AT&T FLORIDA

REBUTTAL TESTIMONY OF LANCE MCNIEL

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

DOCKET NO. 100176-TP AND DOCKET NO. 100177-TP

OCTOBER 6, 2010

ISSUES
II.B.2, IV.F.1,
IV.F.2 and IV.G.2.

I. INTRODUCTION

Q. PLEASE STATE YOUR NAME.

A. My name is Lance McNiel. I am the same Lance McNiel who filed Direct Testimony on behalf of AT&T in this matter on August 30, 2010.

Q. WHAT IS THE PURPOSE OF YOUR REBUTTAL TESTIMONY?

A. My Rebuttal Testimony addresses certain assertions made by Sprint witnesses Mr. Sywenki and Mr. Felton in their Direct Testimonies filed on August 25, 2010. Specifically, I address issues those witnesses raised in regard to DPL Issues II.B.2, IV.F.1, IV.F.2 and IV.G.2.

II. DISCUSSION OF ISSUES

DPL ISSUE II.B.2

Should the ICAs include Sprint's proposed language that would permit Sprint to combine its CMRS wireless and CLEC wireline traffic on the same trunk groups that may be established under either ICA?

Contract Reference: Attachment 3, Section 2.5.4(b)

Q. IN HIS DIRECT TESTIMONY SPRINT WITNESS MR. SYWENKI STATES, "IT IS IMPORTANT TO DECIDE THE ISSUE OF MULTI-USE TRUNKING SEPARATE FROM THE ISSUE OF TRAFFIC RATES BECAUSE IT IS FUNDAMENTALLY A DIFFERENT ISSUE." (SYWENKI DIRECT P. 65 L. 4). DO YOU AGREE WITH MR. SYWENKI?

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

originating and terminating NPA-NXX of that call that determines the appropriate rate AT&T will charge Sprint. Therefore, the two issues are not separate, but are rather two sub-issues that are part of a single issue – that is, whether AT&T will be able to more accurately bill Sprint, using actual call data, for calls Sprint delivers to AT&T's tandem for termination. Under Mr. Sywenki's paradigm of a single trunk group, the answer is "no" since a given trunk group can only be associated with a single billing arrangement.

Q. MR. SYWENKI CLAIMS THAT "SPRINT'S POSITION IS BASED ON ITS DESIRE TO MORE EFFICIENTLY INTERCONNECT WITH AT&T." (SYWENKI DIRECT P. 65 L.9). HOW DO YOU RESPOND?

A. Mr. Sywenki is obviously only considering the well known network architecture principle that one large trunk group generally is more efficient than two smaller trunk groups. However, Mr. Sywenki ignores the fact that under Sprint's proposed network design, AT&T will not be able to accurately bill Sprint for terminating its calls. That is anything but efficient. Based on that reality alone, the parties must agree to separate the Sprint wireless originating traffic from its wireline originating traffic so that AT&T can apply the appropriate rates to the calls that arrive at its tandem from Sprint.

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

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

Q. MR. SYWENKI CLAIMS THAT CHANGES IN THE INDUSTRY REQUIRE SPRINT TO CONVERGE ITS WIRELESS AND WIRELINE TRAFFIC ONTO A SINGLE TRUNK GROUP. HE ALSO CLAIMS THAT "SERVICES AVAILABLE TODAY ALLOW A USER TO HAVE A SINGLE TELEPHONE NUMBER ASSIGNED TO BOTH A MOBILE AND DESK TELEPHONE. THIS CREATES THE SITUATION WHERE IT MAY NOT BE DETERMINABLE WHETHER A PARTICULAR CALL IS A WIRELINE CALL OR A WIRELESS CALL IN THE HISTORICAL SENSE UNTIL THE USER ANSWERS EITHER HIS WIRELINE TELEPHONE OR HIS WIRELESS TELEPHONE BECAUSE THE TWO TELEPHONES ARE EFFECTIVELY INTEGRATED INTO A SINGLE SERVICE WITH A SINGLE TELEPHONE NUMBER." (SYWENKI DIRECT P. 65 L. 17). HOW DO YOU RESPOND?

A. I would submit that Mr. Sywenki is looking at the call scenario from the wrong direction. Whether a call was wireless or wireline is not determined by the type of handset that *answers* the call. Rather, the issue for AT&T is whether the call was originated by a Sprint wireless or a Sprint wireline end user. While Mr. Sywenki correctly notes that a party may be able to switch back and forth between a wireless and wireline handset using the same telephone number, he ignores the fact that the originating carrier (one of the Sprint entities in this case) is the only party that knows whether a given call originated on its respective wireless or wireline network. And the manner in which the call is originated (*i.e.*, over the wireline or wireless network) determines the appropriate compensation for the call between Sprint and AT&T. The originating carrier should, therefore, be able to separate its wireless originations from its wireline originations on to unique trunk groups so that the appropriate compensation schemes can be applied.

Q. MR. SYWENKI FURTHER STATES THAT "IN ADDITION, THE USER OF SUCH AN INTEGRATED SERVICE HAS THE ABILITY TO SWITCH BETWEEN THE WIRELESS TELEPHONE AND THE DESK TELEPHONE DURING A CONVERSATION. THIS REALITY CREATES THE SITUATION

WHERE CARRIERS EXCHANGING TRAFFIC OVER SEGREGATED TRUNKS WILL NOT KNOW WHICH TRUNK TO PLACE THE CALL ON BECAUSE ITS TRUE NATURE IS NOT KNOWN UNTIL THE CALL IS ANSWERED, AND MAY CHANGE MID-CONVERSATION." (SYWENKI DIRECT P. 65 L. 23). HOW DO YOU RESPOND?

A. Mr. Sywenki's assertion in that regard is a red herring. The question again is how the call was originated, because it is the initial call set-up that determines on which of the AT&T proposed separate trunk groups Sprint should route the call. When a Sprint wireless end user originates a call, Sprint knows that it is a wireless handset making the origination. Likewise, when a Sprint wireline end user places a call, Sprint knows that it is a wireline handset that placed the call. The fact that the end user changes technologies in mid call should have no bearing on that initial call set-up[1] and the rate Sprint is charged is based on that initial origination.

In fact, if I understand his scenario correctly, the "problem" he purports to be describing makes no sense. Even if a call originated on a Sprint wireless telephone, and the caller later transferred it to a Sprint wireline desk telephone, the call would remain connected to the called party throughout that transfer process[2] on the same trunk on which it was originally routed to AT&T's tandem. That is, the call remains stable from AT&T's perspective.

Again, the issue for AT&T is whether the call, as originally dialed, originated on Sprint's wireless network or Sprint's wireline network. Only Sprint knows for sure on which network the call originated; therefore, only Sprint can segregate the traffic at the originating end so that the appropriate billing rates can be applied by

[1] Just as the second leg of a three way call has no bearing on the initial call set up.
[2] Much like a call transfer on a Private Branch Exchange ("PBX") or central office based Centrex system.

AT&T. In citing the above mid-call transfer scenario, Mr. Sywenki does not clearly state whether a single trunk group is required by Sprint in order to allow that specific product to function nor does he state that Sprint cannot make the product work if the parties establish two separate trunks groups. He merely claims that, "The very nature of services being provided within the industry and by Sprint ***will*** require the combining of the different traffic types" (Sywenki Direct p. 65, l. 16) (***emphasis added***). As mentioned above, Mr. Sywenki does not say that Sprint is unable to separate its wireless originated traffic from its wireline originated traffic, but merely cites network efficiencies and unknown and un-described new features as the main reason Sprint needs a single trunk group. In doing so Mr. Sywenki ignores the fact that the OBF compliant billing systems in use today are not designed to switch from one billing rate to another in mid-conversation – the billing systems instead bill by reference to the manner in which the call is originated.

Q. UNDER THE AT&T PROPOSED LANGUAGE, THE PARTIES WOULD BE REQUIRED TO HAVE SEPARATE TRUNK GROUPS FOR THE SPRINT WIRELESS AND WIRELINE ORIGINATIONS, THEREBY RESULTING IN MORE ACCURATE BILLING. USING MR. SYWENKI'S EXAMPLE OF A MID-CONVERSATION TRANSFER FROM A WIRELESS HANDSET TO A WIRELINE HANDSET, WOULDN'T THE BILLING FOR THE POST TRANSFER PORTION OF THE CALL BE INCORRECT?

A. No. If I understand Mr. Sywenki's Testimony, the transfer from the Sprint wireless handset to the Sprint wireline handset, during a stable call, occurs solely within Sprint's network, not AT&T's network. The call as originally dialed remains stable over the dedicated trunk group – whether wireline or wireless – between the parties. Therefore, AT&T's portion of the call does not change, nor does the proper compensation to be applied to the call. If the call originated as a wireless call, and

thus was initially delivered to AT&T over a trunk group dedicated to Sprint wireless end user originations, then the call will remain stable on that trunk group until the conversing parties end the call, regardless of any wireless to wireline transfer that may have occurred within the Sprint network. AT&T would bill the wireless rate for the entire call because AT&T has no idea that Sprint's end user changed his or her handset mid-call. Nor would AT&T ever know that such a transfer occurred since it occurred within the Sprint network.

Q. HAS MR. SYWENKI QUANTIFIED THE NUMBER OF CALLS SPRINT EXPECTS TO DELIVER THAT WILL UTILIZE THE MID-CONVERSATION TRANSFER PROCESS HE DISCUSSES?

A. No, he has not presented any evidence as to how many mid-conversation transfers may occur per day, and I believe it is safe to assume that such calls would represent a very small proportion of the calls between Sprint and AT&T. Nonetheless, AT&T's position regarding issue II.B.2 has been very clear. AT&T wants to be sure that it is billing Sprint accurately. To ensure that accuracy, AT&T has proposed that the parties establish a dedicated trunk group for Sprint wireless originations and a dedicated trunk group for Sprint wireline originations. If Sprint's language should prevail, the parties will be required to resort to some kind of yet to be determined factoring arrangement or a bill and keep arrangement[3] that, in the case of factoring, would allow for a percentage of wireless originations versus a percentage of wireline originations over the combined trunk group rather than relying on actual billing

[3] Sprint may propose to use a bill and keep arrangement if the parties' traffic is roughly balanced. However, one must look at traffic on a company-by-company basis to determine that balance and mixing CLEC and CMRS traffic on a single trunk group will make that exercise difficult if not impossible to do.

records. Moreover, as explained above, such factors would not properly compensate AT&T based on the manner in which the call is originated.

Q. MR. SYWENKI CLAIMS THAT "MORE EFFICIENT INTERCONNECTION AND THE RESULTING REDUCTION IN INTERCONNECTION COST *DOES SERVE THE PUBLIC INTEREST. IN A COMPETITIVE MARKET, A* REDUCTION IN COSTS EITHER LEADS TO A REDUCTION IN PRICE OR SOME OTHER IMPROVEMENT, WHICH IS IN THE PUBLIC INTEREST." (SYWENKI P. 66 L. 19). DO YOU AGREE?

A. Under other circumstances, yes. However, given its adverse impact on accurate billing, it is simply not accurate to assume, as Mr. Sywenki does, that Sprint's proposal provides for "more efficient interconnection" or reduces costs. Moreover, being able to submit an accurate and timely bill for actual services rendered is also in the public interest. AT&T's proposed language would do that while Sprint's proposed language would not.

Q. MR. SYWENKI POINTS TO TWO SPECIFIC COMMISSION RULINGS THAT HE CLAIMS ARE RELEVANT TO THIS ISSUE. HE CITES A 2006 SPRINT ARBITRATION WITH LIGONIER TELEPHONE COMPANY IN THE STATE OF INDIANA[4] AND A 2006 SPRINT ARBITRATION WITH *ACE COMMUNICATIONS GROUP IN THE STATE OF IOWA*[5]. ARE THESE RULINGS RELEVANT?

A. No. First, AT&T was not a party to either of the referenced arbitrations. Both were between Sprint and rural LECs. Second, from the record, it is difficult to tell whether either LEC presented the same objections that AT&T has raised in this Docket. Additionally, the Indiana Commission qualified its ruling when it stated, "However, the Commission is concerned about: identifying and measuring traffic that goes over one trunk; the use of factors; issues associated with phantom traffic; and auditing

[4] Indiana Utility Regulatory Commission, Cause No. 43052-INT-01.
[5] Iowa Utilities Board, Docket Nos. Arb-05-2, Arb-05-5, and Arb-05-6.

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

Q. ARE THERE ANY STATE DECISIONS THAT ARE RELEVANT TO THIS PROCEEDING?

A. Yes. The Public Service Commission of Wisconsin ("PSCW") did address a very similar situation in a proceeding between Sprint and Ameritech (now AT&T Wisconsin). In that case, Sprint proposed similar language to that it has put at issue here. However, the Arbitration Panel rejected Sprint's proposal in favor of AT&T's proposed language, finding "Sprint's proposed multi-jurisdictional trunking architecture to be technically infeasible given the evidence filed in this proceeding." (Decision of the Arbitration Panel in Dockets 6055-MA-100, January 15, 1997, p. 8). As I understand it, that technical infeasibility ruling was based primarily on AT&T's

[6] In the Matter of Sprint Communications Company, L.P.'s Petition for Arbitration Pursuant to Section 252(B) of the Communications Act of 1934, As Amended by the Telecommunications Act of 1996,and the Applicable State Laws for the Rates, Terms and Conditions of Interconnection with Ligonier Telephone Company, Inc., Indiana Utility Regulatory Commission, Cause No. 43052-INT-01, September 6, 2006, p. 17.

inability to properly bill the calls it would receive over a single trunk group from Sprint.

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

A. For the same reason AT&T believes that Sprint's proposed arrangement in this Docket is technically infeasible. AT&T showed in the Wisconsin proceeding that it was unable to differentiate between the traffic types arriving at its tandem on a single trunk group and thus was unable to render accurate bills. In its ruling the Arbitration Panel acknowledged AT&T's position, noting that "Ameritech states that Sprint's multi-jurisdictional trunk group proposal is technically infeasible and renders Ameritech unable to provide accurate bills since it does not have the ability to identify various traffic types for billing purposes." (Decision of the Arbitration Panel in Docket 6055-MA-100, January 15, 1997, p. 8). Consequently, the Panel adopted Ameritech's proposed language.

Q. THE WISCONSIN DOCKET YOU CITE IS OVER A DECADE OLD. HAVEN'T THERE BEEN TECHNICAL CHANGES IN THE NETWORK THAT WOULD ALLOW AT&T TO IDENTIFY THE VARIOUS TRAFFIC TYPES FOR BILLING PURPOSES BASED ON THE SPRINT PROPOSED LANGUAGE?

A. Not that I am aware of. The digital tandem switching technologies that were deployed throughout the network in 1997 are, by and large, the same tandem switching technologies that are deployed throughout the network today. Although there have been software upgrades and feature additions to those tandem switching machines since the above mentioned 1997 Wisconsin Commission ruling, I am not

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

Q. MR. SYWENKI CLAIMS THAT AT&T, TODAY, COMBINES "CMRS AND CLEC TRAFFIC DESTINED FOR SPRINT CLEC ON CURRENT SPRINT CLEC LOCAL INTERCONNECTION TRUNKS." (SYWENKI P. 68 L. 2). CAN YOU EXPLAIN WHY SUCH ROUTING TO SPRINT IS APPROPRIATE?

A. Yes. Mr. Sywenki is missing the point that the traffic AT&T routes to Sprint CMRS or Sprint CLEC from other CMRS providers and CLECs has been billed appropriately by AT&T at the tandem because the trunk groups arriving at AT&T's tandem from those other providers have been segregated into separate CMRS traffic originations and CLEC originations. That is, AT&T has technology (CMRS vs. CLEC) based tandem trunking arrangements with other CMRS providers and CLECs so that when these other providers route a call, destined for Sprint CMRS or Sprint CLEC, to AT&T's tandem for termination AT&T has been able to create the appropriate billing record (based on the type of origination CMRS vs. CLEC) to charge those other providers for terminating their end users' calls to a Sprint CMRS or Sprint CLEC end user. This is exactly the same network configuration AT&T proposes for the parties in this Arbitration. Since AT&T is able to properly bill these other providers based on their separate trunking arrangements (CMRS vs. CLEC), AT&T can route the calls to Sprint over a trunk group of Sprint's choosing. This is not a matter of AT&T being hypocritical, rather, it is a matter of assuring that the billing that must occur between the parties is as accurate as possible.

Q. WHAT DO YOU RECOMMEND TO THE COMMISSION?

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

Issue IV.F.1

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

Contract Reference: Attachment 7, Section 1.6.3

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

A. Yes. Prior to November, 2009 Sprint submitted bills to AT&T that were state specific. Subsequent to November, 2009, however, Sprint unilaterally changed the coding in its invoice to eliminate references to specific states. Instead of limiting an invoice to a specific state, Sprint now combines billing from multiple states in a single invoice in a manner that has resulted in a need for significant manual intervention on the part of AT&T's accounts payable personnel in order to reconcile Sprint's invoice. AT&T thus seeks to regain the state specificity in Sprint's invoices that it had prior to November, 2009.

Q. PLEASE DESCRIBE THE CHANGE SPRINT MADE IN ITS INVOICE TO AT&T THAT HAS CAUSED THE PROBLEM.

A. One of the invoice fields submitted by Sprint to AT&T is the "Billing Account" field. That field contains the OCNs of both parties. **Exhibit LM-3** to this filing is an excerpt from a Sprint submitted invoice to AT&T prior to November, 2009. The "Billing Account" field is found in the upper right hand corner of the invoice and in the case of this exhibit, contains Sprint's California OCN of 8941 (first four digits)

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

Exhibit LM-4 to this filing contains excerpts from a Sprint submitted invoice to AT&T subsequent to November, 2009. Although the "Billing Account" field is still a valid field, the information it carries is not the same as it was prior to November, 2009. Note in Exhibit LM-4 that the "Billing Account" field now reflects Sprint OCN 8712, which is defined in the Local Exchange Routing Guide ("LERG") as Sprint's "Overall" OCN[7]. That is, OCN 8712 is not state specific, but rather reflects an all encompassing Sprint identifier.

Also, note that the AT&T OCN for Exhibit LM-4 is 9533, which the LERG identifies as Southwestern Bell – Texas (now AT&T Texas). So a reasonable person might believe that the billing reflected on this particular invoice is solely for traffic generated by AT&T within Texas. If that were the case, AT&T might be able to simply modify its processes to key on that AT&T state specific field. However, page 2 of Exhibit LM-4 shows that Sprint has included billings for states other than Texas on this particular invoice. (In this case, billing for Akron, OH services). So, subsequent to November, 2009 AT&T can no longer be certain that the invoice it receives from Sprint is attributable to a specific state, as Sprint is combining billing from multiple states into a single invoice. Thus, Sprint's billing format change has

[7] Sometimes referred to as the "Parent" OCN.

caused AT&T untold hours of manual processing as it now must sort Sprint's combined bill into state specific categories in order to process the appropriate payment.

Q. IN HIS DIRECT TESTIMONY, SPRINT WITNESS MR. FELTON STATES THAT "SPRINT'S BILLING SYSTEM IS BASED ON THE SECAB INDUSTRY STANDARD, WHICH DOES NOT IDENTIFY USAGE BY 'BILLED PARTY OCN'. AT&T HAS NO RIGHT TO MANDATE A CHANGE IN SPRINT'S LONG-STANDING, INDUSTRY-STANDARD BILLING SYSTEM." (FELTON P. 93 L. 4). CAN YOU COMMENT ON MR. FELTON'S STATEMENT?

A. Yes. As noted above and in my Direct Testimony, Sprint did include the state specific OCN on the bills it submitted to AT&T prior to November 2009. So despite Mr. Felton's assertions to the contrary, Sprint's billing systems until very recently were fully capable of providing the state specific invoices AT&T requires. Additionally, I would disagree with Mr. Felton that less than one year of invoice submission by Sprint without the inclusion of the state specific OCN qualifies is a "long-standing" arrangement, particularly since Sprint included the information for years prior to November 2009. If anything, the true "long standing" arrangement at issue here was the one in which Sprint did include the appropriate state-specific OCN – and it was Sprint that undermined that arrangement. Mr. Felton also fails to tell the Commission that the inclusion of the billed parties' OCN is optional within a SECAB compliant billing system. That is, providers may optionally encode the state specific billing and billed parties' OCN combinations as part of the Billing Account Number ("BAN"). Sprint had optionally done so prior to November 2009 and has merely chosen to no longer perform that optional state specific encoding.

Q. MR. FELTON ASSERTS THAT AT&T'S NEED TO HAVE THE OCN INCLUDED ON THE INVOICES SPRINT SUBMITS FOR PAYMENT MAY BE "ANOTHER INSTANCE THAT AT&T IS SEEKING TO IMPOSE A CONTRACT MANDATE TO 'DO IT AT&T'S WAY OR IN THE FUTURE YOU WILL NOT GET PAID'" (FELTON P. 93 L. 12). HOW DO YOU RESPOND?

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

Q. IN DISCUSSING THIS ISSUE, MR. FELTON IMPLIES THAT AT&T SEEKS TO "IMPOSE CONTRACT MANDATES UPON COMPETING CARRIERS TO DO SOMETHING A SPECIFIC WAY SIMPLY AND SOLELY BECAUSE AT&T SAYS SO." (FELTON P. 93 L. 16). HOW DO YOU RESPOND?

A. This is simply more posturing. All AT&T seeks is the restoration of the information that Sprint willingly provided to AT&T prior to November 2009. Given the fact that Sprint did provide this information prior to November 2009 in what Mr. Felton describes as Sprint's SECAB compliant billing system, AT&T is not demanding anything that Sprint has not done before or that it does not already have ready access to. AT&T does not seek to reinvent the wheel; it simply seeks to restore previously provided relevant data that ensures proper and more efficient bill processing.

Q. IN HIS DIRECT TESTIMONY, MR. FELTON MENTIONS AN ATTEMPT BY AT&T TO "MANDATE USE OF THE AT&T BILLING DISPUTE FORM." (FELTON P. 93 L. 14). IS THAT FORM RELEVANT TO THIS ISSUE?

A. No, it is not. In 2002,[8] AT&T (then SBC) introduced a standard process for CLECs to follow when submitting billing disputes to the Local Service Center ("LSC") Billing team. The standard process was developed because, at the time, no two CLECs were submitting billing disputes in the same manner. One CLEC might send a spreadsheet with all of the required information, while another would submit an email or fax with required information missing. In the case of the latter, CLECs experienced delays and, in many cases, denial of their claims, because the LSC Billing team did not have enough information to validate the facts. In order to expedite the process for CLECs and to assure that CLECs submitted the required information, we created the Billing Dispute process to which Mr. Felton appears to object.

Q. DID CLECS HAVE INPUT INTO THAT STANDARD PROCESS?

A. Initially no. However, through the collaborative CLEC User Forum ("CUF"), participating CLECs did have significant input into refining the process that was introduced. Sprint was at the time and has been a participant in the CUF process, so for Mr. Felton to assert that AT&T mandated a specific process without significant input by the CLECs, including Sprint, is not only inaccurate, but also disingenuous. In order to most efficiently handle CLEC billing disputes, it is essential that AT&T be able to use a standard billing dispute process.

Q. PLEASE EXPLAIN THE CUF.

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[8] *See* Accessible Letter CLECALL02-075) issued June 11, 2002 effective July 11, 2002. *See also* Accessible Letter CLECALL02-085 changing effective date to July 19, 2002.

A. CUF is an AT&T 22-state industry forum that is specifically intended to care for non-OSS issues regarding order processing, billing, provisioning and maintenance of products and services provided to CLECs. CLECs actively participate with AT&T during monthly sessions either in person or via conference call. Each participant is free to bring specific issues to the table for adoption by the CUF in order to foster their resolution. In many cases, one issue raised by an individual CLEC is recognized as affecting another CLEC, and all participants can respond accordingly. The CUF participants track the issues, fully discuss the issues and work toward their resolution by involving the appropriate work groups or individuals who can have an impact on the issue. When an issue is adopted by the CUF, both an AT&T and a CLEC issue sponsor are identified. It is the sponsors' responsibility to coordinate efforts to resolve the specific issue for the CLEC and to report on their progress to the CUF at large during subsequent meetings.

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

A. I recommend that the Commission reject Sprint's proposed language, which does not include the reference to the state specific OCN, and that the Commission adopt AT&T's proposed language that does include the state specificity AT&T requires in order to process Sprint's submitted invoices.

Issue IV.F.2

"How much notice should one Party provide to the other Party in advance of a billing format change?"

Contract Reference: Attachment 7, Section 1.19

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

A. Yes. As noted in my Direct Testimony, the issue is related to the competing language the parties propose for Attachment 7, Section 1.19, which concerns the notice period required before a party can institute a change in billing format. The parties' disagreement is not about how much notice the Billing Party must provide before instituting a billing format change; the parties generally agree notice should be provided at least ninety calendar days or three billing cycles before the change goes into effect. Rather, the disagreement concerns other language in Section 1.19.

AT&T objects to Sprint proposed language that leaves it up to the *Billing* Party – the party responsible for sending the notification – to decide whether a particular billing format change will "impact the *Billed* Party's ability to validate and pay the Billing Party's invoices". AT&T also objects to Sprint's proposed language concerning what happens if the Billing Party fails to notify the Billed Party of billing format changes within the agreed notice period and the ensuing calculation of any appropriate late payment charges. Specifically, the parties disagree about the time period during which Late Payment Charges will be halted subsequent to a billing format change.

Q. IN HIS DIRECT TESTIMONY, MR. FELTON CLAIMS THAT "AT&T'S LANGUAGE CREATES AN AMBIGUITY THAT MAY RESULT IN DISPUTES BETWEEN THE PARTIES." (FELTON P. 94, L. 20). HE ALSO

CLAIMS THAT AT&T'S PROPOSED LANGUAGE "CREATES THE POSSIBILITY A BILLED PARTY COULD FORESTALL PAYMENT FOR AN INDEFINITE, UNSPECIFIED TIME TO 'MAKE CHANGES DEEMED NECESSARY.'" (FELTON P. 94, L. 22). HOW DO YOU RESPOND?

A. I disagree with Mr. Felton on both points. AT&T's proposed language provides the parties with a flexible timetable that allows for unforeseen obstacles the Billed Party may experience in preparing for the billing format change. For example, AT&T is still unable to process Sprint's invoices mechanically subsequent to Sprint's November, 2009 billing format change. Sprint did not consult with AT&T when it changed its billing methodology and provided no technical documentation with regard to that change. It merely sent notification letters[9] that provided little or no system requirement information, but simply told AT&T that certain invoices were being consolidated. Now nearly one year later, AT&T is still unable to process Sprint's invoice in the mechanized manner that it had previously been able to use.

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

Q. MR. FELTON STATES THAT "IT IS UNCLEAR TO SPRINT WHY, AT MOST, 90 DAYS FROM ACTUAL RECEIPT OF A CHANGED BILL IS NOT

[9] Less than 90 days in advance of its system changes.

THE APPROPRIATE PERIOD FOR THE BILLED PARTY TO MAKE THE NECESSARY ADJUSTMENT UNDER ALL CIRCUMSTANCES." (FELTON P. 94, L. 24). CAN YOU COMMENT ON MR. FELTON'S STATEMENT?

A. Yes, I can. First, billing format changes do not occur on a frequent basis. That is, once the parties have established billing procedures, they generally do not change. To do so not only requires both parties to modify systems and procedures, but would likely require capital expense as well. Such changes, therefore, are not taken lightly nor rushed into. Second, AT&T's experience with Sprint's billing format change of November, 2009 should be more than enough clarification for Mr. Felton as to why AT&T prefers its proposed language. As the experience shows, the billed party, in all cases, may not be able to react in the hard and fast 90-day period Sprint proposes.

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

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

Issue IV.G.2

"What language should govern recording?"

Contract Reference: Attachment 7, Section 6.1.9.4

Q. PLEASE DESCRIBE THE ISSUE BETWEEN THE PARTIES.

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

detail, and Sprint asserted that it was unnecessary. I must say that I believe that the issue has changed since the parties' DPL was filed given the statement made by Sprint Witness Mr. Felton. On page 96 of his Direct Testimony Mr. Felton provides the following Q &A.

> **Q. Do Sprint end-users make calls that would generate End User Billable Messages?**
>
> A. Yes, on a limited basis Sprint's end users have unlimited long distance calling included in their calling plan and would, therefore, have no incentive to make a alternately billed call that would generate an End User Billable Message. However, it is possible that a Sprint customer may make an 8YY call to an AT&T customer.

I believe this is a change in Sprint's position in that the DPL statement Sprint provided stated that it had no End User Billable Messages. Mr. Felton further states that Sprint accepts AT&T's proposed language with one small exception. AT&T has no objection to the exception Mr. Felton proposes and believes that the parties have reached agreement on this issue.

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

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

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

III. CONCLUSION

Q. DOES THIS CONCLUDE YOUR REBUTTAL TESTIMONY?

A. Yes it does.

BEFORE THE PUBLIC UTILITY COMMISSION OF OREGON

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

INITIAL BRIEF OF SPRINT COMMUNICATIONS COMPANY L.P.

Judith A. Endejan - OSB #072534
Graham & Dunn PC
2801 Alaskan Way ~ Suite 300
Seattle WA 98121-1128
Tel: 206.624.8300
Fax: 206.340.9599
Email: jendejan@grahamdunn.com

Kristin L. Jacobson
Sprint Nextel
San Francisco, CA 94105
Tel: 707-816-7583
Email: kristin.l.jacobson@sprint.com

Janette W. Luehring
6450 Sprint Parkway
Mailstop: KSOPHN0304 - 3B653
Overland Park, Kansas 66251
Tel: 913-315-8525
Fax: 913-523-9631
Email: janette.w.luehring@sprint.com

PUBLIC / REDACTED

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

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

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

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

Related Agreement Provisions: Article VI Section 5.0.

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

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

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

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

[94] Sprint/6, Farrar/9.

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

[96] Sprint/6, Farrar/9.

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

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

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

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

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

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

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

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

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

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

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

[103] *Joint petition by TDS Telecom d/b/a/ TDS Telecom/Quincy Telephone, et. al. objecting to and requesting suspension and cancellation of proposed transit traffic service tariff filed by BellSouth Telecommunications, Inc.*, Order on BellSouth Telecommunications, Inc.'s Transit Traffic Service Tariff, Florida Public Service Commission, Order No. PSC-06-0776-FOF-TP, Docket Nos. 05-0119-TP and 05-0125-TP, issued September 18, 2006, p. 17. Available at: http://www.lexis.com/research/xlink?app=00075&view=full&searchtype=get&search=2006+Fla.+PUC+LEXIS+543

[104] Level 3 Communications, L.L.C Petition for Arbitration Pursuant to Section 252(b) of the Communications Act of 1934, as amended by the Telecommunications Act of 1996, and the Applicable State Laws for Rates, Terms, and Conditions of Interconnection with Illinois Bell Telephone Company (SBC Illinois).; Illinois Commerce Commission Docket No. 04-0428; Administrative Law Judge's Proposed Arbitration Decision; dated December 23, 2004. This docket was subsequently settled without a final commission order. Available at: http://www.icc.illinois.gov/downloads/public/edocket/132520.pdf

[105] *In the Matter of Level 3 Communications, LLC's Petition for Arbitration Pursuant to Section 252(b) of the Communications Act of 1934, as Amended by the Telecommunications Act of 1996, and Applicable State Laws for Rates, Terms, and Conditions of Interconnection with Indiana Bell Telephone Company d/b/a SBC Indiana*; Indiana Utility Regulatory Commission Cause No. 42663 INT-01; page 12; approved December 22, 2004. Vacated at request of parties who had negotiated 13-state ICA, March 16, 2005. Available at: http://www.lexis.com/research/xlink?app=00075&view=full&searchtype=get&search=2004+Ind.+PUC+LEXIS+465

[106] *In the Matter of arbitration Between Level 3 Communications, LLC and SBC Communications, Inc., Pursuant to Section 252(b) of the Communications Act of 1934, as Amended by the Telecommunications Act of 1996, for Rates, Terms, and Conditions of Interconnection*; Kansas Corporation Commission Docket No. 04-L3CT-1046-ARB; page 283; February 4, 2005, Dated. Available at: http://www.lexis.com/research/xlink?app=00075&view=full&searchtype=get&search=2005+Kan.+PUC+LEXIS+166

[107] *Joint Petition for Arbitration of NewSouth Communications Corp., NUVOX Communications, Inc., KMC Telecom V, Inc., KMC Telecom III LLC, and Xspedius Communications, LLC on Behalf of its Operating Subsidiaries Xspedius Management Co. Switched Services, LLC, Xspedius Management Co. of Lexington, LLC and Xspedius Management Co. of Louisville, LLC of an Interconnection Agreement with BellSouth Telecommunications, Inc. Pursuant to Section 252(b) of the Communications Act of 1934, as Amended*; Kentucky Public Service Commission Case No. 2004-00044; page 27; March 14, 2006. Available at: http://www.lexis.com/research/xlink?app=00075&view=full&searchtype=get&search=2006+Ky.+PUC+LEXIS+159

[108] Petitions of MediaOne Telecommunications of Massachusetts, Inc. and New England Telephone and Telegraph Company d/b/a Bell Atlantic-Massachusetts for arbitration, pursuant to Section 252(b) of the Telecommunications Act of 1996 to establish an interconnection agreement, et al.; Massachusetts Department of Telecommunications and Energy Docket Nos. 99-42/43, 99-52; at page 122; August 25, 1999.

[109] *In the matter of the petition of Michigan Bell Telephone Company, d/b/a/ SBC Michigan, for arbitration of interconnection rates, terms, and conditions, and related arrangements with MCIMetro Access transmission Services, LLC, pursuant to Section 252b of the Telecommunications Act of 1996*; Michigan Public Service Commission Case No. U-13758; page 46; August 18, 2003. Available at: http://www.lexis.com/research/xlink?app=00075&view=full&searchtype=get&search=2003+Mich.+PSC+LEXIS+206

[110] *Petition of Socket Telecom, LLC for Compulsory Arbitration of Interconnection Agreements with CenturyTel of Missouri, LLC and Spectra Communications, LLC, pursuant to Section 251(b)(1) of the Telecommunications Act of 1996*; Missouri Public Service Commission Case No. TO-2006-0299; page 47; June 27, 2006, Issued. Available at: http://www.lexis.com/research/xlink?app=00075&view=full&searchtype=get&search=2006+Mo.+PSC+LEXIS+1380

[111] *In the Matter of the Application of Cox Nebraska Telcom, LLC, Omaha, seeking arbitration and approval of an interconnection agreement pursuant to Section 252 of the Telecommunications Act of 1996, with Qwest Corporation, Denver, Colorado*; Nebraska Public Service Commission Application No. C-3796; Order Approving Agreement; Entered January 29, 2008. Available at: http://www.lexis.com/research/xlink?app=00075&view=full&searchtype=get&search=2008+Neb.+PUC+LEXIS+30

[112] *In the Matter of Joint Petition of NewSouth Communications Corp. et al. for Arbitration with BellSouth Telecommunications, Inc.*; North Carolina Utilities Commission Docket No. P-772, Sub 8; Docket No. P-913, Sub 5; Docket No. P-989, Sub 3; Docket No. P-824, Sub 6; Docket No. P-1202, Sub 4; page 130; July 26, 2005. Available at: http://www.lexis.com/research/xlink?app=00075&view=full&searchtype=get&search=2005+N.C.+PUC+LEXIS+888

[113] *In the Matter of the Establishment of Carrier-to-Carrier Rules In the Matter of the Commission Ordered Investigation of the Existing Local Exchange Competition Guidelines In the Matter of the Commission Review of the Regulatory Framework for Competitive Telecommunications Services Under Chapter 4927, Revised Code*; Public Utilities Commission of Ohio Case No. 06-1344-TP-ORD; Case No. 99-998-TP-COI; Case No. 99-563-TP-COI; page 52; November 21, 2006, Entered. Available at: http://www.lexis.com/research/xlink?app=00075&view=full&searchtype=get&search=2006+Ohio+PUC+LEXIS+718

[114] *Petition of CLEC Coalition for Arbitration Against Southwestern Bell Telephone, L.P. d/b/a SBC Oklahoma Under Section 252(b)(1) of the Telecommunications Act of 1996*; Oklahoma Corporation Commission Cause Nos. PUD 200400497 and 200400496; Order No. 522119; Final Order; dated March 24, 2006.

[115] *Arbitration of Non-Costing Issues for Successor Interconnection Agreements to the Texas 271 Agreement*; Public Utility Commission of Texas P.U.C. Docket No. 28821; Arbitration Award – Track 1 Issues; page 23; February22, 2005 (available at: http://interchange.puc.state.tx.us/WebApp/Interchange/application/dbapps/filings/pgSearch_Results.asp?TXT_CNTR_NO=28821&TXT_ITEM_NO=520)

At least eight of these states have concluded that transiting must be priced at TSLRIC or TELRIC.[116] Sprint submits that the same conclusion applies in this case; CenturyTel should be required to provide transit service at TELRIC rates.

Issue 14: What are the appropriate rates for services provided in the Interconnection Agreement, including rates applicable to the processing of orders and number portability?

Related Agreement Provisions: Article VII Section II

Rates for Section 251-related services should be priced consistent with the pricing methodology set forth in 47 USC Section 252(d).[117] The rates must be just and reasonable and based on the cost (determined without reference to a rate-of-return or other rate-based proceeding), nondiscriminatory, and may include a reasonable profit.[118]

CenturyTel has proposed rates for non-recurring charges for CLEC account establishment, customer record search, initial service order, subsequent service order and complex orders. On May 2 CenturyTel proposed new rates, different from those provided during negotiations, just prior to filing its testimony on May 5. Thus, Sprint was unable to ask for support for these new rates in the three days prior to the filing of CenturyTel's testimony.[119] CenturyTel's testimony provided little information thus making it impossible to perform any meaningful analysis.[120] CenturyTel did not provide a cost study with its

[116] Texas, California, Kentucky, Missouri, North Carolina, Ohio, Connecticut, and Nebraska, *id.*

[117] Sprint/1, Burt/52.

