AT&T TENNESSEE

DIRECT TESTIMONY OF J. SCOTT MCPHEE

BEFORE THE TENNESSEE REGULATORY AUTHORITY

DOCKET NO. 10-00042 AND DOCKET NO. 10-10043

AUGUST 31, 2010

ISSUES

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

I. INTRODUCTION

Q. PLEASE STATE YOUR NAME, TITLE AND BUSINESS ADDRESS.

A. My name is J. Scott McPhee. I am an Associate Director in AT&T Operations' Wholesale organization. My business address is 2600 Camino Ramon, San Ramon, California, 94583.

Q. PLEASE SUMMARIZE YOUR BACKGROUND AND EXPERIENCE.

A. I received my Bachelor of Arts degree with a double major in Economics and Political Science from the University of California at Davis. I began my employment with SBC Communications Inc. in 2000 in the Wholesale Marketing – Industry Markets organization as Product Manager for Reciprocal Compensation throughout SBC's legacy 13-state region. My responsibilities included identifying policy and product issues to assist negotiators and witnesses for SBC's reciprocal compensation and interconnection arrangements, as well as SBC's transit traffic offering. In June of 2003, I moved into my current role as an Associate Director in the Wholesale Marketing Product Regulatory organization. In this position, my responsibilities include helping define AT&T's positions on certain issues for Wholesale Marketing, and ensuring that those positions are consistently articulated in proceedings before state commissions.

Q. HAVE YOU PREVIOUSLY TESTIFIED IN ANY REGULATORY PROCEEDINGS?

A. Yes. I have filed testimony and/or appeared in regulatory proceedings in 19 of the states where AT&T provides local service, including Alabama, Florida, Georgia, Kentucky, Louisiana, North Carolina and South Carolina.

Q. ON WHOSE BEHALF ARE YOU TESTIFYING?

A. AT&T Tennessee, which I will refer to as AT&T.

Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY?

A. I explain and support AT&T's positions on DPL Issues I.A(2), I.A.(3), I.A(4), I.A(6), I.B(2), I.B(4), I.B(5) I.C(1), I.C(2), I.C(3), I.C(4), I.C(5), I.C(6), III.A.1(3), III.A.1(4), III.A.1(5), III.A.2, III.A.3(1), III.A.3(2), III.A.3(3), III.A.4(1), III.A.4(2), III.A.5, III.A.6(1), III.A.6(2), III.E(3), III.E(4) and III.F.

II. DISCUSSION OF ISSUES

DPL ISSUE I.A(4)

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

Contract Reference: GTC Part A, Section 1.4

Q. WHAT IS THE ISSUE?

A. In GTC Part A, Purpose and Scope of the interconnection agreement ("ICA"), the parties have agreed and incorporated interconnection agreement ("ICA") language in section 1.4 describing Sprint Wholesale Services. The parties have agreed the ICA may be used for the exchange of traffic associated with Sprint's wholesale arrangements with third-party carriers, so long as this wholesale traffic uses numbering resources Sprint acquires from the North American Numbering Plan Administration ("NANPA") or the Number Pooling Administrator. These numbering resources, also commonly referred to as NPA-NXX blocks, are therefore associated with one specific carrier.

In addition to the above agreed language, Sprint has proposed language to allow it to possibly exchange wholesale traffic with NPA-NXX blocks not associated with Sprint, but rather assigned to a third party carrier.

Q. WHY DO YOU SAY "ALLOW IT TO *POSSIBLY* EXCHANGE?"

A. Because Sprint does not anticipate providing such a service at this time. Indeed, Sprint's proposed contract language for section 1.4 actually begins with the words, "Although not anticipated at this time . . . ."

Q. AS A GENERAL RULE, SHOULD THE ICA BE USED TO FORMALIZE ARRANGEMENTS OR TERMS THAT NEITHER PARTY ACTUALLY ANTICIPATES USING DURING THE LIFE OF THE ICA?

A. No, it should not. While it is sometimes appropriate to include ICA provisions that address pending resolution of outstanding issues,[1] it is generally not appropriate to incorporate a product or service the offering of which is "not anticipated at this time." If, at some point in the future, a carrier seeks to incorporate or implement a service that is not addressed in the ICA, it would be appropriate at that time for the parties to negotiate an amendment to the ICA. This is particularly so when, as here, there is legitimate reason for concern about the proposed language. It does not make sense to arbitrate questionable language for a service that the proponent of the language does not anticipate offering.

