic through intercarrier compensation.[32]

Q. IS AT&T'S POSITION CONSISTENT WITH THE COMMISSION'S PRIOR DECISIONS?

A. Yes. Today, as in past proceedings, AT&T has provided legal support and analysis for its position regarding POI and related issues. Thus, the Commission has no reason to stray from its established positions on POI and related issues.

Q. HOW SHOULD THE COMMISSION DECIDE THIS ISSUE 1?

A. The Commission should adopt AT&T's proposed language for Part E, Section 1.1 because it is consistent with the Act, the *Local*

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[31] Id.
[32] Id. at Page 26.

Competition Order and other FCC Rules and Orders. AT&T, as the ALEC, is entitled to select a POI for its originating traffic as well as for Sprint's originating traffic. Despite Sprint's protestations to the contrary, there simply is no requirement under applicable law that the POI for AT&T's originating traffic has to be the same as Sprint's POI for Sprint's originating traffic.

ISSUE 2: ESTABLISHMENT OF MID-SPAN FIBER MEET. May AT&T require the establishment of a Mid-Span Fiber Meet arrangement or is the establishment of a Mid-Span Fiber Meet arrangement conditional on the amount of traffic from one network to the other being roughly balanced? (Network Interconnection, Part E, Section 3.1.6.1)

AT&T's Position: AT&T, as an ALEC, may interconnect to Sprint's network using any technically feasible method of interconnection in accordance with Section 252(c)(2) of the Act. Sprint, as an ILEC, has a duty to provide Mid-Span Fiber Meet arrangements upon request in accordance with 47 C.F.R. § 51.321(b)(2). Sprint may only deny such a request if it proves to the Commission, with clear and convincing evidence, that specific and adverse impacts would result.

Sprint's Position: Sprint's obligation to construct facilities and establish a new meet point should not extend to situations where the traffic between the carriers is not in balance, as is the case when the ALEC's primary business interest is in providing Internet access.[33]

Q. WHAT IS A MID-SPAN FIBER MEET ARRANGEMENT?

A. AT&T's proposed language in Part A, Section 1.136, defines mid-span fiber meet as "interconnection between two LECs whereby each provides its own cable and equipment to the meet point of the cable facilities. The meet point is the demarcation of establishing

[33] Sprint Response at Page 5.

ownership of an responsibility for each LEC's portion of the transmission facility."

Q. PLEASE DESCRIBE MID-SPAN FIBER MEET INTERCONNECTION IN GREATER DETAIL.

A. Mid-Span Fiber Meet Interconnection is a method of interconnecting whereby an ALEC and ILEC jointly establish a fiber optic facility system utilizing SONET protocol and each Party provides fiber optic terminating equipment located in its own serving wire center. Fiber optic strands originate from the terminating equipment on each end and meet at a fiber cross-connect point (meet point) between the two (2) serving wire centers. The POI for AT&T's originating traffic would be located at the terminating facilities[34] point on Sprint's network, and the POI for Sprint's originating traffic would be at the terminating facilities point designated by AT&T on its network. Thus, AT&T and Sprint would share the use of the mid-span fiber meet facility that spans the Parties' two (2) wire centers. The mid-span fiber meet method of interconnection avoids the need for collocation because the networks are connected outside of a Sprint serving wire center.

[34] Specifically, the POI would be a cross connecting device such as a DSX (electrical) or LGX (optical) cross connect panel associated with the terminating equipment.

Q. WHAT ARE AT&T'S RIGHTS REGARDING MID-SPAN FIBER MEET INTERCONNECTION ARRANGEMENTS?

A. AT&T has the legal right to choose any technically feasible method of interconnection pursuant to both the Act and the *Local Competition Order*. This right also includes the right to select the location of the mid-span fiber meet interconnection. The FCC specifically has determined that mid-span fiber meet interconnection is a technically feasible method of interconnection.[35]

Q. DOES THE FCC CONDITION SPRINT'S OBLIGATION TO PROVIDE ANY INTERCONNECTION ARRANGEMENT, INCLUDING SPECIFICALLY A MID-SPAN FIBER MEET INTERCONNECTION ARRANGEMENT, UPON TRAFFIC EXCHANGED BETWEEN THE PARTIES BEING "ROUGHLY BALANCED?"

A. Absolutely not. In fact, there is nothing in either the Act or the *Local Competition Order* that conditions an ILEC's interconnection obligations on "balance of traffic" considerations.

Specifically, Sprint asserts that the FCC's statement " . . . [t]he incumbent and the new entrant are co-carriers and each gains value from the interconnect arrangement [mid-span fiber meet

[35] *Local Competition Order* at ¶210.

interconnection] . . ."[36] to mean that value is not received unless traffic between the Parties is roughly balanced. There is no legal or policy support for Sprint's position and to adopt such a position would undermine the fundamental framework of the Act that ALECs are entitled to interconnect with ILECs at any technically feasible point under Section 251(c)(2)(B). Moreover, regarding Sprint's misplaced analogy to "bill and keep" compensation, an ILEC's interconnection obligations are separate and apart from its interconnection obligations. Under the Act, Section 251(c)(2)(B) covers interconnection obligations applicable only to ILECs, while Section 252(d)(2)(B)(i) covers compensation obligations applicable to all LECs. Thus, Sprint's "bill and keep" analogy is inapplicable to Section 251(c)(2) because it is an "apples to oranges" comparison which cannot stand and should be rejected by the Commission.

Q. IN ITS RESPONSE, DID SPRINT ATTEMPT TO MAKE ANOTHER INAPPROPRIATE ANALOGY TO SUPPORT ITS POSITION THAT A MID-SPAN FIBER MEET INTERCONNECTION ARRANGEMENT SHOULD ONLY BE REQUIRED WHERE TRAFFIC BETWEEN THE PARTIES IS "ROUGHLY BALANCED?"

A. Yes. Sprint also argued that its position was "consistent with the FCC's policy regarding payment for the exchange of traffic as set forth

[36] Id. at ¶553; Sprint Response at Page 6.

in the [FCC's] ISP Order."[37] Specifically, Sprint argued that AT&T's proposed language was "fallacious" particularly in the context of an ALEC which primarily serves internet service providers ("ISPs") and where almost all of an ILEC's originating traffic goes to an ALEC's ISP customers.[38]

Q. SHOULD SPRINT HAVE AN ECONOMIC CONCERN IF THE TRAFFIC WERE OUT OF BALANCE DUE TO AT&T'S SERVING ISP CUSTOMERS?

A. Not in the least. If anything, AT&T, not Sprint, should have a concern in this situation. If an ALEC primary serves ISP customers (which AT&T does not), then the balance of terminating traffic favors the ALEC and, under federal rules, the ILEC is required to transport its greater share of traffic to the POI and compensate the ALEC for any transport it provides to the terminating switch. Obviously, in this situation the ILEC would be using a greater amount of transport than the ALEC. Accordingly, the ILEC would be able to make greater use of a mid-span meet arrangement than the ALEC and the ILEC would gain the greater advantage.

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[37] *In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, Intercarrier Compensation for ISP-Bound Traffic*, FCC Docket Nos.: 96-98, 99-68, Order on Remand and Report and Order, April 27, 2001, ("*ISP Remand Order*").

[38] Sprint Response at Page 1.

If Sprint is trying to make the point that it should have no financial responsibility for the transport of ISP traffic, that matter is being decided under Issue 9. Irrespective of Issue 9, the FCC and virtually all state commissions, including this Commission, recognize that the originating LEC bears the responsibility to transport its traffic to the POI and to compensate the terminating LEC for any transport it provides to the terminating switch. Therefore, Sprint would gain the greater value in a mid-span fiber meet arrangement where the ILEC is originating a greater share of traffic.

Q. GIVEN THE FCC'S ISP REMAND ORDER, ISN'T SPRINT'S COMPLAINT ABOUT COMPENSATION FOR ISP-BOUND TRAFFIC A "MOOT ISSUE?"

A. Absolutely. In its *ISP Remand Order*, the FCC already has ruled regarding compensation for ISP-bound traffic and has allowed ILECs to avoid paying local reciprocal compensation for such traffic. Thus, Sprint's fear that AT&T will utilize a mid-span fiber meet interconnection arrangement to establish facilities solely to generate Sprint originated ISP-bound traffic to AT&T ISP customers – for which Sprint will over compensate AT&T for termination – is unfounded. Moreover, in its *ISP Remand Order*, the FCC did not amend any of its Rules regarding an ILEC's underlying obligation under Section 251(c)(2)(B) to provide interconnection to ALEC's for ISP-bound traffic.

It only set forth a compensation scheme for ISP-bound traffic. Thus, the Commission also should reject Sprint's ISP-bound traffic analogy as justification for not requiring mid-span fiber meet interconnection except where traffic is "roughly balanced" between the Parties.

Q. WAS AN ILEC'S OBLIGATIONS TO PROVIDE A MID-SPAN FIBER MEET INTERCONNECTION ARRANGEMENT ADDRESSED BY THE FCC IN ITS RECENT VIRGINIA ARBITRATION ORDER?

A. Yes. Similar to Sprint's attempt to limit its obligation to provide AT&T with a mid-span fiber meet interconnection arrangement, in the Virginia proceeding Verizon also made several arguments to avoid providing AT&T with this method of interconnection.

Q. DID THE FCC ADOPT AT&T'S PROPOSED LANGUAGE REGARDING MID-SPAN FIBER POINT INTERCONNECTION ARRANGEMENT IN THE VIRGINIA ARBITRATION?

A. Yes. The only modification made by the FCC to AT&T's proposed language dealt with subsequent maintenance of the mid-span fiber point interconnection arrangement and recognizing Verizon's forward looking economic costs of embedded facilities used to construct these arrangements.[39] In negotiating terms and conditions for mid-span meet interconnection arrangements, AT&T agreed to start with

[39] *Virginia Arbitration Order* at ¶¶132-133.

Sprint's model language, rather than the terms that the FCC adopted in its Virginia decision. Nevertheless, the mid-span fiber meet interconnection terms and conditions proposed by AT&T in this proceeding are substantially similar to the terms and conditions proposed by AT&T in the Virginia arbitration and adopted almost in its entirety by the FCC. As such, the Commission should reject Sprint's attempt to avoid its interconnection obligations under the Act by limiting its provision of a mid-span fiber meet interconnection arrangement to situations where the traffic exchanged between the Parties is "roughly balanced." There is no support for the same under the Act, the *Local Competition Order*, or the FCC's most recent interpretation of the Act and its *Local Competition Order* in the *Virginia Arbitration Order*.

ISSUE 3: MID-SPAN FIBER MEET CONSTRUCTION COSTS. When establishing a Mid-Span Fiber Meet arrangement, should AT&T and Sprint equally share the reasonably incurred construction costs? (Network Interconnection Part E, Sections 3.1.6.9 and 3.1.6.10)

AT&T's Position: As AT&T and Sprint will share equally the capacity of a Mid-Span Fiber Meet arrangement, AT&T proposes that AT&T and Sprint should share (i.e., 50:50) the reasonably incurred construction costs for establishing a Mid-Span Fiber Meet arrangement.

Sprint's Position: Sprint should not be required to pay for construction outside of its exchange boundaries or for more than fifty percent (50%) of the facilities, whichever is less.[40]

[40] Sprint Response at Page 8.

Q. DOES THIS ISSUE INVOLVE CONSTRUCTION COSTS FOR THE SAME MID-SPAN FIBER MEET INTERCONNECTION ARRANGEMENT DISCUSSED IN ISSUE 2 ABOVE?

A. Yes it does. While Issue 2 involves *when* Sprint is obligated to provide a mid-span fiber meet interconnection arrangement, this issue involves Sprint's *obligation to pay* for its portion of the construction costs of such interconnection arrangement. AT&T believes the Parties should split these costs equally while Sprint believes it should not be obligated for construction costs for facilities outside of its local exchange area, or fifty percent (50%) of the costs, whichever is less.

Q. HAS THE FCC RECENTLY ADDRESSED COSTS FOR PROVIDING A MID-SPAN FIBER MEET INTERCONNECTION ARRANGEMENT?

A. Yes. The FCC addressed this issue in its decision in the *Virginia Arbitration Order.* The FCC adopted virtually all of AT&T's proposed language in its entirety stating:

> In the Local Competition First Report and Order, the Commission stated, "In a meet point arrangement, each party pays its portion of the costs to build out the facilities to the meet point." The Commission stated further that, in a meet point interconnection established pursuant to Section 251(c)(2), the incumbent and the new entrant are "co-carriers and each gains value from the interconnection arrangement;" under these circumstances, the Commission reasoned, "it is reasonable to require each party to bear a reasonable portion of the economic costs of the arrangement." *AT&T's proposal splits the costs of*

> *construction equally*, but does not split any of the costs of maintenance of the mid-span meet. Instead, AT&T's proposal leaves each party responsible for maintaining its side of the fiber splice . . . Accordingly, we modify this sentence in AT&T's proposed language governing the allocation of mid-span meet costs to include costs of maintenance, and the forward-looking economic costs of embedded facilities used to construct the mid-span meet.[41]

Q. DOES THIS MEAN THAT IN THE VIRGINIA ARBITRATION THE FCC REQUIRED VERIZON TO SHARE EQUALLY WITH AT&T CONSTRUCTION COSTS FOR PROVIDING MID-SPAN FIBER MEET INTERCONNECTION ARRANGEMENT?

A. Yes. Specifically, the FCC modified AT&T's proposed language to read:

> The reasonably incurred construction and maintenance costs for a mid-span fiber meet established pursuant to this Section, including the forward-looking economic cost of embedded facilities (i.e., pre-existing facilities) used to construct the mid-span fiber meet will be shared equally . . .[42]

Q. WHAT LEGAL SUPPORT DOES SPRINT PROVIDE FOR ITS ASSERTION THAT MID-SPAN FIBER MEET CONSTRUCTION COSTS SHOULD NOT BE SHARED EQUALLY BY THE PARTIES?

A. Similar to Issue 2, Sprint provides no authority for its position relative to "build out" expenses for providing a mid-span fiber meet

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[41] *Virginia Arbitration Order* at ¶133.
[42] Id. at ¶133, FN 439.

interconnection arrangement.[43] Section 251(c)(2) of the Act requires Sprint to provide a reasonable build out of facilities. However, by arguing that its Section 251(c)(2) build out obligations should end at its exchange boundaries, or for no more than fifty percent (50%) of the build out, whichever is less, Sprint appears to be asserting a rural company exemption under Section 251(f). Yet, Sprint has not sought any rural company exemption in this proceeding. Accordingly, the Commission should recognize the FCC's most recent pronouncement in the *Virginia Arbitration Order* in which the FCC specifically approved AT&T's equal sharing of construction costs for a mid-span fiber meet interconnection arrangement.

Q. WHY HAS AT&T PROPOSED THAT THE PARTIES EQUALLY SHARE THE COST OF A MID-SPAN FIBER MEET ARRANGEMENT?

A. In Part E, Section 3.1.6.8, the Parties agreed to allocate half of the channels (i.e., transmission capacity) of the mid-span fiber meet arrangement to AT&T and half to Sprint. Thus, it is only fair and appropriate that each Party provide one-half of the construction and maintenance costs of the system.