[118] *Id.*

[119] Sprint/6, Farrar/14.

[120] Sprint/6, Farrar/14.

ORDER NO. 08-486

ENTERED 09/30/08

BEFORE THE PUBLIC UTILITY COMMISSION

OF OREGON

ARB 830

In the Matter of	)	
	)	
SPRINT COMMUNICATIONS COMPANY L.P.	)	ORDER
	)	
Petition for Arbitration of an Intercon-nection Agreement with CENTURYTEL OF OREGON, INC.	)	

DISPOSITION: ARBITRATOR'S DECISION ADOPTED AS MODIFIED

I. PROCEDURAL HISTORY

On March 11, 2008, Sprint Communications Company L.P. (Sprint) filed a petition with the Public Utility Commission of Oregon (Commission) requesting arbitration of an Interconnection Agreement (ICA) with CenturyTel of Oregon, Inc. (CenturyTel), under Section 252(b) of the Communications Act of 1934, as amended by the Telecommunications Act of 1996[1] (the Act). The parties agreed to waive the statutory timeline due to the number of arbitrations pending in different states. CenturyTel responded to Sprint's petition on April 4, 2008.

Telephone conferences were held in this matter in April and June 2008 to establish a schedule and discuss procedural matters. General Protective Order No. 08-524 was issued on May 14, 2008.

The parties submitted written testimony on May 5 and June 4, 2008. The parties waived cross-examination and submitted the case for consideration based on their prefiled testimony. The hearing scheduled for June 24, 2008, was therefore canceled. The parties submitted opening briefs on July 16, 2008. CenturyTel submitted its reply brief on July 23, 2008. Sprint received a one-day extension and submitted its reply brief on July 24. Because this extension gave Sprint the opportunity to review CenturyTel's reply brief before submitting its own, CenturyTel was permitted to file a surreply brief on July 28, 2008.

[1] 47 USC §§ 151-614.

CenturyTel against claims by a third-party carrier asserting that CenturyTel is liable for such charges.

The Arbitrator concluded that it is reasonable for the ICA to include provisions that would protect CenturyTel from any adverse economic consequences if Sprint fails to compensate a terminating carrier for traffic that Sprint originates and CenturyTel transits. Conversely, the Arbitrator also found that it was reasonable for the ICA to include a reciprocal provision that protects Sprint when a third party seeks payment for terminating charges from Sprint for traffic originated by CenturyTel.[20]

Sprint objects to the Arbitrator's findings, stating that the language will have the opposite of its intended effect. "If CenturyTel compensates a third party it may result in a dispute that not only involves the originating and terminating party but also CenturyTel." Sprint is concerned that including the language about indemnification would encourage terminating carriers who were not entitled to compensation from Sprint to go after CenturyTel and, through the indemnification process, get Sprint to pay them money to which they might not be otherwise entitled.[21] Sprint also speculates that the indemnification terms would result in payments that were not reciprocal; CenturyTel would collect compensation for Sprint's originating traffic, but would not collect compensation from the originating third party for traffic that Sprint terminates.[22]

Discussion. We find Sprint's concern that carriers that are not entitled to compensation would be induced by the Sprint/CenturyTel ICA to make false claims against CenturyTel, who would then pay those claims without making a determination as to their validity and then seek reimbursement from Sprint, to be highly speculative. We concur with the Arbitrator who concluded "that it is reasonable for the ICA to include provisions that would protect CenturyTel from any adverse economic consequences if Sprint fails to compensate a terminating carrier for traffic that Sprint originates and CenturyTel transits. It is also reasonable for the ICA to include a reciprocal provision that protects Sprint when a third party seeks payment for terminating charges from Sprint for traffic originated by CenturyTel."[23] The Arbitrator's decision on this issue is affirmed.

G. Issue 13 – Rates for Transit Service – Article VII, Sections I.B and I.C

Issue 13 involves the rates CenturyTel should be permitted to charge Sprint for transit services. Sprint argued that CenturyTel is required to provide transit services as part of its duty to provide indirect interconnection and that CenturyTel must provide transit service at TELRIC rates because charging rates that are not based on forward-looking economic cost would hinder competition. After reviewing the relevant case law, the Arbitrator found that the FCC has clarified that direct interconnection

[20] Arbitrator's Decision at 15-16.
[21] Sprint Exceptions at 7.
[22] *Id.* at 8.
[23] Arbitrator's Decision at 15-16.

facilities must be provided at TELRIC rates, but there has been no such clarification about the services necessary for indirect interconnection.[24] The most recent case law "seems to contradict the conclusion that TELRIC is the appropriate rate for transit services."[25]

Sprint opines that the statement upon which the Arbitrator relies was made by the Chief of the FCC's Common Carrier Bureau acting on delegated authority and merely stated that the Commission had not had occasion to determine whether incumbent LECs have a duty to provide transit service under this provision of the statute...."[26] Since the FCC has not made a determination, Sprint believes that the Commission may, as many other state commissions have, find that CenturyTel is obligated to provide transit services at TELRIC rates.[27]

Discussion. The Arbitrator took great pains in examining the law and making a close call, noting "[a]lthough the precedent cited above does not provide a clear resolution to this issue, I find particularly relevant the FCC's statement that any duty 'under section 251(a)(1) of the Act to provide transit service would not require that service to be priced at TELRIC.'"[28] Notwithstanding the fact that the FCC Order was issued by the Common Carrier Bureau, it did so with the full authority of the FCC. The Bureau decision stands as unreversed case law some six years later. The Arbitrator's findings on this issue are therefore affirmed.

H. Issue 14 – Rates for Processing Orders and Number Portability – Article VII, Section II

The Arbitrator dealt with several subissues in the findings under Issue 14. The first subissue was what interim rate should be charged for nonrecurring charges pending the submission of an acceptable cost study by CenturyTel. The Arbitrator stated:

> I disagree, however, that the rates should be set at zero until CenturyTel files, and the Commission approves, new rates based on an appropriate cost study. I find that the ICA should include the rates proposed by CenturyTel for customer record searches and service order charges (simple, complex, and subsequent) as "interim" rates. CenturyTel must file a more detailed cost study. Once the Commission approves new rates to be included in the ICA, the interim rates will be subject to "true-up."[29]

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[24] Arbitrator's Decision at 18.
[25] *Id.*
[26] Sprint Exceptions at 8.
[27] *Id. at* 9.
[28] Arbitrator's Decision at 18.
[29] *Id.* at 20.

at&t

Manuel A. Gurdian
General Attorney

AT&T Florida
150 South Monroe Street
Suite 400
Tallahassee, FL 32301

T: (305) 347-5561
manuel.gurdian@att.com

October 6, 2010

Ms. Ann Cole
Office of the Commission Clerk
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850

Docket No. 100176-TP: Petition for Arbitration of Interconnection Agreement between BellSouth Telecommunications, Inc. d/b/a AT&T Florida and Sprint Communications Company L.P.

Docket No. 100177-TP: Petition for Arbitration of Interconnection Agreement between BellSouth Telecommunications, Inc. d/b/a AT&T Florida and Sprint Spectrum L.P., Nextel South Corp. and NPCR, Inc. d/b/a Nextel Partners

Dear Ms. Cole:

Enclosed is an original and twenty-five copies of BellSouth Telecommunications, Inc. d/b/a AT&T Florida's Rebuttal Testimony of P. L. (Scot) Ferguson, James W. Hamiter, Lance McNiel, J. Scott McPhee, and Patricia H. Pellerin, which we ask that you file in the captioned docket.

Copies have been served to the parties shown on the attached Certificate of Service.

Sincerely,

Manuel A. Gurdian

COM 5
APA ___
ECR ___
GCL 1
RAD 18
SSC ___
ADM ___
OPC ___
CLK CF.RPR

cc: All parties of record
Gregory R. Follensbee
Jerry D. Hendrix
E. Earl Edenfield, Jr.

Certificate of Service
Docket Nos. 100176-TP and 100177-TP

I HEREBY CERTIFY that a true and correct copy was served via Electronic Mail and U.S. Mail this 6th day of October, 2010 to the following:

Florida Public Service Commission
Charles Murphy, Staff Counsel
Larry Harris, Staff Counsel
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399-0850
cmurphy@psc.state.fl.us
Tel. No. (850) 413-6191
lharris@psc.state.fl.us
Tel. No. (850) 413-6856

Joseph M. Chiarelli
6450 Sprint Parkway
Mailstop: KSOPHN03 14-3A621
Overland Park, KS 66251
Tel. No.: (913) 315-9223
Fax. No.: (913) 523-9623
joe.m.chiarelli@sprint.com

Bill Atkinson
Director & Senior Counsel
Sprint Nextel
3065 Akers Mill Rd., SE
Mailstop GAATLD0704
Atlanta, GA 30339
Tel. No. (404) 649-8981
Fax. No. (404) 649-8980
bill.atkinson@sprint.com

Marsha E. Rule
Rutledge, Ecenia & Purnell, P. A.
Post Office Box 551
Tallahassee, Florida 32302-0551
(850) 681-6788
marsha@reuphlaw.com

Florida Public Service Commission
Brenda Merritt
2540 Shumard Oak Blvd.
Room 270G
Tallahassee, FL 32399-0850
Tel. No. (850) 413-6850
bmerritt@psc.state.fl.us

Florida Public Service Commission
Frank Trueblood
2540 Shumard Oak Blvd.
Room 270E
Tallahassee, FL 32399-0850
Tel. No. (850) 413-7019
ftrueblo@psc.state.fl.us

Manuel A. Gurdian

AT&T FLORIDA

REBUTTAL TESTIMONY OF P.L. (SCOT) FERGUSON

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

DOCKET NO. 100176-TP AND DOCKET NO. 100177-TP

OCTOBER 6, 2010

ISSUES

5 [DPL I.A(5)], 57 [DPL III.C], 73 [DPL IV.A(1)], 74 [DPL IV.A(2)], 75 [DPL IV.B(1)], 76 [DPL IV.B(2)], 77 [DPL IV.B(3)], 78 [DPL IV.B(4)], 79 [DPL IV.B(5)], 80 [DPL IV.C(1)], 81 [DPL IV.C(2)], 82 [DPL IV.D(1)], 83 [DPL IV.D(2)], 84 [DPL IV.D(3)], 85 [DPL IV.E(1)], 86 [DPL IV.E(2)], 90 [DPL IV.H], 92 [DPL V.C(1)], 93 [DPL V.C(2)]

I. INTRODUCTION

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

A. Yes.

Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY?

A. I rebut the direct testimony of Sprint's witnesses, Mr. Peter Sywenki and Mr. Mark Felton on certain issues I address in my direct testimony.

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

A. No. I do not respond to Mr. Felton's direct testimony on Issues 74 *[DPL IV.A(2)]*, 77 *[DPL IV.B(3)]*, 78 *[DPL IV.B(4)]*, 79 *[DPL IV.B(5)]*, 82 *[DPL IV.D(1)]*, 83 *[DPL IV.D(2)]*, and 90 *[DPL IV.H]*, because he did not provide anything of substance on these issues that justifies a response.

II. DISCUSSION OF ISSUES

ISSUE #5 *[DPL ISSUE I.A(5)]*

Should the CLEC Agreement contain Sprint's proposed language that requires AT&T to bill a Sprint Affiliate or Network Manager directly that purchases services on behalf of Sprint?

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

Q. PLEASE RESPOND TO MR. SYWENKI'S CLAIM ON PAGE 34 OF HIS DIRECT TESTIMONY THAT "AT&T BELIEVES IT HAS SOME INHERENT RIGHT TO 'INVESTIGATE' AND THEREBY CONTROL HOW A CLEC CONDUCTS BUSINESS WITH THIRD PARTIES."

A. His statement is an over-dramatization of AT&T's actual position. I explained in my direct testimony beginning on page 2 that AT&T is not opposed to Sprint's proposal, in principle, and is willing to amend the Competitive Local Exchange

Carrier("CLEC") interconnection agreement ("ICA") if and when Sprint identifies a candidate Affiliate or third-party network manager.

Sprint proposes that AT&T become involved in a billing relationship with some unnamed/unknown entity. Clearly, AT&T would have legitimate concerns about the background of any such entity, and that is the basis for the investigation that I mentioned as being important to AT&T. AT&T's proposed language certainly is not rooted in any desire on AT&T's part to control any aspect of Sprint's relationship with other parties. If anything, Sprint is interjecting itself into AT&T's business to decide with whom AT&T should have a billing relationship.

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

A. Absolutely not. As I stressed in my direct testimony, AT&T is concerned with the result that Sprint's language would have if other carriers adopt the ICAs that will come out of this arbitration.

Q. MR. SYWENKI ASSERTS AT PAGE 36 THAT "AT&T HAS NOT IDENTIFIED THE CRITERIA IT WOULD UTILIZE" TO QUALIFY AN ENTITY SPRINT WAS CONSIDERING. IS THAT TRUE?

A. Yes. It is as true as the fact that Sprint has not identified any Affiliates or network managers to populate Exhibit A to the CLEC ICA that corresponds to that exhibit in the Commercial Mobile Radio Service ("CMRS") ICA. Again, the issue is not about controlling Sprint's relationships with others. It is about AT&T knowing what it would be agreeing to do, and, on this issue, AT&T does not.

Q. ALSO ON PAGE 36 OF HIS DIRECT TESTIMONY, MR. SYWENKI STATES THAT "AT&T HAS AN INCENTIVE TO HINDER THE PROCESS" OF "SELECTING AN AFFILIATE OR THIRD PARTY." PLEASE RESPOND.

A. That is empty rhetoric for which Mr. Sywenki offers no support. AT&T's acceptance of the network managers that Sprint has identified for the CMRS ICA shows that AT&T's purpose is not to hinder Sprint, but is merely to know with whom AT&T will be dealing, and to have a reasonable opportunity to vet those entities.

Q. FINALLY, MR. SYWENKI CLAIMS ON PAGE 37 THAT AT&T IS DISCRIMINATORY IN ITS TREATMENT BETWEEN THE CMRS AND CLEC AGREEMENTS ON THIS ISSUE. IS HE CORRECT?

A. No. Again, AT&T has no issue with respect to the CMRS ICA because AT&T knows the identity of Sprint's third party CMRS managers and is comfortable with them. That is not true of the CLEC ICA. This is a difference, but it certainly is not discrimination.

ISSUE #57 *[DPL ISSUE III.C]*

Should Sprint be required to pay AT&T for any reconfiguration or disconnection of interconnection arrangements that are necessary to conform to the requirements of this ICA?

Contract Reference: (AT&T) Att. 3, section 3.5, and Pricing Schedule, section 1.7.4 and 1.7.5; (Sprint) Att. 3, section 3.4, and Pricing Schedule, section 1.7.5

Q. DO YOU AGREE WITH MR. FELTON'S STATEMENT, AT PAGE 57 OF HIS DIRECT TESTIMONY, THAT "THE PARTIES HAVE BEEN INTERCONNECTED AND EXCHANGING TRAFFIC FOR OVER A DECADE AND NO MAJOR NETWORK RECONFIGURATIONS

SHOULD BE NECESSARY FOR THE PARTIES TO CONTINUE THEIR EXISTING RELATIONSHIP?"

A. Yes. However, I disagree with Mr. Felton's implication that that means AT&T's language should be rejected. On the contrary, the expectation that there will be no major reconfigurations, and, therefore, no major expenditures for Sprint, is a reason that Sprint should not oppose AT&T's language. The language should be included in the ICAs, though, in order to ensure the proper result if these ICAs are adopted by other carriers that are not as advanced in their interconnection relationships with AT&T as is Sprint.

Q. HOW DO YOU RESPOND TO MR. FELTON'S ASSERTION (DIRECT TESTIMONY AT PAGE 57) THAT IF THE "RECONFIGURATION IS NECESSITATED BY AN AT&T PROPOSAL, AT&T SHOULD BEAR THE COST"?

A. The 1996 Telecommunications Act ("Act") requires AT&T to interconnect with Sprint, so that Sprint can compete with AT&T. The statute does not contemplate, however, that AT&T will bear the cost of interconnecting for Sprint's benefit. On the contrary, the Act requires Sprint to compensate AT&T for its interconnection costs, at rates that are cost-based and include a reasonable profit.

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

reconfiguration necessitated by contract language that the Commission imposes in this arbitration or that the Parties agreed should be included in the ICAs. It is Sprint – not AT&T – that is the beneficiary of the interconnection requirements of the Act, so it must be Sprint – not AT&T – that bears the cost of the interconnection.

ISSUE #73 *[DPL ISSUE IV.A(1)]*

What general billing provisions should be in Attachment 7?

Contract Reference: Att. 7, sections 1.4 – 1.6.2

Q. DO YOU HAVE ANY GENERAL OBSERVATIONS ABOUT MR. FELTON'S DIRECT TESTIMONY ON THIS ISSUE?

A. Yes. In my direct testimony on this issue (see pages 7-11), I address three different billing language disagreements: 1) Section 1.6.5 (CMRS only) for sharing the cost of Facilities and/or Trunks; 2) section 2.10.1.1 for credit claims by the Billed Party; and 3) section 2.10.1.1 for back-billing and credit claim limitations as affected by regulatory and court decisions. Mr. Felton's direct testimony addresses only item #1. In my direct testimony, I stated that I did not know Sprint's position on items #2 and #3. However, in light of rebuttal testimony that Mr. Felton recently filed in other states,[1] and that I anticipate Mr. Felton will reiterate in his rebuttal here, I will address in this rebuttal what I understand to be Sprint's positions on #2 and #3.

Q. LET'S DISCUSS FIRST YOUR ITEM #1, CONCERNING BILLING FOR SHARED FACILITY COSTS. ON PAGE 70 OF HIS DIRECT TESTIMONY, MR. FELTON CITES "A *VERY* SUBSTANTIAL SHARED

[1] Mr. Felton filed rebuttal testimony on September 15, 2010 in Georgia Dockets No. 31691-U and 31692-U, and on September 17, 2010 in Kentucky Case No. 2010-00061 – similar proceedings to this one.

FACILITY DISPUTE FROM THE PARTIES' PAST ICA" AS A REASON FOR NOT ADOPTING AT&T'S PROPOSED LANGUAGE. DO YOU AGREE?

A. No – Mr. Felton's argument is specious. The dispute between AT&T and Nextel to which Mr. Felton refers has nothing to do with whether the billing results from a credit process or a direct bill process, as Mr. Felton suggests. Instead, the dispute concerns the proper facility factor to be used to determine the charges under the prior ICA. Specifically, Nextel claimed the appropriate facility factor was much higher than AT&T's actual usage data indicated. Accordingly, AT&T paid Nextel based on that actual usage percentage, and disputed the remainder. That dispute would have arisen regardless of whether the billing process had been based on bill credits or direct billing, and has no bearing on the contract language at issue here.

Q. HOW DO YOU RESPOND TO MR. FELTON'S CLAIM (DIRECT AT PAGE 70) THAT "ADMINISTRATIVE COSTS OF VERIFYING THE BILLS AND THE LIKELIHOOD OF BILLING DISPUTES DOUBLES" UNDER AT&T'S PROPOSED PROCESS?

A. Mr. Felton does not substantiate his assertion, and I believe he is mistaken. Regardless of the billing method, the amount of work required to determine or validate the billed amounts and the credits should be about the same. If a credit is to be rendered, the credit has to be developed and substantiated; if a direct facility bill is to be rendered, the amount of the bill has to be developed. The actual bill process of applying credits versus the issuance of direct facility bills does not result in appreciably more work.

Q. MOVING TO THE SECOND DISAGREEMENT UNDER THIS ISSUE, WHAT IS YOUR UNDERSTANDING OF SPRINT'S POSITION

REGARDING AT&T'S PROPOSED LANGUAGE FOR CREDIT CLAIMS?

A. As I discussed in my direct testimony at pages. 9-10, this disagreement concerns AT&T's proposed language that would allow the Parties to assert claims for amounts they mistakenly paid in the past, just as they may backbill for amounts they mistakenly failed to bill in the past. In recent rebuttal testimony in similar proceedings in Georgia and Kentucky, Mr. Felton stated that Sprint's objection to AT&T's language is that the subject is covered already in Section 3 of Attachment 7, concerning resolution of billing disputes.

Q. IS THAT CORRECT?

A. No. Credit claims are *not* addressed in the Billing Dispute Resolution section. In fact, there is no mention of "credit claims" in that section. AT&T's proposed language makes clear that credit claims have status, and should be treated on an equitable basis with back-billing. As it is a reciprocal provision, Sprint should not have a problem including credit claims as part of section 2.10.1.1.

Q. FOR THE THIRD DISAGREEMENT UNDER THIS ISSUE, WHAT IS AT&T'S UNDERSTANDING OF SPRINT'S POSITION ON AT&T'S PROPOSED LANGUAGE WITH RESPECT TO COMMISSION AND COURT RULINGS SUPERSEDING BACK-BILLING AND CREDIT CLAIM TIME LIMIT PROVISIONS OF THE ICAS?

A. According to the rebuttal testimony Mr. Felton filed recently in similar proceedings in Georgia and Kentucky, Sprint agrees with AT&T that the Commission has authority to supersede ICA provisions and that the Parties will comply with any such orders.

Q. WHAT, THEN, IS THE DISAGREEMENT?

A. First, Sprint does not recognize provisions for "credit claims" as proposed by AT&T, so Mr. Felton does not include credit claims in his discussion of this disagreement. I addressed that in the previous series of questions.

Second, Mr. Felton says that "the agreement should not presuppose the timelines within which the Commission may rule or add additional framework beyond what is provided for in such Commission order." AT&T's proposed language makes no such presupposition. AT&T's language offers options for what timeframe is applicable, including several options whereby the Commission specifies the time limit, as well as reasonable time limits for circumstances where the Commission is not involved (also discussed in Issue #74 *(DPL Issue IV.A(2))*.

Third, Mr. Felton contends that "any Commission action that does not specify a back-billing period should apply on a prospective basis only." That contention assumes that if the Commission renders a decision that says nothing one way or the other about back-billing, the Commission intends the decision to be prospective only. There is no basis for such an assumption. If the Commission decides that any particular order shall apply prospectively only, the Commission will presumably say so. If the Commission says nothing, no inference about the Commission's intent is appropriate. Furthermore, with AT&T's proposed language included in the ICA, a Party that believes a particular Commission decision should apply prospectively only will know that it needs to urge the Commission to include language to that effect in its order.

ISSUE #75 *[DPL ISSUE IV.B(1)]*

What should be the definition of "Past Due"?

Contract Reference: General Terms and Conditions, Part B – Definitions

Q. WHAT IS YOUR ASSESSMENT OF MR. FELTON'S DISCUSSION OF THE DEFINITION OF "PAST DUE" BEGINNING ON PAGE 73 OF HIS DIRECT TESTIMONY?

A. In my direct testimony at pages 15-17, I demonstrated that "past due" amounts should include disputed amounts because that yields the correct dollars-and-cents result whether or not AT&T's proposed escrow language is adopted. Mr. Felton, in contrast, offers only rhetoric. He argues that payment of a bill is not really "due" if the bill is disputed. At first blush, that may have an aura of plausibility – but it entirely misses the point. The question for the Commission is which Party's definition of "past due" produces the right result, and the answer is that only AT&T's definition does.

Mr. Felton offered no support, and can offer no support, for the proposition that only *undisputed* charges not paid by the Bill Due Date should be subject to Late Payment Charges, and that is the fundamental failing in Sprint's position. If a Party disputes a bill and the dispute is ultimately resolved in favor of the Billing Party, Late Payment Charges should apply to the Disputed Amounts.

Q. DOES AT&T'S PROPOSED LANGUAGE IN THIS DOCKET FOR THE DEFINITION OF "PAST DUE" AND THE APPLICATION OF LATE PAYMENT CHARGES TO PAST DUE AMOUNTS APPEAR IN ANY OTHER AT&T/CLEC ICAS IN FLORIDA?

A. Yes. In my direct testimony, I cited that there are *at least* eleven ICAs that became effective in Florida since mid-2009 that contain AT&T's proposed

language on a number of issues in this docket. Please see footnote 9 of my direct testimony for a listing of those CLECs that have ICAs containing AT&T's proposed language on the definition of "Past Due" and the reciprocal provision of Late Payment Charges on past due amounts.

Q. PLEASE RESPOND TO MR. FELTON'S ASSERTION THAT "THE BILLING PARTY HAS NO INCENTIVE TO ENSURE THE BILLED AMOUNTS ARE ACCURATE OR TO QUICKLY AND EFFICIENTLY WORK THROUGH BILLING DISPUTES."

A. The assertion is unpersuasive for three reasons. First, inaccurate billing is costly to both Parties, and it is insulting for Sprint to insinuate (without any substantiation) that AT&T would knowingly issue inaccurate bills for the purpose of having the Billed Party pay extra. This is, after all, a reciprocal provision, and AT&T would not make a similar insinuation against Sprint.

Second, there is no incentive for the Billed Party not to dispute billed amounts if *undisputed* amounts are exempted from Past Due amounts.

Third, the ICAs contain specific terms for the dispute resolution process – including timeframes within which the Parties should settle Billing Disputes. Those terms ensure that the Billing Party appropriately works through Billing Disputes.

ISSUE #76 *[DPL ISSUE IV.B(2)]*

What deposit language should be included in each ICA?

Contract Reference: Att. 7, section 1.8

Q. IN MR. FELTON'S DIRECT TESTIMONY AT PAGE 75, HE STATES THAT "SPRINT HAS PROPOSED LANGUAGE THAT RECOGNIZES THE EXISTENCE OF MUTUAL BILLING AND THEREFORE REQUIRES MUTUALITY IN THE DEPOSIT PROVISIONS." IS THERE

ANY REGULATORY REQUIREMENT THAT MUTUAL BILLING EQUATES TO MUTUAL DEPOSITS?

A. No. On the contrary, state commissions have ruled that AT&T and CLECs are not similarly situated and, therefore, mutual deposit requirements should not be reciprocal. Please see my direct testimony at pages 21-22 and the Georgia case cited therein. Further, the Tennessee Regulatory Authority ruled the same as did the Georgia Commission in a similar arbitration proceeding.[2] Those rulings constitute a fairly simple summation of AT&T's position on reciprocal deposits, and suggest why Sprint's position has no basis. I note that Mr. Felton is unable to cite any state commission decisions that support Sprint's position.

Q. MR. FELTON CLAIMS AT PAGE 75 OF HIS DIRECT TESTIMONY THAT "AT&T'S LANGUAGE IS AN OVERREACTION TO LOSSES IT CLAIMS TO HAVE INCURRED OVER THE YEARS AND IT TIPS THE BALANCE DECIDEDLY IN FAVOR OF THE ILEC AS A BILLING PARTY TO THE POINT OF BEING A POTENTIAL BARRIER TO COMPETITION." PLEASE RESPOND.

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

Regarding his "tipping the balance" statement, Mr. Felton is dangerously close to accusing AT&T of discriminatory and predatory practices, without sharing any evidence to support his allegations. That AT&T bills decidedly more

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[2] See *Final Order of Arbitration Award in re Petition for Arbitration of ITC^DeltaCom Communications, Inc. with BellSouth Telecommunications, Inc. Pursuant to the Telecommunications Act of 1996*, Docket 03-00119, dated October 20, 2005, Decision on Issue 60(a), page 66.

to CLECs and CMRS providers than vice versa, coupled with AT&T's proven creditworthiness, is the basis for the fact that AT&T is not similarly situated to CLECs and CMRS providers and, therefore, is due some measure of protection. Further, AT&T is obligated to enter into ICAs, whereas Sprint and other CLECs have no such obligation. AT&T's deposit language is the same language that this Commission has repeatedly approved in other ICAs, so it is difficult to see how such language could be considered anticompetitive.

Q. WHAT IS AT&T'S POSITION REGARDING MR. FELTON'S CLAIM AT PAGE 75 OF HIS DIRECT TESTIMONY THAT "AT&T'S HEAVY-HANDED SECURITY DEPOSIT LANGUAGE IS EXCESSIVE AND UNNECESSARY" IN LIGHT OF SPRINT'S "LONG AND SOLID PAYMENT HISTORY WITH AT&T"?

A. That claim is not a basis for rejecting AT&T's proposed language, because that language does not require deposits from carriers with long and solid payment histories with AT&T. Indeed, AT&T already has agreed that no additional deposit will be required of Sprint at the time that these ICAs become effective. However, AT&T is entitled to language that allows it to demand from Sprint or any other carrier adopting these ICAs a deposit when a deposit is warranted to mitigate AT&T's risks.

ISSUE #80 ***[DPL ISSUE IV.C(1)]***

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

Contract Reference: Att. 7, section 3.1.1

Q. MR. FELTON STATES ON PAGE 80 OF HIS DIRECT TESTIMONY THAT "BILLING ERRORS MAY NOT BE DETECTABLE IN TWELVE MONTHS." DO YOU AGREE?

A. No. It simply is not a logical premise, and Mr. Felton does not provide any support for it. I cannot imagine that Sprint would not be able to determine within a year that it does not agree with its bill. As I discussed in my direct testimony on page 33, a 12-month limitation is practical and appropriate. AT&T has learned through experience that it is often more difficult to corroborate dispute claims beyond 12 months.

Q. ALSO ON PAGE 80, MR. FELTON POINTS OUT THAT THE PARTIES HAVE AGREED TO A 24-MONTH LIMIT AS TO ANY DISPUTE UNDER THE ICA. DOES THAT HAVE ANY BEARING ON WHETHER AT&T'S PROPOSED 12-MONTH LIMITATION ON BILLING DISPUTES IS VALID?

A. No. Simply because the Parties agreed to a general 24-month limitation on disputes under the ICA does not preclude the possibility that the Parties can agree to – or this Commission can order – a different limitation on a specific type of dispute.[3] Sprint itself has proposed a self-serving 6-month back-billing limitation for Issue #74 *(DPL Issue IV.A(2))* that is significantly shorter than the 24-month general limitation that it is touting for this issue. Sprint cannot have it both ways.

Q. MR. FELTON ALSO MENTIONS AT PAGE 80 THAT THE AGREED-TO 24-MONTH GENERAL LIMITATION IS "LIKELY SHORTER THAN A GIVEN JURISDICTION'S APPLICABLE STATUTORY LIMITATIONS PERIOD." IS THAT RELEVANT?

A. No. There is nothing unreasonable about expecting sophisticated companies that routinely validate each other's bills to assert any disputes they may have about those bills within twelve months. The fact that a state legislature may have allotted more time for parties in general – including unsophisticated individuals

[3] In my direct testimony on page 34, I cited section 3.4.1 of the General Terms and Conditions as allowing specific provisions that supersede the provisions of the main body of the Agreement

who may have claims that cannot be uncovered through mere bill validation – to avail themselves of the state's judicial machinery does not change that.

Q. MR. FELTON DISPUTES THE NOTION THAT THE "BACK-DISPUTING" LIMITATION SHOULD BE EQUAL TO THE BACK-BILLING LIMITATION. WHAT IS WRONG WITH HIS POSITION?

A. Sprint's DPL position statement on Issue #74 *(DPL Issue IV.A(2))* for back-billing cited "stale billings" as the reason that back-billing should be limited to six months, but the potential for "stale billings" does not seem to apply to a 24-month limitation for billing disputes – even though the data sources for corroboration of either type of claims is subject to the same level of "staleness." Sprint's positions on these two issues do not square with each other, and each of Sprint's proposed limitations is clearly self-serving. Further, this Commission has approved other ICAs with the 12-month limitations on both types of claims. Please see my direct testimony at page 36, lines 6-7 and footnote 11.

ISSUE #81 ***[DPL ISSUE IV.C(2)]***

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

Contract Reference: Att. 7, section 3.3.1

Q. MR. FELTON STATES ON PAGE 81 OF HIS DIRECT TESTIMONY THAT "TO THE EXTENT AT&T ISSUES IMPROPER BILLS, SPRINT MAINTAINS ITS RIGHT TO USE ITS EXISTING AUTOMATED DISPUTE SYSTEM." WHAT IS AT&T'S RESPONSE?

A. AT&T does not agree that Sprint has a "right" to use its own automated system, or that AT&T has an obligation to accept disputes filed that way. Mr. Felton does not provide any support for that premise, nor can he. Also, Sprint's position

falsely assumes that every dispute it files is a valid dispute, and that AT&T is always at fault.

AT&T receives Billing Disputes from many carriers, and in order for AT&T to efficiently process those disputes, it is essential that all carriers use the same form. AT&T has worked successfully with other carriers with respect to AT&T's Billing Dispute form, but Sprint believes it should be treated differently from other carriers. This is a reciprocal requirement on both Parties, and AT&T is willing to use Sprint's dispute form when AT&T files a dispute. Finally, AT&T must be concerned that, if Sprint has its way, other carriers adopting these ICAs would not be compelled to use AT&T's form.

Q. PLEASE RESPOND TO MR. FELTON'S CLAIM AT PAGE 82 OF HIS DIRECT TESTIMONY THAT SPRINT WILL INCUR "ADDITIONAL COSTS" IF IT IS REQUIRED TO SUBMIT BILLING DISPUTES USING AT&T'S DISPUTE FORM.

A. I certainly understand his contention because AT&T has the same consideration with using Sprint's dispute form when AT&T files a Billing Dispute with Sprint. However, that is part of the cost of doing business, and AT&T is willing to accept those costs in using Sprint's form when AT&T disputes a Sprint bill.

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

A. Yes. AT&T employs two full-time billing representatives who are dedicated solely to reformatting and loading Sprint's dispute information into AT&T's billing and collections system for dispute processing. That is work that is not necessary for AT&T to perform for other carriers that submit disputes on AT&T's form.

Q. ACCORDING TO MR. FELTON AT PAGE 82, SPRINT'S DISPUTE FORM PROVIDES AT&T WITH "EVERYTHING THAT IS NECESSARY TO IDENTIFY AND PROCESS A SPRINT DISPUTE." IS HE CORRECT?

A. Mr. Felton may be correct, but that is not the point. AT&T's problem with Sprint's form is not that it does not call for the information AT&T needs, but that it is an anomaly for AT&T's billing system. That is why AT&T must devote two full time employees to extract the information from Sprint's form (frequently needing to correct or complete the information supplied by Sprint) and feed it into AT&T's system in the required format.

Q. MR. FELTON STATES ON PAGE 82 OF HIS DIRECT TESTIMONY THAT SPRINT HAS BEEN USING THIS SAME PROCESS FOR AT LEAST SIX YEARS. IS THAT RELEVANT TO THE RESOLUTION OF THIS ISSUE?

A. No. Assuming the Commission agrees with AT&T that Sprint should use the same form as every other carrier in the state to submit its billing disputes to AT&T, as it should, the fact that the Parties' current ICA fails to mandate that efficient practice is not a sound reason for continuing the inefficiency.

Q. IS MR. FELTON CORRECT AT PAGE 83 WHEN HE SAYS THAT AT&T SHOULD PAY FOR THE COSTS OF MODIFICATIONS TO SPRINT'S DISPUTE SYSTEM IF AT&T WANTS SPRINT TO USE AT&T'S DISPUTE FORM?

A. No. Once again, Sprint's position self-servingly and erroneously assumes that every dispute it files is valid. Mr. Felton claims that Sprint must use the dispute process because AT&T issues erroneous bills, when a large percentage of the disputes Sprint files are, in fact, invalid.

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

A. Yes. AT&T witness Lance McNiel addresses this at length in his rebuttal testimony on Issue #87 *(DPL Issue IV.F(1))*. The high-level view is that AT&T originally developed a standard Billing Dispute process in 2002, but, because CLECs submitted disputes by different means and with different levels of accurate information, dispute resolution was often delayed. Through the collaborative CLEC User Forum ("CUF"), participating CLECs provided significant input to refine the original process in order to increase accuracy of submission by the CLECs and resolution by AT&T. As Mr. McNiel explains, Sprint was an active participant in the refinement of the Billing Dispute process that Sprint suggests is being forced upon it by AT&T.

ISSUE #84 *[DPL ISSUE IV.D(3)]*

Should the ICA include AT&T's proposed language requiring escrow of disputed amounts?

Contract Reference: Att. 7, sections 1.12 – 1.18, 3.3.2

Q. MR. FELTON STATES ON PAGE 85 OF HIS DIRECT TESTIMONY THAT IT IS "INAPPROPRIATE TO REQUIRE THE BILLED PARTY TO REMIT PRESUMPTIVELY ERRONEOUS BILLED AMOUNTS..." PLEASE RESPOND.

A. I explained in my direct testimony on page 43 that AT&T has lost tens of millions of dollars to carriers that disputed bills without a proper basis and then did not have the money to pay when those disputes were resolved in AT&T's favor. AT&T's proposed language is a reasonable method to assure the funds are available to whichever Party to these ICAs happens to be the Billing Party.

There is simply no basis for Mr. Felton's suggestion that a disputed bill is "presumptively erroneous." It is certainly true that, as Mr. Felton states, an

inaccurate bill will prompt a billing dispute, but it is also true that many billing disputes arise out of accurate bills. Unless Sprint can show that most billing disputes are resolved in favor of the Billed Party – which I am confident Sprint cannot – the Commission should reject Mr. Felton's baseless premise that disputed bills are presumptively erroneous.

Q. IT IS MR. FELTON'S CONTENTION AT PAGE 86 "THAT AT&T IS AS PRONE TO ISSUE AN INCORRECT BILL AS ANY OTHER CARRIER." IS THAT RELEVANT?

A. No. I assume that Mr. Felton includes Sprint in that "any other carrier" category. Although either Party to these ICAs can make a mistake, the benefit to both Parties is that AT&T's proposed language is reciprocal. When Sprint or any adopting carrier issues a factually (not presumptively) erroneous bill, AT&T will be subject to the same escrow requirements as any other Party to this ICA when it comes to paying Disputed Amounts by the Bill Due Date. In reality, and as this Commission has approved in other ICAs, escrow is a common practice regardless of whether Sprint engages in it.[4]

Q. MR. FELTON'S DIRECT TESTIMONY ON PAGE 87 SUGGESTS THAT AT&T'S PROPOSED LANGUAGE DOES NOT INCENT AT&T TO SEND OUT ACCURATE BILLS. IS THAT CORRECT?