[1] The FCC's treatment of ISP-Bound Traffic is an example. Though the FCC has established a regime for the treatment of ISP-Bound Traffic for intercarrier compensation purposes, it also made clear that that regime is interim, and that it will address the matter further. AT&T proposes language for the ICA that appropriately anticipates this future resolution. I discuss this in greater detail under Issue III.A.2.

Q. WHAT IS AT&T'S CONCERN ABOUT SPRINT'S PROPOSED ICA LANGUAGE?

A. While it may be possible for Sprint to send AT&T traffic that is associated with another carrier's NPA-NXX, AT&T is unable to send a call originated by an AT&T end user with an NPA-NXX assigned to one carrier to another carrier for termination. All intercarrier call routing is governed by the Local Exchange Routing Guide ("LERG"). Each carrier inputs its NPA-NXX number blocks and the location of its switches into the LERG so that all other carriers will know where to send traffic associated with those NPA-NXXs. AT&T routes according to the LERG. If ABC Telephone Company has certain NPA-NXXs assigned to it, the LERG will reflect those NPA-NXXs as ABC Telephone's. Under Sprint's proposed language, if Sprint were to offer a wholesale service for some of ABC Telephone's end users, Sprint would want AT&T to route calls to those NPA-NXXs not to ABC Telephone, but instead to Sprint. That is not routing according to the LERG, and it is not routing that AT&T performs or should be required to perform.

Q. HAS SPRINT PROPOSED LANGUAGE TO ADDRESS HOW AT&T WOULD ROUTE TRAFFIC WITH NPA-NXXS ASSIGNED TO A THIRD PARTY CARRIER SO THAT IT WENT TO SPRINT INSTEAD OF THE THIRD PARTY CARRIER?

A. No, its language would just obligate AT&T to route this traffic appropriately without any explanation of how AT&T is to accomplish such routing. As a result, if the parties were to incorporate Sprint's additional proposed language in GTC Part A section 1.4, and if Sprint were to subsequently start exchanging such wholesale traffic with AT&T, it is very likely that the calls – at least from AT&T to Sprint – would be misrouted.

Q. HOW SHOULD THE AUTHORITY RESOLVE THIS ISSUE?

A. Sprint's proposed language should not be included in the ICA. If at some point in the future Sprint desires to provision wholesale services using a third party carrier's NPA-NXX numbering resources, the parties can work together to determine how such an arrangement might be accommodated, including working out any potential network routing problems and, if necessary, amending the ICA as appropriate. However, at this point there is no way to appropriately route this traffic and Sprint's proposed ICA language does not provide one.

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. WHAT IS THIS ISSUE ABOUT?

A. AT&T proposes a section 1.6 for GTC, Part A, which states that AT&T's obligations under the CMRS and CLEC ICAs apply only within AT&T's ILEC territory, and only to the extent that Sprint is offering service in that territory. Sprint objects to AT&T's proposed language.

Q. WHY SHOULD AT&T'S PROPOSED LANGUAGE BE INCLUDED IN THE ICA?

A. Because it properly delineates the extent of AT&T's obligations under the ICA. The purpose of an ICA is to establish rates, terms and conditions to fulfill the requirements that section 251(b) of the Telecommunications Act of 1996 ("1996 Act") imposes on local exchange carriers and that section 251(c) of the 1996 Act imposes on incumbent

local exchange carriers.[2] And the principal duties that are implemented through interconnection agreements – including, first and foremost, the duty to provide interconnection (as well as the duties to negotiate an ICA, to provide unbundled network elements, to provide services for resale, and to provide collocation), are those set forth in section 251(c), which applies only to incumbent local exchange carriers.

Section 251(h) of the 1996 Act defines incumbent local exchange carriers ("ILECs"), and it expressly defines them "with respect to an area." Section 251(h) provides: "For purposes of this section [251], the term 'incumbent local exchange carrier' means, *with respect to an area*, the local exchange carrier that [meets certain criteria]." Thus, AT&T is an ILEC in this state within a particular area – that is what makes it an ILEC – and its ILEC duties pertain only to that area. AT&T's proposed language appropriately reflects that geographic limitation.