[43] More specifically, Sprint merely cites to ¶553 of the *Local Competition Order* in which the FCC provides that the state commissions are in a better position to determine what constitutes a reasonable "build out" for interconnection facilities.

ISSUE 4: MID-SPAN FIBER MEET TRAFFIC. Should certain traffic types be excluded from interconnection via a Mid-Span Fiber Meet Arrangement? (Network Interconnection, Part E, Section 3.1.6.11)

AT&T's Position: All traffic for which AT&T has a right to interconnect to Sprint in accordance with Section 251(c)(2) of the Act may be exchanged via a Mid-Span Fiber Meet arrangement.

Sprint's Position: Sprint is not attempting to limit the types of traffic that are exchanged over fiber meet facilities. Sprint is simply intending to describe the compensation arrangement that applies to certain traffic routed over fiber meet facilities, that is, that non-transit local traffic and non-local traffic are subject to bill and keep compensation arrangement.[44]

Q. IS SPRINT'S EXPLANATION OF ITS POSITION ON THIS ISSUE AS SET FORTH ABOVE (FROM ITS RESPONSE TO AT&T'S ARBITRATION PETITION) CONSISTENT WITH THE LANGUAGE PROPOSED BY SPRINT FOR PART E, SECTION 3.1.6?

A. No. Although Sprint states in is response to AT&T's arbitration petition that Sprint is not attempting to limit the types of traffic that are exchanged over a mid-span fiber meet arrangement, Sprint's proposed language is not clear that this is the case. Specifically, Sprint's proposed language states in Part E, Section 3.1.6.11:

> Neither Party shall charge the other for its portion of the fiber meet facility used exclusively for non-transit local traffic (i.e., the Local Channel) or non-local traffic. Charges incurred for other services including dedicated transport facilities to the POI if applicable will apply. Charges for Switched and Special Access Services will be billed to the appropriate carrier in accordance with the applicable federal or state access service tariff.

[44] Sprint Response at Page 9.

By taking the position that the Parties will not charge one another for each Party's portion of the fiber meet facility for certain types of traffic — *but will charge one another for certain other types of traffic* — for all practical purposes Sprint *is* attempting to limit the types of traffic which are exchanged over a mid-span fiber meet arrangement. In this respect, Sprint's position on this issue is similar to the ILEC position (which this Commission repeatedly has rejected) that ALECs are free to select whatever POI they desire within a LATA for the exchange of traffic, but that the ALEC is financially responsible for transporting the ILEC's originating traffic from the ILEC's local calling area to the POI selected by the ALEC.

Just as the POI proposal was a hollow gesture, similarly Sprint's position that all types of traffic can be exchanged over a mid-span fiber meet arrangement — but not all such traffic can be exchanged without incurring a facility charge — also is a hollow gesture.

Moreover, in Part E, Section 3.1.6.9, AT&T agreed to equally share with Sprint the cost of incurred construction costs for a mid-span fiber meet arrangement. Likewise, in Part E, Section 3.1.6.9, Sprint

also agreed to equally share these construction costs at least for such arrangements that are within Sprint's exchange boundaries.[45]

Additionally, in Part E, Section 3.1.6.8, the Parties agreed to ". . . initially allocat[e] the use of facilities equally with half the facility channels allocated to the use of AT&T and half of the facility channels allocated to the use of Sprint." Because AT&T will be funding half of the construction costs and Sprint already has agreed that AT&T is entitled to use half of the facility channels on the mid-span fiber meet arrangement, Sprint should be prohibited from charging AT&T for certain traffic exchanged between the Parties over such arrangement. To do so would defeat the whole purpose of the Parties constructing a mid-span fiber meet arrangement.

Q. IS AT&T'S RIGHT TO ESTABLISH A MID-SPAN FIBER MEET ARRANGEMENT UNEQUIVOCAL UNDER APPLICABLE LAW?

A. Yes. As discussed in greater detail in Issue 2, under the Act, FCC rules and the *Local Competition Order*, AT&T is entitled to any technically feasible method of interconnection, and that right includes the right to select the method, as well as the location of this interconnection. Moreover, as discussed in greater detail in Issue 3,

[45] In Issue 3, the Commission will decide whether Sprint also is obligated to share equally construction costs for mid-span fiber meet arrangements which are constructed "outside" of Sprint's exchange boundaries.

the FCC also has acknowledged in its *Local Competition Order* that each carrier needs to build out its facilities in order to establish a mid-span fiber meet arrangement.[46]

Q. IF AT&T'S RIGHT TO REQUIRE A MID-SPAN FIBER MEET ARRANGEMENT AS A TECHNICALLY FEASIBLE METHOD OF INTERCONNECTION IS UNEQUIVOCAL UNDER APPLICABLE LAW, WHAT IMPACT DOES SPRINT'S PROPOSAL TO CHARGE FOR CERTAIN TRAFFIC EXCHANGED OVER THIS ARRANGEMENT HAVE ON AT&T'S RIGHT?

A. It basically guts AT&T's right to such interconnection. In this respect, the Commission should recognize Sprint's proposal for what it really is – an attempt to re-define what constitutes a mid-span fiber meet arrangement without doing so directly.

Q. WHAT IS AT&T'S PROPOSED LANGUAGE REGARDING THIS ISSUE?

A. AT&T's proposed language, as set forth in Part E, Section 3.1.6.11, states:

> Neither Party shall charge the other for its portion of the Fiber Meet facility. Each Party may use the Fiber Meet facility to deliver Local Traffic, ISP-bound traffic, Transit Traffic, and IntraLATA/InterLATA toll traffic, including translated 8YY traffic to the other Party. Charges

[46] *Local Competition Order* at ¶553.

incurred for other services including dedicated transport facilities to the POI if appropriate will apply. Charges for Switched Access and Special Access Services shall be billed to the appropriate carrier in accordance with the applicable federal or state access services tariff.

Clearly, AT&T's proposed language meets the intent of a mid-span fiber meet arrangement as a form of interconnection allowed under Section 251(c). The arrangement can be used to exchange all types of traffic. Because AT&T already has paid its fair share of the construction costs for such arrangement, it should be allowed full use of this arrangement at no additional charge. For AT&T to pay its fair share of the cost of the arrangement — then also be required to pay Sprint additional amounts to exchange certain traffic over the arrangement — means AT&T would be paying twice for the transport of any such traffic. This is not consistent with Section 251(c) or the intent of the Parties when they agreed to share equally the construction costs for this arrangement.

Q. DOES THE ACT OR FCC'S RULES SET ANY LIMITS ON THE USE OF MID-SPAN MEET FIBER ARRANGEMENTS FOR LOCAL NETWORK INTERCONNECTION?

A. No. Any traffic that originates from or terminates to a local exchange customer may be carried across a mid-span fiber meet arrangement. Section 251(c)(2)(A) of the Act requires that ILECs, ". . . provide for the

facilities and equipment of any requesting carrier telecommunications carrier, interconnection with the local exchange carrier's network for the transmission and routing of *exchange service and exchange access*."[47] There is no traffic exchanged between AT&T and Sprint in their LEC operations that falls outside the scope of "exchange service and exchange access." The FCC made this point particularly clear in its *Local Competition Order* when it said:

> We conclude that the phrase "telephone exchange service and exchange access" imposes at least three obligations on incumbent LECs: *an incumbent must provide interconnection for purposes of transmitting and routing telephone exchange traffic or exchange access traffic or both.* We believe that this interpretation is consistent with both the language of the statute and Congress's intent to foster entry by competitive providers into the local exchange market.[48] Moreover, the term "local exchange carrier" is defined in the Act as "any person that is engaged in the provision of telephone exchange service *or* exchange access."[49] Thus, we believe that Congress intended to facilitate entry by carriers offering either service.[50]

The FCC promulgated 47 C.F.R. § 51.321(b)(2), which requires ILECs to provide interconnection under Section 251(c)(2) of the Act using a

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[47] Section 251(c)(2)(A); emphasis added

[48] As the U.S. Court of Appeals for the Fifth Circuit stated in *Peacock v. Lubbock Compress Company*, "the word 'and' is not a word with a single meaning, for chameleon like, it takes its color from its surroundings." The court held that "[i]n the construction of statutes, it is the duty of the Court to ascertain the clear intention of the legislature. In order to do this, Courts are often compelled to construe 'or' as meaning 'and,' and again 'and' as meaning 'or'." *Peacock v. Lubbock Compress Company*, 252 F.2d 892, 893 (5th Cir. 1958) (*citing United States v. Fisk*, 70 U.S. 445, 448)

[49] 47 U.S.C. § 153(26) (emphasis added).

[50] *Local Competition Order* at ¶184.

mid-span fiber meet arrangement upon request from an interconnecting carrier. Accordingly, any exchange service and exchange access provided by AT&T may be carried over a mid-span fiber meet arrangement. Sprint's proposed limitations for certain traffic types are inappropriate and contrary to FCC rules.

ISSUE 5: DEFINITION OF LOCAL CALLING AREA. How should AT&T and Sprint define Local Calling Area for purposes of their interconnection agreement? (Network Interconnection, Part E, section 4.1)

AT&T's Position: AT&T proposes the Florida Public Service Commission's definition of Local Calling Area as ordered in Docket No. 000075-TP.

Sprint's Position: Sprint believes the default definition of Local Calling Area set forth in Docket No. 000075-TP is "skewed" to the ALECs and a disincentive to negotiations.[51]

Q. HAS THE COMMISSION PREVIOUSLY ADDRESSED THE DEFINITION OF LOCAL CALLING AREA?

A. Yes. In Generic Docket No. 000075-TP, the Commission discussed and defined what constituted a local calling area. The Commission had jurisdiction to decide this issue by virtue of FCC Order 96-325 granting state commissions 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) of the Act.[52]

[51] Sprint Response at Page 11.
[52] *Local Competition Order* at ¶1035.

Q. WHAT DID THE COMMISSION DECIDE RELATIVE TO DEFINING WHAT CONSTITUTED A LOCAL CALLING AREA IN THIS DOCKET?

A. The Commission adopted what is referred to as a "default" local calling area in the event that Parties fail to reach agreement regarding what constitutes a local calling area in their Section 251 and Section 252 negotiations under the Act. In this proceeding, Sprint, as well as other ILECs, unsuccessfully argued that the default should be the ILEC's retail local calling area. As argued by AT&T, to apply the ILEC's definition would "predate the Act, restrict customer choice and result in higher rates."[53] Accordingly, the Commission found use of an ILEC's local calling area not to be competitively neutral. Specifically, the Commission held:

> Using the ILEC's retail local calling area appears to effectively preclude an ALEC from offering more expansive calling scopes. Although an ALEC may define its retail local calling area as it sees fit, this decision is constrained by the cost of intercarrier compensation. An ALEC would be hard pressed to offer local calling in situations where the form of intercarrier compensation is access charges, due to the unattractive economics.[54]

Additionally, the Commission ordered:

> A default should be competitively neutral as possible, thereby encouraging negotiation and development of business solutions. On this basis, we find that the originating carrier's retail local

[53] *Florida Reciprocal Compensation Order* at Page 44.
[54] Id. at Page 53.

calling area shall be used as the default local calling area for purposes of reciprocal compensation[55]

Q. SINCE THE COMMISSION'S ORDER IN THIS DOCKET, HAS ANYTHING CHANGED THAT WOULD JUSTIFY THE COMMISSION CHANGING ITS PRIOR ORDER AS TO WHAT CONSTITUTES A LOCAL CALLING AREA?

A. No. Just as Sprint's proposal regarding what should constitute a local calling area was antiquated and stifling to competition in the prior generic proceeding, it remains so today in this proceeding. Local calling areas established by the ILECs were created years prior to competition. If a new entrant is required to define its local calling area by the local calling area of the ILEC, there is little room for competitive offerings that would offer something different for the customer.

Q. IS THE USE OF AN ORIGINATING CARRIER'S RETAIL LOCAL CALLING AREA "TECHNICALLY FEASIBLE" AND "ADMINISTRATIVELY MANAGEABLE?"

A. Yes. Many, ILECs, including BellSouth Telecommunications, Inc. ("BellSouth") have negotiated interconnection agreements to include the originating party's local calling area as the local calling area for purposes of determining intercarrier compensation between the

[55] Id. at Page 55.

Parties.[56] In fact, in the Commission's prior generic proceeding, the Commission determined that BellSouth's Witness Shiroishi testified that using the originating Party's local calling area was both "technically feasible"[57] and "administratively manageable."[58]

Q. GIVEN THAT AT&T ARGUED FOR A "LATA WIDE" LOCAL CALLING AREA IN THE COMMISSION'S PRIOR GENERIC PROCEEDING, IS AT&T WILLING TO ACCEPT THE COMMISSION'S "DEFAULT" IN ITS INTERCONNECTION AGREEMENT WITH SPRINT?

A. Yes. While AT&T argued for LATA-wide local calling area during the Commission's prior proceeding, AT&T's proposed language with Sprint found at Part A, Section 1.119, adopts the Commission's default definition of the originating Party's retail local calling area for purposes of determining which traffic shall be subject to reciprocal compensation.

Q. HAS SPRINT ACCEPTED THE COMMISSION'S "DEFAULT" FROM ITS PRIOR PROCEEDING?

A. No. In Sprint's Response to AT&T's arbitration petition, Sprint argued that the Commission's prior Order was "skewed to the ALEC position

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[56] Id. at Page 47.
[57] Id. at Page 46.
[58] Id. at Page 53.

and is in fact a disincentive to negotiations,"[59] and that the Commission " . . . did not include any specific guidance as to how parties should implement its decision."[60] Additionally, Sprint argues that implementing the Commission's default ". . . will require Sprint either to spend thousands of hours modifying its existing system to be able to have carrier-specific jurisdiction tables or to scrap the existing jurisdictional process and spend the hours and dollars necessary to be able to apply factors to all measured minutes."[61] By refusing to accept the Commission's default, Sprint is attempting yet another "bite at the apple" by continuing to assert a losing proposition on an issue that the Commission decided less than one year ago.

Q. HAS SPRINT PROVIDED ANY "NEW" ARGUMENTS OR ARE THEY JUST A REPEAT OF PRIOR ARGUMENTS ALREADY MADE IN THE COMMISSION'S PRIOR GENERIC PROCEEDING?

A. All of Sprint's arguments are repetitious from the Commission's prior generic proceeding. Specifically, Sprint's Witness Ward testified in the prior generic proceeding that:

> Sprint's billing systems must be changed if the Commission determines that reciprocal compensation rates now apply between ILECs and ALECs for calls that originate and terminate within the LATA, yet IXCs must still pay access rates for the same calls. Currently, Sprint's systems bill

[59] Sprint Response at Page 11.
[60] Id.
[61] Id.