A. Absolutely not, and there is no basis for such a suggestion. AT&T wants access to the money that is rightfully due to AT&T, and AT&T has no access to money

[4] See *TDS Metrocom Petition for Arbitration of Interconnection Terms, Conditions, and Prices from Wisconsin Bell, Inc., d/b/a Ameritech Wisconsin,* Docket No. 05-MA-138, Arbitration Award on Issue TDS-11, dated March 12, 2001, pages 14-16. In its award granting Ameritech Wisconsin the right to escrow provisions, the Arbitration Panel noted "it is clear that requiring disputed amounts to be placed in escrow is *a standard practice in this industry.*"[Emphasis added] In fact, the escrow provisions that AT&T is proposing in this proceeding have long been standard ICA terms in AT&T's former 13-state region, and it is now standard language in AT&T's 22-ICA

that is in an escrow account. It most definitely is in AT&T's or any carrier's best interest to render correct bills. It is ludicrous to suggest that AT&T would do otherwise, particularly for the reasons upon which Mr. Felton appears to be basing his premise.

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

A. No. Again, there is no basis for such a suggestion as to AT&T's intent, and I will remind this Commission that the proposed provision is reciprocal. However, if escrow requirements discourage *frivolous* disputes, AT&T's proposed language will have had its intended effect.[5] I can also attest that, as a factual matter, the inclusion of escrow provisions in ICAs does not appear to discourage legitimate disputes; AT&T receives many bill disputes from carriers whose ICAs require them to deposit the Disputed Amounts into an escrow account.

Q. MR. FELTON DEVOTES SEVERAL PAGES OF HIS DIRECT TESTIMONY TO COMPLAINING GENERALLY ABOUT THE BURDENS OF ESCROW ACCOUNTS. IS THERE ANY MERIT TO HIS COMPLAINTS?

A. No. Sprint is overstating by far any such burdens, given that there are well-established processes for opening and maintaining escrow accounts. I described

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[5] There is a regulatory precedent that addresses escrow with respect to such disputes. The Texas Public Utilities Commission stated, "This process would enable the CLECs to: 1) obtain the escrowed funds in a more timely manner if the billing error is in CLEC's favor than if they had to wait for a refund or credit from SBC-Texas in a "pay and dispute" situation, 2) receive interest on funds placed in escrow. *This process would also deter CLECs from filing a bill dispute in order to avoid paying the invoice.*" [Emphasis added] See *Arbitration Award – Track 1 Issues* in *Arbitration of Non-Costing Issues for Successor Interconnection Agreements to the Texas 271 Agreement*. P.U.C. Docket No. 28821, Arbitration Award on issue 34, dated February 23, 2003, pages 158-159

the steps for escrow under AT&T's proposed language in my direct testimony beginning on page 44.

Q. HOW DO YOU RESPOND TO MR. FELTON'S STATEMENT AT PAGE 87 THAT "AT&T HAS OTHER MEANS AT ITS DISPOSAL TO ENSURE THAT IT IS NOT TAKEN ADVANTAGE OF BY UNSCRUPULOUS CARRIERS THAT WOULD ATTEMPT TO GAME THE BILLING AND DISPUTING SYSTEM"?

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

ISSUE #85 *[DPL ISSUE IV.E(1)]*

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

Contract Reference: General Terms and Conditions, Part B – Definitions (under definition of Discontinuance Notice); Att. 7, section 2.2

Q. MR. FELTON STATES ON PAGE 88 OF HIS DIRECT TESTIMONY THAT "IT IS NOT UNREASONABLE TO PROVIDE FORTY-FIVE (45) DAYS NOTICE TO AVOID POTENTIAL DISRUPTION OR DISCONNECTION OF SERVICE." IS HE CORRECT?

A. No, but he is misleading. Mr. Felton is really saying that Sprint wants 45 *more* days. As I discussed in my direct testimony on page 46, the non-paying carrier already has had 31 days to pay its bill before the Billing Party renders a

Discontinuance Notice. AT&T is willing to agree to give 15 more days (or 46 total), but not 45 more days (or 76 total). Forty-six total days should be ample time for the Billed Party to determine whether the bill should be paid.

As for Mr. Felton's assertion that discontinuance is a "drastic remedy", AT&T points out that it is significant to the Billing Party when it is not timely paid for services provided to the Billed Party. Discontinuance is the appropriate response to such non-payment, and, as I pointed out in my direct testimony, this Commission has approved AT&T's proposed discontinuance language in other ICAs.

Q. MR. FELTON FURTHER SUGGESTS AT PAGE 89 THAT, BECAUSE SPRINT "PROCESSES THOUSANDS OF INVOICES EVERY MONTH," IT IS POSSIBLE THAT THE LOSS OF ONE OF THOSE IN ELECTRONIC TRANSMISSION COULD MEAN VERY HARSH RESULTS. IS THAT REALLY AN ISSUE BETWEEN AT&T AND SPRINT?

A. I do not believe it is, and I doubt that it would be. If such a situation occurred, and if Sprint received a Discontinuance Notice from AT&T, it is beyond my perception how that would result in actual discontinuance. I am sure Mr. Felton would agree with me that our companies are in constant communication with each other, and that if Sprint had a plausible explanation, the situation would work out. AT&T is not intent on discontinuing service for any carrier; AT&T is intent on protecting its right to be timely paid for services it renders to Sprint or any carrier that might adopt these ICAs.

Q. PLEASE RESPOND TO MR. FELTON'S SUGGESTION AT PAGE 89 THAT SPRINT'S "PRACTICE IS TO PAY ALL UNDISPUTED BILLS BY THE DUE DATE" AND, THEREFORE, THIS REQUIREMENT MAY NOT BE AN ISSUE BETWEEN THE PARTIES.

A. If it is true that Sprint pays its undisputed bills[6] by the Bill Due Date, then Mr. Felton might be right that discontinuance is not an issue between AT&T and Sprint. If it is not an issue between AT&T and Sprint, then it should not matter to Sprint if AT&T's proposed 15-day limitation goes into the ICA. In the event that Sprint's "practice" changes or other carriers adopt these ICAs, AT&T would be protected (as would Sprint, since this is a reciprocal provision).

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

ISSUE #86 *[DPL ISSUE IV.E(2)]*

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

Contract Reference: Att. 7, sections 2.0 – 2.9

Q. MR. FELTON IMPLIES THROUGHOUT HIS DISCOURSE ON THIS ISSUE (BEGINNING ON PAGE 90 OF HIS DIRECT TESTIMONY) THAT AT&T (OR THE BILLING PARTY) SHOULD NOT HAVE THE RIGHT TO DISCONNECT *ALL* OF SPRINT'S (OR THE BILLED PARTY'S) SERVICES EVEN IF NOT ALL OF THE BILLED PARTY'S SERVICES ARE UNPAID. PLEASE RESPOND.

A. At least Mr. Felton does not dispute the general right of the Billing Party to disconnect the Billed Party for nonpayment. I think that this Commission will not be misled by his suggestion that there are degrees of nonpayment that should somehow be treated by degrees of discontinuance. A carrier that does not pay its

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[6] As a reminder, AT&T has proposed language in its escrow provisions that would require Sprint to change its practice of paying all undisputed bill amounts to one in which Sprint (or any adopting carrier) would pay all billed amounts, albeit some of those dollars may be paid into escrow

bills – to whatever degree – should not be able to continue to receive services. If an automobile repair shop performs a $3,000 engine rebuild and a $200 brake job on the same vehicle, the repair shop is not going to release that vehicle to the owner if the owner is willing to pay only for the brake job.

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

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

A. No. I addressed this in my direct testimony on pages 47-49. To summarize, AT&T's position is that, under AT&T's proposed language, the Billing Party should be able to make the decision that the Billed Party has not complied with the terms of these new ICAs, and, therefore, is subject to discontinuance. Having made that determination, the Billing Party should notify any commission(s) requiring notification that a Discontinuance Notice was issued to a non-paying carrier. The Billing Party should not have the burden to seek permission, while

the Non-Paying Party should have the burden of taking the initiative to ask a commission to stop the Billing Party from discontinuing service. Mr. Felton's suggestion otherwise automatically builds more time into what is already a delay in the Billing Party gaining resolution for nonpayment.

ISSUE #92 *[DPL ISSUE V.C(1)]*

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

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

ISSUE #93 *[DPL ISSUE V.C(2)]*

Should the ICA include language governing company code changes?

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

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

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

Q. MR. SYWENKI STATES ON PAGE 88 OF HIS DIRECT TESTIMONY THAT "AT&T'S PROPOSED LANGUAGE IS AN ATTEMPT BY AT&T TO INAPPROPRIATELY SHIFT ITS INTERNAL RECORD KEEPING EXPENSES TO SPRINT." IS HE CORRECT?

A. No. AT&T is attempting to obtain ICA language that says that the cost-causer – whether Sprint or an adopting carrier – will pay for the costs for required changes. I discussed this in my direct testimony beginning on page 53 (for Issue #92 *(DPL Issue V.C(1))*) and page 55 (for Issue #92 *(DPL Issue V.C(2))*). AT&T is obligated to enter into ICAs with carriers. If carriers take actions that require corporate name or code changes, AT&T is compelled to update its records to reflect those changes. Changes to that record information would not be made if

not for the actions of other parties. As I discussed in my direct testimony, these changes can affect (among other things) the names of the parties to an ICA, account identification, billing, provisioning, maintenance, and call routing. It is clear from that list of items that the carrier requesting those changes (and the carrier's customer) benefits from the changes being made due to the carrier's actions.

Q. MR. SYWENKI STATES AT PAGE 88 THAT "THE AT&T PROPOSED LANGUAGE APPEARS TO ALWAYS REQUIRE SPRINT TO PAY AT&T...IN THE CONTEXT OF A SPRINT NAME CHANGE OR COMPANY CODE CHANGE," AND SUGGESTS THAT "IT DOESN'T APPEAR THAT SPRINT WOULD BE COMPENSATED..." FOR SIMILAR NAME AND CODE CHANGES. IS THAT CORRECT?

A. Yes. That is exactly what AT&T's proposed language would and would not allow. First, AT&T is not similarly situated to Sprint and other carriers, and it is unlikely that Sprint and other carriers would be subjected to the type of changes to which AT&T is constantly subjected. Therefore, it is unclear that Sprint can establish that it would incur any costs for name changes. Second, I am not aware that Sprint made any proposal that this language should be reciprocal, but I am aware that Sprint does not believe that AT&T's company name change or company code change language is necessary or appropriate.[7]

Q. AT PAGE 88, MR. SYWENKI "SERIOUSLY DOUBTS THAT AT&T WOULD INCUR ANY INCREMENTAL COSTS" TO MAKE COMPANY NAME AND CODE CHANGES. IS THAT EVEN RELEVANT TO THIS ISSUE?

[7] Footnotes 19 and 22 of my direct testimony refer to Sprint's statements to this effect as found on the Language Exhibit for this proceeding.

A. No, it is a totally irrelevant, and merely sounds like something that would be said when there is nothing else to say. AT&T incurs costs to perform the changes at issue here, and has a right to be paid for them. Any discussion of personnel utilization or cost studies[8] is an attempt by Mr. Sywenki to divert attention from the fact that a cost-causer should pay the costs.

Q. DOES THIS CONCLUDE YOUR REBUTTAL TESTIMONY?

A. Yes.

[8] As I discussed in my direct testimony, the charges for making the changes at issue in this proceeding are contained in the current and proposed Pricing Schedule for these ICAs, and in appropriate tariffs. For some perspective, the charges for the types of changes at issue are generally (but not limited to) record change charges and service ordering charges, and are approved by state and federal regulatory bodies.

AT&T FLORIDA

REBUTTAL TESTIMONY OF JAMES W. HAMITER

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

DOCKET NO. 100176-TP AND DOCKET NO. 100177-TP

OCTOBER 6, 2010

REDACTED VERSION

ISSUES

24 *[DPL II.C(1)]*, 25 *[DPL II.C(2)]*, 26 *[DPL II.C(3)]*, 27 *[DPL II.D(1)]*, 28 *[DPL II.D(2)]*, 29 *[DPL II.F(1)]*, 30 *[DPL II.F(2)]*, 31 *[DPL II.F(3)]*, 32 *[DPL II.F(4)]*, 33 *[DPL II.G]*, 34 *[DPL II.H(1)]*, 35 *[DPL II.H(2)]*, 36 *[DPL II.H(3)]*, 51 *[DPL III.A.4(3)]*, 93 *[DPL V.B]*

I. INTRODUCTION

Q. PLEASE STATE YOUR NAME.

A. My name is James W. Hamiter.

Q. ARE YOU THE SAME JAMES W. HAMITER WHO FILED DIRECT TESTIMONY IN THIS CASE ON OR ABOUT AUGUST 25, 2010?

A. Yes.

Q. WHAT IS THE PURPOSE OF YOUR REBUTTAL TESTIMONY?

A. I will present testimony in response to the direct testimony of Sprint witnesses Mark G. Felton and Peter N. Sywenki on DPL Issues 24 *[DPL II.C(1)]*, 25 *[DPL II.C(2)]*, 26 *[DPL II.C(3)]*, 27 *[DPL II.D(1)]*, 28 *[DPL II.D(2)]*, 29 *[DPL II.F(1)]*, 30 *[DPL II.F(2)]*, 31 *[DPL II.F(3)]*, 32 *[DPL II.F(4)]*, 33 *[DPL II.G]*, 34 *[DPL II.H(1)]*, 35 *[DPL II.H(2)]*, 36 *[DPL II.H(3)]*, 51 *[DPL III.A.4(3)]* and 93 *[DPL V.B]*.

II. DISCUSSION OF ISSUES

ISSUE # 24 *[DPL ISSUE II.C(1)]*

Should Sprint be required to maintain 911 trunks on AT&T's network when Sprint is no longer using them?

Contract Reference: Att. 10, section 1.3

Q. SPRINT (FELTON DIRECT AT 10) SAYS THAT AT&T OPPOSES SPRINT'S LANGUAGE ALLOWING IT TO DISCONNECT E911 TRUNKS THAT "ARE NO LONGER NECESSARY." HOW DO YOU RESPOND?

A. Sprint's characterization is not completely accurate. AT&T agrees with Sprint in principle that Sprint should not have to maintain trunks where they are no longer necessary because Sprint is not providing service in a particular area. But Sprint's

proposed language is not that limited. It provides that Sprint may disconnect E911 Trunks "if E911 Trunks are no longer utilized to route E911 traffic." That could be due to a temporary condition, or because the trunks Sprint wants to disconnect represent diverse and redundant facilities that, as discussed in my direct testimony, the FCC recommends be maintained.

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

Q. SPRINT "SURMISES" (FELTON DIRECT AT 11) THAT AT&T'S POSITION IS BASED ON A DESIRE TO MAINTAIN A REVENUE STREAM. IS SPRINT CORRECT?

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

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

A. No, we did not. This is just an attempt to paint AT&T in a negative light.

ISSUE # 25 *[DPL ISSUE II.C(2)]*

Should the ICA include Sprint's proposed language permitting Sprint to send wireline and wireless 911 traffic over the same 911 Trunk Group when a PSAP is capable of receiving commingled traffic?

Contract reference: Attachment 10, section 1.2 (CLEC); 1.1 (CMRS)

Q. IS THIS STILL A LIVE ISSUE?

A. No, I am pleased to report the parties have been able to resolve Issue II.C(2).

ISSUE # 26 *[DPL ISSUE II.C(3)]*

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

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

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

A. Based on Sprint's testimony (Felton Direct at 16-17), no. The parties seem to agree that 911 trunks should only carry 911 traffic.

Q. WHAT IS THIS ISSUE ABOUT, THEN?

A. This issue concerns section 1.2 of Attachment 10 of the Competitive Local Exchange Carrier ("CLEC") Interconnection Agreement ("ICA"), where the parties have agreed that AT&T will provide Sprint with access to AT&T's 911 and E911 databases, and will provide 911 and E911 interconnection and routing for the purpose of 911 call completion only. AT&T proposes to firm that up by specifying that it shall be solely for the purposes of *Sprint* 911 call completion. Sprint opposes that limitation (Felton Direct at 15-16). The same disagreement appears in section 1.1 of Attachment 10 of the CMRS ICA. I outlined the reason for AT&T's proposed language in my direct testimony at page 11-12.

Q. IS IT ENOUGH THAT SPRINT WILL COMMINGLE E911 TRAFFIC ONLY IF THE "PSAP IS EQUIPPED TO PROPERLY HANDLE SUCH TRAFFIC" (FELTON DIRECT AT 16)?

A. No. As I explained in my direct testimony at pages 11-12, combining multiple carriers' end users' 911 calls on the same trunk group would prevent identification of the originating carrier, which could be catastrophic in

circumstances where the Public Safety Answering Point ("PSAP") needs to isolate a call back to that carrier. Every reasonable effort should be made to avoid blocked or mishandled E911 calls and the risks I have described can and should be avoided. Sprint's proposed language is insufficient to avoid these risks and should be rejected in its present state. AT&T has proposed new language to Sprint in an attempt to cure the defects in that language and is awaiting a response. If Sprint accepts AT&T's new language, this issue will be resolved.

ISSUE # 27 ***[DPL ISSUE II.D(1)]***

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

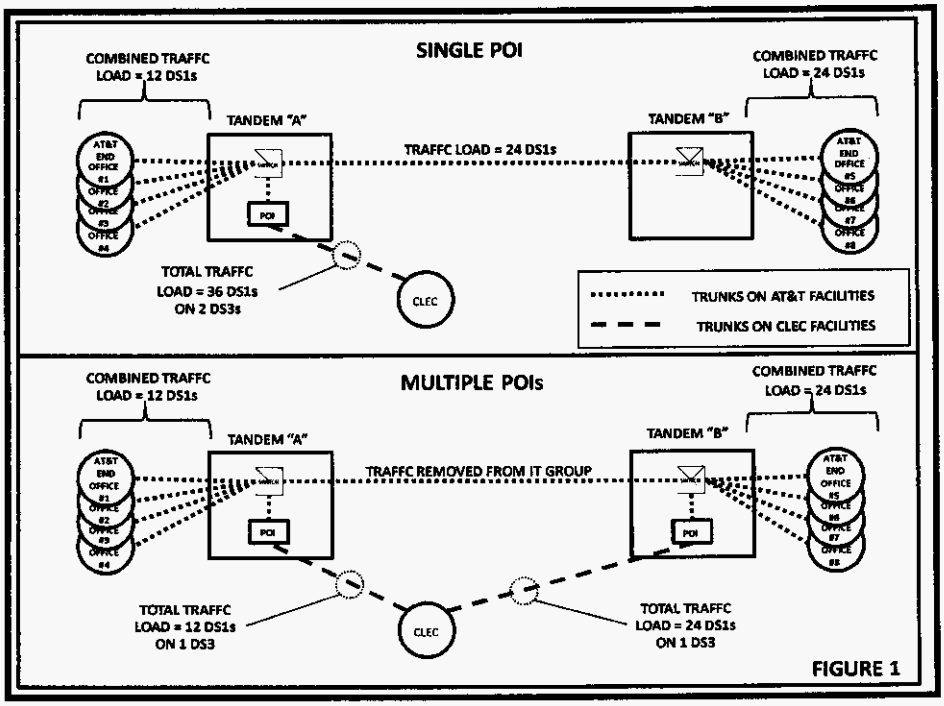
Contract Reference: Att. 3, AT&T section 2.3.2 (CMRS); AT&T section 2.6.1 (CLEC); Sprint section 2.3 (CLEC)

Q. SPRINT DESCRIBES AT&T'S 24 DS1 THRESHOLD AS "ARTIFICIAL" (FELTON DIRECT AT 18). IS IT?

A. No. Having a specific threshold is a fair way to create a distributed network architecture based on traffic volumes, and Sprint's argument that the 24 DS1 threshold proposed by AT&T is artificial is not supported. Both Sprint CLEC and Sprint CMRS currently have multiple POIs in LATAs in Florida. *** **BEGIN CONFIDENTIAL/PROPRIETARY** ***

*** **END CONFIDENTIAL/PROPRIETARY** *** Exactly what Sprint means by "artificial" is unclear and it is possible that Sprint still does not understand exactly what AT&T is proposing with its 24 DS1 threshold language. Using Figure 1,

below, I will illustrate and describe how the 24 DS1 threshold is used to trigger an additional POI.



For the purpose of this explanation, suppose the AT&T network has two tandems in a hypothetical LATA, each of which serve four end offices apiece – Tandem "A" serves end offices 1 through 4, and Tandem "B" serves end offices 5 through 8 as depicted in the top and bottom panels of Figure 1. These two tandem switches are connected with an inter-tandem trunk group ("IT Group").

In the top panel of Figure 1, a CLEC has a single point of interconnection with AT&T at tandem "A." It is through this POI that the CLEC exchanges traffic with end users in AT&T end offices that are served by both tandems, respectively. That is, all of the traffic is carried by trunks that are provisioned on both AT&T and CLEC facilities, through the single POI at "A." Also, for the

purpose of this explanation only and for the sake of simplicity, let's assume that the CLEC has not established direct end office trunk groups ("DEOTs") with any AT&T end office, nor does it directly trunk to tandem "B." In other words, the CLEC delivers traffic that is destined for end offices behind tandem "B" to tandem "A", and tandem "A" delivers the traffic to tandem "B" for completion over the appropriate end office trunk group.

As depicted in Figure 1, the traffic load between the CLEC and the AT&T end users behind tandem "B" has reached a level that is equivalent to 24 DS1s. If the combined traffic load of the traffic exchanged between the CLEC and AT&T end offices 1 through 4 has reached a level that is equivalent to 12 DS1s, then the total traffic load through the POI at "A" is equivalent to 36 DS1s. As discussed in Table 1 on page 5 of my direct testimony, there are 28 DS1s in a DS3. Consequently, the total traffic load between AT&T and the CLEC requires 2 DS3s.

Tandem "A" routes the traffic from the CLEC to AT&T end users in end office 5 through 8 over the inter-tandem trunk group to tandem "B", where it is delivered to the respective end offices. Tandem "B" also uses this trunk group to route traffic from AT&T end users in end offices 5 through 8 to the CLEC.

The trunks from the POI to tandem "A", the trunks from tandem "A" to end offices 1 through 4, the inter-tandem trunk group between tandem "A" and tandem "B", and the trunks from tandem "B" to end offices 5 through 8 are all

provisioned over AT&T-owned facilities. The trunks from the CLEC switch to the POI are provisioned on CLEC-owned facilities.

Since the level of traffic to tandem "B" has reached 24 equivalent DS1s, it is time for the CLEC to establish a second POI at tandem "B" in accordance with the AT&T threshold language. The lower panel of Figure 1 illustrates how this has been done. With the second POI established, and after the traffic has been re-directed, the CLEC and AT&T both have a more efficient network. The traffic exchanged with the AT&T end users in end offices 5 through 8, just as the traffic exchanged with AT&T end users in end offices 1 through 4, now has one less point of switching through which to route – i.e. calls are more directly routed – and the chance of experiencing routing problems is lower. This is analogous to creating a bypass on a highway that proceeds through a town. Those travelers whose destination is other than the town in question may bypass the town entirely, rather than hitting all of the stop lights as they drive through the town.

Q. HOW REASONABLE – AS OPPOSED TO BEING "ARTIFICIAL" – IS THE 24 DS1 LANGUAGE OFFERED BY AT&T AS IT IS USED IN THE EXAMPLE IN FIGURE 1, ABOVE?

A. The number of DS3s required to route all of the traffic to both tandems has not increased, so overall facility costs have not increased. Also, with the single POI arrangement, there were 20 DS1s available (56 – 36 = 20) in the two working DS3s to provision trunks for growth in traffic exchanged with all eight end offices. In the arrangement with two POIs, there are now 16 DS1s available for growth in traffic between CLEC and offices 1 through 4, as well as 4 DS1s

available for growth in traffic exchanged with offices 5 through 8. This makes a total of 20 DS1s available for growth, so the number of unused DS1s does not change, either. The CLEC will not have to immediately purchase any additional facilities to handle growth in traffic to any of the end offices. That alone makes 24 DS1s a reasonable threshold. But it goes further than this.

In my explanation above, I mentioned a reduction in the risk of call routing problems. This still stands, but in addition to this improvement in service, there is also an increase in network reliability because there is route diversity available for emergency situations. To explain, if something were to happen to the facility over which the trunks through the second POI at "B" were provisioned – a cable cut, for instance – the CLEC would have an alternate facility route over which calls could be temporarily routed for completion until the severed cable could be repaired.

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

A. As I stated in my direct testimony at page 23, the number of DS1s that AT&T uses as its threshold for adding another POI[1] was the result of an interconnection arbitration conducted before the Public Utilities Commission of Texas. That

[1] The threshold of 24 DS1s that AT&T proposes for adding an additional POI should not be confused with the 24 DS0s (one DS1) threshold for creating a DEOT, which is also based on traffic load over a period of time. In fact, when managing its own network, AT&T imposes even more stringent standards upon itself when establishing a DEOT. For instance, AT&T installs a direct end office trunk (DEOT) to alleviate tandem traffic load when the traffic level is only 12 DS0 trunks required, rather than the 24 DS0s that AT&T has proposed elsewhere in the ICA.

order established a threshold level that AT&T (then SBC) was and is willing to use going forward. As stated in my direct testimony, the threshold AT&T proposes for additional POIs is 15% lower than a full DS3 and has been in use for some time now.

Q. SPRINT CITES 47 C.F.R. § 51.305 TO SUPPORT ITS POSITION (FELTON DIRECT AT 18-19). WHAT IS AT&T'S RESPONSE?

A. As I discussed in my direct testimony, there is no controlling federal law or FCC rule that addresses, one way or the other, the question of whether additional POIs should be established when traffic volumes so warrant. 47 C.F.R. § 51.305 does not actually state that a requesting carrier is entitled to limit interconnection to only one POI regardless of traffic volumes. And, as indicated above, Sprint CLEC and Sprint CMRS already have multiple POIs in some LATAs within the state.

Q. DO YOU AGREE WITH SPRINT THAT SPRINT ALONE SHOULD DECIDE WHEN IT IS ECONOMICALLY ADVANTAGEOUS TO ESTABLISH ADDITIONAL POIS (FELTON DIRECT AT 19)?

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

Q. SPRINT ASSERTS THAT AT&T'S PROPOSAL WILL CAUSE SPRINT TO INCUR ADDITIONAL COSTS (FELTON DIRECT AT 19). DO YOU AGREE?

A. No. First, Sprint seems to argue that AT&T is already being compensated through charges AT&T imposes for the "existing [i]nterconnection" and Minutes of Use ("MOU") charges associated with the passing of traffic through that interconnection. Sprint is mixing apples and oranges. Whether AT&T was compensated in the past for traffic delivered over existing facilities has nothing to do with this issue, which involves establishing new POIs when traffic reaches a level to warrant an additional POI. Second, as I have previously described, Sprint's current network architecture contemplates additional POIs and Sprint should appropriately bear its fair share of the costs for those POIs. When a carrier has a single POI and delivers traffic to AT&T that is destined for AT&T end offices many miles from the tandem where the carrier's single POI is located, AT&T incurs significant costs. When the other party is a new entrant, those volumes are typically smaller than they are when the other party is an established carrier. AT&T simply wants Sprint, when traffic volume warrants, to establish an additional POI and to pay for the facilities from its switch to that additional POI.

ISSUE # 28 ***[DPL ISSUE II.D(2)]***

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

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

Q. SPRINT CLAIMS THAT AT&T HAS NOT PROVIDED ANY REASON TO HAVE DIFFERENT LANGUAGE IN THE CLEC ICA VERSUS THE CMRS ICA (FELTON DIRECT AT 20). PLEASE RESPOND.

A. It should not be surprising that there is different POI language in the two ICAs, because there is a dramatic difference between the parties' CLEC POI

arrangement and the parties' CMRS POI arrangement. As AT&T witness Pellerin discusses at some length, AT&T's interconnection arrangement with Sprint CLEC is a standard, section 251(c)(2)-compliant arrangement, with each POI within AT&T's network, as required by FCC Rule 51.305. These POIs are the demarcation points between the parties' network, with each party responsible for the facilities on its side of the POI. AT&T's interconnection arrangement with Sprint CMRS, on the other hand, is not a standard, section 251(c)(2)-compliant arrangement, because instead of each POI being within AT&T's network (as required by section 251(c)(2) as implemented in FCC Rule 51.305), Sprint CMRS delivers its traffic to a POI on AT&T's network and AT&T delivers its traffic to a POI on the Sprint CMRS network. Parties are free, of course, to negotiate interconnection terms and conditions without regard for the requirements of section 251(c)(2), and that is what they have done here. And as part of that agreement, the parties have also agreed to share the costs of facilities between their reciprocal CMRS POIs, rather than for each party to be responsible for the facilities on its side of the POI. It is only natural that these very different POI arrangements would yield differences in POI language.

Q. DOES SPRINT RAISE ANY SUBSTANTIVE CONCERNS ABOUT AT&T'S PROPOSED LANGUAGE?

A. Yes, but just one – Sprint opposes bearing any financial responsibility for mass calling and third party trunk groups.

Q. WHAT SPECIFICALLY IS SPRINT'S OBJECTION TO AT&T'S PROPOSAL REGARDING FINANCIAL RESPONSIBILITY FOR MASS CALLING AND THIRD PARTY TRUNK GROUPS?

A. AT&T's proposed section 2.6.5 provides: "Sprint is solely responsible, including financially, for the facilities that carry OS/DA, E911, mass Calling and Third Party Trunk Groups." Sprint does not object to that language as it pertains to OS/DA and E911, but does object that AT&T's language "imposes financial responsibility on Sprint for the facilities and trunks associated with mass calling or third-party trunk groups, even if installed for AT&T's benefit or use." (Felton Direct at 21.)

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

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

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

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

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

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

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

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

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

A. Sprint offers no cogent objection to the other AT&T-proposed language encompassed by this issue. This is not surprising. AT&T's language is reasonable for the reasons I addressed in my direct testimony at pages 26 through 31.

ISSUE # 29 ***[DPL ISSUE II.F(1)]***

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

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

Q. WHAT IS THE STATUS OF THE ISSUE?

A. AT&T has withdrawn the proposed language to which Sprint objected on the ground that it may have required Sprint to use one-way trunking. Also, Sprint has accepted AT&T's language for Sprint CLEC ICA section 2.8.1.1. This issue is now closed.

ISSUE # 30 ***[DPL ISSUE II.F(2)]***

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

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

Q. SPRINT COMPLAINS THAT THERE IS NO JUSTIFICATION FOR DIFFERENCES IN LANGUAGE FOR THE CMRS ICA VERSUS THE CLEC ICA (FELTON DIRECT AT 24-25). HOW DO YOU RESPOND?

A. As I explained above in connection with Issue II.D(2), there is a perfectly good reason for the differences between the interconnection-related provisions in the two ICAs. Perhaps more important, Sprint's complaint about the differences has

no bearing on the resolution of this issue. Indeed, Sprint has indicated that it is agreeable to AT&T's language subject to three conditions – two of which are acceptable to AT&T.

Q. WHAT ARE THOSE CONDITIONS?

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

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

A. AT&T does not agree that it should bear any portion of the costs of such groups. The provision to which Sprint appears to be referring is AT&T's proposed section 2.8.11.1, and in particular the last sentence, which provides:

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

This issue should be resolved based on the same reasoning set forth by Ms. Pellerin in her testimony for Issue III.E(2), which I reference above in my discussion of Issue II.D. Her analysis applies equally here: For traffic that neither

originates with nor terminates to an AT&T end user, Sprint, not AT&T, should bear the costs, since Sprint is the cost-causer.

Q. HOW SHOULD THE COMMISSION RESOLVE THIS ISSUE?

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

ISSUE # 31 *[DPL ISSUE II.F(3)]*

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

Contract Reference: Attachment 3, section 2.8.6.3

Q. IS THIS AN OPEN ISSUE?

A. No. As reflected in Sprint's testimony (Felton Direct at 27), Sprint has accepted AT&T's proposed language that requires the parties to use Trunk Group Service Requests to request changes in trunking.

ISSUE # 32 *[DPL ISSUE II.F(4)]*

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

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

Q. SPRINT SEEMS TO SUGGEST (FELTON DIRECT AT 28) THAT LANGUAGE FOR 800/8YY TOLL FREE SERVICE IS NOT NECESSARY. DO YOU AGREE?

A. No. As I explained in my direct testimony at page 38, inclusion of the language cannot possibly do any harm, and a carrier that would otherwise choose to opt

into this ICA but that wants to use AT&T's service might be troubled by the absence of language governing the provision of this service. Moreover, AT&T's network is designed to perform the 800/8YY Toll Free database query unless the other carrier has previously performed the query, as Sprint plans to do. Absent AT&T's proposed language, AT&T would not have a way to bill a CLEC opting into the Sprint agreement for the database query that AT&T performs for the carrier.

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

A. Not really. Sprint says that it "has no conceptual problem with AT&T's proposed language" (Felton Direct at 28). Sprint notes that there are several other issues that touch on some of the terms used in AT&T's proposed language and notes that those are addressed elsewhere. In particular, Sprint points to Issues I.B(2), II.F(2) and III.A.4(2).

Q. HOW SHOULD THE COMMISSION RESOLVE THIS ISSUE?

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

ISSUE # 33 *[DPL ISSUE II.G]*

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

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

Q. SPRINT OBJECTS THAT AT&T'S 24 TRUNK THRESHOLD IS "ARBITRARY" AND "ARTIFICIAL" (FELTON DIRECT AT 29.) HOW DO YOU RESPOND?

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

Q. SPRINT ALSO OBJECTS TO AT&T'S PROPOSED CLEC ICA LANGUAGE BECAUSE IT REQUIRES MUTUAL AGREEMENT BEFORE TWO-WAY TRUNKS CAN BE USED (FELTON DIRECT AT 29-30). IS THIS STILL AN ISSUE?

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

Q. DOES SPRINT'S LANGUAGE ADEQUATELY ADDRESS AT&T'S CONCERNS OVER TANDEM EXHAUST, AS SPRINT CLAIMS (FELTON DIRECT AT 30)?

A. No. As I anticipated in my direct testimony, Sprint claims that its proposed language provides for DEOTs. However, if the Commission were to adopt Sprint's language, there would be no DEOT requirement in the agreement. Sprint's language would "require" a DEOT only "subject to Sprint's sole discretion," and only "as it [Sprint] deems necessary" or "to the extent mutually

agreed" – which means much the same thing, since there will be no mutual agreement if Sprint does not agree. Accordingly, the Commission should adopt AT&T's proposed DEOT language and reject Sprint's.

Q. SPRINT ARGUES THAT AT&T SHOULD BEAR THE ENTIRE COST OF A DEOT INSTALLED TO RELIEVE TANDEM EXHAUST (FELTON DIRECT AT 30). DO YOU AGREE?

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

Q. WHAT ABOUT SPRINT'S ARGUMENT THAT ANOTHER CARRIER MIGHT HAVE CAUSED THE EXHAUST AND THAT SPRINT IS BEING PENALIZED BECAUSE IT IS THE "LAST ONE TO THE PARTY" (FELTON DIRECT AT 30)?

A. That argument makes no sense. Under AT&T's proposed language, the determination whether Sprint must install a DEOT is based solely on the amount of traffic Sprint is sending through the tandem to a particular AT&T end office; traffic delivered to AT&T by other carriers has nothing to do with it.

ISSUE # 34 ***[DPL ISSUE II.H(1)]***

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

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

Q. SPRINT SAYS IT WILL ADDRESS MASS CALLING TRUNKS WHEN "IT ACQUIRES A CUSTOMER THAT 'CAUSES' MASS CALLS TO BE

INITIATED" (FELTON DIRECT AT 31). IS THAT A REASONABLE APPROACH?

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

Moreover, it is important that carriers *proactively* work together to address mass calling events. Mass calling events can create call blockage and jeopardize the PSTN, including emergency services, as I detailed in my direct testimony at pages 43 and 44.

AT&T therefore establishes, and asks carriers with which it is interconnected to establish, mass calling trunks, separate from the PSTN, in order to ensure reliability of the network in general and the 911 network in particular. Mass calling trunks [also referred to as choke trunks or high volume call-in ("HVCI") trunks] limit the number of calls allowed at one time to a particular mass calling number.

Q. DOES SPRINT'S LANGUAGE APPROPRIATELY ADDRESS THIS ISSUE, AS SPRINT MAINTAINS (FELTON DIRECT AT 31-32)?

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

> If the need for HVCI trunk groups are identified by either Party, that Party may initiate a meeting at which the Parties will negotiate

where HVCI Trunk Groups may need to be provisioned to ensure network protection from HVCI traffic.

There are several obvious problems with this language as I explained in my direct testimony. Sprint's proposal only provides that Sprint *may* initiate a meeting if it becomes aware of a need for HVCI trunks. Sprint's language also does not require Sprint to do anything at all even if AT&T initiates a meeting – except negotiate.

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

A. No, the cost should be shared by all carriers whose end users make calls during mass calling events. Again, Sprint has it backwards, trying to allocate all of the cost to the carrier whose customer receives the calls. It is the end users who originate the mass calls who cause the cost, and those end users' carriers should be responsible for their fair share of the costs. This is consistent with the familiar "calling party's network pays" concept. To the extent that it is Sprint's customers that make the calls that congest the network, Sprint must accept its fair measure of responsibility for safeguarding the network.

Q. HOW SHOULD THE COMMISSION RESOLVE THIS ISSUE?

A. The Commission should resolve this issue in favor of AT&T.

ISSUE # 35 ***[DPL ISSUE II.H(2)]***

What is appropriate language to describe the signaling parameters?

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

Q. IS THIS AN OPEN ISSUE?

A. No. With respect to Section 2.3.2.b of the CMRS ICA, AT&T has withdrawn its proposed language. With respect to the CLEC ICA, Mr. Felton testifies (Direct at 35) that Sprint is willing to accept all of AT&T's proposed language on this issue, so the issue is closed as to the CLEC ICA as well.