Q. IS THERE REASON FOR CONCERN THAT IF AT&T'S LANGUAGE WERE NOT INCLUDED IN THE ICA, SPRINT MIGHT SEEK TO EXPAND THE SCOPE OF AT&T'S INTERCONNECTION OBLIGATIONS UNDER SECTION 251(c)?

A. Yes. Sprint is opposing AT&T's proposed language, but offers no competing language describing the scope of the ICAs. This suggests that Sprint's objection is not to matters of wording or detail, but to the concept of defining the geographic scope of the ICA. This gives reason for concern that if AT&T's proposed language were excluded from the

[2] *See* section 251(c)(1) of the 1996 Act, which requires negotiation of "the particular terms and conditions of agreements to fulfill the duties described in . . . subsection (b) and this subsection [(c)]."

ICAs, Sprint might attempt to seek products or services via the ICAs from AT&T in a territory beyond AT&T's incumbent regions.

Q. DOES AT&T OPERATE OUTSIDE ITS INCUMBENT TERRITORIES?

A. Yes. But when it does so, AT&T, like Sprint, is a competitor within *another ILEC's* incumbent territory. Where AT&T is operating as a CLEC, AT&T has no obligation to fulfill any of the duties listed in section 251(c). For example, portions of the Dallas – Ft. Worth metropolitan area are within AT&T's incumbent territory in Texas; and portions of the same region are within Verizon's incumbent territory in Texas. In order to offer services to customers *throughout* the Dallas – Ft. Worth metropolitan area, AT&T may offer service within Verizon's territory. AT&T would then be a Competitive Local Exchange Carrier in that geographic area – not the ILEC – and would have no incumbent obligations in that area.

Q. HOW IS AT&T OPERATING IN ANOTHER ILEC'S TERRITORY DIFFERENT THAN A CLEC OPERATING IN AT&T'S INCUMBENT TERRITORY?

A. There is no practical difference. When AT&T operates in areas outside its own incumbent territories, it is simply another CLEC, competing for the ILEC's or other CLECs' customers.

Q. HOW SHOULD THE AUTHORITY RESOLVE THIS ISSUE?

A. The Authority should direct the Parties to include AT&T's proposed language in the ICAs to ensure that Sprint cannot contend in the future that AT&T has an obligation under the ICAs to provide section 251(c) interconnection, UNEs, resale or collocation in areas of the state where AT&T does not operate as an ILEC.

DPL ISSUE I.C(2)

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

Contract Reference: Attachment 3

Q. WHAT IS TRANSIT TRAFFIC?

A. In simplest terms, transit traffic is telecommunications traffic that originates on one carrier's network, passes through an intermediate network (AT&T's in this instance), and terminates on a third carrier's network. The intermediate carrier is said to be providing "transit service."

Q. WHAT IS THE PARTIES' CORE DISAGREEMENT CONCERNING TRANSIT TRAFFIC?

A. AT&T and Sprint disagree about whether transit service should be addressed in the ICAs they are arbitrating in this proceeding. Sprint contends the ICAs should address the subject, and AT&T contends they should not.

Q. WHAT IS THE BASIS FOR EACH PARTY'S POSITION?

A. Based on the way it has framed its position statement, Sprint contends that transit service is a form of interconnection transmission and routing that is encompassed by section 251(c)(2) of the 1996 Act, and that AT&T can therefore be required to provide transit service pursuant to arbitrated rates, terms and conditions in an interconnection agreement made pursuant to section 252 of the 1996 Act.

AT&T, on the other hand, maintains that transit service is not required by section 251(c)(2) – or by any other subsection of section 251(b) or 251(c) of the 1996 Act – and, therefore, AT&T cannot lawfully be required to provide transit service under rates, terms or conditions governed by the 1996 Act or imposed in an arbitration conducted under the

1996 Act. Consequently, transit service should not be covered by the ICA, but instead should be addressed, if at all, in a negotiated commercial agreement not subject to regulation under the 1996 Act.

Q. IS EITHER PARTY'S POSITION SUPPORTED BY THE LANGUAGE OF THE 1996 ACT AND BY FCC RULINGS?

A. Yes. As I will explain, the 1996 Act and the FCC's rulings concerning interconnection and transit traffic strongly support AT&T's position.