> both ALECs and IXCs based on the same local calling scope. For example, Sprint applies the same access rates to both classes of carriers when an intrastate/intraLATA call originates and terminates outside the local calling area. In addition, ILECs compensate each other for intraLATA toll calls through tariffed modified access based compensation rates that would remain in place for price-regulated ILECs, even if the Commission were to establish the LATA as the default local calling area in this docket. Commission approval of the LATA as the default local calling area between ILECs and ALECs will require Sprint to make billing system enhancements in order to apply this new LATAwide definition to ALECs only.[62]

Thus, Sprint's current "billing systems" arguments add nothing new for the Commission's consideration on what should be the default definition for local calling area.

Q. IN THE PRIOR GENERIC PROCEEDING, DID THE COMMISSION CONSIDER WHAT IMPACT THE ADOPTION OF ITS "DEFAULT" WOULD HAVE ON ILEC BILLING SYSTEMS?

A. Yes. The Commission stated:

> . . . [d]ata on the potential cost to reconfigure billing systems is not in the record in this proceeding. It appears reasonable to us, based on the testimony, however, that some costs would be incurred to implement proposals using the originating carrier's retail local calling area for reciprocal compensation purposes.[63]

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[62] *In RE: Investigation Into Appropriate Methods to Compensate Carriers For Exchange of Traffic Subject to Section 251 of the Telecommunications Act of 1996, Phase II*, Florida Public Service Commission, Docket No. 000075-TP, Rebuttal Testimony of Julie L. Ward on Behalf of Sprint-Florida, Incorporated and Sprint Communications Company Limited Partnership, March 25, 2002, Page 5-6.

[63] *Florida Reciprocal Compensation Order* at Page 48.

As is clear from this statement, the Commission agreed that even if costs would be incurred to establish the originating carrier's retail local calling area as the "default" local calling area, such should not stop adoption of the default.

Q. DID SPRINT ALSO SEEK RECONSIDERATION FROM THE COMMISSION REGARDING ITS ORDER ESTABLISHING THE ORIGINATING CARRIER'S LOCAL RETAIL CALLING AREA AS THE "DEFAULT" LOCAL CALLING AREA?

A. Yes, but the Commission denied Sprint's motion for reconsideration in Florida PSC Order PSC-03-0059-FOF-TP.

Q. BASED ON ALL OF THE FOREGOING, WAS THE DECISION BY THE COMMISSION "SKEWED TO THE ALECS" AND "LACKING IN GUIDANCE" AS TO THE IMPLEMENTATION BY THE PARTIES AS ALLEGED BY SPRINT?

A. Absolutely not. Rather, the Commission conducted a thorough review and analysis of the issues during its prior generic proceeding. Even BellSouth conceded that using an ILEC's local calling area as the definition of local calling area would predate adoption of the Act.[64] Further, BellSouth admitted that the use of an originating carrier's

[64] Id. at Page 44.

retail local calling area was both "technically feasible"[65] and "administratively manageable."[66] In fact, other ALECs, including AT&T, supported a LATA wide local calling area which the Commission rejected. Thus, there is no way a reasonable conclusion can be reached that the Commission's determination that the originating Party's local calling area should serve as the "default" local calling area was "skewed to the ALECs," most of whom wanted, and still advocate for, a LATAwide local calling area.

Regarding Sprint's "lack of guidance" argument as to the implementation of the Commission's Order, Sprint appears to assert that the Commission must hold Sprint's hand in implementing system changes – system changes which Sprint has been doing for decades regarding the mechanics of billing for telecommunications services. Thus, Sprint's argument is nothing more than Sprint's attempt to change the Commission's mind in this "company specific" arbitration on an issue that was the subject of an exhaustive prior generic proceeding involving many companies in this industry.

Q. WOULD THE PUBLIC INTEREST BE SERVED BY THE COMMISSION ADOPTING SPRINT'S POSITION IN THIS

[65] Id. at Page 46.
[66] Id. at Page 53.

ARBITRATION?

A. No. As was undisputed in the Commission's prior generic proceeding, Sprint's local calling area(s) predate the Act and are rooted in Sprint's legacy network architecture and monopoly era regulation. They were established largely before anyone envisioned competition for local service. ALECs should not be saddled with "cloning" Sprint's historical local calling area(s) in the provision of local telecommunications services. Requiring the Parties to use only Sprint's local calling area(s) for reciprocal compensation purposes creates artificial price barriers and stifles competitive offerings. In fact, the dependence on Sprint's retail local calling area(s) tilts the competitive playing field toward Sprint and effectively bars ALECs such as AT&T from making competitive offerings different from those provided by Sprint.

ISSUE 6: DEFINITION OF LOCAL TRAFFIC. How should AT&T and Sprint define Local Traffic for purposes of their interconnection agreement? (Network Interconnection, Part E, Section 4.1).

AT&T's Position: AT&T proposes a definition of Local Traffic that is consistent with the FCC's *ISP Remand Order* dated April 27, 2001, which provides that all telecommunications traffic is subject to reciprocal compensation in accordance with Section 251(b)(5) of the Act, except for exchange access traffic subject to Section 251(g) of the Act and ISP-Bound Traffic.

Sprint's Position: Sprint agrees that Local Traffic is subject to reciprocal compensation, but does not agreed that traffic that originates and

terminates outside of the local calling area is "local," as that term is generally understood by most parties.[67]

Q. WHAT IMPACT DOES THE FCC'S APRIL 27, 2001 ISP REMAND ORDER HAVE ON THE DEFINITION OF "LOCAL TRAFFIC?"

A. In the FCC's *ISP Remand Order*, the FCC found that it had erred in attempting to distinguish between local and long distance traffic for the purpose of determining when reciprocal compensation should apply.[68] The FCC said "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(b)."[69] Specifically, in the *ISP Remand Order*, the FCC expressly stated that:

> 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

[67] Sprint Response at Page 15.
[68] *ISP Remand Order* at ¶26.
[69] Id. at ¶34.

> service provides 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 superceded by regulations prescribed by the Commission after such date of enactment.[70] (Emphasis in original)

Thus, the FCC concluded that under the Act, *all traffic* is subject to reciprocal compensation under Section 251(b)(5), unless it falls within the exemptions established in the Section 251(g) "carve out."[71]

Q. DID THE FCC AMEND ITS RECIPROCAL COMPENSATION RULES TO REFLECT ITS FINDINGS IN ITS ISP REMAND ORDER?

A. Yes. The FCC amended 47 C.F.R. Part 51, Subpart H, to eliminate use of the term "local" and revised 47 C.F.R. § 51.701(b)(1) to change the definition of services subject to Section 251(b)(5) of the Act. Prior to this amendment, under 47 C.F.R. § 51.701(b)(1), reciprocal compensation applied to "Telecommunications traffic between a LEC and a telecommunications carrier other than a Commercial Mobile Radio Services ("CMRS") provider that originates and terminates within a local service area established by the state commission."

[70] Id. at ¶32 (footnote omitted).
[71] Id. at ¶46.

Now, under 47 C.F.R. § 51.701(b)(1), as amended by the FCC in the *ISP Remand Order*,[72] reciprocal compensation applies to "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." These exceptions are known as the Section 251(g) "carve out" items.

Q. DO THE FCC'S ISP REMAND ORDER AND AMENDED RECIPROCAL COMPENSATION RULES REGARDING "LOCAL TRAFFIC" MAKE DISTINCTIONS BETWEEN "LOCAL TRAFFIC" AND "NON-LOCAL TRAFFIC" MEANINGLESS IN TODAY'S ENVIRONMENT?

A. Yes. As the foregoing reflects, both the FCC's *ISP Remand Order* and its amended reciprocal compensation rules make any distinction regarding "local" and "non-local" traffic irrelevant for purposes of determining which traffic is subject to reciprocal compensation. Rather, currently the only meaningful analysis is determining whether traffic falls into the 251(g) "carve out" items. If it does not, the traffic is subject to reciprocal compensation under Section 251(b)(5) of the Act.

[72] Id. at ¶112.

Q. IN ITS NEGOTIATIONS WITH SPRINT, DID AT&T ATTEMPT TO INCORPORATE THE FCC'S ISP REMAND ORDER AND AMENDED RECIPROCAL COMPENSATION RULES INTO ITS PROPOSED LANGUAGE RELATIVE TO THE DEFINITION OF "LOCAL TRAFFIC?"

A. Yes. In Part A, Section 1.127, AT&T proposed a definition of "Local Traffic" which states:

> "Local Traffic" for the purposes of this Agreement, means all telecommunications traffic, as defined in the Act, except for exchange access traffic subject to Section 251(g) of the Act and ISP-bound traffic.

The references to "exchange access" and "ISP-bound" traffic in AT&T's proposed Part A, Section 1.127, refers to "exchange access" and "information access" traffic as set forth in the Section 251(g) "carve out" items. Thus, AT&T's proposed definition of "Local Traffic" tracks precisely the FCC's *ISP Remand Order* and the FCC's amended reciprocal compensation rules.

Q. WHAT IS SPRINT'S PROPOSED DEFINITION OF "LOCAL TRAFFIC?"

A. Sprint has proposed a definition of "Local Traffic" which inappropriately includes a "local calling area" criteria. Sprint's proposed language for Section 1.127 is as follows:

> "Local Traffic" for the purpose of this Agreement, the Parties shall agree that "Local Traffic" means

traffic (excluding CMRS traffic) that is originated and terminated within the Local Calling Area. For this purpose, Local Traffic does not include any ISP-bound traffic.

Q. WHY IS SPRINT'S REFERENCE TO A "LOCAL CALLING AREA" INAPPROPRIATE?

A. As discussed above, the FCC has made clear in its *ISP Remand Order* and its amended rules that *all* traffic is subject to reciprocal compensation under Section 251(b)(5), unless it falls within the exceptions established in the Section 251(g) "carve out." The "carve out" items of Section 251(g) do not involve determinations of whether traffic is originated or terminated within the "local calling area." In fact, "local calling area" is not even mentioned in Section 251(g). Use of the term "local calling area" in Sprint's proposed language becomes even more inappropriate given that in Issue 5 Sprint is attempting to have "local calling area" defined to mean Sprint's local calling area. The better approach is for the Commission to adopt AT&T's proposed language for Part A, Section 1.127, because it tracks precisely the FCC's *ISP Remand Order* and the FCC's amended rules. Sprint's proposed language does not.

Q. WHAT PRACTICAL ADVANTAGES DOES AT&T'S PROPOSED LANGUAGE PROVIDE?

A. First, it would permit the proper compensation for unique classes of traffic, such as CMRS[73] and 8YY traffic, without having to include the applicable compensation terms for each within the agreement. Thus, a smaller and simpler interconnection agreement would result. Second, AT&T's proposed language would allow the interconnection agreement implemented between AT&T and Sprint to immediately and precisely track the federal and Florida intercarrier compensation rules as they exist and are promulgated and/or litigated. Sprint's static proposal, on the other hand, would require re-negotiation of each rule change inserting delay and doubt to the outcome.

ISSUE 7: VOICE OVER INTERNET PROTOCOL. How should traffic originated and terminated by telephone and exchanged by the parties and transported over internet protocol (in whole or in part, including traffic exchanged between the parties originated and terminated to enhanced service providers) be compensated? (Network Interconnection, Part E, Section 4.1.2)

AT&T's Position: Determining compensation for Voice Over Internet Protocol ("VOIP") traffic is not an appropriate issue in this arbitration. In Docket No. 000075-TP, the Commission previously determined that compensation regarding VOIP traffic was not "ripe" for consideration. Subsequent to the Commission's Order in this Docket, on October 18, 2002 AT&T filed with the FCC its "Petition For Declaratory Ruling That Phone-To-Phone IP Telephony Services Are Exempt From Access Charges." Recognizing the pendency of this AT&T Petition at the FCC, on December 31, 2002 in Docket No. 021061-TP, the Commission declined to address whether phone-to-phone IP telephony services constitute "telecommunications" under Florida law, noting that "the FCC currently is considering a similar matter." In such Order, the Commission specifically found that "it would be

[73] Pursuant to federal rules, the jurisdiction of CMRS traffic is determined by whether the traffic originates and terminates within or between major trading areas, not local calling areas; See, *ISP Remand Order* at ¶47.

administratively inefficient" to make such a determination while this FCC proceeding was underway.

Sprint's Position: Sprint's proposed language addresses phone-to-phone voice over internet protocol services in order to "close a loophole" being used by various carriers to avoid payment of access charges.[74]

Q. HAS THE COMMISSION PREVIOUSLY ADDRESSED COMPENSATION FOR VOIP TRAFFIC?

A. Yes. In FL PSC Docket No. 000075-TP, the Commission decided not to address compensation with regard to VOIP finding that " . . . this issue is not ripe for consideration at this time."[75] In particular, the Commission concluded that VOIP was a " . . . relatively nascent technology, with limited application to the present marketplace."[76]

Q. IN SPRINT'S RESPONSE TO AT&T'S ARBITRATION PETITION, DOES SPRINT ALLEGE THAT VOIP IS NO LONGER A "NASCENT" TECHNOLOGY?

A. No. All Sprint has alleged is that "Sprint has become aware of a variety of network arrangements deployed by carriers using IP transport for interexchange telecommunications that originate and terminate not over access trunks, but over local interconnection trunks and other facilities, avoiding access charges."[77] Sprint makes

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[74] Sprint Response at Page 16.
[75] *Florida Reciprocal Compensation Order* at Page 37.
[76] Id.
[77] Sprint Response at Page 17.

the bold generalization that "[t]here is little doubt that today carriers are using IP transport technology to evade paying access charges."[78] Thus, the allegations made by Sprint in this proceeding appear to be allegations related to the industry in general, and not a specific interconnection dispute with AT&T. As such, the Commission should not allow Sprint to litigate such an important industry wide issue in the context of this proceeding.

Q. HAS THE COMMISSION ADDRESSED VOIP MORE RECENTLY THAN IN FL PSC DOCKET NO. 000075-TP?

A. Yes. In FL PSC Docket No. 021061-TP, CNM Networks, Inc. ("CNM") filed a petition for declaratory relief with the Commission that phone-to-phone internet protocol telephony does not constitute "telecommunications" under Florida law, and therefore CNM was not a telecommunications company subject to the Commission's certification and tariffing requirements.[79]

In the CNM proceeding, the Commission stated " . . . any statement by this Commission on phone-to-phone IP telephony would be a statement of general applicability interpreting law and policy which

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[78] Id.

[79] *In Re: Petition CNM Networks, Inc. For Declaratory Statement That CNM's Phone-To-Phone Internet Protocol (IP) Technology Is Not "Telecommunications" And That CNM Is Not A Telecommunications Company" Subject To Florida Public Service Commission Jurisdiction*, FL PSC Docket No. 021061-TP, Florida PSC Order PSC-02-1858-FOF-TP, December 31, 2002, at Page 1.

would carry implications for the telecommunications industry statewide."[80] Thus, the Commission found it improper to address the issues raised in CNM's petition by way of a declaratory statement. The Commission also denied CNM's alternative request that the Commission establish a generic proceeding regarding VOIP telephony stating:

> [W]e also find that as the FCC is currently addressing a similar matter, it would be administratively inefficient at this time to grant the alternative relief [generic proceeding] requested in CNM's petition.[81]

Although the Commission's Order in the CNM proceeding is less than six (6) months old, once again Sprint is seeking to have the Commission rule on VOIP telephony (this time in the context of an arbitration with Sprint making inappropriate industry-wide allegations regarding ALECs' use of VOIP telephony to avoid access charges.) The Commission should not be persuaded by Sprint's repeated efforts to push this Commission into rendering a decision on VOIP – particularly in the context of this arbitration which is limited to AT&T and Sprint.