ISSUE # 36 *[DPL ISSUE II.H(3)]*

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

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

Q. SPRINT SAYS THAT SPECIFIC PROVISIONS REGARDING TRUNK PROVISIONING ARE NOT NECESSARY BECAUSE ENGINEERS CAN TYPICALLY WORK TOGETHER TO RESOLVE NETWORK ISSUES (FELTON DIRECT AT 36). HOW DO YOU RESPOND?

A. I find Sprint's reasoning faulty. Sprint itself agrees conceptually about the need for trunk servicing language (Felton Direct at 35). Then Sprint says the network engineers "typically" work things out (Felton Direct at 36). But that is no reason not to address these matters in the ICA. The point of an ICA is to provide specific terms so that the parties, including their engineers, can – hopefully always – works things out. There have been numerous instances in which AT&T has had to seek help from a state commission to get a carrier to engineer its trunks to handle the traffic being exchanged and eliminate blocked calls. Detailed language that addresses trunk servicing will help reduce future disputes.

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

As I explained in my direct testimony, AT&T proposes detailed language in an effort to define all of the possibilities that may be encountered between the two carrier's networks, while Sprint offers only high level language. AT&T's language better defines what is expected of each carrier for its trunking network and is used in hundreds, if not thousands, of ICAs across the 22 states where AT&T operates as an ILEC.

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

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

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

A. Sprint mentions only two provisions. First, Sprint complains that AT&T's proposed language allows three days to address an overutilization/trunk-blocking scenario but does not address what happens if the parties do not agree about the cause of the blocking and want to have further discussions (Felton Direct at 36). Second, Sprint complains that AT&T's proposed language gives AT&T a unilateral right to issue an Access Service Request ("ASR") to resize Interconnection Trunks and does not grant Sprint the same right (Felton Direct at 36-37).

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

A. I find Sprint's objection ironic. On the one hand, Sprint takes the position that all the detail should be left to the engineers to work out later; on the other hand, its objection here appears to be that there is not enough detail. In addition to that, I am not exactly sure what provision(s) Sprint is critiquing. Sections 3.10.3.1.1 and 3.10.3.1.2 of AT&T's proposed CLEC ICA set a three day deadline to issue an ASR after receipt of a Trunk Group Service Request ("TGSR") in the event of an overutilization/trunk-blocking scenario. That is the only three day deadline I see in this section of the ICA. But those provisions do not provide for what Sprint is complaining about. In any event, nothing in these provisions prevents the parties from discussing concerns or questions about the cause of an overutilization/trunk-blocking issue. And if the parties cannot reach an agreement, I would expect them to look to the ICA's dispute resolution provisions. Sprint's objections are a red herring.

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

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

Moreover, Sprint's accusation that AT&T's language is "patently one-sided" (Felton Direct at 36) is baseless. AT&T's proposed section 3.10.3.2.1.1

provides that if certain trunk groups are underutilized, *either* party may request the issuance of an order to resize them. Section 3.10.3.2.1.2 provides that *either* party may send a TGSR to the other party to trigger changes to the trunk groups based on capacity assessments. AT&T's language further proposes that upon receipt of a TGSR, the receiving party will either issue an ASR to the other party within twenty business days or, if the receiving party does not agree with the resizing, the parties will schedule a joint planning discussion. The parties will then meet to try to resolve and mutually agree to the disposition of the TGSR. Notwithstanding Sprint's contention, AT&T's language provides ample opportunity for Sprint to evaluate and discuss trunk resizing requests.

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

Q. SPRINT NOTES (FELTON DIRECT AT 37) THAT THE DPL THE PARTIES FILED DID NOT INCLUDE SOME CONTRACT LANGUAGE THAT AT&T PROPOSED FOR THE CMRS ICA IN REDLINES TO SPRINT. IS SPRINT CORRECT?

A. Yes. AT&T inadvertently omitted Attachment 3, Sections 4.2, 4.3 and 4.4 to the CMRS ICA, which provisions are still in dispute between the parties. As Mr. Felton notes, these sections were in the AT&T redlines sent to Sprint, and they should have been included in the DPL filed by the parties. The missing sections will be added to the revised DPL that parties will file prior to the hearing.

Q. WHICH OF THESE PROVISIONS DOES SPRINT OBJECT TO?

A. Sprint identifies only one provision from the omitted sections with which it disagrees. Specifically, Mr. Felton objects (Direct at 37) to the CMRS ICA language regarding trunk resizing performed without Sprint's consent on the same basis that he objects with respect to the CLEC ICA language. AT&T's proposed CMRS ICA language is reasonable and should be adopted for the reasons I identified above in my discussion of the CLEC ICA language.

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

Q. SPRINT ALSO COMPLAINS (FELTON DIRECT AT 37) THAT AT&T'S CMRS LANGUAGE DOES NOT ADDRESS OVERUTILIZATION/ BLOCKING SCENARIOS WHILE AT&T'S CLEC ICA LANGUAGE DOES. HOW DO YOU RESPOND?

A. Sprint is incorrect that overutilization/blocking conditions are not addressed in the ICA. If Sprint sees an overutilization/blocking condition on a one-way trunk group that originates at its switch, Sprint can issue an order to increase the

number of trunks working in that group since it has administrative control over that trunk group. Likewise, if Sprint sees an overutilization/blocking condition on a two-way trunk group between its switch and an AT&T switch, Sprint can issue an order to augment the trunk group, as Sprint has administrative control on two-way trunk groups as well. While Sprint is not as likely to see an overutilization or a blocking condition on a one-way trunk group that originates at an AT&T switch, it can happen. Since AT&T has administrative control on this type of trunk group, Sprint can issue a TGSR to AT&T, requesting it augment that trunk group.

Q. SPRINT SAYS THAT ITS PROPOSED LANGUAGE ADDRESSES HOW THE PARTIES WILL UNDERTAKE NETWORK MANAGEMENT (FELTON DIRECT AT 37-38). DO YOU AGREE?

A. No. As far as I can tell, Sprint has not proposed any language for the CLEC ICA relating to network management. According to the DPL, Sprint relies exclusively on agreed language regarding forecasting and does not believe any additional trunk servicing language is necessary. I am not sure how Sprint can claim this approach is "workable," as Mr. Felton does (Direct at 38).

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

ISSUE # 51 ***[DPL ISSUE III.A.4(3)]***

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

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

Q. IS THIS STILL A LIVE DISPUTE?

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

ISSUE # 91 *[DPL ISSUE V.B]*

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

Contract Reference: Att. GT&C Part B Definitions

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

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

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

Sprint proposes the following additional sentence:

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

Q. IS SPRINT'S PROPOSED ADDITIONAL LANGUAGE ACCEPTABLE?

A. No.

Q. WHY NOT?

A. As Sprint itself acknowledges, AT&T's alternative language comports with industry definitions of a CIC. (Sywenki Direct at 86-87). That should be sufficient. Moreover, there is nothing ambiguous in AT&T's proposed definition; plainly, an "access purchaser" is a purchaser of access services. Sprint's

additional language is unnecessary and Sprint has not provided a valid reason for adding to the accepted industry definition.

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

Q. HOW SHOULD THE COMMISSION RESOLVE THIS ISSUE?

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

Q. DOES THIS CONCLUDE YOUR REBUTTAL TESTIMONY?

A. Yes.

AT&T FLORIDA

REBUTTAL TESTIMONY OF J. SCOTT McPHEE

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

DOCKET NO. 100176-TP AND DOCKET NO. 100177-TP

OCTOBER 5, 2010

ISSUES

2 *[DPL Issue I.A(2)]*, 3 *[I.A.(3)]*, 4 *[I.A(4)]*, 6 *[I.A(6)]*, 9(ii) *[I.B(2)(b)]*, 12 *[I.B(4)]*, 13 *[I.B(5)]*, 14 *[I.C(1)]*, 15 *[I.C(2)]*, 16 *[I.C(3)]*, 17 *[I.C(4)]*, 18 *[I.C(5)]*, 19 *[I.C(6)]*, 42 *[III.A.1(3)]*, 43 *[III.A.1(4)]*, 44 *[III.A.1(5)]*, 45 *[III.A.2]*, 46 *[III.A.3(1)]*, 47 *[III.A.3(2)]*, 48 *[III.A.3(3)]*, 49 *[III.A.4(1)]*, 50 *[III.A.4(2)]*, 52 *[III.A.5]*, 53 *[III.A.6(1)]*, 54 *[III.A.6(2)]*, 60 *[III.E(3)]*, 61 *[III.E(4)]* and 62 *[III.F]*

I. INTRODUCTION

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

A. Yes.

Q. WHAT IS THE PURPOSE OF YOUR REBUTTAL TESTIMONY?

A. I will address and respond to various points made by Sprint witnesses Peter Sywenki ("Sywenki Direct"), Mark Felton ("Felton Direct") and Randy Farrar ("Farrar Direct") as they pertain to DPL Issues 2 *[DPL Issue I.A(2)]*, 3 *[I.A.(3)]*, 4 *[I.A(4)]*, 6 *[I.A(6)]*, 9(ii) *[I.B(2)(b)]*, 12 *[I.B(4)]*, 13 *[I.B(5)]*, 14 *[I.C(1)]*, 15 *[I.C(2)]*, 16 *[I.C(3)]*, 17 *[I.C(4)]*, 18 *[I.C(5)]*, 19 *[I.C(6)]*, 42 *[III.A.1(3)]*, 43 *[III.A.1(4)]*, 44 *[III.A.1(5)]*, 45 *[III.A.2]*, 46 *[III.A.3(1)]*, 47 *[III.A.3(2)]*, 48 *[III.A.3(3)]*, 49 *[III.A.4(1)]*, 50 *[III.A.4(2)]*, 52 *[III.A.5]*, 53 *[III.A.6(1)]*, 54 *[III.A.6(2)]*, 60 *[III.E(3)]*, 61 *[III.E(4)]* and 62 *[III.F]*.

Q. IN WHAT ORDER WILL YOU ADDRESS THESE ISSUES?

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

II. DISCUSSION OF ISSUES

ISSUE 4 *[DPL ISSUE I.A(4)]*

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

Contract Reference: GTC Part A, Section 1.4

Q. SPRINT WITNESS SYWENKI IDENTIFIES THREE SCENARIOS IN WHICH AN ENTITY MAY HAVE ITS OWN NANPA NUMBERING, YET WANT TO USE ANOTHER CARRIER, SUCH AS SPRINT, ON A WHOLESALE BASIS, FOR PURPOSES OF EXCHANGING TRAFFIC (SYWENKI DIRECT AT 30-31). ARE YOU AWARE OF ANY INSTANCE IN WHICH SUCH AN ARRANGEMENT IS ACTUALLY IN PLACE?

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

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

A. No, it does not – and Mr. Sywenki's testimony says nothing to remedy that shortcoming. Rather, he merely indicates (Direct at 31) that he is "not aware" of any technical limitations on a VoIP service provider's ability to *obtain its own telephone numbers* from NANPA. But the issue here is not how the third party is going to obtain telephone numbers from NANPA; rather, it is *how will that traffic be exchanged between AT&T and Sprint.* As I discussed in my direct testimony, AT&T routes telephone numbers according to their assignment in the Local Exchange Routing Guide ("LERG"). Sprint proposes to exchange with AT&T traffic with

telephone numbers that the LERG assigns to third parties, but provides no explanation how the parties would accomplish that.

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

A. No. Contrary to Mr. Sywenki's example (Direct at 31), SBC IP Communications, Inc. does not exchange its traffic over AT&T's incumbent network – and neither does any other AT&T affiliate.[1]

Q. REGARDING SPRINT'S OTHER EXAMPLE, "ANOTHER TELECOMMUNICATIONS CARRIER THAT HAS ACQUIRED ITS OWN TELEPHONE NUMBERS, BUT FOR WHATEVER REASON WISHES TO UTILIZE A WHOLESALE INTERCONNECTION PROVIDER SUCH AS SPRINT" (SYWENKI DIRECT AT 31), ARE YOU AWARE OF SUCH A SITUATION?

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

Q. HOW SHOULD THE COMMISSION RESOLVE THIS ISSUE?

A. Given the lack of clarity in Sprint's proposal, on top of the conjectural nature of the traffic Sprint is seeking to address, Sprint's proposed language should be rejected. If Sprint does at some point actually anticipate providing such a service (recall that Sprint not only does not provide the service at this time, but actually states in its

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

proposed language that it does not even anticipate providing such a service), it would be appropriate for the parties to amend the ICA to address this unique scenario, including incorporating complete terms for the routing and billing of this traffic exchanged between the parties.

ISSUE 6 *[DPL ISSUE I.A(6)]*

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

Contract Reference: GTC Part A, Section 1.6

Q. IN HIS DISCUSSION OF THIS ISSUE, MR. SYWENKI STATES (DIRECT AT 38) THAT AT&T IS ATTEMPTING TO LIMIT SPRINT TO SERVING ONLY CUSTOMERS WITHIN AT&T'S ILEC GEOGRAPHIC SERVING TERRITORY. IS THIS TRUE?

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

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

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

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

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

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

Q. MR. SYWENKI STATES (DIRECT AT 39) THAT AT&T'S PROPOSED LANGUAGE IN GTC PART A SECTION 1.6 CONTRADICTS UNE AND COLLOCATION TERMS IN THE ICA. IS THIS ACCURATE?

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

to Mr. Sywenki's assertions, not only is there no "contradictory" language, but instead, Attachment 4 – Collocation provides for a limitation that Collocation is available only from the AT&T ILEC: "This Attachment sets forth the terms and conditions pursuant to which the applicable AT&T-owned Incumbent Local Exchange Carrier (ILEC) will provide Physical and Virtual Collocation pursuant to 47 U.S.C. § 251(c)(6)." Section 1.1. As the AT&T ILEC does not operate outside of its own incumbent territory, it follows that Collocation is only available from the company within AT&T's incumbent territory.

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

ISSUE 15 ***[DPL ISSUE I.C(2)]***

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

Contract Reference: Attachment 3

Q. YOU ADDRESSED THIS ISSUE AT LENGTH IN YOUR DIRECT TESTIMONY (AT 8-21). BEFORE YOU RESPOND TO SPRINT'S TESTIMONY, PLEASE SUMMARIZE AT&T'S POSITION.

A. This issue turns on whether section 251(c)(2) of the 1996 Act does or does not require AT&T to provide transit service. If it does not, there is no lawful basis for requiring AT&T to provide transit service pursuant to a section 251/252 ICA or at cost-based rates. As I demonstrated in my direct testimony, section 251(c)(2) does not impose a

transiting requirement. The FCC has repeatedly refused to find a transit requirement in the 1996 Act, and the FCC's treatment of interconnection under section 251(c)(2), both in its rules and in the discussion in its *Local Competition Order,* make clear that interconnection under section 251(c)(2) does not encompass transit service.

Q. IN HIS DISCUSSION OF THIS ISSUE, SPRINT WITNESS FARRAR FOCUSES ON INDIRECT INTERCONNECTION UNDER SECTION 251(a) OF THE 1996 ACT (FARRAR DIRECT AT 12-14). CAN A DETERMINATION THAT AT&T MUST PROVIDE TRANSIT SERVICE PURSUANT TO THE ICAS BE BASED ON SECTION 251(a)?

A. No. As Mr. Farrar correctly states, section 251(a) provides that each carrier has the duty to interconnect directly or indirectly with other carriers. Mr. Farrar infers from this that the originating carrier has the right to choose whether to deliver its traffic directly or indirectly to the terminating carrier. That inference is perhaps not as clear and certain as Mr. Farrar suggests – but I will go along with it for the sake of discussion. In other words, I will agree that under section 251(a), if Carrier X tells Carrier Y that X is going to deliver its traffic to Y indirectly – *i.e.*, through a provider of transit service – Y cannot insist that X deliver its traffic directly (though Y can insist on delivering its traffic to X directly). But Mr. Farrar then makes a further inference, namely, that because Y must accept X's decision to deliver its traffic indirectly, AT&T must have a duty to transit X's traffic. That inference simply does not follow. The fact that Congress gave X the right – *as between X and Y* – to deliver its traffic indirectly to Y does not mean that Congress also gave X the right to demand that AT&T (or any other provider of transit service) must transit X's traffic to Y.

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

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

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

A. That still would not entitle Sprint to terms and conditions for transit service in a section 251/252 ICA. As I explained in my direct testimony (at 18, line 8 – 19, line 5), duties imposed by section 251(a) are not subject to negotiation and arbitration under the 1996 Act.

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

A. Yes, and it is also true that that makes no difference. As a business decision, in the past, BellSouth agreed to provide transit under the ICA – perhaps in exchange for a

concession from Sprint. That makes no difference now. The Commission needs to decide whether the 1996 Act imposes a transit duty, and the provisions in the parties' old ICA and BellSouth's past business decisions shed no light on that question.

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

A. A bit. Mr. Farrar says nothing about the discussion in the *Local Competition Order* of the definition of "interconnection" as that term is used in section 251(c)(2) – a discussion that strongly supports AT&T's position. *See* my direct testimony at 13, line 16 – 16, line 16. Mr. Farrar also ignores the fact that the FCC has repeatedly declined to find a transiting requirement in section 251(c)(2). Mr. Farrar does say, however, that section 251(c)(2) requires interconnection "for the transmission and routing of telephone exchange service and exchange access," and asserts that that necessarily includes transmission and routing of third party traffic. Farrar Direct at 11 – 12.

Q. IS THAT CORRECT?

A. No, it is just an unsupported assertion, with no basis in the language of section 251(c)(2). Section 251(c)(2) does require interconnection "for the transmission and routing of telephone exchange service and exchange access," but it does not say whose telephone exchange service and exchange access. If anything, the telephone exchange service and exchange access to which the statute refers would naturally be understood to mean the traffic of the interconnected carriers – not traffic between one of those carriers and a third party. Furthermore, if section 251(c)(2) encompassed a

duty to transit traffic, one can only wonder why the FCC has been unwilling to find such a duty in the statute. And, again, the FCC has made it absolutely clear that the *only* duty imposed by section 251(c)(2) is the duty to establish the physical connection, and that section 251(c)(2) does *not* encompass a duty to transport traffic.

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

A. The Florida decision that Mr. Farrar cites actually supports not Sprint's position, but AT&T's – as does another Florida decision that Mr. Farrar does not cite. Mr. Farrar's case did not present the question whether the 1996 Act requires transit service, or whether transit service must be included in a section251/252 ICA, or whether ILECs must provide transit service at TELRIC-based rates. Rather, the question was whether the ILEC's transit service tariff was valid. The Florida Commission held it was not, primarily because "Florida law provides that a tariff filing is an inappropriate mechanism for . . . transit traffic" (emphasis added). The Florida Commission also stated, "Federal policy and law seem to indicate that the negotiation process is preferred to a unilateral tariff for transit service arrangements." That is perfectly consistent with AT&T's position here that transit service should be provided pursuant to a commercially negotiated transit agreement.

In a decision that Mr. Farrar does not cite, the Florida Commission ruled that section 251(c)(2) does *not* require transit to be provided at TELRIC.[2]

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

A. Not as many as Mr. Farrar would have the Commission believe, but yes, a number of state commissions have ruled that ILECs are required to provide transit service under the 1996 Act. This Commission, though, should do as the Public Utility Commission of Oregon did when Sprint cited all the same decisions to that Commission. In a 2008 arbitration, Sprint argued, as it does here, that transit is required by the 1996 Act and must therefore be provided at TELRIC rates. Mr. Farrar was Sprint's witness on the issue, and Sprint's argument read very much like Mr. Farrar's testimony here – including the citation to the same state commission decisions Mr. Farrar cites to here.[3] The Oregon Commission was unpersuaded. It stated:

> After reviewing the relevant case law, the Arbitrator found that the FCC has clarified that direct interconnection facilities must be provided at TELRIC rates, but there has been no such clarification about the services necessary for indirect interconnection. The most recent case law "seems to contradict the conclusion that TELRIC is the appropriate rate for transit services." . . . .
>
> The Arbitrator took great pains in examining the law and making a

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

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

> close call, noting "[a]though the precedent cited above does not provide a clear resolution to this issue, I find particularly relevant the FCC's statement that any duty 'under section 251(a)(1) of the Act to provide transit service would not require that service to be priced at TELRIC.'" Notwithstanding the fact that the FCC Order was issued by the Common Carrier Bureau, it did so with the full authority of the FCC. The Bureau decision stands as unreversed case law some six years later. The Arbitrator's findings on this issue are therefore affirmed.[4]

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

Q. NONETHELESS, MR. FARRAR CITES 17 STATE COMMISSION DECISIONS THAT HE SAYS RULE THAT ILECS MUST PROVIDE TRANSIT SERVICE (FARRAR DIRECT AT 16-18). HOW CAN SO MANY STATE COMMISSIONS HAVE BEEN WRONG?

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

A. The cited *Alabama* decision did require Bell Atlantic (as it then was) to provide transit service, but gave no cogent basis for that requirement. The Alabama PSC stated only, "The Act is silent on this issue, and the FCC definition provides limited guidance on this point. In Section 251(c), Congress manifested an intent to promote local exchange competition by imposing obligations on incumbent carriers . . . . In light of the above, we find that Section 251(c)(2) requires . . . Bell Atlantic to make available to new entrants its network for the purpose of allowing new entrants to

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

exchange with other CLECs without having to interconnect with each and every CLEC." In other words, the Alabama Commission decided that section 251(c)(2) requires transit not based on anything the statute actually says, but based solely on the theory that section 251 seeks to promote competition and requiring transit service would be good for competition. I would hope that this Commission will not fall into that sort of obviously improper statutory "interpretation."

Furthermore, the Alabama PSC went on to rule, "However, Bell Atlantic's obligation is not absolute. Bell Atlantic should not be required to provide this service indefinitely for a given CLEC. Tandem transit service should, generally speaking, only be made available as a transition service until a CLEC sufficiently expands its business as demonstrated by increased levels of traffic . . . to warrant direct interconnection to other CLECs." Sprint is not a new entrant. If this Commission were to follow Mr. Farrar's Alabama precedent, it would resolve the transit issue in favor of AT&T.

B. The principal ground for Sprint's *California* decision was "[t]he Arbitrator's general approach . . . to continue results from the 2001 ICA unless new facts or law justify a change. . . . On this issue, the [Arbitrator's report] adopts [the CLEC's] proposal, which was based on terms and conditions for transit traffic in the 2001 ICA." The California PUC also concluded the ILEC must provide transit in order to enable third party carriers to indirectly interconnection under section 251(a)(1) – but that conclusion was based on a perfunctory analysis that ignored *both* the fact that duties imposed by section 251(a) are not subject to mandatory negotiation and arbitration

and the fact that even if section 251(a)(1) does allow carriers to interconnect indirectly, that does not translate into a statutory requirement that ILECs provide transit service.

C. The *Colorado* decision is irrelevant. There was no question in that case concerning whether the ILEC was required to provide transit service, and no question concerning whether transit service must be provided at TELRIC-based rates. Indeed, the only issue in the case concerning transit was resolved in favor of the ILEC.[5]

D. Sprint's *Indiana* decision is a legal nullity, entitled to no precedential weight. As Mr. Farrar acknowledges (Farrar Direct at 17), the decision was vacated.

E. The *Massachusetts* decision is identical in all pertinent respects to the Alabama decision I discussed above. Thus, like that decision, it counsels that Sprint, as an established competitor with substantial business, is not entitled to transit service.

F. In the *Michigan* decision, no question was presented concerning whether the 1996 Act requires transit service, or whether transit service is a proper subject for an ICA, or concerning rates for transit service. Rather, the question the Michigan Commission addressed in the passage to which Mr. Farrar cites was whether a CLEC, having established a point of interconnection at an AT&T tandem, should be required to establish direct interconnection with third party carriers once the volume of traffic it is exchanging with those carriers so warrants. That is a separate question, and is presented in this arbitration as Issue 33 *[II.G]*.

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[5] *See* ¶ 7 of Issue 5: Delivery of Transit Traffic.

G. Sprint's *Ohio* order does not remotely support Sprint's position; it says nothing about whether section 251 requires ILECs to provide transit service and, if anything, suggests that transit service need not be provided at TELRIC. In that order, the Ohio Commission adopted a rule (purportedly pursuant to Ohio law, not federal law) that provided,

> A telephone company [including a CLEC] may not refuse to carry transit traffic if:
>
> 1) It is appropriately compensated [not TELRIC] for the use of the network facilities necessary to carry the transit traffic.
>
> 2) The originating and terminating telephone companies have a compensation agreement in place that sets the rates, terms and conditions for the compensation of such transit traffic. [Sprint opposes such a requirement.]

H. The *Oklahoma* decision includes literally no rationale. It simply states – without explanation and without saying anything about whether transit service is required by the 1996 Act or whether transit service must be priced at TELRIC – that transit service shall be covered by an ICA.

In short, at least three of the states whose decisions Mr. Farrar cites (Alabama, Florida and Massachusetts) actually support AT&T's position here; a number of Mr. Farrar's cases are entirely irrelevant; and a number of them are entitled to little or no weight because they reflect little or no real analysis.

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

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

A. I am not a lawyer, but my layman's view is that especially in the first few years after the 1996 Act was enacted, state commissions evidently believed that they were serving the pro-competitive goals of the 1996 Act by requiring ILECs to provide transit service, with little or no regard for whether there really was a basis for such a requirement in the 1996 Act. This was obviously true of the Alabama and Michigan cases cited by Sprint. This type of regulatory approach was ultimately significantly narrowed by the FCC, responding to direction from the Supreme Court.[6]

ISSUE 16 ***[DPL ISSUE I.C(3)]***

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

Q. IN YOUR DIRECT TESTIMONY (AT 21), YOU EXPLAINED THAT BECAUSE NEITHER SECTION 251(b) NOR SECTION 251(c) OF THE 1996 ACT IMPOSES A TRANSIT OBLIGATION, TRANSIT RATES ARE NOT SUBJECT TO A TELRIC-BASED PRICING METHODOLOGY, BUT SHOULD INSTEAD BE ESTABLISHED THROUGH COMMERCIAL NEGOTIATIONS. DOES MR. FARRAR'S TESTIMONY PERSUASIVELY CONTEND OTHERWISE?

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

A. No. Mr. Farrar spends several pages (Direct at 20-23) demonstrating that TELRIC rates would apply if transit were required by section 251(c)(2) – but that discussion is irrelevant, because there is no such requirement.

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

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

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

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

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

A. Yes.

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

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

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

A. Mr. Farrar recognizes that the $0.0007 reciprocal compensation rate is "not necessarily cost-based," but speculates that AT&T would not have agreed to that rate if it did not at least recover AT&T's costs. (Farrar Direct at 27.) Mr. Farrar candidly acknowledges that he does not know this, but is merely assuming it. (*Id.*)

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

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

exchange traffic at this rate absolutely does not imply that the rate allows the ILEC to recover its costs; far more likely, it means that the ILEC sought to reduce its net reciprocal compensation payments by obtaining a low (even below-cost) rate.

Q. WHAT CONCLUSION DOES THAT LEAD TO?

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

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

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

Q. IS THAT A REASONABLE APPROACH?

A. Yes. In fact, if the Commission is going to impose an interim transit rate, as Sprint proposes, this is the approach the Commission should take; as I explain below, Mr. Farrar's two other benchmarks are as wide off the mark as his reciprocal compensation-based benchmark. However, Mr. Farrar misapplies the approach as he neglects to incorporate *all* of the UNE rate elements for tandem switching and common transport in his calculations. The missing elements are "Tandem Trunk Port – Shared, Per MOU" (for which two are required) of $0.000235; and Common Transport, per MOU, per mile of $0.0000035. The final input Mr. Farrar neglected to include is the average airline miles per call, which in Florida, is 22.59 miles.

When applying the appropriate rate elements to Mr. Farrar's approach to construct a cost-based rate, the calculated rate is more than three times what Mr.

Farrar has represented: $0.0011182 per MOU for local transit traffic only [$0.0001319 + ($0.000235 * 2) + ($0.0000035 * 22.59) + $0.0004372 = $0.0011182].

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

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

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

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

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

A. Yes.

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

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

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

A. No – for several reasons. In the first place, the very rates that Mr. Farrar displays in his testimony show that there is a considerable variance from state to state, contrary to Mr. Farrar's speculation. Mr. Farrar states that the three rates he displays (at 26, Table 1) are AT&T's three lowest rates, so if Mr. Farrar's speculation that rates should be relatively constant from state to state were correct, one would expect these three rates – clustered at the bottom – to be quite close. In fact, however, the second lowest rate is about 50% higher than the lowest, and the third lowest is more than double the lowest. That alone, without even considering the higher rates in other AT&T states, refutes Mr. Farrar's speculation.

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

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

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

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

Q, IS THAT A PLAUSIBLE BENCHMARK?

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

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

A. The rate is not properly subject to determination in this section 251/252 arbitration proceeding, but should instead be commercially negotiated. If the Commission concludes otherwise, it should direct the parties to include in their new ICAs a rate of $0.0011182. This is the same transit rate that is in the parties' current ICAs and it is the rate that results from a correct application of Sprint's second "benchmark" approach.

ISSUE 17 ***[DPL ISSUE I.C(4)]***

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

Q. DOES MR. FARRAR CORRECTLY UNDERSTAND THIS ISSUE?

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

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

A. First, I would note that Mr. Farrar's reference to "interconnection agreements" in this context is somewhat misleading. AT&T does not contemplate that Sprint and the third party carriers would enter into *interconnection agreements* of the sort we are arbitrating here; rather, we are talking about potentially much more simple

compensation arrangements. More to the point, though, the answer to the question is no, Sprint's view that it might be burdensome to enter into compensation arrangements with all the carriers with which it exchanges traffic is not a good reason to reject AT&T's language, because AT&T's language leaves the decision to Sprint. AT&T's point is simply that it should not be exposed to any loss as a result of Sprint's decision not to enter into compensation arrangements with third parties. If Sprint believes it would be too burdensome to enter into compensation arrangements with carriers with which it exchanges only small volumes of traffic, and that the risk of loss to AT&T resulting from Sprint not entering into such arrangements is modest, Sprint might rationally decide not to enter into the arrangements, but instead to take the risk that it may have to indemnify AT&T for some loss.

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

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

ISSUE 18 ***[DPL ISSUE I.C(5)]***

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

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

A. Not at all. In Mr. Farrar's short discussion of this issue (Direct at 34-35), he offers no criticism of any provision proposed by AT&T. Indeed, the *only* reason he offers for rejecting AT&T's language is his characterization that the language was "non-negotiated" (*id.* at 34, line 17).

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

A. No. For reasons that I have explained at length, AT&T believes that transit service is not required by section 251 and so is not a proper subject for interconnection agreement negotiations or arbitration under the 1996 Act. There is some legal authority, however, to the effect that if parties negotiate a subject that is not encompassed by section 251, that subject becomes eligible for arbitration. In order to avoid making transit service subject to arbitration pursuant to that legal authority, AT&T had no choice but to decline to negotiate the subject unless and until Sprint agreed not to argue that by negotiating transit, AT&T made it subject to arbitration. Sprint did not so agree. Nevertheless, it is my understanding that AT&T recently agreed to negotiate transit terms with Sprint, but holds to its position that such negotiations do not make this an appropriate subject for inclusion in the ICAs that will result from this arbitration. Under these circumstances, it would be unfair for the Authority to penalize AT&T for not negotiating an issue AT&T believes it is not required to negotiate.

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

A. Yes. If the Commission requires the ICA to include transit language, the 1996 Act requires that that language be just, reasonable and nondiscriminatory. If the Commission were to disregard AT&T's proposed language, the result could be unjust, unreasonable or discriminatory language (or the absence of language). In that event, the Commission could not properly approve the language under section 252(e) of the 1996 Act when the parties submit an ICA conforming to the Commission's arbitration decision, and the language would also be vulnerable on appeal. To ensure that it achieves a lawful result, the Commission needs to consider AT&T's language.

Q. HOW SHOULD THE COMMISSION RESOLVE THIS ISSUE?

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

ISSUE 19 ***[DPL ISSUE I.C(6)]***

Should the ICAs provide for Sprint to act as a transit provider by delivering Third Party-originated traffic to AT&T?

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

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

A. No. Mr. Farrar asserts (Direct at 36), "AT&T is simply unilaterally declaring that no Sprint entity can provide wholesale Interconnection Transit Service." That is not the case. As I believe I made clear in my direct testimony, AT&T does not foreclose the possibility that Sprint CLEC might provide transit service. Indeed, AT&T has proposed language that cares for that possibility. *See* McPhee Direct at 30, lines 1-24. The problem with Sprint's proposed language as it relates to the CLEC ICA is that it merely reserves the right for Sprint to become a transit provider in the future (Sprint concedes it does not provide transit service now), and states that Sprint can provide transit service upon 90 days' notice to AT&T – with no explanation of how that would work. A far more reasonable approach is to provide for the parties to amend the Sprint CLEC ICA by including appropriate terms governing Sprint's provision of transit service when and if Sprint CLEC actually decides to provide such service. This is what AT&T's proposed language provides for.

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

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

ISSUE 14 ***[DPL ISSUE I.C(1)]***

What are the appropriate definitions related to transit traffic service?

Contract Reference: GTC Part B Definitions

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

A. I strongly disagree, for the reasons I discussed above in connection with Issue 18 *[I.C(5)]*.

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

A. Yes, and appropriately so, for the reasons I have discussed in connection with Issue 19 *[I.C(6)]*. When and if Sprint CLEC actually seeks to provide transit service and the parties modify the ICA accordingly, one modification would be to the definitions.

Q. MR. FARRAR COMPLAINS (DIRECT AT 7) THAT AT&T'S LANGAUGE CAN BE INTERPRETED AS "ELIMINATING AT&T'S PAYMENT RESPONSIBILITIES FOR CERTAIN AT&T WHOLESALE INTERCONNECTION CUSTOMER TRAFFIC." IS THAT COMPLAINT WELL-FOUNDED?

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

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

A. Yes, that is true – and it is also the correct result, as AT&T witness Pellerin explains in her testimony on Issue 41 *[III.A.1(2)]*. Note that, as Ms. Pellerin explains, this does not mean Sprint is not compensated for terminating these calls. Sprint is entitled to receive compensation – reciprocal compensation, assuming the call is local (for

CLEC) or intraMTA (for CMRS) – from the CLEC whose customer originated the call.

Q. MR. FARRAR INDICATES, THOUGH (DIRECT AT 7-8) THAT THESE CALLS APPEAR TO SPRINT AS IF THEY ORIGINATED WITH AT&T. HOW CAN SPRINT BILL THE ORIGINATING CARRIER IF IT DOES NOT KNOW WHO THE ORIGINATING CARRIER IS?

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

Q. HOW SHOULD THE COMMISSION RESOLVE THIS ISSUE?

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

ISSUE 9(ii) ***[DPL ISSUE I.B(2)(b)]***

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

Contract Reference: GTC – Part B – Definitions

Q. WHAT PART OF THIS ISSUE ARE YOU ADDRESSING?

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

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

SPRINT'S DIRECT TESTIMONY IDENTIFY ANY FLAWS IN AT&T'S DEFINITION?

A. No. I explained the basis for AT&T's definition in my direct testimony. Sprint witness Sywenki discusses this issue in his direct testimony, at 46-47, and he does not disagree with anything in AT&T's definition for the CLEC traffic; all he says is that the inclusion of a definition would "create unnecessary complexity" (Direct at 46).

Q. WOULD IT?

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

Q. MR. SYWENKI ASSERTS (DIRECT AT 46) THAT AT&T IS PROPOSING "A COMPENSATION ARRANGEMENT INCONSISTENT WITH THE FCC RULES IMPLEMENTING SECTION 251(b)(5)." IS THAT CORRECT?

A. No, it is not. For that matter, Mr. Sywenki does not say *which* "FCC rules" Sprint believes AT&T's definition contradicts, so I cannot provide a specific response to his assertion, other than to reaffirm that AT&T's definition is consistent with rulings by the FCC that have characterized traffic as either being within the scope of Section

251(b)(5), or as being beyond the scope of Section 251(b)(5). For example, the FCC clarified that dial up traffic bound for ISPs is not Section 251(b)(5) traffic.[7]

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

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

ISSUE 42 *[DPL ISSUE III.A.1(3)]*

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

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

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

A. No. Mr. Felton testifies on this issue (Direct at 43-44), and he says nothing whatsoever about why Sprint's language should be adopted. Instead, he takes five baseless potshots at AT&T's proposed language, and in effect asks the Commission to adopt Sprint's language by default.

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

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

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

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

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

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

A. He states (Direct at 43) that AT&T's proposed language includes audit provisions that conflict with another, undisputed, section in the GTC portion of the ICA.

Q. IS THAT CORRECT?

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

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

A. He asserts that AT&T's proposed language in Attachment 3 is inconsistent with its proposed Attachment 7 billing dispute language. I do not believe there is any such inconsistency – and I can be no more specific than that, because Mr. Felton does not bother to say what the supposed inconsistency is. It is highly unlikely that there is any such inconsistency, however, because the billing dispute provisions in Attachment 7 pertain to matters *other than* intercarrier compensation, while the billing dispute provisions in Attachment 3 (namely, AT&T's proposed section 6.8.4) concern *only* intercarrier compensation disputes. There may be *differences* between the billing dispute mechanisms that apply to intercarrier compensation and other matters, but appropriate differences are not *inconsistencies*.

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

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

Q. NEXT?

A. Mr. Felton states that Sprint is adamantly opposed to the AT&T language that would require Sprint to enter into compensation arrangements with third parties with which Sprint exchanges traffic. That language should be included in the ICA for the reasons I discussed in connection with Issue 17 *[I.C(4)]*, which concerns precisely this disagreement.

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

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

Q. IS THAT A VALID CRITICISM?

A. No. It is perfectly appropriate for AT&T to apply a multiple tandem access charge when Sprint traffic is routed through more than one tandem on AT&T's network, in order to recover the costs AT&T incurs when traffic is routed in that fashion; indeed, it would be improper for AT&T not to recover these costs. Mr. Felton asserts that AT&T's recovery of these costs defeats the purpose of allowing Sprint to maintain a single POI, but that is a red herring. Regardless whether Sprint is entitled to a single POI architecture (which is the subject of Issue II.D, addressed by AT&T witness Hamiter), Sprint has no right to route, for free, traffic that enters AT&T's network at one tandem, and then must be routed through other tandems before termination at an AT&T end office.