Q. PLEASE SUMMARIZE YOUR TESTIMONY ON THIS ISSUE.

A. There are several reasons why transit service should not be addressed in the parties' ICAs. First, the FCC has repeatedly declined to find transit service to be an interconnection requirement of the 1996 Act. These rulings are consistent with the meaning of "interconnection" as the FCC has defined that term. Second, transiting does not involve the mutual exchange of traffic with the ILEC's end user customers, which is the core characteristic of interconnection. Rather, transiting is the transport of traffic, which the FCC has expressly excluded from the definition of interconnection. Third, even if transit service did qualify as interconnection, it still would not be subject to mandatory inclusion in an ICA, because it is a function not of direct interconnection to the ILEC under section 251(c)(2) of the 1996 Act, but of indirect interconnection under section 251(a)(1), and section 251(a) requirements are not subject to mandatory negotiation or arbitration under the 1996 Act.

Q. CAN YOU PROVIDE A MORE DETAILED EXPLANATION OF WHAT TRANSIT SERVICE IS?

A. I can do that best by referring to the interconnection requirements in the 1996 Act. There are actually two provisions in section 251 that deal with interconnection – sections 251(a)(1) and 251(c)(2). Section 251(a)(1) requires all telecommunications carriers "to interconnect directly or indirectly with the facilities and equipment of other telecommunications carriers." Direct interconnection occurs when two carriers physically connect their network equipment to each other in order to exchange calls, while indirect interconnection involves passing traffic through an intermediate carrier.

Section 251(c)(2) addresses interconnection in a more specific and limited way than section 251(a)(1), in that it applies only to incumbent LECs and only to direct interconnection. Specifically, section 251(c)(2) gives any requesting carrier the right to directly interconnect its network "with the [ILEC's] network" for the mutual exchange of traffic between the CLEC and ILEC's end user customers.

Q. HOW DOES TRANSIT TRAFFIC FIT INTO THIS?

A. When two carriers are indirectly interconnected, so that traffic from one to the other passes through an intermediate carrier, that intermediate carrier is providing "transit service" (or "transiting"). Thus, AT&T provides transit service when an originating carrier delivers traffic to AT&T to be passed through AT&T's tandem switch and on to a terminating carrier. Traffic that AT&T transits does not originate or terminate with AT&T end users. Indeed, it does not involve AT&T's end users at all.

Q. DOES TRANSIT TRAFFIC INCLUDE LONG DISTANCE TRAFFIC, SUCH AS A CALL THAT AN INTEREXCHANGE CARRIER ("IXC") HANDS OFF TO AT&T FOR DELIVERY TO A CLEC THAT TERMINATES THE CALL TO ITS END USER CUSTOMER?

A. No. The transit traffic that is the subject of this issue includes only traffic that would be considered "local" traffic, i.e., traffic for which the originating carrier would pay the terminating carrier reciprocal compensation, with no IXC or access charges involved.

Q. DOES ANYTHING IN THE 1996 ACT EXPLICITLY REQUIRE TRANSITING?

A. No. There is no reference to "transit" or "transiting" in the 1996 Act.

Q. HAS THE FCC EVER RULED THAT SECTION 251(c)(2), OR ANYTHING ELSE IN THE 1996 ACT, IMPLICITLY REQUIRES TRANSITING?

A. No, the FCC has never suggested such a thing. On the contrary, the FCC has repeatedly ruled that nothing in the 1996 Act or in the FCC's rules or orders requires it to treat transiting as part of interconnection under section 251(c)(2).[3]

Q. HAS THE FCC EVER ADDRESSED THE MATTER IN AN ARBITRATION?

A. Yes. The FCC's Wireline Competition Bureau was called upon to decide whether section 251(c)(2) requires transit service in an arbitration where the Bureau stood "in the shoes" of a state commission.[4] The Bureau, recognizing the FCC's repeated statements that there is no "clear Commission precedent or rules declaring such a duty," and noting that it was acting "on delegated authority" as a state commission, declined "to determine for the first time" that transiting was required under section 251(c)(2). *Petition of*

[3] *E.g.*, *Application of Qwest Commc'ns Int'l, Inc.*, 18 FCC Rcd. 7325, n.305 (2003) ("we find no clear Commission precedent or rules declaring such a duty" to provide transiting under section 251(c)(2)); *Application of BellSouth Corp.*, 17 FCC Rcd. 25828, ¶ 155 (2002) (same); *Joint Application by BellSouth Corp., et al.*, 17 FCC Rcd. 17595, n.849 (2002) (same).