Q. IN ITS ORDER IN THE CNM PROCEEDING THE COMMISSION NOTED THAT THE FCC ALSO WAS IN THE PROCESS OF

[80] Id. at Page 3.
[81] Id.

CONSIDERING VOIP TELEPHONY. ARE YOU FAMILIAR WITH THIS FCC PROCEEDING?

A. Yes. On October 18, 2002, AT&T Corp. filed a petition with the FCC requesting a declaratory ruling that AT&T's phone-to-phone IP telephony services are exempt from access services.[82] In its petition, AT&T stated:

> AT&T seeks this relief to resolve actual controversies with LECs over the applicability of interstate access charges to AT&T and to provide guidance to states who follow the federal rule in assessing intrastate access charges.[83]

In particular, AT&T specifically advised the FCC in its petition that it currently had a billing dispute with Sprint regarding VOIP telephony in Florida.[84]

Q. WHAT IS THE STATUS OF AT&T'S FCC VOIP PETITION?

A. The FCC initiated a comment cycle on AT&T's petition with initial Comments due on December 18, 2002 and Reply Comments due on January 24, 2003.

Q. IS SPRINT INVOLVED IN THIS FCC PROCEEDING?

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[82] *In the Matter of Petition For Declaratory Ruling That AT&T's Phone-To-Phone IP Telephony Services Are Exempt From Access Charges*, WC Docket No. 02-361, ("*AT&T FCC VOIP Petition*").
[83] Id.
[84] Id. at Page 21.

A. Yes. Sprint has been an active participant in this FCC proceeding. Specifically, on December 18, 2002, Sprint filed its Comments indicating that the FCC should declare that AT&T's phone-to-phone VOIP service is subject to access charges.[85] Moreover, in its Comments, Sprint also indicated that it ". . . agree[d] with AT&T that there was a pressing need for the [FCC] to clarify whether phone-to-phone VOIP traffic should be subject to or exempt from access charges."[86] In urging the FCC to so rule, Sprint specifically brought to the FCC's attention that this Commission had dismissed CNM's Petition. Sprint stated:

> On December 17, 2002, the Florida PSC dismissed a petition filed by CNM Networks, Inc. for a declaratory statement that phone-to-phone IP telephony is not telecommunications (PSC Docket No. 021061-TP). The PSC cited, among other factors, the instant proceeding before the FCC as a reason to defer action at the state level at this time. Thus, it is clear that at least some state PUC's except the FCC to assume a leadership role in this matter and clarify this *national policy*.[87]

Additionally, on January 24, 2003, Sprint filed its Reply Comments with the FCC reiterating its position that phone-to-phone voice over VOIP is a telecommunications service which should be subject to access charges.[88] Finally, on March 13, 2003, Sprint filed notice of an

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[85] *AT&T FCC VOIP Petition*, Sprint Comments, December 18, 2002, at Page 1.
[86] Id. at Page 9.
[87] Id. at Pages 9-10 (emphasis added).
[88] *AT&T FCC VOIP Petition*, Sprint Reply Comments, January 24, 2003, at Page 1.

exparte presentation held with the FCC where Sprint again argued that phone-to-phone voice over VOIP should be subject to access charges.[89]

Clearly, Sprint is an active participant regarding *AT&T's FCC VOIP Petition*, having filed extensive Comments, Reply Comments, and an exparte with the FCC regarding the same.

Q. IN ANY OF ITS PLEADINGS FILED AT THE FCC, DID SPRINT MENTION THE BILLING DISPUTE IT HAS WITH AT&T REGARDING VOIP TRAFFIC IN FLORIDA?

A. Yes. In its December 18, 2002, Comments, Sprint described with particularity its position regarding the billing dispute it has with AT&T in Florida regarding VOIP.

Q. BASED ON THE FOREGOING, IS THERE ANY DOUBT THAT SPRINT HAS THE OPPORTUNITY TO MAKE ITS ARGUMENTS REGARDING WHETHER PHONE-TO-PHONE VOICE OVER VOIP SHOULD BE SUBJECT TO ACCESS CHARGES IN THIS FCC PROCEEDING?

A. No. Clearly Sprint has "teed up" to the FCC the very same position

[89] *AT&T FCC VOIP Petition*, Sprint Letter from N. Moy to M. Dortch, Secretary FCC, RE: Exparte Presentation, WC Docket No. 02-361, dated March 13, 2003.

which it now seeks to have this Commission decide. Thus, Sprint's opportunity to make its "access charges" argument is fully protected, making it unnecessary for the Commission also to decide this same issue in this proceeding.

Q. WOULD IT BE PRUDENT FOR THE COMMISSION TO MAKE A DETERMINATION REGARDING VOIP TELEPHONY IN THIS ARBITRATION GIVEN THIS PENDING FCC PROCEEDING?

A. Absolutely not. The better course for the Commission is to wait until the FCC makes its decision regarding *AT&T's FCC VOIP Petition.* In the meantime, Sprint is free to continue to pursue its VOIP billing dispute with AT&T as referenced in *AT&T's FCC VOIP Petition.*

ISSUE 8: ISP Bound Traffic. Should ISP-Bound Traffic be limited to calls to an information service provider or internet service provider which are dialed by using a local call dialing pattern? (Network Interconnection, Part E, Section 4.2.1)

AT&T's Position: No. ISP-Bound Traffic are calls delivered to an information service provider or internet service provider and may or may not originate and terminate within a Local Calling Area.

Sprint's Position: AT&T has proposed language that provides that any ISP-bound traffic should be compensated according to rates set forth in the FCC's *ISP Remand Order*, regardless of whether the call otherwise would be a local call or a toll call. AT&T appears to base its position on the FCC's determination in the *ISP Remand Order* that all ISP-bound traffic is jurisdictionally interstate, whether or not the call technically terminates within a local calling area. Sprint believes that the FCC's *ISP Remand Order* logically cannot be interpreted to support AT&T's position.[90]

[90] Sprint Response at Page 19.

Q. FIRST OF ALL, DOES THE COMMISSION HAVE JURISDICTION OVER ISP-BOUND TRAFFIC?

A. No. In the FCC's *ISP Remand Order*, the FCC concluded that because ISP-bound traffic is interstate in nature, it falls under the FCC's jurisdiction. Specifically, the FCC held:

> The Commission has held, and the Eight Circuit has recently concurred, that traffic bound for information service providers (including Internet access traffic) often has an interstate component. 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. Thus, ISP traffic is properly classified as interstate, and it falls under the Commission's Section 201 jurisdiction.[91]

Moreover, in reviewing the FCC's *ISP Remand Order*, the DC Court of Appeals stated that the FCC had:

> . . . established the interim [ISP-bound]regime under its general authority to regulate the rates and terms of interstate telecommunications services and interconnection between carriers under § 201 of the Act; as a result, the state regulatory commissions would no longer have jurisdiction over ISP-bound traffic as part of their power to resolve LEC interconnection issues under § 252(e)(1) of the Act.[92]

In other words, with the adoption of the FCC's *ISP Remand Order*, the Commission has been divested of jurisdiction to determine

[91] *ISP Remand Order* at ¶52.
[92] *WorldCom, Inc. v. FCC*, 288 F.3d 429 (D.C. Cir.) at 432.

compensation for ISP-bound traffic. In this respect, other state commissions have recognized that ISP-bound traffic is subject to the FCC's jurisdiction. For example, the Illinois Commission found in *Essex Telecom, Inc., v. Gallatin River Communications, L.L.C.* that "with the adoption of the [FCC's] *ISP Remand Order*, the Illinois Commission has been divested of jurisdiction to determine compensation issues as they relate to ISP bound calls."[93] The Illinois Commission restated this finding in the Global NAPs Arbitration with Verizon.[94]

In Connecticut Department of Public Utility Control ("DPUC") Docket No. 01-01-29, *DPUC Investigation of the Payment of Mutual Compensation for Local Calls Carried over Foreign Exchange Service Facilities ("ISP Decision")*, the DPUC also found that "[a]s of the effective date of the [FCC's] ISP Order, state commissions will no longer have the authority to address intercarrier compensation for ISP-bound traffic on a prospective basis."[95]

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[93] *Essex Telecom, Inc. vs. Gallatin River Communications, L.L.C.*, Docket 01-0427, July 24, 2002, ¶ 27.

[94] *Global NAPs Illinois, Inc., Petition for arbitration pursuant to section 252(b) of the Telecommunications Act of 1996 to establish an interconnection agreement with Verizon North, Inc., f/k/a GTE North Incorporated and Verizon South, Inc,. f/k/a/ GTE South Incorporated*, Docket No. 02-0253, November 7, 2002, Page 17.

[95] *DPUC Investigation of the Payment of Mutual Compensation for Local calls Carried over foreign Exchange Service Facilities ("ISP Decision")*, Docket No. 01-01-29, January 30, 2002, Findings of Fact at page 47.

Further, the New Hampshire Public Utilities Commission has stated "[b]ecause the FCC determined that inter-carrier compensation for ISP-bound traffic is within its jurisdiction under 47 U.S.C §201, our consideration of the issues raised in this docket excludes any rulings regarding inter-carrier compensation for ISP-bound traffic."[96]

Q. BECAUSE ISP-BOUND TRAFFIC IS SOLELY WITHIN THE FCC'S JURISDICTION, PLEASE EXPLAIN THE FCC'S INTERCARRIER COMPENSATION MECHANISM FOR PAYMENT FOR ISP-BOUND TRAFFIC.

A. The FCC developed an intercarrier compensation mechanism that permits the ILEC to choose from two payment options for ISP-bound traffic. An ILEC may apply the FCC's rate cap established for the relevant period—*i.e.* $.0015 per minute of use (MOU) from June 13, 2001 to December 13, 2001; $.0010 per MOU from December 14, 2001 to June 13, 2003; and $.0007 per MOU from June 14, 2003 until the FCC issues a further order on intercarrier compensation—for ISP-bound traffic if it also offers to exchange traffic subject to section 251(b)(5) at the same rate. If the ILEC chooses not to opt into the FCC's rate caps, then the FCC's mandated rate for ISP-bound

[96] *Investigation as to whether Certain Calls are Local* and DT 00-054, *Independent Telephone Companies and Competitive Local Exchange Carriers – Local Calling Areas*, DT 00-223, Order No. 24,080, October 28, 2002, Pages 44-45.

traffic will be the 251(b)(5) reciprocal compensation rate adopted by the state.[97]

Q. IN ITS ISP REMAND ORDER, DID THE FCC EXCLUDE ISP-BOUND TRAFFIC FROM SECTION 251(b)(5) TRAFFIC?

A. Yes. As discussed in greater detail in Issue 6, the FCC expressly stated that *all* traffic is subject to reciprocal compensation unless it falls within the exceptions known as the Section 251(g) "carve out." With respect to such "carve out" items, the FCC stated that ISP-bound traffic constituted Section 251(g) "carve out" traffic[98] for which the Commission established an intercarrier compensation mechanism in its *ISP Remand Order*, separate and apart from Section 251(b)(5) traffic which is subject to reciprocal compensation.

Q. WAS THE FCC'S ISP REMAND ORDER APPEALED?

A. Yes. The D.C. Circuit Court of Appeals held that the FCC could not classify ISP-bound traffic as constituting Section 251(g) "carve out" traffic because the "carve out" set forth in Section 251(g) was meant to preserve certain compensation mechanisms that were in effect when Congress implemented the Act, *i.e.*, access payments, and was not meant to create new classes of service within the meaning of

[97] Additionally, the FCC imposed a cap on the total ISP-bound minutes for which a local exchange carrier may receive intercarrier compensation.
[98] *ISP Remand Order* at ¶ 32.

Section 251(g).[99] However, the court declined to vacate the FCC's intercarrier compensation mechanism for ISP-bound traffic giving the FCC the opportunity to readdress the issue, which the FCC has publicly stated it intends to do in its *InterCarrier Compensation NPRM*. As such, because the FCC's *ISP Remand Order* has not been vacated, it continues to govern compensation for ISP-bound traffic.

Q. WHAT IS THE IMPACT OF THE COMMISSION NOT HAVING JURISDICTION OVER ISP-BOUND TRAFFIC?

A. Because only the FCC has jurisdiction over ISP-bound traffic, the Commission is required to implement the FCC's *ISP Remand Order* in this arbitration and all other proceedings. However, by attempting to have the Commission "re-define" ISP-bound traffic to mean only calls that are made using a "local calling dialing pattern,"[100] Sprint is doing nothing more than trying to avoid the FCC's *ISP Remand Order*. The Commission simply has no jurisdiction to make Sprint's requested modification, and thus it must reject Sprint's proposal.

Q. WITH RESPECT TO THE SPECIFICS OF SPRINT'S PROPOSED LANGUAGE, DOES THE FCC'S ISP REMAND ORDER DESCRIBE ISP-BOUND TRAFFIC AS BEING ONLY THOSE CALLS WHICH ARE

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[99] *WorldCom, Inc. v. FCC at 430-433.*
[100] Sprint Response at Page 19.

DIALED USING A LOCAL CALL DIALING PATTERN?

A. No. For good reason, in its *ISP Remand Order* the FCC avoided "dialing pattern" considerations all together relative to determining what constituted ISP-bound traffic. Instead, the FCC ". . . adopt[ed] a rebuttable presumption that traffic delivered to a carrier, pursuant to a particular contract, that exceeds a 3:1 ratio of termination to originating traffic is ISP-bound traffic that is subject to the compensation mechanism set forth in this order."[101] Clearly, the FCC's 3:1 ratio for determining what constitutes ISP-bound traffic does not include any consideration of dialing patterns.

Q. IN LIGHT OF THE FCC'S ADOPTION OF THE 3:1 RATIO FOR ISP-BOUND TRAFFIC, WOULD IT BE APPROPRIATE FOR THE COMMISSION TO ADOPT SPRINT'S PROPOSED "LOCAL DIALING" ONLY CRITERIA FOR ISP-BOUND TRAFFIC?

A. No. If the Commission were to do so it would have to modify the FCC's 3:1 ratio language from the FCC's *ISP Remand Order* as follows:

> " . . . adopt a rebuttable presumption that *locally dialed 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 compensation mechanism set forth in this Order."

[101] *ISP Remand Order* at ¶79.

The Commission clearly has no jurisdiction to make this fundamental change in the FCC's *ISP Remand Order*.

Q. WHAT ABOUT SPRINT'S ARGUMENT THAT THE FCC'S ISP REMAND ORDER DEALS WITH ISP-BOUND TRAFFIC THAT WAS "TECHNICALLY WITHIN THE ILEC'S LOCAL CALLING AREA"[102] AND THUS APPLIES ONLY TO LOCALLY DIALED CALLS TO ISPs?