Q. WHAT IS YOUR CONCLUSION ON THIS ISSUE?

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

ISSUE 45 ***[DPL ISSUE III.A.2]***

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

Contract Reference: Attachment 3, Pricing Sheet (Sprint)

Attachment 3, Section 6.1.2 (AT&T CMRS)

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

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

A. No, not at all. Sprint's language consists only of a reference to the Attachment 3 Pricing Sheet, where it references a rate for an "Information Services Rate" and an "Interconnected VoIP Rate." Sprint witness Felton discusses this issue (Direct at 50-51), but says literally nothing in support of Sprint's language; instead, he offers two criticisms of AT&T's language, neither of which holds water, as I will explain.[8]

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

A. No. I cover that under Issue 53 *[III.A.6(1)]*. My discussion here will focus on the proper treatment of ISP-Bound traffic, which is what Sprint purports to address with its "Information Services Rate."

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

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[8] In addition to the two criticisms of AT&T's language, Mr. Felton also registers an objection concerning Multiple Tandem Switching. Felton Direct at 50, lines 17-20. That, though, is the subject of Issue 42 *[III.A.1(3)]*, not this issue.

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

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

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

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

A. As I discussed in my direct testimony, the *ISP Remand Order* established an interim compensation plan for the treatment of "ISP-bound traffic." AT&T's proposed terms and conditions conform to the FCC's *ISP Remand Order*, and also include language acknowledging the FCC's intent to address intercarrier compensation for ISP traffic in the future, including provisions to transition to any new pricing scheme the FCC may introduce. Under the rate plan that the FCC established in the *ISP Remand Order*, the rate for ISP-Bound Traffic is $0.0007 per minute of use (assuming, as is the case here, that the ILEC has offered to exchange Section 251(b)(5) traffic, as well as ISP-Bound Traffic, at that rate).

Q. MR. FELTON (AT P. 50) POINTS TO AT&T'S PROPOSED CMRS LANGUAGE LIMITING ISP-BOUND TRAFFIC TO THE MOBILE-TO-LAND DIRECTION, AND STATES THERE IS NO BASIS IN THE FCC'S RULES FOR SUCH A "CONDITION." WHAT IS THE BASIS FOR AT&T'S PROPOSED LANGUAGE?

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

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

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

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

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

Q. MR. FELTON ALSO CONTENDS (DIRECT AT 50) THAT THE LANGUAGE IN AT&T'S PROPOSED SECTION 6.1.2 FOR THE CMRS ICA THAT CALLS FOR ISP-BOUND TRAFFIC TO BE JURISDICTIONALIZED IS FLAWED, BECAUSE ISP-BOUND TRAFFIC CANNOT BE JURISDICTIONALIZED. IS THAT CORRECT?

A. No. The ISP-bound traffic that the FCC addressed in its *ISP Remand Order* was limited to traffic within a local exchange, *i.e.*, traffic that, based on the endpoints of the call, would be subject to reciprocal compensation. Indeed, the problem that the FCC was addressing in that order was, as the FCC repeatedly stated, a reciprocal compensation problem.[9] Thus, the rate plan for ISP-Bound Traffic that is currently in effect, and pursuant to which the compensation rate for ISP-Bound Traffic is $0.0007 is limited to traffic that originates with an ISP's customer in a given local exchange area and that is delivered to the ISP in that same local exchange area. It is not only possible, but absolutely necessary, to jurisdictionalize ISP-bound traffic in accordance with the location of the calling party and the ISP in order to determine whether the call is "local," and therefore subject to the $0.0007 rate, or not, and therefore subject to applicable intrastate or interstate access charges.

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

ISSUE 43 ***[DPL ISSUE III.A.1(4)]***

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

Contract Reference: Attachment 3, section 6.3.7.

ISSUE 44 ***[DPL ISSUE III.A.1(5)]***

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

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

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

A. As in my direct testimony, I will first address the question whether the ICAs should provide for the possibility of a bill and keep arrangement for Section 251(b)(5) Traffic, and will then address the separate question of what language should be included in the ICAs if the Commission decides, over AT&T's objection, that the ICAs should allow for bill and keep.

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

A. Virtually none. In my direct testimony, I demonstrated that (i) AT&T is entitled, as a matter of law, to recover the costs it incurs for transporting and terminating Sprint's traffic; (ii) while bill and keep is permissible if (and only if) traffic is roughly balanced (or the parties agree otherwise), nothing in the 1996 Act or the FCC's rules suggests that bill and keep is a favored alternative to payment; (iii) the FCC recognized as early as 1996, when it promulgated its reciprocal compensation rules,

that bill and keep is economically inefficient because it distorts carriers' incentives; (iv) experience since 1996 has shown that bill and keep does in fact encourage arbitrage; and (v) AT&T (which after all is half of the equation) realizes almost no administrative savings from bill and keep.

Compared with AT&T's detailed demonstration that bill and keep is a bad idea, all Sprint has said is that bill and keep is permitted (while recognizing that it is in no instance mandated); that bill and keep eliminates transaction costs; and that AT&T in one instance – FX traffic – advocates bill and keep. Felton Direct at 44-45.

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

A. Yes, the Commission *could* impose bill and keep *if* it finds that the reciprocal–compensation eligible traffic the parties are exchanging is roughly balanced and is expected to remain so. That does not mean it would be wise to do so, however, and I believe I have demonstrated that it would not be.

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

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

Indeed, Sprint practically admits that this is the test. Mr. Felton states, "Frequently, the cost of undertaking such billing-related tasks exceeds the amounts billed. In such cases both parties are clearly better off under a bill and keep arrangement." Felton Direct at 45, lines 14-16. If Sprint wants bill and keep, Sprint should show that this is one of those cases. And again, the question is not just whether Sprint would be "clearly better off under a bill and keep arrangement" – Sprint might well be because AT&T generally terminates more Sprint traffic than Sprint terminates AT&T traffic (which is why Sprint really wants bill and keep). The Commission must also consider whether AT&T would be better off– even though I have testified there are virtually no administrative savings from bill and keep.

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

A. That is incorrect. What Mr. Felton is referring to is Issue 52 *[III.A.5]*, concerning FX traffic. As I have explained in my testimony on that issue, Sprint should actually be paying AT&T access charges on that traffic; bill and keep is a compromise. If Sprint would rather pay access charges on FX traffic than to exchange it on a bill and keep basis, that is fine with AT&T.

Q, HOW SHOULD THE COMMISSION RESOLVE ISSUE 43 *[III.A.1(4)]*?

A. AT&T has given the Commission powerful reasons for including no bill and keep language in the ICAs. In summary, AT&T has an unqualified right to recover its transport and termination costs – the FCC has recognized that – and that means that there should not be bill and keep unless it is quite clear that AT&T's savings in administrative costs would exceed the amount that AT&T would lose in forfeited

reciprocal compensation payments (net of AT&T's payments to Sprint). It is far from clear that that is the case, and I am confident that Sprint will not be able to prove otherwise in its rebuttal testimony.[10] Add to that the fact that bill and keep is, as the FCC expressly recognized, uneconomic, and the conclusion is inescapable: The parties should pay each other reciprocal compensation on traffic that is subject to reciprocal compensation, and the ICAs should not provide for a bill and keep alternative.

Q. ON THE QUESTION OF WHICH PARTIES' LANGUAGE SHOULD BE ADOPTED IF THE ICAS ARE GOING TO PROVIDE FOR BILL AND KEEP, YOUR DIRECT TESTIMONY IDENTIFIED THREE DEFECTS IN SPRINT'S LANGUAGE, ONE OF WHICH WAS THAT SPRINT'S LANGUAGE FALSELY RECITES THAT THE PARTIES ACKNOWLEDGE THEIR TRAFFIC IS IN BALANCE AS OF THE EFFECTIVE DATE OF THE ICA. (MCPHEE DIRECT AT 60-61, 66-67). HOW DOES MR. FELTON JUSTIFY THAT ASPECT OF SPRINT'S LANGUAGE?

A. Astoundingly, Mr. Felton's rationale is that "AT&T has not provided any evidence to demonstrate the exchange of traffic is not roughly balanced." Felton Direct at 47.

Q. WHY DO YOU SAY THAT IS ASTOUNDING?

A. Because Sprint's position that AT&T should have to prove that traffic is not roughly balanced is preposterous. Under 47 C.F.R. § 51.713(b), the Commission may impose bill and keep *only* if it "determines that the amount of telecommunications traffic

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[10] Note in this regard that if Sprint does undertake to show that Section 251(b)(5) traffic is roughly balanced, it must exclude FX traffic (which is the subject of Issue 52 *[III.A.5]*, below) from its calculations, because FX traffic is not subject to reciprocal compensation. Sprint witness Sywenki acknowledges that the Parties' current ICA excludes FX traffic from reciprocal compensation (Sywenki Direct at 76), so any current traffic numbers should not count FX traffic as Section 251(b)(5) traffic. Also, FX traffic should not be subject to reciprocal compensation under the new CLEC ICA. *See* discussion of Issue 52 *[III.A.5]*.

from one network to the other is roughly balanced with the amount of telecommunications traffic flowing in the opposite direction and is expected to remain so." Sprint proposes, however, that instead of making such a determination, the Commission just assume traffic is roughly balanced because AT&T has not proven otherwise. I do not believe the Commission can take that proposal seriously.

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

A. Yes, but if Mr. Felton is offering that as an excuse for Sprint's untenable suggestion that AT&T be required to prove that traffic is out of balance in order to avoid bill and keep – and I cannot tell from his testimony whether he is – the excuse is disingenuous. As the Commission is aware, the parties are exchanging traffic on a bill and keep basis today only because BellSouth agreed, over nine years ago to do so – not because their traffic is in balance or because this or any other state commission determined bill and keep was appropriate.

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

A. Nothing. This is a telling omission, because AT&T emphasized this aspect of the issue on the DPL – which Mr. Felton acknowledges he read (Direct at 47). It is easy to understand why Sprint would rather play down this part of the issue. Its 60/40 proposal is indefensible.

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

A. Mr. Felton admits that Sprint's language makes no provision for discontinuing bill and keep (Direct at 47-48), but he offers no justification for the omission. All he says is that Sprint will entertain language to provide for conversion away from bill and keep when AT&T demonstrates that traffic is not roughly balanced. The notion that AT&T would first demonstrate that traffic is not roughly balanced and only then would Sprint "entertain" language providing for a conversion away from bill and keep is patently unreasonable.

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

A. No, he does not. His discussion of the competing language proposals is limited to his very weak attempts to justify Sprint's language. Mr. Felton briefly summarizes AT&T's proposed language (Direct at 47), but he does not comment on it.

Q. HOW SHOULD THE COMMISSION RESOLVE ISSUE 44 *[III.A.1(5)]*?

A. The Commission should not reach Issue 44 *[III.A.1(5)]*, because it should rule, for all the reasons I have discussed, that there will be no bill and keep language in the ICAs. If the Commission does reach the issue, however, it should adopt AT&T's language.

ISSUE 52 *[DPL ISSUE III.A.5]*

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

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

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

A. Yes. Mr. Sywenki acknowledges that FX service allows for customers to have a local appearance in one exchange while being physically located in another exchange. He states (Direct at 75-76), "End Users are generally businesses that want the appearance of being in a given location when they are actually located somewhere else or want their customers to be able to make a locally dialed call *rather than a toll call.*" Thus, Sprint seems to recognize that FX calls are *interexchange* calls instead of *intraexchange*, or "local," calls. Yet, Sprint seeks to treat this traffic as if it were Section 251(b)(5) Traffic, which it is clearly not.

Q. HOW DO YOU RESPOND TO MR. SYWENKI'S DISCUSSION OF THE TREATMENT OF FX TRAFFIC IN THE PARTIES' CURRENT ICA (SYWENKI DIRECT AT 76-77)?

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

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

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

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

A. None whatsoever. Without providing any justification or support for why it should be so, Mr. Sywenki merely states (Direct at 77) that "Sprint CLEC prefers that FX traffic be treated based on the calling and called party telephone numbers."

Q. WHAT ABOUT MR. SYWENKI'S ASSERTION (DIRECT AT 75) THAT THERE IS NO NEED FOR AT&T'S PROPOSED LANGUAGE BECAUSE "FX TRAFFIC CAN BE HANDLED TODAY BASED ON THE CALLING AND CALLED PARTY NUMBERS"?

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

Q. SPRINT ALSO CONTENDS THERE IS NOT ENOUGH FX TRAFFIC TO WARRANT THE "SPECIAL TREATMENT" PROPOSED BY AT&T (SYWENKI DIRECT AT 78). DO YOU DISAGREE?

A. AT&T is not proposing "special treatment" – FX traffic simply is not subject to reciprocal compensation, and AT&T is proposing that it be treated accordingly. Furthermore, since, as Mr. Sywenki says, the parties' current ICA subjects FX traffic to access charges rather than reciprocal compensation, systems should already be in place for tracking FX traffic. In addition, the ICA should not improperly subject FX traffic to reciprocal compensation because traffic volumes that Sprint suggests are now "minimal" (Sywenki Direct at 78) may increase, and because the CLEC ICA may be adopted by carriers that terminate large volumes of traffic to their FX customers.

Q. IS MR. SYWENKI CORRECT THAT AT&T IS PROPOSING AN "OVERLY BURDENSOME" SYSTEM FOR TRACKING AND REPORTING FX TRAFFIC (DIRECT AT 78)?

A. No. AT&T's language simply provides that the terminating carrier will work to identify and provide either summary data or some other agreed-upon method, such as an "FX factor" or percentage, in order to eliminate calls to FX customers from reciprocal compensation. This should not be unduly burdensome for Sprint because under the current ICA, Sprint should already be tracking the FX traffic. Furthermore, while Mr. Sywenki opposes tracking and segregating FX traffic, Mr. Sywenki proposes exactly the same concept for VoIP traffic (Direct at 81).

Q. DOES AT&T SEEK TO APPLY BILL AND KEEP TO FX ISP-BOUND TRAFFIC IN ORDER TO AVOID PAYING THE FCC ISP RATE ON THIS TRAFFIC, AS MR. SYWENKI ASSERTS (DIRECT AT 78)?

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

Q. HOW SHOULD THE COMMISSION RESOLVE THIS ISSUE?

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

ISSUE 49 ***[DPL ISSUE III.A.4(1)]***

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

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

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

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

A. No. Mr. Sywenki provides testimony that purports to address this issue (Direct at 69-71), but his testimony centers on appropriate treatment of VoIP traffic, which is actually the subject of Issue 53 *[III.A.6(1)]*, which is where I address it. Rather than justifying Sprint's proposed language on the present issue – 49 *[III.A.4(1)]* – Mr. Sywenki merely asserts (Direct at 69-70) that AT&T's proposed language is "unnecessary, inaccurate and written in a manner designed to expand the application of access charges." But aside from making an incorrect assertion regarding VoIP traffic, Mr. Sywenki does not purport to identify any specific defect in AT&T's language. In contrast, my direct testimony explained the merits of AT&T's language, and also showed that Sprint's language is too vague.

Q. MR. SYWENKI CONTENDS (DIRECT AT 70) THAT COMPENSATION IS NOT BASED SOLELY ON THE ENDPOINTS OF THE CALL, BUT ALSO UPON THE "UNDERLYING SERVICE." HOW DO YOU RESPOND?

A. The parties disagree about the extent to which that is true. For example, Sprint would disregard the endpoints of the call when determining the compensation applicable to FX traffic (Issue 52 *[III.A.5]*). Similarly, AT&T maintains that the endpoints of the call determine the compensation applicable to VoIP traffic, while Sprint contends that VoIP traffic should be subject to no compensation at all (Issues 53 and 54 *[III.A.6(1) and (2)]*). More important, though, Mr. Sywenki fails utterly to explain what his contention has to do with the disputed language that is the subject of *this* Issue 49 *[III.A.4(1)]*. The disputed language at issue here does not say or imply that the endpoints of a call are the sole determinant of compensation. For example:

Mr. Sywenki suggests that AT&T's language would somehow yield an incorrect treatment of ISP-bound traffic, which he notes is subject to the FCC ISP compensation regime (Direct at 70), but AT&T's proposed language specifically cares for that. Similarly, compensation for VoIP traffic and FX traffic are the subject of other issues.

Q. WHAT ABOUT MR. SYWENKI'S ASSERTION (DIRECT AT 70) THAT "AT&T'S LANGUAGE APPEARS TO REQUIRE SPRINT TO INSTALL ACCESS TRUNKS PER ACCESS TARIFFS (SEE AT&T 6.23.1) EVEN FOR TRAFFIC FOR WHICH ACCESS CHARGES DO NOT APPLY"?

A. It would be helpful if Mr. Sywenki had identified what sort of non-access traffic he thinks it "appears" AT&T's language requires access trunks for. Since he does not, all I can say is that if the Commission looks at AT&T's proposed section 6.23.1, the Commission will see that on its face the language calls for access trunks only for traffic that is subject to access charges – and in subsections 6.23.1.1 through 6.23.1.4, it excludes certain traffic from that requirement. Given that Mr. Sywenki does not explain what he is talking about, I imagine that his concern may actually reflect a disagreement about what traffic is or is not subject to access charges – interexchange VoIP traffic, for example. If that is the case, this piece of the disagreement will take care of itself when the Commission resolves the separate dispute about the applicability of access charges.

Q. HOW SHOULD THE COMMISSION RESOLVE THIS ISSUE?

A. As with so many other issues, Sprint's approach to this one in its testimony is to say nothing about the merits of its own language; criticize bits and pieces of AT&T's language (generally with no sound basis – and often in general terms that make it

almost impossible to pin down the criticism); and expect the Commission to adopt Sprint's language by default. The Commission should reject this approach. Here, AT&T is proposing clear, complete and reasonable terms for wireline switched access, and the Commission should adopt those terms.

ISSUE 50 ***[DPL ISSUE III.A.4(2)]***

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

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

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

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

A. No. As I discussed, if the parties were to bill based upon Sprint's proposal, charges would apply only when the originating carrier billed its retail customer a toll charge. The terminating carrier would not always know if intraLATA access charges were applicable, and so would be at the mercy of the other carrier to determine appropriate charges. Sprint has not proposed any terms or conditions to determine how such billings would take place, and Mr. Sywenki's testimony on the issue provides no guidance.

Q. MR. SYWENKI PURPORTS (DIRECT AT 71) TO NOT UNDERSTAND WHY AT&T'S LANGUAGE FOR TELEPHONE TOLL SERVICE REFERENCES "LOCAL CALLING AREA." CAN YOU EXPLAIN?

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

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

A. Yes. Although 8YY database queries are a tariffed offering, as Mr. Sywenki notes (Direct at 72), AT&T appropriately includes language to address compensation for 8YY database queries as they may be applicable. If Sprint routes a non-queried 8YY call to AT&T, AT&T must perform the query to identify how to route the call. In this situation, Sprint bears the cost of the query AT&T performed on Sprint's behalf. AT&T's reference to this charge is appropriate as it provides clear terms under which such a charge may apply through the course of exchanging traffic under the ICA.

ISSUE 2 ***[DPL ISSUE I.A(2)]***

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

Contract Reference: GTC Part A, Section 1.3

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

A. No. Mr. Sywenki implies this language is necessary as some sort of "placeholder" in the event the FCC provides guidance in the future concerning compensation for VoIP traffic. Sywenki Direct at 22-23. As I discuss under Issue 53 *[III.A.6(1)]*, however, the FCC has provided guidance that parties can rely upon existing law for determining appropriate compensation for this traffic.

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

ISSUE 3 ***[DPL ISSUE I.A(3)]***

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

Contract Reference: GTC Part A, CMRS Section 1.1

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

A. Yes, in this instance it does. Sprint witness Sywenki discusses this issue (Direct at 23-29), and he makes clear that Sprint's real interest is in ensuring that it can deliver *Sprint CMRS-originated* (not third party-originated) VoIP traffic to AT&T. Mr. Sywenki, in his first Q&A on this issue, complains that under AT&T's proposed language, "Sprint CMRS will not be allowed to send any *Sprint CMRS originated Interconnected VoIP traffic* to AT&T," and asserts that AT&T fails to explain "why *Sprint CMRS cannot originate* Interconnected VoIP traffic." (Emphases added.) Then (at 25), Mr. Sywenki talks about a Sprint device – Airave – that he contends meets the FCC criteria for Interconnected VoIP. Whether Airave does or does not meet those criteria is unclear. The important point for present purposes, though, is that Mr. Sywenki describes Airave traffic as Sprint CMRS-originated Interconnected VoIP traffic.

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

A. Yes. As I indicated in my direct testimony, AT&T's concern has to do with the possibility of Sprint aggregating and delivering landline-originated VoIP. Now that AT&T understands Sprint's principal aim, AT&T is willing to change its proposed language for GTC section 1.3 in the CMRS ICA. The AT&T-proposed language that Sprint found objectionable read as follows:

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

AT&T now instead proposes this:

> This Agreement may be used by AT&T to exchange Interconnected

VoIP traffic to Sprint CMRS and by Sprint CMRS to exchange Sprint CMRS-originated VoIP traffic to AT&T.

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

A. Yes, that does appear to be Sprint's secondary concern. Mr. Sywenki states (Direct at 25): "It is Sprint's position that there is nothing under federal law that prevents . . . Sprint CMRS from offering a wholesale Interconnection Transit Service. Although Sprint CMRS does not offer such service today, if it so chose, it could offer such a service to such a carrier, including a . . . .customer that originates Interconnected VoIP traffic."

Q. YOUR RESPONSE?

A. I have explained, in connection with Issue 19 *[I.C(6)]*, why the Commission should reject Sprint's proposed language that would provide for Sprint CLEC and Sprint CMRS to become transit providers in the future. As to Sprint CLEC, there is no need for such a placeholder, and the particular language that Sprint proposes is unreasonable, for reasons I previously explained. As to Sprint CMRS, all of that is true and, in addition, Sprint CMRS can properly exchange only CMRS traffic (*i.e.*, traffic that originates or terminates on a wireless network), and so cannot properly become an aggregator of landline-originated traffic. Accordingly, AT&T proposed language for Issue 19 *[I.C(6)]* – for the CLEC ICA but not the CMRS ICA – that provides a process for developing appropriate contract language *when and if* Sprint CLEC actually wants to become a transit provider.

As speculative as Sprint's transit proposal is in general (*i.e.*, in connection with Issue 19 *[I.C(6)]*), it is all the more so here, where Sprint is imagining the possibility not just that it might become a transit provider, but that it might become a provider of transit service to landline VoIP providers. There is no reason for the Commission to indulge this hypothesis at this point. The Commission should adopt AT&T's revised language, which plainly addresses the real concern here.

ISSUE 53 *[DPL ISSUE III.A.6(1)]*

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

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

ISSUE 54 *[DPL ISSUE III.A.6(2)]*

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

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

Q. WHAT IS THE RELATIONSHIP BETWEEN ISSUES 53 *[III.A.6(1)]* AND 54 *[III.A.6(2)]*?

A. That is one point on which I agree with Mr. Sywenki. Issue 53 *[III.A.6(1)]* concerns compensation for Interconnected VoIP traffic for the CMRS ICA. Issue 54 *[III.A.6(2)]* concerns that same issue for the CLEC ICA, but also encompasses compensation for other forms of telecommunications traffic as it relates to that ICA. *See* Sywenki Direct at 81, 84.

Q. DO YOU ALSO AGREE WITH MR. SYWENKI (DIRECT AT 84-85) THAT THE INTERCONNECTED VOIP COMPENSATION ISSUE PRESENTS THE SAME FUNDAMENTAL QUESTION FOR BOTH THE CLEC AND THE CMRS ICAS?

A. Yes.

Q. DO YOU AGREE WITH MR. SYWENKI THAT AT&T'S POSITION ON ISSUE 53 *[III.A.6(1)]* – WHERE AT&T PROPOSES COMPENSATION TERMS FOR INTERCONNECTED VOIP FOR THE CMRS ICA – IS INCONSISTENT WITH AT&T'S POSITION ON ISSUE 3 *[I.A(3)]*, WHERE AT&T CONTENDS SPRINT CMRS SHOULD NOT BE ALLOWED TO SEND VOIP TRAFFIC TO AT&T?

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

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

A. No, I do not. Mr. Sywenki's contention is untenable in light of the FCC's direction to the Public Utility of Texas to arbitrate precisely this issue.[11] With the FCC having unequivocally declared that state commissions should address the VoIP compensation

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[11] *See* McPhee Direct at 85-86, discussing the FCC's decision in *Petition of UTEX Commc'ns Corp., Pursuant to Section 252(e)(5) of the Communications Act, for Preemption of the Jurisdiction of the Public Utility Comm. of Texas Regarding Interconnection Disputes with AT&T Texas*, WC Docket No. 09-134, 24 FCC Rcd. 12573 (Oct. 9, 2009).

issue when it is presented in arbitration, I do not see how Mr. Sywenki can contend that the Commission must wait for the FCC.[12]

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

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

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

Q. SPRINT PROPOSES BILL AND KEEP FOR VOIP TRAFFIC UNTIL SUCH TIME AS THE FCC DETERMINES A SPECIFIC COMPENSATION

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[12] Mr. Sywenki's citation to Sections 364.01(3), 364.011(3) and 364.013, Florida Statutes is simply a "red herring" as AT&T is not asking the Commission to regulate VoIP but only to find that VoIP should be subject to the same compensation principles as other traffic – reciprocal compensation if within a local exchange area and intrastate or interstate access otherwise.

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

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

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

A. No. Mr. Sywenki simply states (Direct at 81) that, because the FCC has not determined "the regulatory classification and proper compensation for VoIP traffic," the traffic is not subject to compensation as is non-VoIP traffic. In other words, Sprint is saying that because there is not a specific rule applying a specific rate for VoIP traffic, the Parties should not compensate each other for the exchange of this traffic. That is obviously not what the FCC had in mind when it directed the Texas commission to arbitrate the VoIP compensation issue.

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

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

Q. MR. SYWENKI CITES (DIRECT AT 83) TO A CERTAIN DISTRICT COURT DECISION REGARDING APPLICATION OF ACCESS CHARGES TO VOIP TRAFFIC. SHOULD THE COMMISSION CONSIDER THAT DECISION?

A. No. I will leave it for the lawyers to address in the briefs the decision Mr. Sywenki is referring to, *PAETEC Commn'cs v. Comm.Partners, LLC,* 2010 U.S. Dist. LEXIS 51926 (D.D.C 2010). For now, suffice it to say that the *PAETEC* decision, in addition to not being binding here, is poorly reasoned and wrong. Indeed, in a recent arbitration decision in another state, the Kansas Corporation Commission ("KCC") expressly rejected *PAETEC* and resolved the VoIP compensation issue – exactly the same issue presented here – in AT&T's favor.[13]

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

A. First, the Commission should – indeed, it must – decide how the parties will compensate each other for VoIP traffic. The Commission clearly has authority to do so, and Sprint's position to the contrary is not only mistaken, but also disingenuous, because Sprint is proposing that the Commission impose bill and keep – which would require the Commission to address the issue. There is simply no basis for Sprint's bill and keep proposal. The purported basis is that the FCC has not yet established special rules for VoIP traffic, but when all is said and done, that is no basis at all. Inasmuch as the FCC has not established special compensation rules for VoIP traffic, it should be subject to the same compensation principles as other traffic – reciprocal compensation if within a local exchange area and intrastate or interstate access

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

charges otherwise. That is what AT&T proposes, and that should be the resolution of Issue 53 *[III.A.6(1)]* and of that portion of Issue 54 *[III.A.6(2)]* that relates to compensation for VoIP traffic.

Q. WHAT OTHER QUESTIONS ARE PRESENTED BY ISSUE 54 *[III.A.6(2)]*?

A. As Mr. Sywenki correctly states (Direct at 85), that issue also nominally encompasses ISP-Bound and FX traffic, but those issues are addressed elsewhere. The only open item that remains is AT&T's proposed language in Attachment 3 section 6.4.4, which Mr. Sywenki addresses at page 85 of his direct testimony.

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

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

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

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

ISSUE 60 *[DPL ISSUE III.E(3)]*

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

Contract Reference: Attachment 3 Sections 2.5.3 (Sprint)

Alternative Section 2.8.6.1.5 (AT&T CLEC)

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

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

Q. IS AT&T ATTEMPTING TO CHARGE SPRINT FOR TRAFFIC ORIGINATED ON AT&T'S NETWORK IN VIOLATION OF 47 C.F.R. § 703(b), AS MR. FARRAR STATES ON PAGES 91-92 OF HIS DIRECT TESTIMONY?

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

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

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

ISSUE 61 ***[DPL ISSUE III.E(4)]***

Should traffic that originates with a Third Party and that is transited by one Party (the transiting Party) to the other Party (the terminating Party) be

attributed to the transiting Party or the terminating Party for purposes of calculating the proportionate use of facilities under the CLEC ICA?

Contract Reference: Attachment 3 Sections 2.5.3 (Sprint)

Alternative Section 2.8.6.1.5 (AT&T CLEC)

Q. HOW SHOULD THE COMMISSION RESOLVE THIS ISSUE?

A. The Commission should not reach this issue, because there should be no proportionate use facilities charges in the CLEC ICA, as I just discussed in connection with Issue 60 *[III.E(3)]*.

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

A. To Sprint CLEC, for the same reasons that Ms. Pellerin has discussed in connection with Issue 59 *[III.E(2)]* for the CMRS ICA, and that I discussed in my direct testimony on this issue.

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

A. It is correct that Sprint does not cause the call to occur. Neither, of course, does AT&T, so the "calling party pays" argument leads nowhere. Given that it is actually the third party carrier's customer that causes the call, the question for present purposes becomes: *As between AT&T and Sprint CLEC*, which party is the causer of the cost incurred to carry the call over the facility between AT&T's switch and Sprint

CLEC's switch. Plainly, Sprint is. AT&T is a mere middleman – no AT&T end user is even involved in the call. It is Sprint's end user customer that is involved in the call, not AT&T's. Thus, the first point Mr. Farrar raises supports AT&T's position, not Sprint's.

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

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

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

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

ISSUE 62 *[DPL ISSUE III.F]*

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

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

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

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

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

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

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

ISSUE 12 ***[DPL ISSUE LB(4)]***

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

Contract Reference: GTCs Part B Definitions

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

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

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

A. Because the POI is "closer in" the network than the cell site. By this I mean that, per the terms of the ICA,[14] Sprint may only have one POI per LATA. That would mean, because there are ten LATAS covering the state, and therefore as few as ten POIs for the state, then there would only be ten CMRS "end user locations" within the state. Furthermore, each POI likely supports numerous cell sites, regardless of whether or not those cell sites are within the same MTA as the POI. Each cell site is inarguably located "further out" in the network, and obviously closer to the true location of the CMRS end user making or receiving a call. Sprint's proposed language would inappropriately aggregate calls from numerous cell sites to just the location of the one

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

POI for all those cell sites, potentially altering the MTA determination so that some interMTA calls would be misidentified as intraMTA calls.

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

A. Yes, he grudgingly acknowledges (Direct at 50) that "the FCC allows the initial cell site to be used to determine the location of a mobile end user at the beginning of a call." But he completely ignores the fact that it is the FCC's preferred method for identifying such calls. In fact, the FCC concluded that "the location of the initial cell cite when a call begins *shall be used as the determinant* of the geographic location of the mobile customer."[15]

Q. MR. SYWENKI, ON PAGE 50, STATES THAT SPRINT'S PROPOSAL FOR USING THE POI AS THE LOCATION OF THE CMRS END USER IS "ABSOLUTELY" CONSISTENT WITH FCC GUIDANCE. DO YOU AGREE?

A. No, I do not. Although the FCC certainly acknowledged the potential difficulty "to determine, in real time, which cell site a mobile customer is connected to,"[16] it still prescribed cell site data, even when gathered via traffic studies and samples, as preferable to any other means to identify the location of a CMRS end user. Only after concluding that cell site data is appropriate did the FCC indicate that the POI could be used as an alternative to determine the location of the mobile caller or called party.[17]

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

16 *Id.*, paragraph 1044.

17 *Id.*, paragraph 1044.

Q. MR. SYWENKI ASSERTS (AT 51) THAT THERE IS "NO NEED FOR THE PARTIES TO EXPEND COST AND EFFORT ON COMPLEX, NON-PRODUCTIVE TRAFFIC STUDIES" IN ORDER TO DETERMINE THE LOCATION OF CMRS END USERS AT THE BEGINNING OF A CALL. DOES SPRINT CMRS POSSESS INFORMATION WHICH WOULD BE HELPFUL IN DETERMINING WHETHER MOBILE-TO-LAND CALLS ARE INTRAMTA OR INTERMTA?

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

Q. ON WHAT DO YOU BASE THIS BELIEF?

A. In 2008, Sprint Communications Company L.P. ("Sprint") filed a complaint in Kentucky against Brandenburg Telephone Company, alleging that Brandenburg was improperly billing Sprint for CMRS traffic terminated to Brandenburg.[18] In that proceeding, Sprint witness Julie A. Walker provided testimony that describes the dispute over assigning jurisdiction to traveling wireless calls: "In the1990's, Sprint began noticing discrepancies between the jurisdictional split (interstate vs. intrastate minutes) as reflected on LEC bills as compared to *what Sprint was measuring internally.*"[19] (Emphasis added). That strongly suggests that Sprint is able to

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

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

determine the originating jurisdiction for its mobile-to-land traffic based upon internal measurements.

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

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

Q. WHAT SHOULD THE COMMISSION DO?

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

ISSUE 13 ***[DPL ISSUE LB(5)]***

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

Contract Reference: GTCs Part B Definitions

Q. MR. SYWENKI (AT 52) ATTACKS AT&T'S PROPOSED DEFINITIONS AS HAVING NO BASIS "IN LAW OR THE INTERCONNECTION RULES, OR SOUND PUBLIC POLICY." IS THAT A VALID CRITICISM?

A. No, it is not. In fact, I do not believe that Mr. Sywenki even believes that there is anything so untoward about AT&T's definitions. What Sprint really objects to – and this is the subject of other issues – is the compensation arrangements that AT&T

proposes for Originating Landline to CMRS Switched Access Traffic and Terminating InterMTA Traffic.

Q. PLEASE EXPLAIN.

A, AT&T's proposed definitions indisputably identify discrete types of InterMTA traffic that AT&T and Sprint CMRS will exchange. Mr. Sywenki does not deny that these specific traffic types exist. Nor does he actually have any quarrel with the way AT&T has defined these terms; if he does, he certainly has not said what it is. Rather, Mr. Sywenki's concern, and the focus of his testimony on this issue, is the compensation that applies to InterMTA traffic. I will discuss compensation for InterMTA traffic under Issues 46 *[III.A.3(1)]* and 47 *[III.A.3(2)]*.

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

A. Because the definitions are accurate and because these categories of traffic need to be defined so that they can be made subject to the appropriate compensation. As I will discuss under Issues 46 *[III.A.3(1)]* and 47 *[III.A.3(2)]*, land-to-mobile calls and mobile-to-land calls that cross MTA boundaries are subject to applicable switched access charges. AT&T proposes the above definitions in order to specifically determine what types of calls are exchanged between AT&T and Sprint CMRS. By trying to preclude definitions describing legitimate types of traffic exchanged between the Parties from the ICA, Sprint CMRS is seeking to insert vagueness into the ICA where none should exist in an attempt to avoid its obligations under the switched access regime. In the land-to-mobile direction, the lack of clear terms acknowledging that locally-dialed mobile traffic may be terminated beyond the local

MTA would allow Sprint CMRS to 1) receive reciprocal compensation for that locally-dialed land-to-mobile calls (to which Sprint is plainly not entitled); and 2) relieve Sprint CMRS from its obligation to pay AT&T originating switched access on that interMTA call.

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

ISSUE 46 *[DPL ISSUE III.A.3(1)]*

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

Contract Reference: Attachment 3, Sections 6.4-6.4.4, Pricing Sheet (Sprint CMRS)
Sections 6.4 - 6.6.3 Pricing Sheet 4,5, GTC - Part B definitions (AT&T CMRS)

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

A. No, it is not. The ultimate source of Sprint's obligation to pay access charges on mobile-to-land interMTA traffic is 47 C.F.R. § 69.5(b), which provides, "Carrier's carrier charges shall be computed and assessed upon all interexchange carriers that use local exchange switching facilities for the provision of interstate or foreign telecommunications services."[20] "Interexchange carrier" is not a defined term, but

[20] Access charges are the subject of Part 69 of the FCC's rules.

"interexchange" is; it simply means "services or facilities provided as an integral part of interstate or foreign telecommunications that is not described as 'access service' for purposes of this part."[21] "Access service," in turn, means "services and facilities provided for the origination or termination of any interstate or foreign telecommunication."[22] When Sprint CMRS carries an interstate interMTA call that originates on its network over an exchange (*e.g.*, MTA for CMRS traffic) boundary and then hands the call off to AT&T for termination to AT&T's end-user customer, AT&T is providing "access service" (because it is providing service for the termination of an interstate telecommunication) and Sprint is acting as an interexchange carrier for purposes of Rule 69.5, because it has used AT&T's local exchange switching facilities for the provision of an interstate communication. For an *intra*state interMTA call, the same principles apply, but pursuant to state law.

There is clear FCC guidance that switched access charges apply to this type of intercarrier traffic. As I discussed in my direct testimony, the FCC's *Local Competition Order* addresses how calls are jurisdictionalized (local, intrastate, interstate) and the intercarrier compensation charges that apply to each category. Paragraph 1036 (emphasis added) addresses application of reciprocal compensation for intraMTA traffic: "[T]raffic to or from a CMRS network that originates and terminates within the same MTA is subject to transport and termination rates under section 251(b)(5), *rather than interstate and intrastate access charges*" – obviously

[21] 47 C.F.R. § 69.2(s).