A. This clearly is revisionist history on Sprint's part. The only reason that the FCC primarily dealt with "locally dialed" calls to ISPs in its *ISP Remand Order* is because it was "locally dialed" calls (and not toll calls to which reciprocal compensation did not apply) that the ILECs, including Sprint, were arguing were not "local" calls for reciprocal compensation purposes. In this respect, the FCC did not draw a distinction between "local" or "long distance" ISP-bound traffic based on dialing patterns. Rather, the FCC specifically mentioned "locally dialed" calls in its *ISP Remand Order* because that was the category of calls which was at issue.

Indeed the FCC itself held that calls to ISPs – even if dialed using a local dialing pattern – were primarily interstate in jurisdiction.[103] Thus, even the FCC ignored "dialing patterns" in deciding how to

[102] Sprint Response at Page 20.
[103] *ISP Remand Order* at ¶39.

identify ISP-bound traffic and determining appropriate compensation for such traffic. This Commission should do the same for prevailing law regarding compensation for ISP-bound traffic as forth in the FCC's *ISP Remand Order* does not distinguish what constitutes ISP-bound traffic on the basis of dialing patterns or even whether ISP-bound traffic is local or not. *All* ISP-bound traffic is presumed interstate *and* the pricing mechanism applies to *all* ISP-bound traffic. Accordingly, the Commission is obligated to implement the FCC's *ISP Remand Order* in this arbitration without modifying the same.

ISSUE 9: TRANSPORT OF ISP-BOUND TRAFFIC. (a) Should AT&T be required to compensate Sprint for the transport of ISP-Bound Traffic between Sprint's originating local calling area and a POI outside Sprint's local calling area? (b) Do the compensation obligations change when a virtual NXX is used? (Network Interconnection, Part E, Section 4.2.5)

AT&T's Position: (a) No. Each originating carrier has the obligation to deliver its traffic to the POI to the terminating Party's network and, in accordance with 47 CFR 51.703(b), a LEC may not assess charges on any other carrier for local telecommunications traffic that originates on the LEC's network. (b) No.

Sprint's Position: Resolution of intercarrier compensation is not based solely on the selection of a Section 251(c)(2) POI, but also is impacted by the type and jurisdiction of the traffic transported to and exchanged at the POI. Because ISP-bound traffic is not traffic subject to reciprocal compensation, 47 C.F.R. 51.703(b) does not apply to ISP-bound traffic. However, Sprint will "absorb" the cost of transport for ISP-bound traffic when it is within Sprint's local calling area and only seeks payment when it transports ISP-bound traffic outside of Sprint's local calling area, and then at total element long run incremental rates ("TELRIC").[104]

[104] Sprint Response at Page 20.

Q. IS THIS ISSUE BASICALLY THE SAME AS ISSUE 1 REGARDING POI AND EACH PARTY'S OBLIGATION TO DELIVER ITS ORIGINATING TRAFFIC TO THE RESPECTIVE POI?

A. Yes. Sprint proposes nothing new in this Issue 9 that is not also covered in Issue 1, dealing with POI issues in general. In Issue 9, Sprint merely attempts another "angle" to avoid its lawful obligation to deliver its originating traffic to the POI – this time in the context of ISP-bound traffic. Accordingly, the testimony which I previously provided relative to Issue 1, also applies to this Issue 9. Additionally, because Sprint attempts to "re-define" what constitutes ISP-bound traffic in contravention of the FCC's *ISP Remand Order* in Issue 8, my testimony regarding Issue 8 also applies to Issue 9. However, instead of repeating this testimony here, I am incorporating here my testimony for both Issues 1 and 8 by this reference, and I only will address in this Issue 9 additional testimony regarding Sprint's obligation to deliver ISP-bound traffic to the POI.

ISP-BOUND TRAFFIC IS SUBJECT TO RULE 47 C.F.R. § 51.703(b)

Q. HOW DOES SPRINT PROPOSE THAT AT&T COMPENSATE SPRINT FOR ISP-BOUND TRAFFIC?

A. In a bizarre compensation proposal, Sprint proposes that for Sprint's originated ISP-bound traffic which Sprint delivers to a POI outside of

Sprint's local calling area, Sprint should be allowed to charge AT&T at TELRIC rates for the transport Sprint provides itself for the delivery of its traffic from Sprint's local calling area to the POI. Sprint suggests that AT&T is "getting a deal" with this proposal given that Sprint believes it could charge AT&T access charges for this traffic.[105]

Q. WHAT ARE SPRINT'S ARGUMENTS REGARDING ISP-BOUND TRAFFIC?

A. In Issue 9(a), Sprint argues that its obligation to deliver ISP-bound traffic is not based solely on selection of the POI, but also by the "jurisdiction" of the traffic transported and exchanged at the POI. Furthermore, Sprint argues that by virtue of the FCC's *ISP Remand Order*, ISP-bound traffic is not subject to reciprocal compensation and thus 47 C.F.R. § 51.703(b) does not apply to ISP-bound traffic. This is important because 47 C.F.R. § 51.703(b) prohibits a carrier from charging another carrier for the first carrier's originating traffic. Finally, in Issue 9(b), Sprint argues because (1) ISP-bound traffic can be "virtual NXX" traffic; and (2) the Commission previously ruled in Generic Docket No. 000075-TP that virtual NXX traffic should be compensated based on the "end-points of the particular calls," Sprint is entitled to charge AT&T at TELRIC rates for Sprint's delivery of

[105] Id.

Sprint's originated ISP-bound traffic to a POI outside of Sprint's local calling area.[106]

Q. IS SPRINT CORRECT IN ITS ASSERTION THAT RULE 47 C.F.R. § 51.703(b) DOES NOT APPLY TO ISP-BOUND TRAFFIC?

A. No. 47 C.F.R. § 51.703(b) applies to *all* telecommunications traffic that is not subject to Section 251(g) of the Act, and pursuant to the DC Circuit Court of Appeals, ISP-bound traffic is not subject to Section 251(g) of the Act.[107]

Q. WHAT DOES 47 C.F.R. § 51.703(b) PROHIBIT?

A. 47 C.F.R. § 51.703(b) prohibits a LEC from assessing charges on any other telecommunications carrier for telecommunications traffic that originates on the LEC's network. In other words, it prohibits a LEC from doing exactly what Sprint proposes it be allowed to do in this Issue 9.

Q. PLEASE EXPLAIN THE FCC'S INTERCARRIER COMPENSATION MECHANISM AS IT APPLIES TO ISP-BOUND TRAFFIC.

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[106] Sprint Response at Page 21-22.
[107] *Worldcom, Inc. v. FCC*, 288 F.3d 429 (D.C. Cir. 2000).

A. Using its authority under Section 201 of the Telecommunications Act,[108] the FCC developed an intercarrier compensation mechanism that provides for two payment options for ISP-bound traffic. An ILEC may offer to exchange traffic subject to Section 251(b)(5) and ISP-bound traffic at rate caps established for certain periods – i.e. $.0015 per minute of use (MOU) from June 13, 2001 to December 13, 2001; $.0010 per MOU from December 14, 2001 to June 13, 2003; and $.0007 per MOU from June 14, 2003 until the Commission issues a further order on intercarrier compensation. If an ILEC chooses not to exchange traffic subject to Section 251(b)(5) and ISP-bound traffic under the FCC's rate cap mechanism, then the FCC requires that the ILEC and ALEC exchange ISP-bound traffic at the state adopted reciprocal compensation rate. Neither option permits ILECs to assess access charges for the exchange of ISP-bound traffic.

Additionally, the FCC imposed a cap on the total ISP-bound minutes for which a LEC may receive intercarrier compensation. ISP-bound minutes that exceed the cap are exchanged on a bill and keep basis.[109]

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[108] *See*, 47 U.S.C. § 201, Communications Act of 1934, as amended by the Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56.
[109] Id. at ¶¶7 and 8.

Q. HAS SPRINT OFFERED TO EXCHANGE BOTH SECTION 251(b)(5) TRAFFIC AND ISP-BOUND TRAFFIC AT THE RATE CAPS ESTABLISHED BY THE FCC?

A. Yes.

Q. WHAT WAS THE FCC'S BASIS FOR EXCLUDING ISP-BOUND TRAFFIC FROM SECTION 251(b)(5) TRAFFIC?

A. The FCC expressly stated that all traffic is subject to reciprocal compensation unless it falls within the exceptions set forth in Section 251(g) of the Act. These exceptions are known as the Section 251(g) "carve out." The FCC believed that ISP-bound traffic fell within the Section 251(g) carve out because ISP-bound traffic was a form of "information access" traffic subject to Section 251(g). The Commission then established an intercarrier compensation mechanism for the exchange of such traffic.

Q. HAS THE ISP REMAND ORDER BEEN APPEALED?

A. Yes. In May 2002, the DC Court of Appeals held that the FCC could not subject ISP-bound traffic to the Section 251(g) carve out because this carve out was intended by Congress to preserve certain compensation mechanisms that were in effect *when* Congress implemented the Act, i.e., access payments, and was not meant to create new classes of service within the meaning of the Section 251(g)

carve out.[110] However, the court declined to vacate the FCC's intercarrier compensation mechanism, giving the FCC the opportunity to readdress the issue, which the FCC intends to do in its *InterCarrier Compensation NPRM.*

Accordingly, ISP-bound traffic is "telecommunications" as set forth in 47 C.F.R. § 51.701(b)(1) and is subject to 47 C.F.R. § 51.703(b).

VIRTUAL NXX ISP-BOUND TRAFFIC IS SUBJECT TO 47 C.F.R. § 51.703(b)

Q. PLEASE RESPOND TO SPRINT'S ARGUMENT THAT ISP-BOUND TRAFFIC IS VIRTUAL NXX TRAFFIC, THEREFORE COMPENSATION SHOULD BE BASED ON THE "END POINTS OF A PARTICULAR CALL?"

A. First, in Part E, Section 4.1.1, for non-ISP virtual NXX traffic, AT&T has agreed to abide by the Commission's Order in Generic Docket No. 000075-TP relative to using the "end points" of a call to determine applicable compensation for such calls. Thus, AT&T is not attempting to "re-litigate" non-ISP virtual NXX traffic in this proceeding. On the other hand, Sprint is attempting to have the Commission determine that ISP-bound traffic is virtual NXX traffic.

[110] *WorldCom, Inc. v. FCC* at Pages 430-432.

This is an issue which has industry-wide application and should not be decided in this proceeding. Second, even if the Commission were inclined to determine whether ISP-bound traffic is virtual NXX traffic in the context of this proceeding, it has no jurisdiction to do so. As discussed in greater detail in Issue 8, once the FCC issued its *ISP Remand Order*, state commissions no longer have jurisdiction on over ISP-bound calls, regardless of their "NXX" status. Moreover, in the Commission's Order in Generic Docket 000075-TP, the Commission specifically acknowledged that it no longer has jurisdiction over ISP-bound traffic:

> We note that due to the FCC's recent ISP Remand Order, which removes ISP-bound traffic from state jurisdiction, this issue is limited to intercarrier compensation arrangements for traffic that is delivered to non-ISP customers.[111]

Thus, this Commission already has decided that it has no jurisdiction over ISP-traffic, which would include not only Issue 9(a) and Issue 9(b), but also Issue 8 where Sprint is attempting to limit ISP-bound traffic to calls which are dialed using only a local call dialing pattern.

Q. NEVERTHELESS, IS SPRINT CORRECT IN ITS ASSERTION THAT 47 C.F.R. § 51.703(b) DOES NOT APPLY TO VIRTUAL NXX ISP-BOUND TRAFFIC?

[111] *Florida Reciprocal Compensation Order* at Page 26.

A. No. Again, 47 C.F.R. § 51.703(b) applies to *all* telecommunications traffic that is not subject to Section 251(g) and the DC Circuit has determined that any new classes of traffic, which would include ISP traffic *and* virtual NXX ISP-bound traffic, is not subject to Section 251(g) of the Act.

Q. DOES VIRTUAL NXX ISP-BOUND TRAFFIC FALL WITHIN THE SECTION 251(g) CARVE OUT?

A. No. First, as discussed above, the DC Court of Appeals held that the Section 251(g) carve out was meant to preserve only certain compensation mechanisms that were in effect when Congress implemented the Act, and was not meant to create new classes of service within the meaning of the Section 251(g) carve out.

Therefore, Section 251(g) temporarily "grandfathered" pre-existing federal compensation rules governing "exchange access" and "information access" traffic between, on the one hand, LECs which were in existence on February 8, 1996, and, on the other hand, IXCs or information service providers. There were no such rules in effect with respect to virtual NXX ISP-bound traffic when the Act was passed, therefore Section 251(g) cannot be relied upon by Sprint to excuse its obligation under 47 C.F.R. § 51.703(b).

Q. WHAT SHOULD THE COMMISSION DO RELATED TO THIS ISSUE?

A. The Commission should reject Sprint's proposed language and require that Sprint be financially responsible to transport its traffic from its local calling area to the POI.

ISSUE 10: DIRECT END OFFICE TRUNKING. When should either AT&T or Sprint be required to install and retain direct end office trunking between an AT&T switching center and a Sprint end office? (Network Interconnection, Part E, Section 6.1.4.2)

AT&T's Position: AT&T proposes that installation and retention of direct end office trunking between an AT&T switching center and a Sprint end office not be required until traffic exceeds or is forecast to exceed a single DS1 of Local Traffic during the time consistent busy hour (as measured utilizing the day-to-day variation and peakedness) per month over a period of three (3) consecutive months.

Sprint's Position: Sprint is not certain that there is actually a dispute between the parties on this issue. Sprint's proposed language in Section 6.1.4.2, to which AT&T apparently objects, applies where AT&T is interconnected at a Sprint tandem and the traffic exceeds or is forecast to exceed 220,000 minutes of local traffic per month.

Q. IS ISSUE 10 STILL AN ISSUE IN THIS PROCEEDING?

A. No. Since the filing of AT&T's arbitration petition, the Parties have continued to negotiate various "Open" and "Disputed" issues. As the Parties recently agreed on language for Issue 10, it is no longer an issue in this proceeding. Accordingly, the Parties have agreed not to provide testimony regarding Issue 10.

ISSUE 11: INDIRECT INTERCONNECTION. When should each Party be required to establish a direct interconnection for (a) Indirect Traffic, (b) Transit Traffic[112]? (Network Interconnection, Part E, Sections 15.2 and 15.4.2.3 and Sections 13.2.3 and 13.3)

AT&T's Position: Because AT&T and Sprint have agreed to use one-way directionalized trunks, each Party may determine, in its sole discretion, where and when it will replace indirect interconnection with direct interconnection for both Indirect Traffic and Transit Traffic. As the volume of traffic which each Party terminates to the other Party may differ, one Party's choice to directly interconnect should not prejudice the other Party's ability to choose the most efficient method of interconnection for its traffic.

Sprint's Position: Sprint maintains that when traffic levels reaches a DS-1 equivalent of traffic, AT&T should be required to establish a direct interconnection arrangement with Sprint.[113]

Q. WHAT IS THE DIFFERENCE BETWEEN DIRECT AND INDIRECT INTERCONNECTION?

A. Direct interconnection is the deployment of transmission facilities directly between the two networks being interconnected. Indirect interconnection is the exchange of traffic via the switch facilities (normally a tandem switch) of a third-party carrier. The switching of traffic between two carriers by a third carrier is referred to as transit service. Where Sprint subtends a third carrier's tandem (such as a

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[112] Transit traffic was not included as Issue 11(b) in AT&T's Attachment B to AT&T's arbitration petition (or included as "Disputed" language in AT&T's Attachment C to AT&T's arbitration petition) filed on March 24, 2003 in this proceeding. Transit Traffic became "Disputed" Issue 11(b) only after AT&T filed it arbitration petition in this proceeding. The language proposed by AT&T to resolve this Issue 11(b) is as follows: Part E, Section 13.3.3 "Sprint agrees to transit traffic originating on AT&T's network that is destined to third-party carriers that have an end office switch that subtends Sprint's tandem switch. Sprint will notify AT&T when the transit traffic volume to a certain third party end office reaches a DS1 equivalent of traffic. AT&T may at its discretion enter into discussions and an agreement with the third party to directly interconnect for the exchange of such traffic."

[113] Sprint Response at Page 23.

BellSouth tandem), AT&T seeks to use that third carrier's transit service to exchange traffic with Sprint.

Q. WHAT DOES "SUBTEND" MEAN?

A. Carriers deploy tandem switches to carry traffic between end office switches that exchange smaller volumes of traffic and to carry overflow volumes of traffic during peak periods when direct routes are full. Each end office switch is related to a certain local tandem for local traffic and a certain access tandem for interexchange traffic. Often the same tandem provides both functions. Many end offices switches are related to a single tandem in a hierarchical relationship. In this end office tandem switch relationship, the end office switch is said to subtend the tandem. When a carrier has traffic destined to the end office of another carrier, it may route such traffic through the tandem switch to the subtending end office switch.

Q. WHAT IS THE DIFFERENCE BETWEEN INDIRECT TRAFFIC AND TRANSIT TRAFFIC?

A. Functionally, indirect traffic and transit traffic are identical. However, AT&T and Sprint have agreed to use these terms to mean different types of traffic in their interconnection negotiations in this proceeding. Specifically, the Parties agreed in Part A, Section 1.98, that "indirect traffic" means traffic that originates and terminates

between AT&T's and Sprint's exchange customers that is routed through the transit service of a third party, such as BellSouth. On the other hand, in Part A, Section 1.212, the Parties agreed that "transit traffic" means traffic that originates and terminates between AT&T and a third party carrier that subtends Sprint's tandem switch and is routed through Sprint's transit switch. Clearly, the roll that Sprint plays in indirect traffic (as the originating or terminating carrier) is different that the role it has for transit traffic (where it is the transiting carrier). Sprint's legal obligations differ in each of these roles. Accordingly, I will address this Issue 11 separately for indirect traffic (Issue 11(a)) and transit traffic (Issue 11(b)).

ISSUE 11(a):INDIRECT TRAFFIC

Q. WHAT IS THE INDIRECT TRAFFIC ISSUE?

A. Where Sprint has elected to have its end office switch subtend another ILEC's tandem switch, Issue 11(a) will determine whether there will be some limitations on AT&T's right to interconnect indirectly to Sprint. AT&T takes the position that, as an ALEC, federal rules provide AT&T broad discretion on the location and methods it may employ to interconnect with an ILEC's network and that Sprint may not require AT&T to directly interconnect where Sprint's end office subtends another ILEC's tandem switch. In its

proposed language for Part E, Section 15.1.2, Sprint takes the position that AT&T must directly interconnect to such an end office where the two Parties' traffic collectively reaches a DS-1 threshold.

Q. DOES AT&T BELIEVE IT HAS FULFILLED ITS OBLIGATION UNDER THE ACT BY DELIVERING ITS TRAFFIC TO SPRINT VIA A THIRD PARTY CARRIER'S TANDEM SWITCH?

A. Yes.

Q. HAS SPRINT FULFILLED ITS OBLIGATION UNDER THE ACT BY DELIVERING ITS TRAFFIC TO AT&T VIA A THIRD PARTY CARRIER'S TANDEM SWITCH?

A. Yes, except that if AT&T requests direct interconnection at a Sprint end office, Sprint is required to provide such direct interconnection to AT&T.

Q. DOESN'T SPRINT ALWAYS HAVE TANDEM SWITCHES TO WHICH AT&T MAY DELIVER ITS TRAFFIC?

A. No, not in the case where Sprint elects to have its end office switch(es) subtend another carrier's tandem switch. All carriers, including Sprint and AT&T, must make network engineering decisions regarding how to deploy switching and transmission facilities. Included in these decisions is whether to deploy tandem

switching. If a carrier elects not to deploy its own local tandem capability, it must subtend the local tandem of another carrier within the LATA so it can exchange traffic with other carriers providing exchange services within the LATA.

Q. PLEASE DESCRIBE ISSUE 11(A) REGARDING INDIRECT TRAFFIC IN THE CONTEXT OF SPRINT'S HISTORICAL NETWORK.

A. There are a number of Sprint's end offices for which Sprint has elected to subtend the tandem switch of another carrier, such as BellSouth. Where such circumstance exists, AT&T should have the choice to route local and intraLATA toll traffic originating on AT&T's network that is destined to such a Sprint end office via the other carrier's tandem switch that the Sprint end office subtends. It is AT&T's position that it may fulfill its interconnection obligation under Section 251(a)(1) of the Act by using indirect interconnection and that AT&T, as an ALEC, may select the method of interconnection that it finds to be most efficient. It is Sprint's position that such indirect interconnection is not always allowed. Sprint's position would require AT&T to establish a POI at each Sprint end office when traffic levels reach a DS-1 equivalent of traffic even if such level of traffic would not justify a dedicated trunk group to that location.

Q. WHAT DO YOU UNDERSTAND TO BE AT&T'S OBLIGATION UNDER THE ACT?

A. Section 251(a) of the Act provides that:

> Each telecommunications carrier has the duty (1) to interconnect directly or indirectly with the facilities and equipment of other telecommunications carrier ...

Q. IS IT TECHNICALLY FEASIBLE FOR AT&T AND SPRINT TO EXCHANGE TRAFFIC VIA THE TANDEM SWITCH TO WHICH SPRINT END OFFICE SUBTENDS?

A. Yes. In its *Local Competition Order*, the FCC said:

> We also conclude that preexisting interconnection or access to a particular point evidences the technical feasibility of interconnection or access at substantially similar points.[114]

Today, AT&T uses indirect interconnection to exchange traffic with numerous carriers. In fact, Sprint is the transiting carrier for some of these indirect interconnection arrangements. Evidence for the same can be found in Part E, Section 13.1, where Sprint has agreed to provide transit service between AT&T and other carriers. Indirect interconnection between AT&T and Sprint using another carrier's tandem switch is a substantially similar arrangement, only the roles of the Parties differ. In cases where Sprint subtends another carrier's tandem, AT&T is seeking to use that other carrier's transit service to

[114] *Local Competition Order* at ¶198.

exchange traffic with Sprint, rather than using Sprint's transit service to exchange traffic with another carrier. Accordingly, the technical feasibility of indirect interconnection between AT&T and Sprint is without doubt.

Q. DOES THE ACT REQUIRE SPRINT TO PROVIDE INTERCONNECTION AT ANY TECHNICALLY FEASIBLE POINT USING ANY TECHNICAL FEASIBLE METHOD?

A. Yes. In its *Local Competition Order*, the FCC specifically stated:

> We conclude that, under Sections 251(c)(2) and 251(c)(3), any requesting carrier may choose any method of technically feasible interconnection or access to unbundled elements at a particular point. Section 251(c)(2) imposes an interconnection duty at any technically feasible point; it does not limit that duty to a specific method of interconnection or access to unbundled elements.[115]

Thus, the FCC has specified that AT&T, as the ALEC, should have the choice to interconnect with Sprint, as the ILEC, using the method that lowers AT&T's costs.

Q. MUST SPRINT ALLOW DIRECT INTERCONNECTION UNDER ANY CIRCUMSTANCES?

[115] Id. at ¶549.

A. No, but the circumstances under which Sprint may be relieved of its duty are extremely limited. The FCC stated in its *Local Competition Order*:

> Negative network reliability effects are necessarily contrary to a finding of technical feasibility. Each carrier must be able to retain responsibility for the management, control, and performance of its own network. *Thus, with regard to network reliability and security, to justify a refusal to provide interconnection or access at a point requested by another carrier, incumbent LECs must prove to the state commission, with clear and convincing evidence, that specific and significant adverse impacts would result from the requested interconnection or access.*[116]

In its response to AT&T's petition, Sprint makes no assertion that "significant adverse impacts would result" from indirect interconnection with AT&T. This is because Sprint cannot make such a claim because the very act of Sprint's subtending another carrier's tandem switch means that Sprint accepts traffic from other carriers routed through the tandem switch it subtends. For example, all interexchange carriers have the option to route their traffic to Sprint via another carrier's tandem switch, because Sprint advertises that option in its Local Exchange Routing Guide. For Sprint to say that some carriers may use this option at their choice, while refusing this option to AT&T as an ALEC, is blatantly discriminatory.

[116] Id. at ¶203 (emphasis provided)

Q. WHY DOES AT&T FAVOR INDIRECT INTERCONNECTION?

A. Indirect interconnection is the most efficient method for AT&T and Sprint to exchange *smaller* volumes of traffic, even traffic volumes above a DS-1 threshold. Moreover, AT&T and Sprint have agreed that they will exchange intraLATA traffic using a one-way trunking architecture. AT&T favors this one-way architecture because it provides each Party the ability to determine for itself the most efficient method to deliver its traffic to the other party independent of the method chosen by the other Party. With respect to the issue at hand, where Sprint's end office subtends another carrier's tandem switch, each carrier has the choice whether to route its traffic directly or indirectly to the other carrier. This decision should be based on an engineering analysis that looks at a number of parameters, including traffic volumes, to provide the most efficient solution, and not determined arbitrarily. In general, tandem switching is the most efficient method to route smaller volumes of traffic. Direct trunking becomes efficient only when the originating carrier is routing *substantial* volumes of traffic.

Q. WHAT IS AT&T'S POSITION REGARDING SPRINT'S THRESHOLD REQUIREMENT FOR REQUIRING "DIRECT INTERCONNECTION?"

A. Sprint has a legal obligation to exchange Indirect Traffic through indirect interconnection regardless of the level of traffic exchanged

between AT&T and Sprint unless and until Sprint proves to the Commission, with clear and convincing evidence, that specific and significant adverse impacts would result. Interconnection pursuant to Section 251(c)(2)(B) obligates Sprint to provide interconnection to AT&T at any technically feasible point.

Q. WHAT THRESHOLD OF TRAFFIC DOES SPRINT PROPOSE WOULD REQUIRE AT&T TO DIRECTLY INTERCONNECT WITH SPRINT?

A. In Part E, Section 15.1.2, Sprint proposes that it will notify AT&T when the "total" Indirect Traffic volume reaches a DS-1 equivalent of traffic and that within sixty (60) days thereafter AT&T is to establish direct interconnection with Sprint. Sprint indicates that it will continue to utilize the indirect arrangement for the exchange of traffic so long as AT&T is exercising "best efforts" to implement direct interconnection. However, if Sprint disagrees that AT&T is using its best efforts to implement direct interconnection, Sprint may invoke the "Dispute Resolution," as well as hold AT&T responsible for any third party transit charges incurred by Sprint.

Q. WHAT IS THE PROBLEM WITH SPRINT'S "THRESHOLD" REQUIREMENT?

A. Essentially, Sprint is requiring AT&T to establish direct trunking arrangements that would be highly inefficient and harmful to AT&T in violation of Sprint's obligation to provide interconnection at any technically feasible point pursuant to Section 251(c)(2)(B). Specifically, Sprint proposes to terminate indirect interconnection when "total" indirect traffic reaches a DS-1 equivalent. This is a significant problem because AT&T's traffic engineers evaluate various trunk routes using economic analyses in order to determine when and where AT&T can realize cost savings by establishing direct trunking. Sprint's proposed fixed threshold prevents AT&T from making those decisions, and instead requires it to direct trunk regardless of the economics of the situation.

Q. WHAT IS THE PROBLEM MEASURING 'TOTAL" TRAFFIC VOLUMES?

A. As we discussed earlier in my testimony, AT&T and Sprint have agreed that they will exchange intraLATA traffic using a one-way trunking architecture.[117] Under a one-way trunking architecture, each Party delivers traffic originating on its network to the other Party on a separate transmission path that is sized for the volume of

[117] In Part E, Section 2.1.1, the Parties agreed that they would "... make available to each other, for an interim period, two-way (one way directionalized) trunks..." The Parties have agreed that each will keep its existing two-way trunks to carry traffic in one direction. These trunk groups are installed as two-way for testing purposes, but carry traffic only in one direction. Accordingly, this trunking arrangement is referred to as a "one-way" in my testimony.

originating traffic. The originating Party is provided control over the sizing of its trunks. Accordingly, one-way trunks provide each Party the ability to determine for itself the most efficient location and method to deliver its traffic to the other Party independent of the location and method chosen by the other Party.

A hypothetical example should make the problem with Sprint's proposal clear. In this example, the Sprint end office that subtends a BellSouth tandem and AT&T's switch and Sprint's switch are indirectly interconnected via the BellSouth tandem switch. On average, Sprint delivers 150,000 minutes of use (MOUs) to AT&T each month and AT&T delivers 50,000 MOUs to Sprint each month. Thus, the "total" MOUs would be 200,000. A fully optimized DS-1 trunk group carries 200,000 MOUs per month. Under Sprint's proposal in this example, AT&T must establish a direct trunk group between the AT&T and Sprint switches even though the trunk group would be substantially under utilized. In other words, AT&T would be forced to put in a trunk group that would be only twenty-five percent (25%) utilized. It would be four (4) times more costly to carry traffic across that trunk group than if the trunk group were fully optimized. In such situations, it would be far more efficient for AT&T to transit such traffic via the BellSouth tandem.

Q. WOULD AT&T'S PROPOSAL REQUIRE SPRINT TO CONTINUE TO TRANSIT TRAFFIC TO AT&T?

A. No. Under AT&T's proposal, when the volume of traffic originating on Sprint's network reaches the threshold at which it would be less costly for Sprint to directly connect to AT&T, Sprint is free to order traffic exchange trunks from AT&T to lower its costs.

Q. HOW IS THIS ISSUE 11(A) RELATED TO ISSUE 1 (REGARDING EACH PARTY'S RIGHTS AND OBLIGATIONS TO ESTABLISH POI(S) AND PAY FOR TRANSPORT)?