[22] 47 C.F.R. § 69.2(b).

signaling that if the call does not originate and terminate within the same MTA, it is subject to interstate and intrastate access charges. With regard to the rating of mobile traffic, the FCC stated, "[T]he geographic locations of the calling party and the called party determine whether a particular call should be compensated under transport and termination rates established by one state or another, or under interstate or intrastate access charges."[23] And the FCC also stated, "[T]o the extent that a cellular operator does provide interexchange service through switching facilities provided by a telephone company, its obligation to pay carrier's carrier (*i.e.*, access) charges is defined by § 69.5 of our rules."[24] Consistent with this FCC conclusion in its initial order implementing the 1996 Act, Sprint must pay AT&T access charges – carriers' carrier charges – when it acts as an interexchange carrier (by transporting a call from one exchange/MTA to another) and then hands the call off to AT&T for termination to AT&T's local customer.

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

A. I believe it supports AT&T's position. Access charges are paid on the traffic that is delivered over IXC trunks – and I take it from Mr. Farrar's testimony that Sprint is not proposing to change that. If traffic that is in all pertinent respects identical to the

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

24 *Id.*, paragraph 1043, n. 2485.

traffic that is delivered over IXC trunks happens to be delivered over local interconnection trunks, it should be subject to the same compensation, whether or not the volume is modest.

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

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

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

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

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

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

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

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

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

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

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

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

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

> [W]e may apply sections 251 and 252 to LEC-CMRS interconnection. By opting to proceed under sections 251 and 252, we are not finding that section 332 jurisdiction over [CMRS] interconnection has been repealed by implication, or rejecting it as an alternative basis for interconnection.
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> . . . . We . . . believe that sections 251 and 252 will foster regulatory parity in that these provisions establish a uniform regulatory scheme governing interconnection between incumbent LECs and all requesting carriers, including CMRS providers. Thus, we believe that sections 251 and 252 will facilitate consistent resolution of interconnection issues for CMRS providers and other carriers requesting interconnection.[25]

When Mr. Farrar says that Rule 20.11(b) is uniquely applicable here, he is advocating a view that is diametrically opposed to the FCC's view. The only sense in which Rule 20.11 is uniquely explicit is that it has to do with CMRS interconnection, so what Mr. Farrar is saying is that the Commission should apply the one special rule

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

that pertains to CMRS interconnection. The FCC's aim, in sharp contrast, was to ensure a "consistent resolution of interconnection issues for CMRS providers and other carriers requesting interconnection." As applied here, that means that the usual principles governing access charges – the principles set forth in the FCC's Part 69 Rules and preserved by section 251(g) of the 1996 Act – should be given effect in the CMRS ICA.

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

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

Q. HOW SHOULD THE COMMISSION RESOLVE ISSUE 46 *[III.A.3(1)]*?

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

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

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

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

A. Yes, at least in the absence of more detailed information, such as actual cell site data. Sprint's testimony in the Brandenburg Kentucky case acknowledged, using a Kentucky example, that JIP data may not always accurately identify the jurisdiction of a particular call.[26] Yet, Sprint still urged use of JIP in that proceeding, stating JIP "is the industry-recommended solution for carriers to fix their traveling wireless jurisdiction flaws."[27]

AT&T agrees that JIP is the best currently available method for applying wireless call jurisdiction, at least in the absence of specific cell site data (which AT&T does not have access to, and which Sprint CMRS has not provided). The FCC has directed that carriers may use "traffic studies and samples" to calculate

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

[27] *Id.* at 30.

compensation, and JIP studies can be adjusted for any outlier data to contemplate the instances where JIP does not match the wireless end user's location, assuming the wireless carrier provides the information necessary to make such adjustments.

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

A. Yes. Although I cannot know what data Sprint used in its internal operations, Sprint definitely advocated that Brandenburg use JIP for purposes of jurisdictionalizing CMRS calls. If anything, Mr. Farrar is mincing words; even if Sprint has some other data that is "similar to the JIP"[28] but isn't JIP, Sprint clearly advocated the use of JIP. Sprint's witness Ms. Walker advocated using JIP in her Direct Testimony in that case:

> *Q. Does Sprint transmit call detail information that would allow Brandenburg to determine the originating jurisdiction for a wireless-originated call?*
> A. Yes. The Alliance for Telecommunications Industry Solutions ("ATIS") Network Interconnection Interoperability Forum ("NIIF"), has adopted an industry standard that the Jurisdictional Information Parameter ("JIP") be populated by wireless carriers with the NPA-NXX that represents the location of the wireless switch, where technically feasible. Sprint's wireless networks do populate the JIP field pursuant to this industry standard. If Brandenburg were to look at the JIP field it would be able to identify where the call was made from, which it cannot do by looking at the calling party number."[29]

The Kentucky Commission was persuaded by Sprint's advocacy. In its Order dated November 6, 2009, the Commission concluded "that the use of Sprint's JIP field and

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[28] Farrar Direct at 64.

[29] Sprint Walker Brandenburg Direct Testimony at 16 (footnote omitted).

the [Percentage of Interstate Use] is the most accurate method by which to assign the jurisdiction of a wireless call."[30]

Q. MR. FARRAR ATTEMPTS TO DISCREDIT THE KENTUCKY PROCEEDING AS IRRELEVANT TO THIS PROCEEDING (DIRECT AT 66-67). DO YOU AGREE?

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

Q. MR. FARRAR DESCRIBES IN DETAIL (DIRECT AT 58-62) A SPRINT TRAFFIC STUDY THAT YIELDS CERTAIN (CONFIDENTIAL) "SPRINT-ORIGINATED MOBILE-TO-LAND INTERMTA FACTORS." WHAT DOES THAT STUDY DEMONSTRATE THAT IS RELEVANT TO THE ISSUES THE COMMISSION MUST DECIDE?

A. I have no idea. One would assume that the ICA calls for a recitation of such factors, and that the parties disagree about what the factors should be. That is not the case, however. There is a disagreement about what the land-to-mobile factor should be

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[30] Order at 11, *Complaint of Sprint Communications Company LP Against Brandenburg Telephone Company and Request for Expedited Relief.* Kentucky Public Service Commission Case No. 2008-00135, November 6, 2009.

(Issue 48 *[III.A.3(3)]*), but I am aware of no debate about a mobile-to-land factor, and so am puzzled by Mr. Farrar's extended discussion.

ISSUE 47 *[DPL ISSUE III.A.3(2)]*

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

Contract Reference: Attachment 3, Sections 6.4-6.4.4, Pricing Sheet (Sprint CMRS)
Sections 6.4 - 6.6.3 Pricing Sheet 4,5, GTC - Part B definitions (AT&T CMRS)

ISSUE 48 *[DPL ISSUE III.A.3(3)]*

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

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

Q. DO YOU HAVE AN OVERARCHING RESPONSE TO SPRINT'S POSITION ON ISSUE 47 *[III.A.3(2)]*?

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

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

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

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

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

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

Q. STARTING ON PAGE 69, MR. FARRAR DISCUSSES AT SOME LENGTH HIS CONTENTION THAT THE ORIGINATING CARRIER IS FINANCIALLY RESPONSIBLE FOR DELIVERING ITS ORIGINATING TRAFFIC TO THE TERMINATING CARRIER. BEFORE YOU ADDRESS THE PARTICULARS OF MR. FARRAR'S DISCUSSION, CAN YOU COMMENT ON HIS CONTENTION AT A GENERAL LEVEL?

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

In any event, none of the authorities Mr. Farrar cites in support of his contention that the originating carrier is financially responsible for delivering its originating traffic to the terminating carrier is pertinent here. I will leave most of the discussion for the briefs, but will address Mr. Farrar's authorities briefly.

Q. ON PAGE 73, MR. FARRAR HOLDS UP A COMMISSION ORDER AS AN EXAMPLE OF WHERE "THE ORIGINATING CARRIER IS FINANCIALLY RESPONSIBLE FOR DELIVERING ITS TRAFFIC." IS THIS DECISION RELEVANT TO THE ISSUE AT HAND?

A. No. The decision, and the excerpt Mr. Farrar relies upon, addresses payment obligations for traffic that originates and terminates *within* the same exchange or

MTA, not interexchange or InterMTA traffic. The decision addresses the payment obligations for carriers that originate local traffic that transits another carrier's network. The "calling party pays concept," as applied in this Order, addresses the obligation of the originating carrier in a transit situation to pay the transit service provider, not the intercarrier compensation obligations of the originating carrier for an interexchange – or interMTA – call.

Q. ON PAGES 71-72, MR. FARRAR ATTEMPTS TO MAKE A CASE THAT THE FCC RULES REQUIRE THE ORIGINATING CARRIER TO BE FINANCIALLY RESPONSBLE FOR DELIVERING ITS TRAFFIC TO A TERMINATING CARRIER IN ALL CASES. IS HE SUCCESSFUL?

A. No. Each rule and provision Mr. Farrar cites involve compensation for local interconnection, not carrier access services. Indeed, the FCC Rules to which Mr. Farrar cites – 47 C.F.R. §§ 51.703 and 51.709 – appear in Subpart H of the FCC's Part 51 Rules, entitled, "Reciprocal Compensation for Transport and Termination of Local Telecommunications Traffic." Similarly, the FCC discussion in the *Local Competition Order* to which Mr. Farrar cites concerns reciprocal compensation – not interexchange traffic – as does the FCC decision Mr. Farrar cites at page 72. None of this has the remotest bearing on the issue presented here, because that issue concerns compensation for interMTA traffic, not intraMTA traffic. Mr. Farrar does not – nor can he – provide any guidance from the FCC or otherwise, that compensation for interexchange calls adheres to the Calling Party's Network Pays policy. That is simply because interexchange calls are subject to the switched access regime, not the reciprocal compensation regime on which Mr. Farrar has erroneously focused.

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

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

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

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

Q. DOES THIS CONCLUDE YOUR REBUTTAL TESTIMONY?

A. Yes.

AT&T FLORIDA

REBUTTAL TESTIMONY OF PATRICIA H. PELLERIN

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

DOCKET NO. 100176-TP AND DOCKET NO. 100177-TP

OCTOBER 6, 2010

ISSUES

1 *[DPL I.A(1)]*
7 *[DPL I.B(1)]*
8 *[DPL I.B(2)(a)]*
9(i) *[DPL I.B(2)(b)(i)]*
11 *[DPL I.B(3)]*
21 *[DPL II.A]*
37 *[DPL III.A(1)]*
38 *[DPL III.A(2])*
39 *[DPL III.A(3)]*
40 *[DPL III.A.1(1)]*
41 *[DPL III.A.1(2)]*
55 *[DPL III.A.7(1)]*
56 *[DPL III.A.7(2)]*
58 *[DPL III.E(1)]*
59 *[DPL III.E(2)]*
63 *[DPL III.G]*
64 *[DPL III.H(1)]*
65 *[DPL III.H(2)]*
66 *[DPL III.H(3)]*
67 *[DPL III.I(1)(a)]*
68 *[DPL III.I(1)(b)]*
69 *[DPL III.I(2)]*
70 *[DPL III.I(3)]*

I. INTRODUCTION

Q. PLEASE STATE YOUR NAME.

A. My name is Patricia H. Pellerin.

Q. ARE YOU THE SAME PATRICIA H. PELLERIN WHO PROVIDED DIRECT TESTMONY IN THIS PROCEEDING?

A. Yes.

Q. WHAT IS THE PURPOSE OF YOUR REBUTTAL TESTIMONY?

A. The purpose of my rebuttal testimony is to respond to Sprint's testimony proffered by its witnesses Randy Farrar ("Farrar Direct"), Mark Felton ("Felton Direct"), and Peter Sywenki ("Sywenki Direct") with respect to Issue # 1 *[DPL Issue I.A(1)]*, Issue # 7 *[DPL Issue I.B(1)]*, Issue # 8 *[DPL Issue I.B(2)(a)]*, Issue # 9(i) *[DPL Issue I.B(2)(b)(i)]*, Issue # 11 *[DPL Issue I.B(3)]*, Issue # 21 *[DPL Issue II.A]*, Issue # 37 *[DPL Issue III.A(1)]*, Issue # 38 *[DPL Issue III.A(2)]*, Issue # 39 *[DPL Issue III.A(3)]*, Issue # 40 *[DPL Issue III.A.1(1)]*, Issue # 41 *[DPL Issue III.A.1(2)]*, Issue # 55 *[DPL Issue III.A.7(1)]*, Issue # 56 *[DPL Issue III.A.7(2)]*, Issue # 58 *[DPL Issue III.E(1)]*, Issue # 59 *[DPL Issue III.E(2)]*, Issue # 63 *[DPL Issue III.G]*, Issue # 64 *[DPL Issue III.H(1)]*, Issue # 65 *[DPL Issue III.H(2)]*, Issue # 66 *[DPL Issue III.H(3)]*, Issue # 67 *[DPL Issue III.I(1)(a)]*, Issue # 68 *[DPL Issue III.I(1)(b)]*, Issue # 69 *[DPL Issue III.I(2)]*, Issue # 70 *[DPL Issue III.I(3)]*, Issue # 71 *[DPL Issue III.I(4)]*, Issue # 72 *[DPL Issue III.I(5)]*. In addition, I respond to the introductory testimony of Mr. Sywenki, which is unrelated to any issues presented for arbitration.

Q. TO WHAT "INTRODUCTORY TESTIMONY" OF MR. SYWENKI ARE YOU REFERRING?

A. At pages 4-17 of his Direct Testimony Mr. Sywenki provides what he describes as "Background and Overview Perspective" on this arbitration.

Q. WHY DO YOU DESCRIBE THAT TESTIMONY AS BEING "UNRELATED" TO THE ISSUES IN ARBITRATION?

A. Essentially, Mr. Sywenki uses that testimony not to provide factual and legal background that would assist the Commission in resolving the discrete issues presented for resolution in this arbitration, but rather to cast aspersions on AT&T's motives for petitioning to have those matters addressed in this arbitration in the first place –and especially for having the audacity to propose contractual language that varies in any way from the provisions of the ICAs that currently are in effect between the parties. Presumably, Mr. Sywenki believes that if he can portray AT&T as the "bad guy" in this arbitration, it will advance Sprint's likelihood of success on its positions – including those areas in which Sprint is proposing changes to the current ICA language.

At the end of the day, none of this "perspective" has any place in determining how the Commission should resolve the discrete issues put forward by the parties. Those resolutions should be squarely based on the applicable law and the evidence presented in this case, not on Sprint's mischaracterizations of AT&T's "intent" in pursuing a change to an ICA provision. Mr. Sywenki's "background and overview perspective," and the overwrought rhetoric through which he provides them, simply distract from the legitimate business and operational concerns that underlie AT&T's proposals.

Q. HAS SPRINT PROPOSED CHANGES TO THE CURRENT ICAS?

A. Yes. For all its complaining about AT&T's proposed changes to the current ICAs, Sprint proposes a number of changes of its own, and in several instances Sprint's proposals are outliers when compared to industry standards. Indeed, the very first issue I discuss below arises out of Sprint's proposal to change the definition of "interconnection" in the current ICA in a way that I am quite certain appears in no current AT&T ICA with any CMRS provider. Another example is Sprint's proposal to combine CMRS and CLEC traffic over the same trunk groups, which is, to my knowledge, unprecedented in the industry. But from Mr. Sywenki's "perspective," Sprint's proposals are intended to reflect an "evolution in the marketplace and the involved technology . . . ." (Sywenki Direct at p. 16). In contrast, and again from his self-serving "perspective," AT&T's proposals solely reflect an intent to "thwart competition." (Sywenki Direct at p. 9).

Q. DO YOU AGREE WITH MR. SYWENKI'S CHARACTERIZATION OF THE BASIS FOR AT&T'S PROPOSALS?

A. Of course not. The fact is that the "evolution" by which Mr. Sywenki purports to justify Sprint's positions in this case also has influenced AT&T's proposals. As he acknowledges, the current ICAs went into effect nearly ten years ago. Given that passage of time it is anything but surprising that the current ICAs are in need of significant revision. Indeed, the evolutionary developments in the marketplace and technology that Mr. Sywenki alludes to need to be reflected in changes to the terms of the ICA. But that is just as true for AT&T as Mr. Sywenki claims it is for Sprint.

Q. CAN YOU PROVIDE AN EXAMPLE OF THOSE DEVELOPMENTS?

A. Yes. A good example is the increased relevance of Voice over Internet Protocol ("VoIP") traffic in today's telecommunications markets and services. When the current agreements were negotiated in 2000, VoIP services, to the extent they even existed, were an insignificant part of the market. That, of course, has changed dramatically in the intervening years as consumer broadband adoption increased, making VoIP service a popular mass market product. Now VoIP traffic is a reality. It is only rational then to establish the *appropriate* terms, conditions and rates for the exchange of that traffic.[1]

Q. MR. SYWENKI SUGGESTS THAT AT&T'S PROPOSED REVISIONS TO THE ICAS EVIDENCE SOME ANTI-COMPETITIVE EFFECT OF THE AT&T- BELLSOUTH MERGER (SYWENKI DIRECT AT PP. 10-11). IS HE CORRECT?

A. No, and he offers no evidence to support that suggestion. Rather, Mr. Sywenki would have the Commission infer an anti-competitive effect from the merger solely from the fact AT&T is proposing changes to the ICAs. Apparently, in Mr. Sywenki's view AT&T is required to accept Sprint's revisions to the ICAs without question, but must sit on its hands, keep its mouth shut, and accept the status quo when it comes to addressing the operational and business effects it is experiencing under the current terms. This is hypocritical and patently unreasonable.

Q. IS THE BELLSOUTH MERGER RELEVANT HERE?

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[1] The parties have several disputes related to VoIP services and traffic, including Issue # 2 *[DPL Issue I.A(2)]*, Issue # 3 *[DPL Issue I.A(3)]*, Issue # 53 *[DPL Issue III.A.6(1)]*, and Issue # 54 *[DPL Issue III.A.6(2)]*.

A. Only to the extent that AT&T's ILEC footprint now involves 22-states, which means that AT&T has to take into account wholesale business and operational concerns that extend across that entire footprint. That also means having to deal with a large number of CLECs and CMRS providers seeking those wholesale services. AT&T cannot vary from industry norms and standardized procedures to accommodate Sprint in Florida – or even for that matter, throughout the 9-state Southeast region – without having to make similar accommodations to myriad other carriers throughout the 22-state footprint. It is simply unreasonable for Sprint to expect such "one off" treatment given these ramifications.

Q. WHAT OTHER GENERAL OPERATIONAL CONCERNS UNDERSCORE THE NEED FOR REVISIONS TO THE ICAS?

A. Mr. Sywenki and Sprint ignore the fact that the ICAs that will result from this arbitration will be subject to adoption by other carriers, and AT&T has to account for that possibility in the terms and conditions that will be established in those ICAs. Thus, for example, provisions governing disputed billings or overdue accounts that Sprint deems unnecessary or unreasonable because of its past course of business with AT&T are critical to AT&T because of the very real possibility that a less reputable carrier than Sprint would take advantage of an ICA that failed to include such terms. That is not a theoretical concern – AT&T has been saddled with overdue and unpaid accounts from more than one CLEC. It would be AT&T, not Sprint, that would be left holding the bag in those circumstances. Thus, AT&T's insistence on these provisions – as well as the other proposals AT&T has made in this case – is commercially reasonable.

II. DISCUSSION OF ISSUES

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

A. No. I do not provide specific rebuttal testimony to Mr. Farrar's direct testimony for Issue # 39 *[DPL Issue III.A(3)]* and Issue # 63 *[DPL Issue III.G]* or to Mr. Felton's direct testimony for Issue # 71 *[DPL Issue III.I(4)]* and Issue # 72 *[DPL Issue III.I(5)]*. Sprint's witnesses did not provide anything of substance in their direct testimony on these issues that justifies a response. I refer the Commission to my direct testimony on these issues for AT&T's support for its position and requested resolution.

ISSUE # 1 *[DPL ISSUE I.A(1)]*

What legal sources of the parties' rights and obligations should be set forth in section 1.1 of the CMRS ICA and in the definition of "Interconnection" (or "Interconnected") in the CMRS ICA?

Contract Reference: CMRS GTC Part A section 1.1, GTC Definitions Part B

Q. MR. SYWENKI CONTENDS THAT AT&T HAD RECOGNIZED WHAT HE CALLS THE "OBVIOUS INCONSISTENCY" BETWEEN AT&T'S PRIOR AGREEMENT TO INCLUDE A REFERENCE TO PART 20 IN THE CMRS DEFINITION OF "INTERCONNECTION" OR "INTERCONNECTED" AND ITS POSITION REGARDING GTC SECTION 1.1 (SYWENKI DIRECT AT P. 18). HOW DO YOU RESPOND?

A. In my direct testimony (at p. 3 footnote 1) I acknowledged AT&T's inadvertent mistake with respect to the CMRS definition of "Interconnection" or "Interconnected." I do not have anything further to add with respect to that mistake.

Q. HAS AT&T AGREED TO ANY ICA TERMS REFERENCING PART 20 RULES THAT ARE NOT INADVERTENT MISTAKES?

A. Yes. AT&T and Sprint have agreed to the following definition, which refers to Part 20:

> **"Commercial Mobile Radio Service(s) (CMRS)"** has the meaning as defined at 47 U.S.C. § 332(d)(1) and 47 C.F.R. § 20.9.[2]

Similarly, the parties have agreed to the following definition referring to Part 24:

> **"Major Trading Area" ("MTA")** has the meaning as defined in 47 C.F.R. § 24.202(a).

Q. ISN'T THAT INCONSISTENT WITH AT&T'S POSITION THAT THE ICA IS GOVERNED BY SECTION 251 AND THE FCC'S PART 51 RULES?

A. No, it is consistent with AT&T's position. "CMRS" and "MTA" are uniquely wireless terms that apply to Sprint as a CMRS provider. 47 C.F. R. § 51.5 defines CMRS as having "the same meaning as that term is defined in §20.3 of this chapter." Rather than providing a definition that leads to sequential references, AT&T simply indicated the FCC rule where the term is specifically defined. There are no comparable terms defined in either the 1996 Act or the FCC's Part 51 rules upon which the parties could base an ICA definition of MTA. AT&T could have agreed to include the actual definitions of CMRS and MTA from the FCC rules, but determined it was appropriate to simply provide the references. That is not the case with the definition of "Interconnection." The FCC defined Interconnection in 47 C.F.R. § 51.5 differently than it did in § 20.3, and that

[2] I believe this reference to § 20.9 is a typo and should properly refer to § 20.3.

distinction is important here. It is the FCC's definition implementing section 251 (*i.e.*, § 51.5) that should apply to the parties' section 251(c)(2) interconnection.

Q. HOW DOES THE PARTIES' EXISTING ICA DEFINE INTERCONNECTION?

A. The parties' existing ICA defines interconnection as follows:

> **"Local Interconnection"** is as described in the Telecommunications Act of 1996 and refers to the linking of two networks for the mutual exchange of traffic. This term does not include the transport and termination of traffic.

This is entirely consistent with the FCC's definition of interconnection in § 51.5. I can only speculate as to Sprint's real reason for seeking to include in its new ICA an additional definition from § 20.3 when there has been no change in the rules or in the nature of the parties' actual interconnection. I think it is reasonable to conclude that Sprint expects that it will gain an advantage by having multiple definitions from which to choose when interpreting any particular provision of the ICA.

Q. WHEN DID THE FCC DEFINE "INTERCONNECTION OR INTERCONNECTED" IN ITS PART 20 RULES?

A. In 1994 – more than two years *before* it defined "Interconnection" in its Part 51 rules implementing the *1996* Act.

Q. MR. SYWENKI ASSERTS THAT THE FCC'S PART 20 RULES APPLY TO SPRINT'S INTERCONNECTION WITH AT&T PURSUANT TO THE ICA (SYWENKI DIRECT AT P. 19). DOES SPRINT OPERATE PURSUANT TO PART 20 RULES?

A. I believe the answer to that question likely would be generally yes, at least for Sprint CMRS, but that is really a question for the attorneys. It is my understanding that 47 U.S.C. § 332, which pre-dates section 251 of the 1996 Act

and provides the foundation for the FCC's Part 20 rules, addresses Sprint CMRS's operation as a common carrier of commercial mobile services, and not its interconnection with AT&T pursuant to section 251 of the 1996 Act.

The Part 20 rules provide a framework for CMRS carriers to interconnect with other carriers outside the section 251(c)(2) arena. Not all local exchange carriers are subject to section 251(c)(2) interconnection, and not even all ILECs are bound by the requirements of section 251(c)(2). Section 251(c)(2) only applies to non-rural ILECs[3] and not to CLECs at all. So the Part 20 rules provide the parameters for CMRS providers to interconnect with other carriers pursuant to section 332 – apart from the Part 51 rules implementing section 251(c)(2). As I explained in my direct testimony (at p. 4), when Sprint interconnects with AT&T in an ICA, it does so pursuant to section 251. The only FCC rules that are relevant to a section 251/252 ICA, therefore, are the Part 51 rules.

Q. DON'T CERTAIN OF THE PART 20 RULES REFER TO PART 51?

A. Yes, but those references must be placed in proper context. For example, Section 20.11(c) provides that applicable Part 51 rules also apply, but that does not mean that Part 51 is superseded by Part 20 when the rules are different – just the opposite is true. This is demonstrated by the significantly more robust requirements of section 251 as compared to section 332. Similarly, § 20.11(e) provides that a CMRS provider is obligated to interconnect with a requesting LEC pursuant to section 251, pulling the CMRS provider into the section 251 arena

[3] Section 251(f) provides that rural ILECs are exempt from the obligations of section 251(c) in certain circumstances.

with respect to that requesting carrier (rather than drawing the ILEC into the section 332 realm). Again, this provision only serves to shift a CMRS provider to the section 251 arena when it is not already in a section 251/252 ICA with the carrier with which it is interconnecting. AT&T Witness Scott McPhee discusses the Part 20 rules in the context of InterMTA Traffic.

Q. MR. SYWENKI REFERS TO AGREED LANGUAGE IN THE CMRS ICA THAT ALLOWS EITHER PARTY TO REQUEST NEGOTIATION OF A SUCCESSOR ICA (EVEN THOUGH ILECS GENERALLY ARE NOT ALLOWED TO REQUEST NEGOTIATIONS) (SYWENKI DIRECT AT PP. 19-20). IS THE PROVISION THAT ALLOWS AT&T TO REQUEST NEGOTIATION BASED ON THE RULE IN PART 20 THAT PERMITS ILECS TO REQUEST NEGOTIATION WITH CMRS PROVIDERS AS MR. SYWENKI ASSERTS – AND IF SO, DOES THAT MEAN THAT THE SUBSTANTIVE PROVISIONS OF THE ICA SHOULD REFLECT THE FCC'S PART 20 RULES?

A. No and no. It is correct that under the 1996 Act, ILECs are generally not allowed to make requests for negotiation under section 252(a). It is also correct that 47 C.F.R. § 20.11(e) – which is one of the FCC's Part 20 rules – makes an exception by allowing ILECs to request interconnection negotiations with CMRS providers. And it is also true that agreed language in the CMRS ICA (GT&C Part A, section 2.2.1) provides for either AT&T or Sprint CMRS to request renegotiation.

> 2.2.1 Either Party ("Noticing Party") may serve the other ("Receiving Party") a notice to terminate the Agreement or to request negotiation of a successor agreement pursuant to the Notices Section ("Notice") at any time within one hundred eighty (180) days prior to the end of the Initial Term or at any time during a Month-to-Month Renewal Period.

Mr. Sywenki's testimony omits language in subsections of section 2.2.1 that provides additional clarity regarding the application of section 2.2.1.

> 2.2.1.1 If Sprint is the Noticing Party, AT&T-9STATE will provide Sprint a written acknowledgement of receipt of the Notice within thirty (30) calendar days of receipt of the Notice.
>
> 2.2.1.2 If AT&T-9STATE is the Noticing Party, Sprint will provide within thirty (30) calendar days of receipt of the Notice a written acknowledgement of receipt of the Notice, in which Sprint shall either (a) request negotiation of a successor agreement or (b) inform AT&T-9STATE that it wishes to terminate the Agreement and not negotiate a successor agreement ("Acknowledgement").

Section 2.2.1.2 specifically provides that if AT&T serves notice to Sprint (pursuant to section 2.2.1), the decision is *Sprint's* (and not AT&T's) as to whether the parties will negotiate a successor ICA or will simply terminate the ICA. This agreed language appears in both ICAs. None of this, however, has any bearing on whether the ICA should state that the parties' rights and obligations under the ICA generally reflect the Part 20 rules.

In the first place, it is not unusual for AT&T to propose language for the term and termination provisions of any ICA – CLEC or CMRS – that allows AT&T to request renegotiation; and CLECs, as well as CMRS providers, have agreed to such language. For example, here is agreed language from an ICA that AT&T is currently arbitrating with a CLEC in Texas:

> This Agreement will become effective as of the Effective Date stated above, and will expire on _____. Upon the expiration, this agreement will continue on an annual basis, *unless written Notice of Non Renewal and Request for Negotiation (Non Renewal Notice) is provided* by either Party in accordance with the provisions of this Section. Any such Non Renewal Notice must be provided not later than 180 days before the day the noticing Party intends to terminate this Agreement. *The noticing Party will delineate the items desired to be negotiated.* Not later than 30 days from receipt of said notice, the receiving Party will notify the sending Party of additional items desired to be negotiated, if any.

> Not later than 135 days from the receipt of the Non Renewal Notice, both parties will commence negotiations. (Emphasis added.).

Obviously, the agreed language in that ICA that allows AT&T to request negotiation is not based on FCC Rule 20.11(e), because the other party is a CLEC, not a CMRS provider. And while Mr. Sywenki implies that Sprint only agreed to a similar provision in the CMRS ICA because Rule 20.11(e) required it to do so, that certainly has not been AT&T's understanding. Moreover, the CLEC ICA that the parties are arbitrating here includes exactly the same provision allowing AT&T to request negotiation. In light of that, Sprint cannot plausibly claim that their termination provisions are based on Rule 20.11(e).

Q. EVEN THOUGH YOU DO NOT BELIEVE IT IS TRUE, ASSUME FOR THE SAKE OF DISCUSSION THAT THE LANGUAGE IN THE CMRS ICA THAT ALLOWS AT&T TO REQUEST RENEGOTIATION WAS BASED ON RULE 20.11(e). WOULD THAT SUPPORT SPRINT'S POSITION THAT THE ICA SHOULD RECITE THAT THE ICA REFLECTS THE PARTIES' RIGHTS AND OBLIGATIONS UNDER THE FCC'S PART 20 RULES?

A. No. Bear in mind what Sprint is trying to accomplish here: The 1996 Act is clear that the only FCC rules that are supposed to guide the Commission's resolution of the open issues are the rules the FCC promulgated pursuant to its authority under the 1996 Act. (Recall that section 251(d)(1) required the FCC to establish regulations to implement the Act, and section 252(c) states that in resolving open issues, the Commission is to "ensure that such resolution . . . meet[s] the requirements of section 251, *including the regulations prescribed by the [FCC] pursuant to section 251.*) Sprint, however, wants to persuade the Commission, when it is deciding interconnection and compensation issues in this proceeding, to

take into account not only the rules the FCC established pursuant to its authority under the 1996 Act, but also Part 20 rules that the FCC did *not* establish pursuant to that authority. To that end, Sprint argues that the Part 20 rules *in general* should bear on the parties' interconnection and compensation obligations. And in the service of that argument, Sprint points to Rule 20.11.

But even if it were true that the parties' agreement that AT&T could request renegotiation with Sprint was based on Rule 20.11(e) – which it is not, at least as far as AT&T is concerned – that still would not mean that the Commission should approve Sprint's proposed reference to the Part 20 rules in the GTC and *then* – and this is the important part – take those rules into account when it decides other issues. This is especially clear when you consider how Rule 20.11(e) came to be.

In 2005, in its so-called *T-Mobile Order*,[4] the FCC determined that LECs could no longer impose reciprocal compensation charges on CMRS providers pursuant to tariffs, and it therefore amended its existing Rule 20.11 by adding a provision to that effect – a new subsection (d).[5] The FCC recognized, however, that this created a problem, because as matters stood, ILECs had a right to charge CMRS providers reciprocal compensation under the 1996 Act, but ILECs had no way to enforce that right, because they could not request CMRS providers to

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[4] *In the Matter of Developing a Unified Intercarrier Compensation Regime, T-Mobile et al. Petition for Declaratory Ruling Regarding Incumbent LEC Wireless Termination Tariffs*, CC Docket No. 01-92 , 20 FCC Rcd 4855 (rel Feb. 24, 2005).

[5] The FCC added 47 C.F.R. §§ 20.11(e) and 20.11(f) in its *T-Mobile Order*; however, those rules are now codified as §§ 20.11(d) and 20.11(e).

negotiate ICAs. Accordingly, the FCC added another subsection to Rule 20.11 – subsection (e) – which provides that an ILEC "may request interconnection from a commercial mobile radio provider and invoke the negotiation and arbitration procedures contained in section 252 of the [1996] Act."

Now, here is the punch line: *When the FCC added subsection 20.11(e), it was acting pursuant to its authority under the 1996 Act.* This is necessarily the case, because subsection (e) has only to do with rights and obligations under the 1996 Act. This particular piece of the FCC's Part 20 rules is distinctive in that respect. The Part 20 rules on which Sprint wants the Commission to rely when it decides interconnection and compensation issues, in contrast, were promulgated before the 1996 Act even came into existence. They therefore cannot properly be taken into account in resolving the issues in this arbitration – and the GTC should not recite that the ICA sets forth the parties' rights and obligations under the FCC's Part 20 rules because, as a general proposition, that is – and should not be – the case.

Q. DO ANY OF THE PART 51 RULES REFER TO PART 20?

A. No. There is nothing in the Part 51 rules stating that Part 20 rules also apply to a CMRS interconnection, lending further support to the conclusion that the Commission should not order that the ICA reference Part 20.

Q. HOW SHOULD THE COMMISSION RESOLVE ISSUE # 1 *[DPL ISSUE I.A(1)]*?

A. As I have explained in my direct and rebuttal testimony and as AT&T will further demonstrate in its briefs, the Commission should reject Sprint's language in GTC

Part A section 1.1 and in the GTC Part B definition of "Interconnection" (or "Interconnected") that would mistakenly suggest that the parties' rights and obligations in the ICA reflect the FCC's Part 20 regulations, which were promulgated pursuant to section 332 and not the 1996 Act. The Commission should also reject Sprint's definition of "Interconnection" or "Interconnected" because it would result in two different definitions for the same term, leading to confusion and potential disputes.

ISSUE # 7 *[DPL ISSUE I.B(1)]*

What is the appropriate definition of Authorized Services?

Contract Reference: GTC Part B Definitions

Q. DOES MR. SYWENKI ACTUALLY ADDRESS THE DEFINITION OF AUTHORIZED SERVICES IN HIS DIRECT TESTIMONY FOR ISSUE # 7 *[DPL ISSUE I.B(1)]*?

A. Only minimally. He says nothing beyond stating that Sprint's definition of Authorized Services should be adopted because it is straightforward and recognizes the services that parties may lawfully provide (Sywenki Direct at pp. 41, 45). Other than mentioning transit traffic, which is addressed in Issues # 14-20 *[DPL Issues I.C(1) – I.C(7)]*, the balance of his testimony supposedly addressing this definition is really focused on other matters, primarily AT&T's definition of Section 251(b)(5) Traffic for the CLEC ICA, which is addressed by Mr. McPhee for Issue # 9(ii) *[DPL Issue I.B(2)(b)(ii)]*.

Q. DO THE PARTIES AGREE AS TO WHAT SERVICES SPRINT CMRS MAY LAWFULLY PROVIDE?

A. No, and that is the reason AT&T's specific language is important. The parties are already engaged in litigation in multiple states regarding the interpretation of the InterMTA provisions of their current ICAs. – there are docketed complaints in 13 states involving significant disputed amounts. Rather than leaving it for another day to determine what services Sprint may lawfully provide, AT&T proposes language that makes clear that the Authorized Services Sprint may provide in the CMRS ICA are *CMRS* services, *i.e.*, services for which traffic is originated with or terminated to Sprint CMRS' end users.

Q. CAN YOU PROVIDE AN EXAMPLE WHERE SPRINT CMRS SEEKS TO PROVIDE A NON-CMRS SERVICE PURSUANT TO THE ICA?

A. Yes. Sprint has proposed language in Attachment 3 sections 4.2 and 4.3 that would permit Sprint to provide transit service to other carriers.[6] I will leave it to the lawyers to address in their briefs what Sprint is and is not entitled to provide as a CMRS carrier, but it is my understanding that if Sprint CMRS wants to transport wireline traffic, it must have a wireline (CLEC) certification.

Q. HOW SHOULD THE COMMISSION RESOLVE ISSUE # 7 *[DPL ISSUE I.B(1)]*?

A. Sprint should accept AT&T's revised definition of the term "Authorized Services" for the CMRS ICA, proposed in my direct testimony (at p. 6), resolving the CMRS portion of this issue. If not, the Commission should adopt AT&T's definition, because it is clearer than Sprint's.

The Commission should adopt AT&T's definition of the term "Authorized Services Traffic" for the CLEC ICA and reject Sprint's definition of "Authorized

[6] See Issue #19 *(DPL Issue I.C(6))*, which is addressed by Mr. McPhee.

Services." AT&T's term and definition accurately depict the types of traffic the parties will exchange pursuant to the ICA, while Sprint's term is too vague.

ISSUE # 8 *[DPL ISSUE I.B(2)(a)]*

Should the term "Section 251(b)(5) Traffic" be a defined term in either ICA?

Contract Reference: GTC Part B Definitions

ISSUE # 9(i) *[DPL ISSUE I.B(2)(b)(i)]*

If so, what constitutes Section 251(b)(5) Traffic for the CMRS ICA?

Contract Reference: GTC Part B Definitions

Q. HOW DOES SPRINT ADDRESS THESE ISSUES IN ITS TESTIMONY?

A. Mr. Sywenki concludes in Issue # 8 *[DPL Issue I.B(2)(a)]* that neither ICA needs a definition of Section 251(b)(5) Traffic (Sywenki Direct at p. 46, and he does not address what the definition in the CMRS ICA should be in the event the Commission disagrees.[7]

Q. DO SECTION 251(b)(5) AND THE FCC'S RULES "SPEAK FOR THEMSELVES," AS MR. SYWENKI ASSERTS (SYWENKI DIRECT AT P. 46)?

A. Apparently not. That is clear from the parties' disagreements on various issues regarding the application of the 1996 Act and the FCC's implementing rules. For example, Sprint proposes that all traffic be lumped together and treated as a single category of traffic for compensation purposes.[8] Yet the FCC's rules do not

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[7] He also does not address what the definition in the CLEC ICA should be in the event the Commission disagrees, but Issue # 9(i) *[DPL Issue I.B(2)(b)(i)]*, concerning the CLEC definition, is addressed by Mr. McPhee.

[8] Sprint proposes that Attachment 3 section 6.1.1 state, "***Authorized Services traffic exchanged between the Parties pursuant to this Agreement will be classified as Authorized Services Terminated Traffic (which includes IntraMTA Traffic, InterMTA Traffic, Information Services traffic, Interconnected VoIP traffic), Jointly Provided***

provide for all traffic to be treated the same in all circumstances. The parties also disagree regarding how to determine the location of a mobile customer at the beginning of a call, which is essential to determining jurisdiction for compensation purposes. AT&T's proposed definition properly reflects the traffic exchanged between the parties that is subject to section 251(b)(5) reciprocal compensation, based on the best approximation of the locations of the originating and terminating parties to a call. Furthermore, even if Mr. Sywenki were correct that that the FCC's rules speak clearly for themselves, that is no reason not to expressly reflect the rules in the ICA.

Q. IS SECTION 251(b)(5) THE ONLY STATUTE RELEVANT FOR DETERMINING THE TRAFFIC SUBJECT TO RECIPROCAL COMPENSATION IN THE CMRS ICA?

A. Yes. The parties have negotiated and are arbitrating for a section 251/252 ICA. The only statute relevant for determining the traffic subject to reciprocal compensation in a section 251/252 ICA is section 251(b)(5). The provisions of section 332 and the FCC's Part 20 rules do not apply.

Q. HOW SHOULD THE COMMISSION RESOLVE ISSUE # 8 *[DPL ISSUE I.B(2)(a)]* AND ISSUE # 9(i) *[DPL ISSUE I.B(2)(b)(i)]*?

A. The Commission should rule that the parties' ICAs will define and use the term "Section 251(b)(5) Traffic," because that is the proper term to reflect the parties' rights and obligations regarding reciprocal compensation under the 1996 Act.

Switched Access traffic, or Transit Service Traffic." Section 6.2.2 provides a single rate category for Terminated Traffic. And Sprint proposes a single rate for Authorized Services Terminated Traffic in its Pricing Sheet.

The Commission should adopt AT&T's definition of the term "Section 251(b)(5) Traffic" for the CMRS ICA because it most accurately identifies the originating and terminating points of a call for purposes of applying reciprocal compensation. There is a separate issue regarding whether reciprocal compensation applies to 1+ IntraMTA Traffic that AT&T routes to an interexchange carrier ("IXC") for termination to Sprint, which I address below for Issue # 40 *[DPL Issue III.A.1(1)]*. The Commission should adopt AT&T's proposal to use the term "Section 251(b)(5) Traffic" regardless of how it resolves Issue # 40 *[DPL Issue III.A.1(1)]*.[9]

ISSUE # 11 *[DPL ISSUE I.B(3)]*

What is the appropriate definition of Switched Access Service?

Contract Reference: GTC Part B Definitions

Q. MR. SYWENKI TESTIFIES THAT AT&T'S DEFINITION OF "SWITCHED ACCESS SERVICE" WOULD INAPPROPRIATELY SUBJECT THE ICA AND NON-IXC PARTIES TO AT&T'S ACCESS TARIFF (SYWENKI AT P. 47). HOW DO YOU RESPOND?

A. As I explained in my direct testimony (at p. 16), for the purpose of providing switched access service (which AT&T only offers pursuant to tariff), *any* carrier that provides service between exchanges (*i.e.*, interexchange service) is an interexchange carrier, including carriers such as Sprint CMRS and Sprint CLEC. Therefore, it is entirely appropriate for the ICAs to define Switched Access

[9] There is only one word in AT&T's definition of "Section 251(b)(5) Traffic" that is relevant to the 1+ IntraMTA Traffic issue – "directly." If the Commission decides for Issue # 40 *[DPL Issue III.A.1(1)]* that Sprint's position prevails, the only modification to AT&T's proposed definition of "Section 251(b)(5) Traffic" would be the deletion of the word "directly."

Service in a manner that would include both Sprint and AT&T when either acts as an interexchange carrier (as the tariff defines that term) , *i.e.*, by directly exchanging interexchange traffic (intraLATA toll calls for CLEC, and InterMTA intraLATA calls for CMRS).

Q. DOES AT&T'S LANGUAGE SHIELD AT&T'S WIRELESS AND CLEC AFFILIATES FROM SPRINT'S ACCESS TARIFF AS MR. SYWENKI CLAIMS (SYWENKI DIRECT AT P. 48)?

A. No. These ICAs are between AT&T (the ILEC) and Sprint CLEC and Sprint CMRS. They therefore have no effect on the relationships between Sprint and AT&T's non-ILEC affiliates. The interconnection arrangements between Sprint and other AT&T affiliates are governed by the applicable contracts and/or tariffs – not these ICAs.

Q. DOES AT&T'S LANGUAGE EXPAND THE APPLICABILITY OF AT&T'S ACCESS TARIFF TO SPRINT'S IXC AFFILIATE AS MR. SYWENKI CLAIMS (SYWENKI DIRECT AT P. 47)?

A. No. Sprint's IXC affiliate is already subject to AT&T's access tariff when it obtains exchange access service from AT&T; nothing in the ICAs changes that.

Q. DOES AT&T TREAT ITS OWN CLEC, CMRS AND IXC AFFILIATES DIFFERENTLY THAN SPRINT?

A. No. AT&T's CLEC and CMRS affiliates have the same opportunity to request interconnection with AT&T, negotiate and arbitrate (if necessary) an ICA, or adopt another CLEC's / CMRS carrier's ICA pursuant to section 252(i) – the same rights Sprint has. Once Sprint's ICA expired, it had the opportunity to adopt

any current ICA in the state,[10] including AT&T's CLEC/CMRS affiliate's ICAs. As for AT&T's IXC affiliate, it obtains exchange access service from AT&T's tariff in the same manner as all IXCs.

Q. HOW SHOULD THE COMMISSION RESOLVE ISSUE # 11 *[DPL ISSUE I.B(3)]*?

A. The Commission should adopt AT&T's definition of "Switched Access Service" for both ICAs and reject Sprint's definition. Sprint's definition would improperly exclude both parties from the offering of Switched Access Service to one another, even when they provide interexchange service.

ISSUE # 21 *[DPL ISSUE II.A]*

Should the ICA distinguish between Entrance Facilities and Interconnection Facilities? If so, what is the distinction?

Contract Reference: GTC Part B Definitions; Attachment 3, section 2.2

Q. MR. FELTON INDICATES THAT SPRINT DISAGREES WITH AT&T'S DISTINCTION BETWEEN ENTRANCE FACILITIES AND INTERCONNECTION FACILITIES (FELTON DIRECT AT P. 5). HOW DOES THE FCC DEFINE "ENTRANCE FACILITIES"?

A. The FCC defines entrance facilities in 47 C.F.R. § 69.2 as "transport from the interexchange carrier or other person's point of demarcation to the serving wire center." The FCC also provides an informal definition of entrance facilities in ¶ 136 of the TRRO (footnotes omitted):

> In the *Local Competition Order*, the Commission defined dedicated transport as:

[10] Sprint previously also had the ability to request to port a current out-of-state ICA pursuant to the AT&T-BellSouth merger conditions, which recently expired. In fact, Sprint exercised that option in porting its Kentucky ICA to other states.

> incumbent LEC transmission facilities dedicated to a particular customer or carrier that provide telecommunications between wire centers owned by incumbent LECs or requesting telecommunications carriers, or between switches owned by incumbent LECs or requesting telecommunications carriers.
>
> The Commission reaffirmed this definition, which encompassed entrance facilities (the transmission facilities that connect competitive LEC networks with incumbent LEC networks), in the *UNE Remand Order*.

Thus, entrance facilities are dedicated transmission facilities between Sprint's office (or POP in the LATA) and AT&T's office.

Q. DOES THE FCC DEFINE "INTERCONNECTION FACILITIES" IN THE CONTEXT OF SECTION 251 OF THE 1996 ACT?

A. Not specifically, but the FCC does define "Interconnection," which I discuss above for Issue # 1 *[DPL Issue I.A(1)]*. It is logical to define Interconnection Facilities in the context of the FCC's Part 51 definition of Interconnection.

Q. MR. FELTON POINTS OUT THAT THE SIXTH CIRCUIT CONCLUDED THAT A FACILITY'S USE IS NOT RELEVANT WHEN DETERMINING THE CORRECT PRICING STANDARD (FELTON DIRECT AT P. 7). DO YOU AGREE WITH THE SIXTH CIRCUIT ON THIS POINT?

A. Yes. As explained by Mr. Hamiter in his direct testimony (at p. 3), a facility is simply a physical medium between two points over which telecommunications messages may be transmitted. In other words, it is a commodity – just a copper or fiber pipe that can be used for various purposes. In the context of entrance facilities, it connects Sprint's network with AT&T's network. Using the Sixth Circuit's analogy, the entrance facility is an extension cord that is available from multiple sources (*i.e.*, lease from the ILEC, lease from another carrier, or self-provision).

Q. MR. FELTON SUGGESTS THAT THE SIXTH CIRCUIT'S ANALOGY FAILS BECAUSE ELECTRICITY ONLY FLOWS IN ONE DIRECTION, WHILE TRAFFIC FLOWS BOTH WAYS OVER AN ENTRANCE FACILITY (FELTON DIRECT AT P. 7). HOW DO YOU RESPOND?

A. I agree that electricity only flows in one direction, but I disagree with Mr. Felton's conclusion that this fact invalidates the Sixth Circuit's analysis. The question at issue is not which party is responsible to pay for the entrance facilities provided by AT&T – that is Sprint's responsibility. Sprint is responsible for the facilities on its side of the POI it establishes on AT&T's network, and that includes the entrance facilities.[11] Similarly, when Sprint routes calls to AT&T that traverse facilities on AT&T's side of the POI, that is AT&T's responsibility. In addition, when the parties share facilities on Sprint's side of the POI on AT&T's network, as they do in the CMRS context, AT&T pays its fair share of the facilities based on its proportionate use. AT&T thus is not "reaping excessive profits" in making

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[11] Several state commissions have reached this conclusion. *See* e.g., Order Approving Arbitrated Interconnection Agreement, Case No. TK20060050, *Re Interconnection Agreement Between Sw. Bell Tel., L.P. d/b/a SBC Missouri, and the MCI Group*, 2005 WL 1999950 (Mo. Pub. Serv. Comm'n Aug. 8, 2005) ("Each party is financially responsible for facilities on its side of the POI."); Supplemental Opinion and Order, Case No. 02-2719-ARB, *Application of T-Mobile USA, Inc. d/b/a VoiceStream Wireless Corp. for Arbitration of Interconnection Rates, Terms and Conditions and Related Arrangements with SBC* Ohio, 2003 Ohio PUC LEXIS 244, at *13 (Pub. Utils. Comm'n Ohio June 10, 2003) ("At the POI, the responsibility for the facilities shifts from one party to the other, as that point is the physical demarcation between the two systems."); Final Arbitrator's Report, Application 05-05-2007, *Application by Pacific Bell Tel. Co d/b/a SBC California for Arbitration of an Interconnection Agreement with MCImetro Access Transmission Services LLC Pursuant to Section 252(b) of the Telecommunications Act of 1996* (Pub. Utils. Comm'n Cal. May 26, 2005) ("A typical method of interconnection is for a CLEC to provide its own facility . . . to a POI on [the ILEC's] network, after which each party provisions a two-way trunk group in the appropriate switch on its side of the POI."); Order on Arbitration, Docket No. 2000-527-C, *AT&T Communications of the Southern States, Inc.* 2001 WL 872914, at *17 (So. Car. Pub. Serv. Comm'n Jan. 30, 2001) ("[The CLEC] is entitled to a single Point of Interconnection in a LATA, however, [the CLEC] shall remain responsible for paying for the facilities necessary to carry calls to the single Point of Interconnection.").

entrance facilities available to Sprint, as Mr. Felton asserts (Felton Direct at p. 7). Moreover, the FCC has concluded that carriers are not impaired without access to entrance facilities at TELRIC-based prices.[12] If Sprint does not want to pay AT&T's tariffed rates for entrance facilities, it need only obtain such facilities from another carrier or provide them itself.[13]

Q. MR. FELTON ALSO MENTIONS THAT THE FCC FILED AN AMICUS BRIEF FOR THE SIXTH CIRCUIT'S CONSIDERATION (FELTON DIRECT AT P. 6). DID THE SIXTH CIRCUIT IGNORE THE FCC'S GUIDANCE ON THIS MATTER AS MR. FELTON TESTIFIES (FELTON DIRECT AT P.8)?

A. No. The Sixth Circuit did not ignore the FCC's guidance – they simply did not take it, stating in footnote 6 that:

> [T]he FCC's proffered interpretation is so plainly erroneous or inconsistent with the regulation [] that we can only conclude that the FCC has attempted to create a new *de facto* regulation under the guise of interpreting the regulation []. (Emphasis in original).

In other words, the Sixth Circuit invited the FCC to explain itself, but rejected that explanation as an after-the-fact attempted justification that misses the mark. . I mean no disrespect to the FCC, but as demonstrated by the tortured history

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12 *TRRO* at ¶ 141.

13 *See* TRRO at ¶ 138. "As we noted in the *Triennial Review Order*, entrance facilities are used to transport traffic to a switch and often represent the point of greatest aggregation of traffic in a competitive LEC's network. Because of this aggregation potential, entrance facilities are more likely than dedicated transport between incumbent LEC offices to carry enough traffic to justify self-deployment by a competitive LEC. Moreover, competitive LECs have a unique degree of control over the cost of entrance facilities, in contrast to other types of dedicated transport, because they can choose the location of their own switches. For example, they can choose to locate their switches close to other competitors' switches, maximizing the ability to share costs and aggregate traffic, or close to transmission facilities deployed by other competitors, increasing the possibility of finding an alternative wholesale supply. In addition, they often can locate their switches close to the incumbent LEC's central office, minimizing the length and cost of entrance facilities." (Footnotes omitted).

regarding UNE regulations, the FCC does not have a very good track record with its orders implementing the 1996 Act.

Q. YOU MENTIONED IN YOUR DIRECT TESTIMONY (AT P. 26) THAT THE NINTH CIRCUIT ISSUED ITS DECISION SHORTLY AFTER THE SIXTH CIRCUIT'S DECISION. DO YOU HAVE ANY UPDATES?

A. Yes. The Ninth Circuit recently denied rehearing of its earlier decision, adding a simple statement that it rejected the Sixth Circuit's reasoning, without detailed explanation for rejecting it. In addition, on August 31, 2010 the Michigan Public Service Commission and Talk America, Inc. filed separate Petitions for Writ of Certiorari to the U.S. Supreme Court to consider the Sixth Circuit's decision.

Q. PLEASE SUMMARIZE AT&T'S POSITION ON THIS ISSUE.

A. The FCC conclusively determined in the *TRRO* that requesting carriers are not impaired if they do not have access to entrance facilities at cost-based rates, because they can economically provide those facilities themselves or obtain them from other carriers. Based solely on a self-serving reading of a side comment in that order,[14] Sprint asks the Commission nonetheless to require AT&T to provide Sprint with entrance facilities at cost-based rates, purportedly pursuant to the interconnection requirement in section 251(c)(2) of the 1996 Act. The Commission should reject Sprint's request. Such a requirement would be anti-competitive, in contravention of the goals of the 1996 Act, unsupported by the language of section 251(c)(2), contrary to the FCC's definition of "interconnection," and is not a reasonable reading of the FCC comment on which Sprint relies.

[14] Felton Direct at p. 8.

Q. HOW SHOULD THE COMMISSION RESOLVE ISSUE # 21 *[DPL ISSUE II.A]*?

A. The Commission should adopt AT&T's separate definitions of "Entrance Facilities" and "Interconnection Facilities" for the parties' ICAs, because they are consistent with the Sixth Circuit's decision and the FCC's *TRRO* and accurately represent the facilities at issue: Entrance Facilities are used to transport traffic between Sprint's location and the parties' POI on AT&T's network (*i.e.*, the Sixth's Circuit's extension cord); Interconnection Facilities provide the link between Sprint's network and AT&T's network (*i.e.*, the Sixth Circuit's surge protector / outlet), and do not include transport. Sprint's definition of "Interconnection Facilities" to include transport between Sprint and AT&T should be rejected, because it is inconsistent with the Sixth Circuit's conclusion that what Sprint is defining is actually entrance facilities and not interconnection facilities. Sprint's language should also be rejected because it improperly includes in the definition of Interconnection Facilities transport from AT&T's network to a third party's POI when terminating Sprint-originated transit calls.

ISSUE # 37 *[DPL ISSUE III.A(1)]*

As to each ICA, what categories of exchanged traffic are subject to compensation between the parties?

Contract Reference: Attachment 3, Sprint section 6.1.1, AT&T CMRS section 6.1.1

Q. IN YOUR DIRECT TESTIMONY (AT P. 45), YOU INDICATED THAT IT WAS UNCLEAR EXACTLY WHAT SPRINT IS ADVOCATING. DOES SPRINT'S TESTIMONY CLARIFY MATTERS?

A. To some extent. Mr. Farrar's testimony on this issue makes clear that Sprint is proposing to revolutionize intercarrier compensation in a way that is squarely at

odds with governing law. For example, Mr. Farrar states that under Sprint's proposal, a first category of traffic ("Authorized Service Terminated Traffic") would include both local traffic[15] (*i.e.*, IntraMTA Traffic for the CMRS contract) and long distance traffic (*i.e.*, InterMTA Traffic for the CMRS contract) *and* that all traffic within that category would be terminated "under mutually identical terms and conditions, including a uniform price" (Farrar Direct at p. 40). Under Sprint's proposal, in other words, compensation for transport and termination of local and long distance traffic would be the same, notwithstanding that under current FCC rules, local (or IntraMTA) traffic is indisputably subject to reciprocal compensation and long distance (InterMTA) traffic indisputably is not.

Q. HOW DOES MR. FARRAR JUSTIFY THIS, GIVEN THE CURRENT STATE OF THE LAW?

A. By relying on 47 C.F.R. § 20.11, which provides in general language for "reasonable compensation" for traffic terminated between local exchange carriers and CMRS providers. Mr. Farrar evidently regards that rule as overriding – at least for CMRS providers – the compensation rules the FCC has developed for ICAs under the 1996 Act. Having jumped that fence, he then goes a step further and asserts that there is "no practical reason why the same approach cannot be used as to CLEC traffic" (Farrar Direct at p. 39).

Q. HOW DO YOU RESPOND?

A. I have been involved in ICA arbitrations for 14 years, and I must say this is one of the most outlandish arbitration positions I have seen. Actually, Mr. Farrar may be

[15] As I indicated in my direct testimony (at footnote 48 on page 61), I use the term "local" based on its common use in the industry.

correct when he says there is "no *practical*" reason that one could not treat local and long distance traffic identically for purposes of intercarrier compensation – in fact, such proposals have been made in the ongoing proceeding in which the FCC is considering new intercarrier compensation rules. And he may or may not be correct regarding the "practicality" of applying Part 20 regulations to a CLEC ICA. But under the current rules, there is an insurmountable obstacle to Sprint's proposal in this proceeding: It is against the law. Local traffic and non-local traffic are, under the current rules, subject to different compensation regimes.

Q. ARE YOU SAYING THE FCC HAS STATED IT IS NOT APPROPRIATE TO TREAT LONG DISTANCE TRAFFIC THE SAME AS LOCAL TRAFFIC FOR COMPENSATION PURPOSES, CONTRARY TO WHAT MR. FARRAR PROPOSES (FARRAR DIRECT AT P. 40)?

A. Yes. The FCC recognizes that local and long distance calls are jurisdictionally distinct – local calls are subject to section 251(b)(5) reciprocal compensation and long distance calls are subject to switched access charges. In its *ISP Remand Order*, the FCC stated at ¶ 37:

> Before Congress enacted the 1996 Act, LECs provided access services to IXCs and to information service providers in order to connect calls that travel to points – both interstate and intrastate – beyond the local exchange. In turn, both the Commission and the states had in place access regimes applicable to this traffic, which they have continued to modify over time. It makes sense that Congress did not intend to disrupt these pre-existing relationships.[16] Accordingly, Congress excluded all such access

[16] "Although section 251(g) does not itself compel this outcome with respect to *intrastate* access regimes (because it expressly preserves only *the Commission's* traditional policies and authority over *interstate* access services), it nevertheless highlights an ambiguity in the scope of "telecommunications" subject to section 251(b)(5) -- demonstrating that the term must be construed in light of other provisions in the statute. In this regard, we again conclude that it is reasonable to interpret section 251(b)(5) to exclude traffic subject to parallel intrastate access regulations, because 'it would be incongruous to conclude that Congress was concerned about the effects of

traffic from the purview of section 251(b)(5). (Footnote in original).

Q. ISN'T MR, FARRAR CORRECT, THOUGH, THAT 47 C.F.R. § 20.11 MERELY PROVIDES FOR REASONABLE COMPENSATION FOR TERMINATION OF TRAFFIC, AND MAKES NO DISTINCTION BETWEEN DIFFERENT CATEGORIES OF TRAFFIC?

A. Yes. But for reasons I have explained in connection with Issue # 1 *[DPL Issue I.A(1)]*, Mr. Farrar's reliance on the FCC's Part 20 rules is misplaced; that rule was not promulgated pursuant to the FCC's authority to implement the 1996 Act and has no bearing on terms and conditions for an ICA made pursuant to the 1996 Act. All the more clearly, the FCC's Part 20 rules cannot override the FCC's Part 51 rules in this proceeding. Furthermore, it would never be appropriate to apply the Part 20 rules to a CLEC-ILEC ICA, which is precisely what Mr. Farrar suggests to the Commission (Farrar Direct at p. 39).

Q. DOES MR. FARRAR PROVIDE ANY TESTIMONY IN SUPPORT OF HIS ALTERNATIVE LIST OF TRAFFIC CATEGORIES IF THE COMMISSION REJECTS SPRINT'S PROPOSAL FOR ONLY TWO TRAFFIC CATEGORIES (FARRAR DIRECT AT P. 41)?

A. No. Mr. Farrar simply lists the alternative traffic categories Sprint proposes and offers no justification.

Q. HOW SHOULD THE COMMISSION RESOLVE ISSUE # 37 *[DPL ISSUE III.A(1)]*?

A. The Commission should adopt AT&T's language in CMRS Attachment 3 section 6.1.1. AT&T's traffic classifications represent the appropriate way to categorize

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potential disruption to the interstate access charge system, but had no such concerns about the effects on analogous intrastate mechanisms.' *Local Competition Order*, 11 FCC Rcd at 15869."

traffic exchanged between the parties for the purpose of intercarrier compensation and provide the parties with the best way to apply the proper rates based on call jurisdiction. The Commission should reject Sprint's proposed language for (Authorized Services) traffic categories in both the CMRS and CLEC ICAs. Sprint's proposal for two billable categories ignores the important jurisdictional distinction between local and toll calls (IntraMTA and InterMTA for CMRS), treating them the same for compensation purposes. And Sprint's proposal for more than two billable categories of traffic creates an unnecessary distinction between telecommunications traffic and non-telecommunications traffic.

ISSUE # 38 *[DPL ISSUE III.A(2)]*

Should the ICAs include the provisions governing rates proposed by Sprint?

Contract Reference: Attachment 3, Sprint sections 6.2 – 6.2.4

Q. MR. FARRAR STATES THAT THE PARTIES CURRENTLY EXCHANGE MOST TRAFFIC PURSUANT TO A BILL AND KEEP ARRANGEMENT (FARRAR DIRECT AT P. 43). IS THAT SUFFICIENT REASON TO ORDER BILL AND KEEP FOR ALL TRAFFIC EXCHANGED PURSUANT TO THE NEW ICAS?

A. No. The parties' agreement many years ago to exchange certain traffic on a bill and keep basis is not relevant to determining the appropriate compensation for the future. There are several issues between the parties related to bill and keep arrangements – Issue # 43 *[DPL Issue III.A.1(4)]* and Issue # 44 *[DPL Issue III.A.1(5)]* concern bill and keep arrangements for reciprocal compensation; Issue # 45 *[DPL Issue III.A.2]* considers compensation for ISP-Bound traffic; and Issue # 53 *[DPL Issue III.A.6(1)]* addresses compensation for VoIP traffic. These issues are addressed by Mr. McPhee.

Q. MR. FARRAR STATES THAT AT&T HAS SUPPORTED RATES FOR INTERCARRIER COMPENSATION LOWER THAN TELRIC-BASED IN A PROCEEDING BEFORE THE FCC (FARRAR DIRECT AT PP. 44-45). HOW DO YOU RESPOND?

A. The filings he refers to appear to have been made by AT&T's parent (*i.e.*, AT&T, Inc.) regarding alternative cost standards that the FCC should consider in its Further Notice of Proposed Rulemaking regarding intercarrier compensation reform.[17] Those standards have not been adopted, and are not at all pertinent to the issues presented to the Commission for arbitration. All that is relevant to the Commission's decision is the rules that are in effect today –and those rules call for reciprocal compensation pricing premised on the TELRIC standard.

Q. ARE SPRINT'S PROPOSED RATE ALTERNATIVES CONSISTENT WITH THE RULES IN EFFECT TODAY?

A. No. As I explained in detail in my direct testimony (at pp. 50-54), there are numerous problems with Sprint's proposal. Rather than reiterate them here, I refer the Commission to my direct testimony.

Q. HOW SHOULD THE COMMISSION RESOLVE ISSUE # 38 *[DPL ISSUE III.A(2)]*?

A. The Commission should reject Sprint's proposed language in its sections 6.2.2 through 6.2.4. An ICA should provide the parties with certainty for a set period of time, and Sprint's proposal subverts that purpose. In addition, Sprint's language violates the FCC's All-or-Nothing Rule and improperly provides for a

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[17] *In the Matter of Developing a Unified Intercarrier Compensation Regime, et al;* CC Docket 01-92 Order on Remand and Report and Order and Further Notice of Proposed Rulemaking; Released: November 5, 2008.

retroactive true-up to the effective date of the ICAs for the difference between the initial contracted rate and any future rate Sprint might elect.[18]

ISSUE # 40 *[DPL ISSUE III.A.1(1)]*

Is IntraMTA traffic that originates on AT&T's network and that AT&T hands off to an IXC for delivery to Sprint subject to reciprocal compensation?

Contract Reference: Attachment 3, AT&T sections 6.2.3.1.7

Q. MR. FELTON STATES THAT A 1+ CALL FROM AN AT&T END USER IS ORIGINATED BY AT&T (FELTON DIRECT AT P. 40). IS IT THE ACT OF DIALING 1+ THAT DETERMINES WHETHER AT&T ORIGINATED THE CALL?

A. No. An AT&T local end user may place a 1+ intraLATA IntraMTA toll call to Sprint that is routed directly between the parties. This call is properly subject to reciprocal compensation because it is an IntraMTA call from *AT&T's (toll) customer.* In this case, AT&T receives the revenue from the end user for that call. It is the fact that AT&T's local end user is placing a toll call (which happens to be dialed as 1+) *routed to an IXC* for completion to Sprint that exempts the call from reciprocal compensation because the end user is a (toll) *customer of the IXC*, not AT&T. The IXC receives the revenue from the end user for that call. In other words, AT&T delivers an IntraMTA toll call directly to Sprint when the end user is *AT&T's (toll) customer*, and that call is properly subject to reciprocal compensation. AT&T routes an IntraMTA (toll) call to an IXC when the end user

[18] Note that Mr. Farrar says nothing whatsoever in support of Sprint's unlawful suggestion that it be allowed to pay the lowest rate that AT&T has offered to any other carrier, which would violate the FCC's All-or-Nothing Rule, or in support of Sprint's improper true-up proposal.

is the *IXC's (toll) customer*, and that call is not subject to reciprocal compensation as between AT&T and Sprint because the end user is not AT&T's (toll) customer.

Q. DOES YOUR ANALYSIS CHANGE WHEN THE ORIGINATING END USER SELECTS AT&T'S IXC AFFILIATE AS HIS LONG DISTANCE CARRIER?

A. No. When an end user places a toll call via his selected IXC, that end user is the IXC's customer for that call. It does not matter if the IXC is AT&T's IXC affiliate, Sprint's IXC affiliate, or any other IXC.

Q. WOULD AT&T ROUTE INTRAMTA CALLS TO ITS IXC AFFILIATE TO AVOID PAYING RECIPROCAL COMPENSATION TO SPRINT?

A. Of course not. AT&T routes a call to its IXC affiliate *only* when the caller has preselected AT&T IXC as his long distance carrier or has proactively dialed AT&T IXC's access code (either directly or via a calling card). It is the end user that decides what IXC will carry his long distance calls, not AT&T.

Q. IS MR. FELTON CORRECT THAT AT&T RECEIVES ORIGINATING SWITCHED ACCESS REVENUE FROM THE IXC (FELTON DIRECT AT P.4)?

A. Yes. However, that revenue is associated with AT&T's activities as the *originating* dial tone provider (*e.g.*, local switching). It is unrelated to the costs incurred by the *terminating* carrier, and it is terminating compensation Sprint seeks to collect from AT&T. If anything, AT&T's receipt of originating access charges from the IXC confirms AT&T's view that the call is an access call, not a reciprocal compensation call.

Q. WOULD AT&T'S PROPOSAL, IF ADOPTED, RESULT IN A "TRIPLE WINDFALL" TO AT&T, AS MR. FELTON CLAIMS (FELTON DIRECT AT P. 40)?

A. No. Mr. Felton's comparison of an IXC call to a simple transit call completely misses the mark. In a transit call, the transit provider does not receive revenue (local or toll) from the caller; it is the originating carrier that receives that revenue, so the originating carrier rightfully compensates the transit provider and the terminating carrier for their respective switching, transport and termination services. That is not the case with an IXC toll call. It is the IXC that receives the revenue for a toll call, not the local dial tone provider. Since the IXC receives the toll revenue, there is no reason the local provider would be compensating the IXC – which is a very different scenario than simple transit service. Rather, the IXC compensates the originating carrier for exchange access; the IXC may or may not compensate the terminating carrier, depending on their arrangement. As I stated in my direct testimony (at pp. 67-68), because wireless carriers are typically compensated by their mobile customers for incoming calls, they are not without compensation for IXC calls.

Q. IS AT&T PROPOSING A ONE-WAY BILL AND KEEP ARRANGEMENT, AS MR. FELTON SUGGESTS (FELTON DIRECT AT P. 42)?

A. No. AT&T does not propose a one-way bill and keep arrangement, nor does AT&T's language reflect an arrangement that is not reciprocal. It is one-way in effect only because Sprint does not route IntraMTA Traffic to an IXC. That is a consequence of how the CMRS world works, not a consequence of AT&T's

proposed language. Mr. Felton's attempt to bootstrap this effect into justification for adopting a bill and keep arrangement for all traffic is improper.[19]

Q. MR. FELTON STATES THAT "THE MAJORITY OF FEDERAL COURTS AND STATE COMMISSIONS" HAVE CONCLUDED THAT INTRAMTA CALLS ROUTED TO AN IXC ARE SUBJECT TO RECIPROCAL COMPENSATION (FELTON DIRECT AT PP. 39). HOW DO YOU RESPOND?

A. Mr. Felton cites to three court cases and no state commission orders. I suspect that Mr. Felton may be wrong when he refers to the "majority of federal courts and state commissions," in part because in one of the court cases that Mr. Felton cites, the state commission had ruled that intraMTA IXC calls are *not* subject to reciprocal compensation.[20] In addition, I am aware that the Public Utility Commission of Texas reached the same conclusion, in a decision that was affirmed by a federal district court and then by the United States Court of Appeals for the Fifth Circuit.[21] This Commission, though, should decide the issue based on a proper analysis. To be sure, that analysis will take into account persuasive thinking of other forums – but the Commission should not base its decision on a count of the courts and commissions on each side of the issue.

Q. ARE THERE ANY PARTICULAR REASONS THAT THE COMMISSION SHOULD NOT FOLLOW THE DECISIONS MR. FELTON CITES?

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[19] The parties' dispute regarding bill and keep arrangements is reflected in Issues # 43 and 44 *(DPL Issues III.A.1(4) and III.A.1(5) respectively)*, addressed by Mr. McPhee.

[20] That case is *T-Mobile USA, Inc. v. Armstrong*, 2009 U.S. Dist. LEXIS 44525, 22-23 (E.D. Ky. May 20, 2009).

[21] *Fitch v. Pub. Util. Comm'n Texas*, 261 Fed. Appx. 788, 794, 2008 U.S. App. LEXIS 919, at **16 (2008).

A. Like Mr. Felton, who merely identified the decisions and did not discuss them, I will leave most of the legal discussion to the lawyers. I would note, however, an important factual distinction between the issue presented in this arbitration and the three cases Mr. Felton relies on. All three of the cases Mr. Felton cites involved disputes between rural local exchange carriers and CMRS providers in situations in which the parties were not directly connected, and the rural LECs were clearly seeking to avoid any liability for what was really transit traffic routed to the CMRS providers. In fact, in one of the cases the rural carrier purposely sent all of its originating traffic through an IXC, rather than through a transit provider, in an apparent effort to avoid paying reciprocal compensation for those calls.[22] And in another, the court actually confuses the transit provider with an IXC.[23]

Here, in contrast, AT&T and Sprint are directly connected, and AT&T certainly is not seeking to avoid payment of reciprocal compensation for IntraMTA calls that *AT&T's customers* send to Sprint CMRS. But that is the important distinction that is not adequately addressed in the cases Mr. Felton relies on. When the customer dials "1+" at the start of that call, he or she no longer is an AT&T customer. Rather, that caller – and compensation liability for the call – belongs to the caller's IXC. In addition, it strikes me that in Mr. Felton's cases, the courts glossed over the fact that the governing FCC rule

[22] *See Alma Communications Company v. Missouri Public Service Comm'n*, 490 F. 3d 619, 622 (8th Cir. 2007).

[23] *See Atlas Telephone Company v. Oklahoma Corporation Comm'n*, 400 f. 3D 1256, 1260 (10th Cir. 2005).

applies reciprocal compensation only to traffic "exchanged between a LEC and a CMRS provider." 47 C.F.R. § 701(b)(2). As I explained in my direct testimony (at pp. 68-69), the calls we are talking about here are not "exchanged between" AT&T and Sprint. The courts that have found that IntraMTA IXC calls are subject to reciprocal compensation have focused on the fact that the FCC's rule makes IntraMTA calls subject to reciprocal compensation, and have disregarded the fact that the rule, by its terms, does not apply to IntraMTA IXC calls, because such calls are not exchanged between the ILEC and the wireless provider

Q. HOW SHOULD THE COMMISSION RESOLVE ISSUE # 40 *[DPL ISSUE III.A.1(1)]*?

A. The Commission should find that AT&T is not obligated to pay reciprocal compensation to Sprint for IntraMTA calls AT&T originates and routes to Sprint via an IXC.

ISSUE # 41 *[DPL ISSUE III.A.1(2)]*

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

Contract Reference: Sprint Pricing Sheet; Attachment 3, AT&T sections 6.2 – 6.3.6, AT&T Pricing Sheet

Q. MR. FELTON STATES THAT AT&T "LAYS OUT AN ELABORATE FACTORING PROCESS" TO BE USED IF SPRINT CANNOT MEASURE TERMINATING USAGE (FELTON DIRECT AT P. 43). DOES THE APPROVAL OF A SPECIFIC PROCESS TO ESTIMATE TERMINATING USAGE, AS AT&T PROPOSES, DEPEND ON OTHER ISSUES IN DISPUTE?

A. Only indirectly. The fundamental formula AT&T proposes to calculate usage when actual usage data is unavailable (section 6.3.4) is a simple formula with only two simple variables: mobile-to-land Section 252(b)(5) usage and the shared facility factor. The resolution of other issues may affect the population of those variables, but that would not affect the formula itself (except perhaps for terminology, which is easily modified when the ICA is conformed to the arbitration decision). For example, the formula includes "Section 251(b)(5) Traffic." In Issue # 40 *(DPL Issue III.A.1(1))*, the Commission will decide if 1+ IntraMTA calls routed to an IXC will be included in Section 251(b)(5) Traffic subject to reciprocal compensation. The application of the formula to estimate terminating usage depends on the outcome of Issue #40 *(DPL Issue III.A.1(1))*, but the formula itself does not. Thus, whether Section 251(b)(5) Traffic includes or excludes 1+ IntraMTA Traffic routed to an IXC is meaningless here – the formula's math works either way. Similarly, the parties disagree in Issue# 58 *(DPL Issue III.E(1))* regarding how shared facilities costs will be apportioned between the parties, *i.e.* the calculation of the shared facility factor (SFF). The outcome of that issue will affect what SFF will apply, but that will not affect the use of the SFF in AT&T's proposed formula to estimate terminating compensation. In other words, it is irrelevant whether the SFF is 20% or 50% – the formula still works.

Q. MR. FELTON STATES THAT SPRINT OBJECTS TO AT&T'S SPECIFIC BILLING PROCESS TO BE USED IF SPRINT CANNOT MEASURE TERMINATING USAGE BECAUSE SPRINT IS CAPABLE OF

MEASURING TRAFFIC (FELTON DIRECT AT P. 42). HOW DO YOU RESPOND?