A. As I explained in my testimony regarding Issue 1, Sprint's proposed language for Issue 1 would substantially increase AT&T's costs for direct interconnection to Sprint's network. The greater AT&T's cost for direct interconnection, the higher the traffic volume threshold must be for direct interconnection to be less costly than indirect interconnection. Moreover, the position that Sprint has taken on Issue 1 – that AT&T must pay a portion of Sprint's interconnection costs – substantially increases the threshold at which AT&T would find it in AT&T's interest to directly interconnect with Sprint. Essentially, Sprint is giving AT&T a "one-two punch," first by requiring direct trunking (even where AT&T's traffic volume may not warrant direct trunks), then second by forcing AT&T to pay a portion of Sprint's direct trunking costs under Issue 1. It is this kind of one-

two punch that makes entering new markets using a facilities-based network prohibitively costly and Sprint knows this to be the case.

Q. IN ITS RESPONSE, SPRINT ASSERTS THAT THE FCC ADDRESSED THIS ISSUE IN THE VIRGINIA ARBITRATION ORDER?[118] IS THIS TRUE?

A. No. First, I was AT&T's witness in that FCC proceeding regarding network interconnection issues, including transit traffic. Sprint's citation to the *Virginia Arbitration Order* concerned Verizon's obligation to provide transit service. It certainly did not concern Verizon's obligation to allow AT&T to indirectly interconnect to Verizon. Moreover, indirect interconnection was not an issue in the *Virginia Arbitration Order* because Verizon has no end offices subtending another ILEC's tandem switch.

That said, there was another issue in the *Virginia Arbitration Order* that is instructive to the Commission in this proceeding. That issue concerned whether AT&T should be required to directly interconnect to a Verizon end office when the traffic volume reached a DS-1 threshold. The FCC held:

> We reject Verizon's proposed language to AT&T and Cox requiring the establishment of direct office trunks when traffic to a particular end office exceeds a DS-1 level. It appears that competitive

[118] Sprint Response at Page 2 and footnote 32.

> LECs already have an incentive to move traffic off of tandem interconnection trunks onto direct trunks, as their traffic to a particular end office increases. By such direct trunking, a competitive LEC may avoid charges associated with Verizon's tandem switching.[119]

The situation between AT&T and Sprint in Florida is exactly the same as between AT&T and Verizon in Virginia, except that in this proceeding AT&T would be using BellSouth's transit service. The FCC believed that AT&T has the economic incentive to make the proper decision to direct trunk when it is efficient to do so. The very same economic conditions govern AT&T's right to indirectly interconnect with Sprint. Accordingly, the Commission should adopt the same result here.

ISSUE 11(b). TRANSIT TRAFFIC

Q. WHAT IS THE TRANSIT TRAFFIC ISSUE?

A. Issue 11(b) will determine what limits, if any, should be imposed on Sprint's obligation to transit traffic originating on AT&T's network that terminates to a third party carrier's end office that subtends Sprint's tandem switch. AT&T takes the position that Sprint, as the ILEC which has deployed tandem switching, is obligated to transit

[119] *Virginia Arbitration Order* at ¶88.

traffic to carriers that subtend its tandem switch irrespective of the volume of traffic exchanged.[120] Because Issue 9(b) only recently was identified by the Parties after AT&T's filed its arbitration petition and Sprint filed its response thereto, AT&T does not know Sprint's exact position regarding Issue 11(b). However, assuming Sprint also holds to its DS-1 traffic volume threshold for transit traffic, questions regarding Sprint's position that concern AT&T include:

1. would the traffic threshold be measured to "*each*" third party end office or among "*all*" end offices owned by the third party? and
2. would the traffic threshold be based "*only on AT&T's originating traffic*" or be based on the "*total*" traffic volume exchange between AT&T and the third party?

Q. DOES SPRINT HAVE A LEGAL OBLIGATION TO TRANSIT TRAFFIC?

A. Yes. If Sprint argues that it has no legal obligation to carry transit traffic and/or that it may decide when and if it will provide such service, AT&T disputes this argument. Sprint does in fact have an obligation to carry transit traffic pursuant to the Act, and it is AT&T, as the ALEC, and not Sprint, as the ILEC, that has the right to decide

[120] The only "exception" to this obligation would be where Sprint proves to the Commission, with clear and convincing evidence, that specific and significant adverse impacts would result. To date, Sprint has not made such a showing to the Commission.

whether it is preferable to directly interconnect with individual ALECs, independent telephone carriers, or wireless providers (collectively referred to as ALECs for purposes of this Issue 11(b)) or to indirectly interconnect to such ALECs by purchasing tandem transit service from Sprint.

Again, although I have not been advised of Sprint's exact position on Issue 11(b), other ILECs have argued that the Act only requires the ILEC to provide interconnection with *its own network*, not to connect two third-party carriers to each other. However, Section 251(c)(2)(A) of the Act requires Sprint to permit ALECs to interconnect with Sprint's network "for the transmission and routing of telephone exchange service and exchange access." The language of the Act does not restrict the duty to interconnect only for traffic between the ILEC and the requesting carrier. Additionally, the language does not state "for the transmission and routing of telephone exchange service and exchange access traffic *between the ILEC and the requesting telecommunications carrier.*" Nor does this Section mention any type of traffic or time limitation. Rather, the statutory language is broad and unrestricted on its face.

Moreover, to the extent that Sprint adopts the position advocated by other ILECs that it should be permitted to discontinue transit service

at some or no threshold of traffic,[121] such a position violates Sprint's obligation to interconnect under the Act because it precludes an ALEC's right, pursuant to Section 251(a)(1) of the Act, to interconnect indirectly with the facilities and equipment of other carriers. Section 251(a)(1) requires ALECs, and other non-incumbent telecommunications carriers, to interconnect directly or indirectly with the facilities and equipment of other carriers. In the *Local Competition Order*, the FCC explained that this requirement granted ALECs the right to determine – based on their economic and technical considerations – whether to interconnect directly or indirectly with other carriers. An indirect connection was specifically described to be an interconnection via the ILEC's network – which is precisely what tandem transit service provides. The relevant portions of the *Local Competition Order* are set forth below:

> Regarding the issue of interconnecting "directly or indirectly" with the facilities of other telecommunications carriers, we conclude that telecommunications carriers should be permitted to provide interconnection pursuant to Section 251(a) either directly or indirectly, based upon their most efficient technical and economic choices. The interconnection obligations under Section 251(a) differ from the obligations under 251(c). Unlike Section 251(c), which applies to incumbent LECs, Section 251(a) interconnection applies to all telecommunications carriers, including those with no market power. Given the lack of market power by telecommunications carriers required to provide interconnection via Section 251(a), and the clear language of the statute, we find that indirect connection (e.g., two non-incumbent LECs

[121] See, Sprint's proposed Part E, Section 13.2.3.

> interconnecting with an incumbent LEC's network) satisfies a telecommunications carrier's duty to interconnect pursuant to Section 251(a).[122]

Additionally, the FCC stated:

> Section 251 is clear in imposing different obligations on carriers depending upon their classification (i.e., incumbent LEC, LEC or telecommunications carrier). For example, Section 251(c) specifically imposes obligations upon incumbent LECs to interconnect, upon request, at all technically feasible points. This direct connection, however, is not required under Section 251(a) of all telecommunications carriers.[123]

Thus, any refusal by Sprint to provide transit service also violates Sprint's Section 251(c)(2)(B) obligation to provide interconnection at any technically feasible point. The FCC rule implementing Section 251(c)(2)(B), 47 C.F.R. § 51.305(a)(2)(iii), makes it clear that "trunk interconnection points for a tandem switch" are technically feasible points. Thus, as noted above, because Sprint has the obligation to permit an ALEC to indirectly interconnect with it for the exchange of ALEC to ALEC traffic, such interconnection must also be allowed at any technically feasible point – which includes the tandem switch.

Failure to provide transit service may also violate Sprint's obligation to provide just, reasonable and nondiscriminatory interconnection pursuant to Section 251(c)(2)(D). The issue of whether a violation of

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[122] *Local Competition Order* at ¶997.
[123] Id.

this Section has occurred requires a fact-based inquiry. To the extent that Sprint suggests that its refusal to provide transit service is based on its concerns with tandem exhaust, it would be necessary to identify the actual level of tandem traffic for each tandem switch in question in order to determine if the refusal is reasonable and nondiscriminatory. In order for Sprint to justify refusal to provide interconnection or access at a point requested by another carrier, it must prove with competent, material and substantial evidence that specific and significant adverse impacts would result from the requested interconnection or access. Sprint has not provided any type of specific information that would demonstrate such significant adverse impacts.

Even if Sprint must bear the cost to deploy additional tandem capacity to its network to accommodate indirect interconnection at its tandem switches, that does not meet the "significant adverse impact" standard established by the FCC.[124] TELRIC rates for tandem interconnection would fully compensate Sprint for its forward-looking costs to deploy additional capacity.

Q. WHAT HAS THE FCC SAID ABOUT THIS ISSUE?

[124] See, *Local Competition Order* at ¶203.

A. This same Issue 11(b) was decided by the FCC's Wireline Competition Bureau in the *Virginia Arbitration Order.* To the extent Sprint alleges that the FCC's Wireline Competition Bureau confirmed that an ILEC has no obligation to provide transit service, the FCC's Wireline Bureau made no such conclusion. Rather, the FCC's Wireline Competition Bureau noted:

> While Verizon as an incumbent LEC is required to provide interconnection at forward-looking cost under the Commission's [FCC] rules implementing section 251(c)(2), *the Commission has not had occasion to determine whether incumbent LECs have a duty to provide transit service under this provision of the statute, nor do we find clear Commission precedent or rules declaring such a duty.*[125]

Thus, the FCC's Wireline Competition merely decided to avoid making a decision on this Issue 11(b). More specifically, rather than exercising its delegated authority, the FCC's Wireline Competition "declined" to make a determination in the absence of a clear precedent from the full Commission.

Q. WHAT ABOUT STATE DECISIONS ON THIS ISSUE?

A. The California, Michigan, and Ohio Commissions all have found that ILECs have an obligation to provide transit services to ALECs without

[125] *Virginia Arbitration Order* at ¶117.

limitation.[126]

Q. WHAT ARE THE PRACTICAL IMPLICATIONS TO SPRINT'S REFUSAL TO TRANSIT TRAFFIC?

A. It is common among the industry today for carriers that are indirectly interconnected to exchange transit traffic on a bill and keep basis without executing an interconnection agreement. Thus, this practice of indirect interconnection is efficient from both a traffic routing perspective and from an administrative perspective. The financial and operational effect of implementing direct interconnection with numerous carriers would be substantial. The direct interconnection requirement advocated by Sprint would require those carriers to enter into interconnection agreements and resolve a broad range of issues. These include: one-way versus two-way trunking, billing and recording, signaling, and allocation of interconnection expenses between the Parties. All of these issues would have to be negotiated between the Parties – not an insignificant task, especially where, as

[126] *Application of AT&T Communications of California, Inc. (U 5002 C), et al., for Arbitration of an Interconnection Agreement with Pacific Bell Telephone Company Pursuant to Section 252(b) of the Telecommunications Act of 1996*, Docket No. 00-01-022, at 472, 473 (CA PUC Aug. 3, 2000); Decision of Arbitration Panel, *AT&T Communications of Michigan, Inc. and TCG Detroit's Petition for Arbitration*, Case No. U-12465 at 20, (Oct. 18, 2000) (The Michigan Public Service Commission affirmed this portion of the Arbitration Panel by Order dated November 20, 2000 at 8); Arbitration Panel Report, *AT&T Communications, Inc., Petition for Arbitration of Interconnection Rates, Terms, and Conditions and Related Arrangements with Ameritech Ohio Pursuant to Section 252(b) of the Telecommunications Act of 1996*, Case No. 00-1188-TP-ARB at 84-85, (March 19, 2001).

with ALECs and CMRS providers, there is no right to compel arbitration.

Use of an ILEC's local tandem is essential to an ALEC's ability to exchange traffic with smaller LECs, wireless companies, and other ALECs where direct interconnection of facilities is commercially impractical. Even aside from the commercial impracticability of such direct interconnection, the time and expense required to negotiate (if possible) interconnection agreements with a myriad of smaller carriers would by itself significantly impede the development of local competition and would do so unnecessarily.

If ALECs are not able to use the ILEC's existing local tandems to transmit calls to – and receive calls from – carriers already receiving ILEC traffic through those tandems, the ALECs' customers will be unable to deliver calls to or receive calls from customers served by those small carriers. This inability to provide a complete calling package would place ALECs at an additional competitive disadvantage to ILECs and would further delay the deployment of facilities-based local competition. Congress clearly did not intend such a result when it passed the Act in order to bring the benefits of local exchange competition to all consumers.

Q. ARE THERE ALSO DISCRIMINATION CONCERNS ASSOCIATED WITH SPRINT'S POSITION?

A. Yes. Sprint's proposal regarding indirect interconnection targets AT&T's use of Sprint's transit service, but Sprint does not impose similar restrictions on traffic from interexchange carriers that is routed through Sprint's tandems, presumably because Sprint collects higher-priced access charges for this traffic. Compared to the volume of traffic which interexchange carriers pass through Sprint's tandems, the volume of AT&T's Transit Traffic is de minimus. Yet the effect of imposing the costs to establish a direct interconnection on AT&T would be significant. Thus, it seems apparent that Sprint's true intention simply is to impose inefficient and expensive interconnection requirements on AT&T as a "local" provider and "local" competitor to Sprint.

Q. BUT COULDN'T THERE BE NEGATIVE INDUSTRY IMPLICATIONS IF THE COMMISSION DOES NOT IMPOSE A DIRECT INTERCONNECTION REQUIREMENT AT SOME TRAFFIC THRESHOLD?

A. I do not believe this to be the case. However, if the Commission is concerned that ILECs in general are experiencing an amount of tandem exhaust that could negatively affect the development of an efficient network, it would be appropriate for the Commission to

examine the issue in a generic proceeding, where it can solicit a broad range of industry input to identify the extent of the problem and, if a problem in fact exists, it could craft a solution that is tailored to the problem's true parameters and that will apply to all industry sectors, as appropriate. Moreover, the FCC is expected to rule on this matter in its pending *Intercarrier Compensation NPRM*. The Commission cannot and should not try to address such an industry wide issue in the context of an individual arbitration. Instead, it should affirm Sprint's existing obligation to provide indirect interconnection without regard to traffic levels until the Commission has an opportunity to determine whether a limit on this obligation is in the public interest.

ISSUE 12: Should Sprint be required to continue to provide its DSL service when AT&T provides the voice service to the customer? (Unbundled Network Elements, Part D, Section 6.15.1)

AT&T's Position: Sprint is required to continue to provide its retail Fast Connect DSL service to a customer when AT&T provides voice service to such customer through either facilities owned totally by AT&T or through UNE-loop or UNE-P provided by Sprint to AT&T.