A. If Sprint is able to bill reciprocal compensation based on actual terminating usage measurements, as Mr. Felton asserts, then AT&T's surrogate billing method will never be utilized as between Sprint and AT&T. Since the language would not apply to Sprint, I find Sprint's objection puzzling. What I find even more puzzling is that Sprint itself proposes language in Attachment 3 section 6.3.6.1 to address the situation in which Sprint could not bill based on actual usage measurements. If neither AT&T's nor Sprint's proposed language would actually apply to Sprint, then AT&T's preferred language, which would apply to any carrier adopting Sprint's ICA pursuant to section 252(i), should prevail.

Q. MR. FELTON QUESTIONS AT&T'S EXCLUSION OF NON-FACILITIES BASED TRAFFIC AND PAGING TRAFFIC FROM RECIPROCAL COMPENSATION (FELTON DIRECT AT P. 42). WHY ARE THOSE CATEGORIES OF TRAFFIC PROPERLY EXCLUDED FROM RECIPROCAL COMPENSATION?

A. AT&T identifies non-facilities based traffic and Paging Traffic as exemptions from reciprocal compensation because AT&T is not responsible for reciprocal compensation for those traffic types. Non-facilities based traffic refers to calls originated by or terminated to CLECs' wholesale access lines served on AT&T's switch, *i.e.*, the former UNE-platform ("UNE-P") lines. In the case of these former UNE lines, it is the CLEC that is responsible for paying (or entitled to bill

and collect) reciprocal compensation;[24] the calls are made to or by the CLEC's end user customers, not AT&T's end users.

As for Paging Traffic, any Paging Traffic Sprint might route to AT&T would be transit traffic, since AT&T does not offer paging services, and AT&T is not responsible for reciprocal compensation for any transit traffic. AT&T would not be sending Paging Traffic to Sprint, because Sprint is not a paging provider. Therefore, it is appropriate for the ICA to reflect Paging Traffic as an exclusion from reciprocal compensation.

Q. HOW SHOULD THE COMMISSION RESOLVE ISSUE # 41 *[DPL ISSUE III.A.1(2)]*?

A. The Commission should adopt AT&T's language in sections 6.2 through 6.3.6 because it provides comprehensive terms and conditions to govern the calculation of reciprocal compensation, including a specific mechanism to be used in the event Sprint (or any adopting wireless carrier) is unable to bill reciprocal compensation based on actual usage measurements. The Commission should also

[24] In the *Access Charge Reform Order* (May 16, 1997), the FCC excluded UNEs from Part 69 access charges (¶ 337), and the ILECs were barred from collecting the switched access charges associated with UNE local switching lines. The FCC applied the same logic to UNE-P (¶ 340), distinguishing UNE-P from resale (for which the ILEC does get to assess the access charges). "Unlike the provision of local exchange services, access services are not services that LECs provide directly to end users on a retail basis. To impose access charges on the sale of unbundled elements would contravene the terms of the resale provision by effectively treating exchange access as a service provided on a retail basis." The same rationale applies to Section 251(b)(5) reciprocal compensation – "To impose [*reciprocal compensation*] charges on the sale of unbundled elements would contravene the terms of the resale provision by effectively treating [*reciprocal compensation*] as a service provided on a retail basis." As with UNE-P lines, AT&T is not entitled to bill and collect access charges or reciprocal compensation associated with CLECs' wholesale access lines (which are clearly not resale lines), nor is AT&T obligated to pay such charges.

adopt the rates AT&T proposes in its Pricing Sheet because the rates are clear and easy to understand, the rates are established with certainty for the term of the ICA, and the rates are reasonably based on the FCC's reciprocal compensation rate.

ISSUE # 55 *[DPL ISSUE III.A.7(1)]*

Should the wireless meet point billing provisions in the ICA apply only to jointly provided, switched access calls where both Parties are providing such service to an IXC, or also to Transit Service calls, as proposed by Sprint?

Contract Reference: Attachment 3, Sprint sections 7.2.1, 7.2.3, 7.2.5, AT&T sections 6.11.1, 6.11.3 – 6.11.5

Q. MR. FELTON STATES THAT RESOLUTION OF TRANSIT ISSUE # 15 *[DPL ISSUE I.C(2)]* WILL RESOLVE THIS ISSUE WITH RESPECT TO SPRINT'S PROPOSED REFERENCE TO TRANSIT SERVICE (FELTON DIRECT AT P. 52). DO YOU AGREE?

A. No. As I stated in my direct testimony (at pp. 78-79), even if Sprint prevails on its position that transit traffic service should be included in the CMRS ICA (Issue # 15 *[DPL Issue I.C(2)]*), that does not mean that the Meet Point Billing provisions should include Transit Service (as Sprint defines it). As Mr. Felton points out, the parties' current ICA includes transit in the Meet Point Billing provisions purely because of a nexus with Meet Point Billing records supplied for jointly provided switched access service (Felton Direct at pp. 51-52). AT&T prefers to have the language addressing records needed for transit traffic to be included with all other language related to transit traffic,[25] rather than having a stray reference to transit in the Meet Point Billing language. Since the language specifically applies to AT&T's provision of records *for transit service*, AT&T's

[25] *See* the DPL Language Exhibit for Issue # 18 *[DPL Issue I.C(5)]*, CMRS Transit attachment section 6.3 *et seq*.

preferred placement of such language with the transit provisions should prevail; there should be no reference to Transit Service in the Meet Point Billing provisions of the CMRS ICA. Sprint's language in its section 6.11.4 referencing the rate AT&T will charge Sprint for transit calls Sprint originates is similarly misplaced. AT&T's charge to Sprint for transit calls is completely unrelated to Meet Point Billing and belongs with the other transit language (if any) in the ICA.

Q. MR. FELTON CLAIMS THAT SPRINT WILL PERFORM ITS OWN 800 DATABASE QUERIES AND WILL NOT UTILIZE AT&T'S 800 DATABASE SERVICE (FELTON DIRECT AT P. 52). WOULD AT&T CHARGE FOR AN 800 DATABASE QUERY IT DID NOT PERFORM?

A. Of course not. Without getting into the technical aspects of how an 800 call is processed, once the database query is complete, the call is routed from there using a conventional 10-digit telephone number – in other words, for routing purposes it looks just like every other long distance call. AT&T would not (and could not) charge Sprint for an 800 database query, because AT&T would not even know the Sprint end user had placed an 800 call.

Q. IF SPRINT SENT AN UNQUERIED 800 CALL TO AT&T, WHY WOULD AT&T CHARGE SPRINT RATHER THAN THE IXC?

A. AT&T would charge Sprint because it is Sprint's end user that placed the 800 call; therefore, Sprint is the cost causer. Sprint can avoid these AT&T charges by simply performing the queries itself, which Mr. Felton states that Sprint actually does.

Q. DOES AT&T TREAT CMRS CARRIERS DIFFERENTLY THAN OTHER CARRIERS IN THIS REGARD?

A. No. When any carrier sends AT&T an un-queried 800 call, such that AT&T must perform the query itself so it can route the call, AT&T bills the originating carrier for the query. AT&T provides the originating carrier with a billing record so it can seek recovery of those AT&T charges from the 800 service provider if it so chooses.

Q. HOW SHOULD THE COMMISSION RESOLVE ISSUE # 55 *[DPL ISSUE III.A.7(1)]*?

A. The Commission should reject Sprint's language that includes Transit Service in the Meet Point Billing provisions of the CMRS ICA, even if Sprint prevails on Issue # 15 *[DPL Issue I.C(2)]*. Language regarding billing records associated with transit service should be set forth in the transit language, not the Meet Point Billing language. The Commission should adopt AT&T's language.

ISSUE # 56 *[DPL ISSUE III.A.7(2)]*

What information is required for wireless Meet Point Billing, and what are the appropriate Billing Interconnection Percentages?

Contract Reference: Attachment 3, Sprint sections 7.2.2, AT&T sections 6.11.2

Q. MR. FELTON STATES THAT AT&T'S PROPOSED FACTORS (*E.G.*, PIU, PLU) ARE UNNECESSARY (FELTON DIRECT AT P. 53). WHY ARE THESE FACTORS NECESSARY?

A. As I explained in my direct testimony (at p. 81), the parties may route traffic destined for or received from IXCs over the same trunk group that carries non-IXC transit traffic, but the parties may be unable to ascertain jurisdiction mechanically. In addition, these trunk groups also carry non-transit IntraMTA Traffic. Therefore, factors populated in the billing system will be used to indicate

approximately how much traffic of each type is being carried so that proper billing may be rendered.

Q. WOULD FACTORS STILL BE NEEDED IF SPRINT ROUTED ALL OF ITS IXC TRAFFIC TO ITS AFFILIATE?

A. Yes. As I mentioned above, the factors are needed to jurisdictionalize the various traffic types carried over these trunk groups. Moreover, even if Sprint routed its IXC traffic to its affiliate, other CMRS carriers that do not have an IXC affiliate may adopt Sprint's ICA. It is important for the ICA to include these factors, which are needed for proper billing.

Q. WHAT IS THE STATUS OF THE PARTIES' DISAGREEMENT REGARDING THE APPROPRIATE BILLING INTERCONNECTION PERCENTAGE (BIP)?

A. Sprint contends that the default BIP should be changed to 50% Sprint and 50% AT&T, consistent with Sprint's flawed proposal for the initial factor used to apportion facility costs for the first six months of the ICA's term.[26] In the interest of resolving this relatively insignificant disagreement, AT&T is willing to accept Sprint's proposed default BIP percentages; however that should not be construed as agreement with Sprint's rationale for its proposal.

Q. HOW SHOULD THE COMMISSION RESOLVE ISSUE # 56 *[DPL ISSUE III.A.7(2)]*?

A. The Commission should adopt AT&T's language that includes PIU, PLU and 800 PIU factors, because these factors are necessary to identify the appropriate jurisdiction of a call for proper rate application. The Commission should retain

[26] AT&T disagrees with Sprint's proposal for a default percentage of 50/50 for sharing facilities costs. *See* my direct and rebuttal testimony for Issue # 58 *[DPL Issue III.E(1)]*.

the parties' existing default BIP of 95% Sprint and 5% AT&T, because Sprint has provided no documentation to support changing the default BIP to a ratio of 50/50. In the alternative, the Commission should accept Sprint's default BIP percentages, but should do so independent of its analysis of the parties' positions set forth for Issue # 58 *[DPL Issue III.E(1)]* regarding shared facility costs.

ISSUE # 58 *[DPL ISSUE III.E(1)]*

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

Contract Reference: Attachment 3, Sprint sections 2.5.3(a) through 2.5.3(d), AT&T sections 2.3.2.1, 2.3.2.5 – 2.3.2 9, 2.3.2.b (excerpt)[27]

Q. FOR THE CMRS ICA, IS AT&T PROPOSING THAT SPRINT PAY 100% OF THE FACILITY COSTS ON ITS SIDE OF THE POI ON AT&T'S NETWORK AND AT&T PAYS ZERO, AS MR. FARRAR STATES (FARRAR DIRECT AT P. 83)?

A. No, although that would be consistent with the requirements of section 251(c)(2) of the 1996 Act and as addressed by several state commissions.[28] Instead, AT&T's proposal is that the parties maintain their current interconnection arrangements whereby each party has a POI on the other parties' network, and they share the cost of the facilities between Sprint's office and AT&T's office (*i.e.*, the entrance facilities). It is important to remember, however, that this arrangement is *different* than what is required by section 251(c)(2) of the 1996 Act, as I explain in my direct testimony for Issue # 66 *[DPL Issue III.H(3)]* (at pp.

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[27] As I explain below, this provision was inadvertently omitted from the Language Exhibit by both parties.

[28] I have identified several relevant state commission decisions (*see* footnote 9 above) in which the commissions determined that each party is responsible for the facilities on its respective side of the parties' POI(s).

105-109). Section 251(c)(2) clearly requires that any POIs are established on AT&T's network, a fact that Mr. Farrar ignores.

Q. MR FARRAR REQUESTS AN INITIAL SHARED FACILITY FACTOR (SFF) OF 50%, STATING THAT THE COMMISSION SHOULD PRESUME THAT TRAFFIC IS ROUGHLY IN BALANCE (FARRAR DIRECT AT P. 86). HOW DO YOU RESPOND?

A. I do not think it is reasonable (or necessary) for the Commission to assume that traffic originating with the parties' end users and carried over the shared facilities will be "roughly in balance." The parties disagree as to what ratio of traffic constitutes "in balance" (as reflected in Issue # 43 *[DPL Issue III.A.1(4)]* and Issue # 44 *[DPL Issue III.A.1(5)]*, addressed by Mr. McPhee), and the parties also disagree as to what traffic should be included in determining each party's proportionate use of the facilities (see Issue # 59 *[DPL Issue III.E(2)]*.[29] AT&T has proposed a process by which actual usage data over a three-month period will be used to calculate the SFF to be used for the subsequent three months, eliminating the need for assumptions regarding balance of traffic. And while the parties currently disagree with respect to the traffic to be used in calculating the SFF, those disputes will be resolved prior to AT&T calculating the SFF for the initial prospective period of the ICA. As I stated in my direct testimony (at p. 89), there is no reason to use an arbitrary factor when actual data is available to calculate the SFF with more precision.

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[29] The parties recognize that some land-to-mobile IntraMTA Traffic may be routed to an IXC. (*See* my testimony for Issue # 40 *[DPL Issue III.A.1(1)]*). Regardless of the resolution of Issue # 40 *[DPL Issue III.A.1(1)]* regarding the compensation (if any) for this traffic, any calculation of the SFF should necessarily exclude such traffic because it is routed to an IXC and not over the shared facilities.

Q. YOU STATED IN YOUR DIRECT TESTIMONY (AT P. 88) THAT AT&T'S PROPOSED LANGUAGE FOR BILLING FACILITIES USING THE SHARED FACILITY FACTOR REFLECTS THE PARTIES' CURRENT PRACTICE. IS THAT ENTIRELY CORRECT?

A. Not quite. It is consistent with the terms of the parties' current ICA, but as explained in the direct testimony of AT&T witness Scot Ferguson for Issue IV.A(1), AT&T has been manually adjusting Sprint's facilities bills to apply the SFF on Sprint's behalf– even though AT&T has no contractual obligation to do so. As a practical matter, AT&T could cease its manual billing adjustments at any time and still be in compliance with the terms of its current ICA.

Q. IS AT&T'S BILLING PROPOSALFOR SHARED FACILITIES "GROSSLY INEFFICIENT" AS MR. FARRAR CLAIMS (FARRAR DIRECT AT P. 87)?

A. No, and that is Mr. Farrar's only argument in favor of Sprint's new billing proposal. Sprint's language in Attachment 3 section 2.5.3(c)(2) would require AT&T not only to modify its billing system to reflect a discounted rate just for Sprint, but also to further modify its system to show a line item credit for each and every DS-1 (or equivalent DS-1) circuit. In the alternative, AT&T would have to continue to manually adjust Sprint's bills every month for Sprint's sole benefit and to do so for free. It is unreasonable (and, one might argue, "grossly inefficient") to require AT&T to either modify its billing system just for Sprint or manually adjust its bills in the manner Sprint's language would require. .

Q. MR. FELTON STATES IN HIS TESTIMONY FOR *ISSUE# 35 (DPL ISSUE II.H(2))* THAT AT&T HAS SOUGHT TO "BACK DOOR" OBJECTIONABLE LANGUAGE INTO THE ICA (FELTON DIRECT AT PP. 35-36). IS HE CORRECT?

A. Absolutely not. During negotiations to develop the joint DPL and Language Exhibit, the parties agreed to bifurcate disputed language in Attachment 3 section 2.3.2.b between two open issues; Issues # 35 and # 59 *(DPL Issues (II.H(2) and III.E(2) respectively)*, which is why only a portion of the language is reflected for Issue # 35 *(DPL Issue II.H(2))*. My testimony for Issue# 59 *(DPL Issue III.E(2))* addresses the last sentence Mr. Felton claims AT&T has tried to slip in the back door.[30]

There are two other sentences that *both* parties apparently missed including in the Language Exhibit. Both of these sentences concern how to apportion the cost of shared facilities, which is the subject of this Issue# 58 *(DPL Issue III.E(1))*.[31] The language related to the application of the tariff is similar to disputed language in section 2.3.2.1, already addressed in this issue. As for AT&T's language in section 2.3.2.b stating that the parties will share the cost of the facilities on a proportionate basis, I am puzzled by Mr. Felton's claim that the language is "offensive." Sprint itself proposes similar language in section 2.5.3(c).[32] The parties do not dispute that the costs for shared facilities should be shared based on proportionate use; the dispute is how to allocate those costs.

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[30] That language is: "**Upon mutual agreement by the parties to implement one-way trunking on a state-wide basis, each Party will be responsible for the cost of the one-way interconnection facilities associated with its originating traffic.**"

[31] That language is: "**In the event a party interconnects via the purchase of facilities and/or services from the other party, the appropriate intrastate tariff, as amended from time to time will apply. The cost of the interconnection facilities between AT&T 9-STATE and Sprint PCS switches within AT&T 9-STATE'S service area shall be shared on a proportionate basis.**"

[32] Sprint's proposed language provides: "***The recurring and non-recurring costs of two-way Interconnection Facilities between Sprint Central Office Switch locations and***

Q. HOW SHOULD THE COMMISSION RESOLVE ISSUE # 58 *[DPL ISSUE III.E(1)f]*?

A. The Commission should adopt AT&T's language because it sets forth a fair and equitable method of allocating costs when the parties share the use of facilities – a method based on actual traffic exchanged between the parties – rather than sharing costs based on unnecessarily arbitrary 50/50 allocation. And AT&T's billing proposal permits it to continue to bill facilities charges to Sprint the same way it does today (for Sprint and other carriers), avoiding the need for billing system revisions, while providing Sprint the information it needs to bill AT&T. Sprint's language is unreasonable for the reasons set forth here and in my direct testimony and should be rejected.

ISSUE # 59 *[DPL ISSUE III.E(2)]*

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

Contract Reference: Attachment 3, Sprint sections 2.5.3(d) and (e), AT&T section 2.3.2.b (excerpt)[33]

Q. MR. FARRAR ASSERTS THAT 47 C.F.R. § 51.709(b) OBLIGATES AT&T TO PAY FOR THE FACILITIES TO TERMINATE TRANSIT CALLS TO SPRINT (FARRAR DIRECT AT P. 90). DO YOU AGREE?

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the POI(s) to which such switches are interconnected at AT&T 9-STATE Central Office Switches shall be shared based upon the Parties' respective proportionate use of such Facilities to deliver all Authorized Services traffic originated by its respective End-User or Third-Party customers to the terminating Party. Such proportionate use will, based upon mutually acceptable traffic studies, be periodically determined and identified as a state-wide "Proportionate Use Factor". (Emphasis added).

[33] Only the last sentence of AT&T's section 2.3.2.b is relevant for this issue, as reflected on the DPL Language Exhibit. The remainder of section 2.3.2.b is reflected for Issue # 35 *[DPL Issue II.H(2)]*, addressed by Mr. Hamiter.

A. No. 47 C.F.R. § 51.709 addresses the rate structure for transport and termination (*i.e.*, reciprocal compensation). It states:

> (a) In state proceedings, a state commission shall establish rates for the transport and termination of telecommunications traffic that are structured consistently with the manner that carriers incur those costs, and consistently with the principles in §§51.507 and 51.509.
>
> (b) 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. Such proportions may be measured during peak periods.

I read this rule to mean that when a commission establishes a carrier's cost-based reciprocal compensation rates, the commission can only include the costs associated with calls from the interconnecting carrier that the terminating carrier will actually terminate to its end users. In the case of transit calls, the "interconnecting carrier" is the originating third party carrier that uses indirect interconnection to deliver its traffic to the terminating carrier. In other words, AT&T is not responsible for the costs to terminate transit traffic to Sprint. This reading is consistent with the numerous commissions that have concluded that the third party originating carrier (not the transit provider) is responsible to pay reciprocal compensation (*i.e.*, transport and termination) to the terminating carrier.[34]

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[34] *See, e.g., Petition of WorldCom, Inc.*, 17 FCC Rcd. 27039, ¶ 119 (2002); Arbitration Panel Report, *AT&T Comms., Inc.'s Petition for Arbitration*, Case No. 00-1188-TP-ARB, at 105 (2001), *aff'd by* the Commission in Arbitration Award, Case No. 00-1188-TP-ARB (Pub. Utils. Comm'n of Ohio, June 21, 2001); Recommended Arbitration Order, *Petition of MCImetro Access Transmission Services, LLC,* N.C.U.C. Docket No. P-474, Sub 10 (Apr. 3, 2001), *aff'd by* the Commission in Order Ruling on Objections and Requiring the Filing of the Composite Agreement, ¶ 16 (N.C.U.C., Aug.

Q. IS THERE ANOTHER REASON AT&T SHOULD NOT BE RESPONSIBLE FOR THE COST OF FACILITIES USED TO TERMINATE TRANSIT TRAFFIC CALLS TO SPRINT'S END USERS?

A. Yes. As I explained in my direct testimony (at pp. 102-104), the parties previously have agreed to and implemented a non-section 251(c)(2) interconnection arrangement whereby AT&T brings its end users' traffic to a POI on Sprint's network and Sprint brings its end users' calls to a POI on AT&T's network. That arrangement differs from a section 251(c)(2) compliant arrangement, because in the latter the POI is always on AT&T's network and Sprint is obligated to pay for the facilities on its side of the POI. Thus, in a 251(c)(2) compliant arrangement, not only is AT&T not responsible for the cost of facilities used to transport transit traffic to Sprint, it is technically not responsible for the facilities on the other side of the POI used to transport its own end users' originating traffic either. Rather, in a 251(c)(2) environment, AT&T's obligation to Sprint is for the intercarrier compensation associated with AT&T's end user's originating traffic – and not at all for the underlying facilities on Sprint's side of the POI. In the parties' current non-standard arrangement, however, AT&T has accepted responsibility for the facilities for its own end users' originating traffic all the way to Sprint's CMRS network, but it is not

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2, 2001); *Petition for Arbitration*, Docket No. 05-MA-120, at 129 (Pub. Serv. Comm'n of Wis., 2000); *Re Reciprocal Compensation*, Docket No. 21982, at 26 (Pub. Utils. Comm'n of Texas, 2000); and *Petition of Qwest Corp. for Arbitration*, Docket No. 03B-287T, at ¶ 124 (Colo. Pub. Utils. Comm'n, 2003).

willing to accept responsibility (technically on Sprint's side of the POI) for another carriers' traffic; that is Sprint's responsibility.

Q. IN TRYING TO JUSTIFY SPRINT'S PROPOSED EXCLUSION OF TRANSIT CALLS WHEN ALLOCATING FACILITIES COSTS, MR. FARRAR USES AN ANALOGY OF ASSESSING A POSTAL STAMP CHARGE ON BOTH THE SENDER AND THE RECIPIENT OF A LETTER (FARRAR DIRECT AT P. 91). HOW DO YOU RESPOND?

A. First, as I stated in my direct testimony (at pp. 92-95) the FCC has previously determined that the terminating carrier (in this case, Sprint) is responsible for *all* costs associated with transit traffic it originates and/or terminates, including the transport facilities over which transit calls are terminated. Sprint may seek recovery of its costs to receive transit traffic via its arrangements with the originating carriers. Accordingly, transit calls should be excluded when allocating facilities costs to AT&T.

Second, I find Mr. Farrar's analogy ironic. Wireless carriers typically charge their customers to both originate and receive mobile calls (*e.g.*, both outgoing and incoming minutes count towards a customer's monthly allotment of minutes). In effect, Sprint is doing precisely what it accuses AT&T of doing – but it does so not just on transit calls, but on all calls for which it receives terminating compensation. It is Sprint that is recovering its costs twice.

Q. HOW SHOULD THE COMMISSION RESOLVE ISSUE # 59 *[DPL ISSUE III.E(2)]*?

A. The Commission should reject Sprint's language in sections 2.5.3(d) and 2.5.3(e), because it would improperly burden AT&T with the facility costs to deliver transit traffic to Sprint – costs that the Commission and the FCC have previously

found should be borne by Sprint as the cost causer. Additionally, as I explained in my direct testimony (at pp. 96), the Commission should adopt AT&T's language in its excerpt of section 2.3.2.b, because it properly establishes that the parties will implement one-way trunking on a statewide basis upon mutual agreement, and that each party is responsible for the cost of facilities associated with the party's originating traffic.

ISSUE # 64 *[DPL ISSUE III.H(1)]*

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

Contract Reference: Attachment 3, Sprint sections 2.9 – 2.9.4, AT&T CMRS section 2.3.6, AT&T CLEC sections 2.4, 2.4.1

Q. MR. FARRAR POINTS TO THE FCC'S *LOCAL COMPETITION ORDER* AND TO CERTAIN FCC'S RULES AS SUPPORT FOR SPRINT'S REQUEST THAT THE COMMISSION ORDER AT&T TO PRICE INTERCONNECTION FACILITIES BASED ON TELRIC (FARRAR DIRECT AT PP. 100-101). IS THAT REALLY WHAT IS AT ISSUE BETWEEN THE PARTIES?

A. No. AT&T agrees that to the extent two parties cannot negotiate the applicable rates, interconnection facilities (as the FCC defines interconnection in 47 C.F.R. § 51.5) should be priced based on TELRIC. The real dispute is whether entrance facilities are interconnection facilities, which is addressed in Issue # 21 *[DPL Issue II.A]*. I therefore direct the Commission to my direct and rebuttal testimony (and AT&T's legal briefs) for AT&T's support for its assertion that "entrance facilities" are separate and distinct from "interconnection" facilities, as the FCC defines those terms.

Q. HOW SHOULD THE COMMISSION RESOLVE ISSUE # 64 *[DPL ISSUE III.H(1)]*?

A. The Commission should order that entrance facilities are not subject to TELRIC-based pricing.

ISSUE # 65 *[DPL ISSUE III.H(2)]*

Should Sprint's proposed language governing "Interconnection Facilities / Arrangements Rates and Charges" be included in the ICA?

Contract Reference: Attachment 3, Sprint sections 2.9 – 2.9.4

Q. MR. FARRAR STATES THAT SPRINT'S LANGUAGE WILL "ENSURE THAT SPRINT CMRS AND SPRINT CLEC ARE CHARGED INTERCONNECTION SERVICES RATES THAT ARE THE LOWER OF: A) TELRIC PRICING; OR B) ANY LOWER THAN TELRIC PRICING THAT AT&T HAS OFFERED ANOTHER TELECOMMUNICATIONS CARRIER" (FARRAR DIRECT AT P. 103). WOULD THAT BE AN APPROPRIATE OUTCOME?

A. No. The only legitimate prices are those set forth in the ICA.[35] As I explained in my direct testimony (at pp. 100-101), Sprint is not entitled to pick and choose the lowest price from a variety of options, and Mr. Farrar offers no justification whatsoever for the proposition to the contrary. Nor is Sprint entitled to retroactive refunds in the event it finds another rate it prefers.

Q. HOW SHOULD THE COMMISSION RESOLVE ISSUE # 65 *[DPL ISSUE III.H(2)]*?

A. The Commission should reject Sprint's proposed language in its sections 2.9 through 2.9.4. An ICA should provide the parties with certainty for a set period of time, and Sprint's proposal does the opposite. In addition, Sprint's language violates the FCC's All-or-Nothing Rule and also improperly provides for a

[35] This includes specific prices hard-coded in the Pricing Sheet as well as any tariff prices incorporated by reference.

retroactive true-up to the effective date of the ICAs for the difference between the initial contracted rate and any future rate Sprint might elect.

ISSUE # 66 *[DPL ISSUE III.H(3)]*

Should AT&T's proposed language governing interconnection pricing be included in the ICAs?

Contract Reference: Attachment 3, AT&T CMRS section 2.3.6, AT&T CLEC sections 2.4, 2.4.1

Q. MR. FARRAR COMPLAINS THAT AT&T DOES NOT OFFER TELRIC-BASED PRICING TO CMRS CARRIERS (FARRAR DIRECT AT P. 104). HOW DO YOU RESPOND?

A. The simple response is that Sprint CMRS is not entitled to TELRIC-based pricing for its CMRS interconnection arrangements. As I explained in detail in my direct testimony (at pp. 105-106), Sprint CMRS's interconnection with AT&T is not consistent with section 251(c)(2) interconnection because it includes AT&T's establishment of reciprocal POIs on Sprint's network. It is not appropriate to apply section 251(c)(2) pricing (*i.e.*, TELRIC-based) to the non-section 251(c)(2) interconnection arrangements Sprint CMRS has in effect. A determination that there should be TELRIC-based interconnection pricing for the CMRS ICA necessarily would entail a change to the parties' current interconnection arrangements in order to be compliant with section 251(c)(2). In addition, any "grandfathering" of the parties' pre-existing arrangements pursuant to Attachment 3 section 2.4 must include the related tariff pricing. In short, Sprint should not be permitted to obtain TELRIC-based pricing for non-251(c)(2) compliant interconnection arrangements.

Q. DID MR. FARRAR INDICATE IN HIS DIRECT TESTIMONY THAT SPRINT SEEKS TO CHANGE THE CMRS ARCHITECTURE TO A SECTION 251(c)(2) INTERCONNECTION ARRANGEMENT IN ORDER TO RECEIVE TELRIC-BASED PRICING?

A. No. Mr. Farrar merely complains that AT&T does not offer Sprint CMRS TELRIC-based pricing for that arrangement (Farrar Direct at p. 104). As I stated in my direct testimony (at pp. 106-107), Sprint does not seek to change its CMRS interconnection arrangement with AT&T in order to qualify for TELRIC-based pricing. Rather, Sprint simply wants that same arrangement, but at an even lower rate, which may be TELRIC-based.[36] Importantly, Sprint is not entitled to TELRIC-based pricing without implementing the associated network arrangements.

Q. HOW SHOULD THE COMMISSION RESOLVE ISSUE # 66 *[DPL ISSUE III.H(3)]* FOR THE CMRS ICA?

A. The Commission should adopt AT&T's language for the CMRS ICA for the parties' existing interconnection arrangement, because providing entrance facilities from the tariff (*i.e.*, non-TELRIC-based pricing) is appropriate for the parties' non-section 251(c)(2) interconnection arrangements.

ISSUE # 67 *[DPL ISSUE III.I(1)(a)]*

If Sprint orders (and AT&T inadvertently provides) a service that is not in the ICA, should AT&T be permitted to reject future orders until the ICA is amended to include the service?

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[36] See, *e.g.*, my testimony for Issue # 63 *[DPL Issue III.G]* and Issue # 65 *[DPL Issue III.H(2)]*.

ISSUE # 68 *[DPL ISSUE III.I(1)(b)]*

If Sprint orders (and AT&T inadvertently provides) a service that is not in the ICA, should the ICAs state that AT&T's provisioning does not constitute a waiver of its right to bill and collect payment for the service?

Contract Reference: Pricing Schedule, sections 1.4.2.1, 1.4.2.2

Q. MR. FELTON STATES THAT IT IS EXTREMELY UNLIKELY THAT THIS SITUATION WOULD EVER OCCUR (FELTON DIRECT AT P. 60). DO YOU AGREE?

A. Yes. It is highly unlikely that the language in dispute would be invoked. However, the situation that AT&T's language addresses certainly could arise, particularly since there is wide variation among AT&T's ICAs. It is entirely possible that Sprint (or a carrier that opts into the resulting ICAs) would order and AT&T would provision a product or service that is not in the parties' ICA. AT&T should always be entitled to reject an order for a product or service for which the ICA has no terms, conditions, or rates. The mere fact that AT&T inadvertently provisioned it once should not obligate it to purposely accept future orders for that product or service before the ICA is amended with the necessary terms.

Q. MR. FELTON SUGGESTS THAT THE PARTIES SHOULD SIMPLY USE THE DISPUTE RESOLUTION PROCESS (FELTON DIRECT AT P. 60). HOW DO YOU RESPOND?

A. The dispute resolution process is intended to resolve disputes regarding products and services that *are* reflected in the ICA, not for services that are absent.[37] If

[37] GTC Part A section 17.1 states: "Except as otherwise stated in this Agreement, if any dispute arises as to the interpretation of any provision of this Agreement or as to the proper implementation of this Agreement, then if the aggrieved Party elects to pursue such dispute, the aggrieved Party may petition the FCC or Commission for a resolution of the dispute. Until the dispute is finally resolved, each Party shall continue to perform its

Sprint orders a product or service that is not in the ICA, there should be no dispute that AT&T has the right to reject such an order. Abiding by the terms and conditions of the parties' ICA is not harsh, as Mr. Felton claims it would be (Felton Direct at p. 61).

Q. DOES MR. FELTON AGREE THAT AT&T'S NO WAIVER LANGUAGE IS REASONABLE (FELTON DIRECT AT P. 61)?

A. Mr. Felton contends that all of AT&T's language addressing this situation is "superfluous" and should be rejected on that basis (Felton Direct at p. 61). It appears, though, that Mr. Felton agrees that AT&T's no waiver language is reasonable. Surprisingly, however, Mr. Felton conditions Sprint's acceptance of AT&T's language on the omission of AT&T's language permitting it to reject future Sprint orders until the ICA is amended to include terms, conditions, and rates, for the product or service at issue. Such a condition makes no sense.

Q. HOW SHOULD THE COMMISSION RESOLVE ISSUE # 67 *[DPL ISSUE III.I(1)(a)]* AND ISSUE # 68 *[DPL ISSUE III.I(1)(b)]*?

A. The Commission should adopt AT&T's proposed language in Pricing Schedule sections 1.4.2.1 and 1.4.2.2 because it cares for the possibility that Sprint may order and AT&T may inadvertently provision a product or service that is not in the ICA. It is reasonable to permit AT&T to reject a Sprint order under these circumstances, even if AT&T previously accepted and provisioned an order

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obligations under this Agreement and shall continue to provide all services and payments as prior to the dispute provided, however, that neither Party shall be required to act in any unlawful fashion. If the issue is as to how or whether to perform an obligation, the Parties shall continue to operate under the Agreement as they were at the time the dispute arose. This provision shall not preclude the Parties from seeking other legal remedies. Each Party reserves any rights it may have to seek judicial review of any ruling made by the Commission concerning this Agreement."

inadvertently. And it is reasonable that AT&T not waive its rights to charge and collect payment for such a product or service that Sprint in fact ordered and obtained.

ISSUE # 69 *[DPL ISSUE III.I(2)]*

Should AT&T's language regarding changes to tariff rates be included in the agreement?

Contract Reference: Pricing Schedule, section 1.4.3

Q. MR. FELTON ASSUMES PRICING SCHEDULE SECTION 1.4.3 REFERS TO RATES THAT ARE HARD-CODED IN THE PRICING SHEET, BUT THAT AT&T PROPOSES TO CHANGE BASED ON TARIFF RATE CHANGES (FELTON DIRECT AT P. 62). DOES AT&T PROPOSE ANY SUCH RATES?

A. On a very limited basis, yes. For example, the CLEC Pricing Sheet reflects a $200 charge to expedite a UNE installation ("UNE Service Date Advancement Charge"). That charge is based on AT&T's federal access tariff. I am not aware of any rates that are hard-coded into the Pricing Sheets that would vary based on tariff rate changes for which there is no tariff reference.

Q. MR. FELTON INDICATES THAT SPRINT WOULD NOT OPPOSE RATE ADJUSTMENTS IF SPECIFIC TARIFF REFERENCES WERE PROVIDED INSTEAD OF AN ACTUAL RATE (FELTON DIRECT AT P. 63). DOES AT&T PROVIDE SPECIFIC TARIFF REFERENCES IN THE PRICING SHEET?

A. Yes. The UNE Service Date Advancement Charge mentioned above is directly linked to the tariff. As noted therein, "The Expedite charge will be maintained commensurate with BellSouth's FCC No.1 Tariff, Section 5 as applicable." It appears from Mr. Felton's testimony that Sprint does not object to an ICA rate

adjustment based on a tariff rate change when the tariff reference is provided in the ICA.

Q. IF THERE ARE RATES IN THE PRICING SHEET BASED ON THE TARIFF, BUT FOR WHICH THERE IS NO TARIFF REFERENCE, WOULD AT&T SEEK TO MODIFY THOSE RATES BASED ON A TARIFF CHANGE?

A. No. Rates hard-coded in the ICA without a tariff reference would apply for the term of the ICA unless superseded by an ICA amendment changing them.

Q. HOW SHOULD THE COMMISSION RESOLVE ISSUE # 69 *[DPL ISSUE III.I(2)]*?

A. The Commission should adopt AT&T's language in section Pricing Schedule 1.4.3 because it ensures non-discriminatory treatment among telecommunications carriers paying the tariff rates. In addition, it appears from Mr. Felton's testimony that Sprint does not object to AT&T's tariff references.

ISSUE # 70 *[DPL ISSUE III.I(3)]*

What are the appropriate terms and conditions to reflect the replacement of current rates?

Contract Reference: Pricing Schedule, sections 1.2 – 1.2.3.3

Q. MR. FELTON CONTENDS THAT "AT&T HAS AN AFFIRMATIVE OBLIGATION TO NOTIFY SPRINT" OF CERTAIN RATE CHANGES RESULTING FROM A RATE PROCEEDING (FELTON DIRECT AT P. 64). HOW DO YOU RESPOND?

A. Mr. Felton offers no support for his assertion. That is not surprising, because AT&T has no such obligation to Sprint, or any other carrier, when they elect to not participate in a regulatory proceeding that could affect AT&T's rates.

Q. HOW SHOULD THE COMMISSION RESOLVE ISSUE # 70 *[DPL ISSUE III.I(3)]*?

A. The Commission should adopt AT&T's language regarding replacement of current rates because it sets forth comprehensive and reasonable terms and conditions to govern generally applicable future FCC and Commission orders affecting ICA rates. The Commission should reject Sprint's language that 1) limits replacement of current rates to those approved by the Commission pursuant to section 252(d), 2) obligates AT&T to notify Sprint of rate-affecting orders, 3) makes any rate adjustments retroactive to the order date, regardless of when notification was made, and 4) includes undefined new rates that do not replace current rates.

Q. DOES THIS CONCLUDE YOUR REBUTTAL TESTIMONY?

A. Yes.