Sprint's Position: Nothing in state or federal law allows the Commission to require Sprint to continue providing its retail Fast Connect DSL service when a customer switches to AT&T for its voice service.[127]

Q. PLEASE DESCRIBE WHAT IMPACT THIS ISSUE HAS ON THE LOCAL TELECOMMUNICATIONS MARKET IN FLORIDA.

[127] Sprint Response at Page 25.

A. Like many other ILECs, Sprint provides its local customer with a "retail" digital subscriber line ("DSL") service known as "Fast Connect DSL." When AT&T competes with Sprint through facilities owned totally by AT&T, or by AT&T obtaining UNE loops or UNE-P from Sprint, and a Sprint voice and Fast Connect DSL service customer switches to AT&T for local service, Sprint proposes to discontinue providing its retail Fast Connect DSL service to the new AT&T customer. Given that there are no operational or technical impediments which would require Sprint to discontinue this service, Sprint proposes to do so solely for anticompetitive purposes. Sprint knows that for those customers who have become accustomed to the faster speeds afforded by DSL service over traditional dial-up service, not having the opportunity to retain their Fast Connect DSL service would be a significant disadvantage for customers switching from Sprint to AT&T for local service. As a result, Sprint is attempting to thwart competition in Florida. This is clearly anticompetitive and violates several federal and state laws.

Q. SPECIFICALLY, TO WHICH FEDERAL AND STATE LAWS ARE YOU REFERRING?

A. Sprint's proposed language violates the "nondiscrimination" and "unreasonable denial of service" provisions of Section 201 of the Communications Act of 1934, as amended by the

Telecommunications Act of 1996, as well as Sections 364.03(1), 364.08(1), and 361.10, Florida Statutes.

Q. WHAT IMPACT DID THE FCC'S LINE SHARING ORDER HAVE ON THE COMMISSION'S JURISDICTION TO REQUIRE SPRINT TO CONTINUE TO OFFER ITS FAST CONNECT DSL SERVICE WHEN AT&T PROVIDES VOICE SERVICE TO THE CUSTOMER?

A. In its *Line Sharing Order*,[128] the FCC specifically provided that a state commission may impose additional line sharing requirements. The FCC stated:

> It is impossible to predict every deployment scenario on the difficulties that might arise in the provision of the high frequent loop spectrum network element. States may take action to promote our overarching policies, when it is consistent with the rules established in this proceeding.[129]

The FCC further emphasized that " . . . states may, at their discretion, impose additional or modified requirements for access to this unbundled network element, consistent with our national policy framework."[130]

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[128] *In the Matter of Deployment of Wireline Services Offering Advanced Telecommunications Capability*, FCC Order No. 99-305; 14 FCC Rcd 20912 (1999); remanded and vacated line sharing requirement, *United States Telecom Assn. v. FCC*, No. 00-1012, (DC Cir., May 24, 2002), ("*Line Sharing Order*").

[129] *Line Sharing Order* at ¶225.

[130] Id.

Q. DOES FLORIDA LAW REQUIRE THE COMMISSION TO REMOVE BARRIERS TO COMPETITION AND ALSO PROMOTE COMPETITION?

A. Absolutely. Section 362.01(4)(g), Florida Statutes, provides a mandate to the Commission to remove barriers to competition while Section 361.04(4)(b) Florida Statutes, requires the Commission to promote competition.

Q. HAS THE COMMISSION ADDRESSED THIS ISSUE IN ANOTHER PROCEEDING?

A. Yes. In a recent arbitration between Florida Digital Network, Inc. ("FDN") and BellSouth, the Commission dealt with several issues related to BellSouth's attempt to no longer provide customers with BellSouth's Fast Access® Internet Service ("FASTACCESS") once the customer switched to FDN for local service using UNE loops provided by BellSouth. In this arbitration, the Commission held:

> Similarly, Section 202 of the Act, among other things, precludes a common carrier from making an unjust or unreasonable discrimination in practice and service, directly or indirectly. BellSouth's practice of disconnecting its FASTACCESS service unduly prejudices or penalizes those customer's who switched their voice service, as well as their new carrier. The FCC's [*Line Sharing Order*] is distinguishable here, because in this case BellSouth's practice of disconnecting its FASTACCESS Internet Service

> has a direct, harmful impact on the competitive provisioning of local telecommunications service.[131]

Having made this policy decision, the Commission then stated:

> Thus in the interest of promoting competition in accordance with state and federal law, BellSouth shall continue to provide FASTACCESS even when BellSouth is no longer the voice provider because the underlying purpose of such a requirement is to encourage competition in the local exchange market, which is consistent with Section 251 of the Act and with Chapter 361, Florida Statutes.[132]

Q. UNDER WHAT CIRCUMSTANCES DID THE COMMISSION REQUIRE BELLSOUTH TO PROVIDE ITS FASTACCESS SERVICE WHEN FDN PROVIDED VOICE SERVICE TO THE CUSTOMER?

A. After considering various motions for reconsideration, in Order No. PSC-02-1453-FOF-TP, the Commission confirmed that BellSouth was obligated to continue providing its FASTACCESS service whenever the customer switches to FDN for voice service provided by FDN over a UNE loop provided by BellSouth.[133]

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131 In RE: *Petition by Florida Digital Network, Inc. for Arbitration of Certain Terms and Conditions of Proposed Interconnection and Resale Agreement with BellSouth Telecommunications, Inc. Under the Telecommunications Act of 1996*; FL PSC Docket No. 010098-TP, Order PSC-02-0765-FOF-TP, June 5, 2002, at Page 10, ("*FDN Arbitration Order*").

132 Id.

133 *In Re: Petition by Florida Digital Network, Inc. for Arbitration of Certain Terms and Conditions of Proposed Interconnection and Resale Agreement with BellSouth Telecommunications, Inc. Under the Telecommunications Act of 1996*; FL PSC Docket No. 010098-TP, Order PSC-02-1453-FOF-TP, October 21, 2002, at Page 7-8, ("*FDN Reconsideration Order*").

Q. DID THE COMMISSION SUBSEQUENTLY "EXPAND" ITS ORDER IN THE FDN PROCEEDING TO ALSO REQUIRE BELLSOUTH TO CONTINUE TO PROVIDE ITS FASTACCESS SERVICE WHENEVER THE CUSTOMER SWITCHES TO ANOTHER CARRIER FOR VOICE SERVICE WHICH IS PROVIDED OVER UNE-P PROVIDED BY BELLSOUTH?

A. Yes. In a subsequent arbitration between BellSouth and Supra Telecommunications and Information Systems, Inc. ("Supra") in FL PSC Docket No. 001305-TP, the Commission held that BellSouth also was obligated to continue to provide its FASTACCESS service when the customer switches its voice service to Supra and Supra was providing such voice service over UNE-P provided by BellSouth.[134]

Q. ARE BELLSOUTH'S FASTACCESS DSL SERVICE AND SPRINT'S FAST CONNECT DSL SERVICE SIMILAR SUCH AS TO JUSTIFY THE COMMISSION CONSIDERING ITS PRIOR ORDERS IN THE FDN AND SUPRA ARBITRATION AS HAVING PRECEDENTIAL VALUE IN THIS PROCEEDING?

A. Absolutely. The same policy and competition goals that were at stake in the FDN and Supra arbitrations also are at stake in this

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[134] *In Re: Petition by BellSouth Telecommunications, Inc. for Arbitration of Certain Issues in Interconnection Agreement with Supra Telecommunications and Information Systems, Inc.*, FL PSC Docket No. 001305-TP, Order PSC-02-0878-FOF-TP, July 1, 2002, at Page 50, ("*Supra Interconnection Order*").

proceeding. Accordingly, the Commission should follow its prior decisions in this proceeding and require Sprint to continue to offer its Fast Connect DSL service to any Sprint voice customer who switches to AT&T for local service. This should be the case when AT&T provides voice service to such customer through facilities owned totally by AT&T or through UNE loop or UNE-P provided by Sprint or AT&T.

ISSUE 13: What are the Parties' rights and obligations following a Legally Binding Action (as defined by agreement of the Parties in Section 1, Part B of the agreement) if such action is not stayed but still subject to review by the Commission, FCC or courts? (Change-In-Law, Terms and Conditions, Part B, Section 1.6)

AT&T's Position: AT&T's position is that, even if the appropriate authority has declined to issue a stay of an otherwise effective decision, either Party to the interconnection agreement may request that the Commission make a determination that the decision should not be "re-negotiated" in the interconnection agreement (effectively staying the issue as to AT&T and Sprint) until any pending appeals are concluded.

Sprint's Position: Sprint's position is that either party may initiate negotiations of an amendment to the agreement to implement an effective legislative, regulatory, or judicial decision, unless the decision has been stayed by the appropriate authority.[135]

Q. WHAT LANGUAGE IS IN DISPUTE RELATIVE TO ISSUE 13?

A. In Part B, Section 1.6, AT&T has proposed the following language:

> Additionally, either Party may petition the Commission for a determination during any portion of the period during which a Legally Binding Action as defined in Section 1.4 above remains subject to review by the Commission, the

[135] Sprint Response at Page 26.

> FCC, or the courts, and has not yet become final and non-reviewable, that the Parties should defer the renegotiation of mutually acceptable terms or any related Dispute Resolution activity, described in Section 1.4 hereof.

Obviously, this language involves situation where a regulatory, judicial or other legal action ("Legally Binding Action") has occurred and the Parties are required by such Legally Binding Action to renegotiate their interconnection agreement to reflect such Legally Binding Action. AT&T's proposed language for Part B, Section 1.6, provides both Parties with the opportunity to petition the Commission to delay renegotiation of the interconnection agreement until the Legally Binding Action has become "final and non-reviewable." Given that since passage of the Act many regulatory, judicial or other legal actions in the telecommunications industry have been subject to years of further regulatory or judicial review, AT&T's proposed language allows the Parties to avoid lengthy and contested renegotiation of their interconnection agreement while further reviews and taking place. This would not only promotes efficiencies in interconnection negotiations between AT&T and Sprint, but it also would provide regulatory economy for the Commission in that the Commission's time would not be consumed with approving amendments to interconnection agreements when further reviews (and thus further renegotiations and further amendments) are possible.

Q. DOES AT&T'S PROPOSED LANGUAGE PROVIDE AT&T WITH AN "AUTOMATIC" RIGHT TO AVOID RENEGOTIATING ITS INTERCONNECTION AGREEMENT WITH SPRINT?

A. Absolutely not. AT&T's language only allows it to petition the Commission for a determination as to whether the time is right to renegotiate the interconnection agreement while further regulatory or judicial reviews are possible. If the Commission grants AT&T request, the Commission will establish the parameters for when the renegotiation shall take place. If the Commission denies AT&T's request, the renegotiation would proceed under Part B, Section 1.4. Thus, there is very little risk to Sprint that AT&T will be able to improperly control renegotiation of any Legally Binding Action. Instead, the Commission will control such process to the extent AT&T or Sprint seeks to avoid immediate renegotiation of the interconnection agreement and petitions the Commission for such a delay under AT&T's proposed Part B, Section 1.6.

ISSUE 14: Should the terms and conditions of the performance measures approved by the Commission be incorporated by reference into the interconnection agreement, or should separate terms and conditions be set forth in the interconnection agreement? (Performance Measures, Part H)

AT&T's Position: Performance measures approved by the Commission should be incorporated into the interconnection agreement between AT&T and Sprint.

Sprint's Position: The interconnection agreement between AT&T and Sprint should not incorporate performance measures approved by the Commission. Sprint is bound to comply with such performance measures without having them made a part of the interconnection agreement by reference or otherwise.[136]

Q. WHY DOES AT&T BELIEVE THAT THE PERFORMANCE MEASURES APPROVED BY THE COMMISSION FOR SPRINT SHOULD BE INCORPORATED INTO THE INTERCONNECTION AGREEMENT BETWEEN AT&T AND SPRINT?

A. The purpose of an interconnection agreement is to establish a contractual relationship between the Parties such that if one Party breaches the agreement it is legally obligated to the other Party for such breach. Only through such contractual arrangements are the Parties bound and obligated to one another. Because the interconnection agreement lays out in detail how the Parties are to meet their obligations, it should include performance measures approved by the Commission for Sprint. As obligations change (either through mutual agreement or subsequent regulatory action), the Parties negotiate changes to the interconnection agreement in order to conform it to such mutual agreement or regulatory action. This happens for all other obligations between the Parties under the interconnection agreement and performance measures should be no

[136] Sprint Response at Page 28.

exception. If Sprint fully intends to be bound and comply the performance measures approved by the Commission, Sprint should have no reservations whatsoever with including performance measures in its interconnection agreement with AT&T.

Q. ARE THERE OTHER REASONS WHY AT&T WANTS TO INCORPORATE SPRINT'S PERFORMANCE MEASURES INTO THE INTERCONNECTION AGREEMENT BETWEEN AT&T AND SPRINT?

A. Yes. Having performance measures as a part of the interconnection agreement insures that both Parties are using the same set of measures for evaluating Sprint's performance. In this respect, there can never be a dispute between the Parties as to which measures apply to Sprint's performance. The Parties only would need to look to one document which sets forth Sprint's performance measures, rather than having to look to an interconnection agreement, as well as an internet webpage to capture the same completeness of Sprint's obligations, and possibly even additional documents. Moreover, if the interconnection agreement contains Sprint's performance measures, any changes to these performance measures as ordered by the Commission would require both Parties to negotiate and execute an appropriate amendment to the interconnection agreement to incorporate the Commission's ordered changes. This allows AT&T the

opportunity to have an in-depth understanding of what changes have been ordered by the Commission from Sprint's perspective, as well as how such changes will impact Sprint's performance under its interconnection agreement with AT&T. Because both Parties routinely execute amendments to their interconnection agreements, no additional process would be necessary to make either mutually agreed to or Commission ordered changes to Sprint's performance measures. Moreover, performance measures are developed by the Commission and implemented through a Commission Order. AT&T has no ability to enforce a Commission Order, but it does have the ability to enforce its interconnection agreement with Sprint. Accordingly, AT&T needs the ability to enforce Sprint's performance measures in its own right. In this respect, the Commission's benefits from AT&T having Sprint contractually obligated to perform such performance measures and by AT&T closely monitoring Sprint's performance. Such will motivate Sprint's performance on an on-going basis.

Q. WHAT EXACTLY IS SPRINT'S POSITION ON THIS ISSUE 14?

A. Sprint's position appears to have changed from when Sprint filed its response to AT&T's arbitration petition. Initially, Sprint balked at incorporating performance measures into the interconnection agreement based on its belief that AT&T was attempting to "add to" or supplement the performance measures ordered by the Commission.

However, during negotiations in the past few weeks, AT&T has assured Sprint that this is not the case, and that AT&T only seeks to incorporate into the interconnection agreement those performance measures ordered by the Commission. Despite this clarification, Sprint continues to refuse to incorporate performance measures into the interconnection agreement.

Again, if Sprint intends to fully comply with the Commission's ordered performance measures, it should have no objections to incorporating those performance measures into its interconnection agreement with AT&T.

Q. DOES THIS COMPLETE YOUR TESTIMONY ON ALL ISSUES IN THIS PROCEEDING?

A. Yes it does.