[4] When a state commission declines to arbitrate an interconnection agreement under section 252, the FCC may take the case. 47 U.S.C. § 252(e)(5). In such instances, the FCC typically assigns the case to its Wireline Competition Bureau, which stands in for the state commission.

WorldCom, Inc. Pursuant to Section 252(e)(5), 17 FCC Rcd. 27039, ¶¶ 117 (Wireline Competition Bureau, 2002) ("*Virginia Arbitration Order*").

Q. HAS A FEDERAL COURT EVER ADDRESSED THE MATTER?

A. Yes. Following the Wireline Competition Bureau's decision in the *Virginia Arbitration Order*, a federal district court affirmed another state commission's refusal to treat transiting as section 251(c)(2) interconnection, finding that "TELRIC pricing is not required for transit service rates. . . . Therefore, as a legal matter, the [state commission] was correct in holding that it was not required to apply TELRIC rates." *WorldNet Telecomms., Inc. v. Telecomms. Regulatory Bd. of Puerto Rico*, 2009 WL 2778058, *28 (D.P.R. 2009). AT&T is asking this Authority to decide here exactly what the FCC's Wireline Competition Bureau decided there.

Q. HOW DOES THE FCC'S TREATMENT OF TRANSIT TRAFFIC IN THE RULINGS YOU DISCUSSED ABOVE RELATE TO THE FCC'S TREATMENT OF INTERCONNECTION IN ITS RULES?

A. The definition of "interconnection" in the FCC's rules compels the conclusion – contrary to Sprint's position here – that interconnection under section 251(c)(2) of the 1996 Act does not encompass transit service. Specifically, 47 C.F.R. § 51.5 provides: "Interconnection is the linking of two networks for the mutual exchange of traffic. This term does not include the transport and termination of traffic."

Q. HOW DOES THAT DEFINITION SUPPORT AT&T'S POSITION?

A. In three ways. First, the FCC limits interconnection to the linking of two networks. (In the 1996 *Local Competition Order,* in which the FCC promulgated Rule 51.5, the FCC

emphasized, in paragraph 176, that interconnection was the "*physical linking* of two networks.)[5] Transit service is not physical linkage – rather it is the transport of traffic.

Second, the FCC states that interconnection is "for the mutual exchange of traffic." Fairly read, that means the mutual exchange of traffic between the interconnected carriers. Transit service does not involve the mutual exchange of traffic between the interconnected carriers; rather, it involves the exchange of traffic between one of those carriers (Sprint, in this instance) and a third party carrier, through the intermediation of, in this instance, AT&T.

Third, the FCC explicitly states that interconnection does not include the transport and termination of traffic. Transit, of course, is the transport of traffic.

Q. ARE YOU CERTAIN THAT THE "INTERCONNECTION" THE FCC DEFINED IN RULE 51.5 IS "INTERCONNECTION" AS USED IN SECTION 251(c)(2)?

A. Absolutely. As I mentioned, the FCC promulgated Rule 51.5 in its 1996 *Local Competition Order*. In its discussion in that Order (at ¶ 176), the FCC specifically said that it was defining "'interconnection' under section 251(c)(2)."

Q. SPRINT HAS SUGGESTED THAT INTERCONNECTION UNDER THE PARTIES' ICA SHOULD BE NOT ONLY AS DEFINED IN THE FCC RULE YOU JUST REFERRED TO, BUT ALSO AS DEFINED IN ANOTHER FCC RULE, 47 C.F.R. § 20.3. DO YOU AGREE?

A. No. This particular disagreement is the subject of another issue, II.A, but it is also relevant here because the definition of "interconnection" in 47 C.F.R. § 20.3 includes language that Sprint would like to rely on in connection with the disagreement about

[5] First Report and Order, Implementation of the Local Competition Provisions In the Telecommunications Act of 1996, 11 FCC Rcd. 15499 (rel. Aug. 8, 1996) ("*Local Competition Order*").

transit service. But the definition of "interconnection" in 47 C.F.R. § 20.3, which applies only to CMRS providers, was not promulgated pursuant to the FCC's authority to implement the 1996 Act, and has no bearing on the meaning of "interconnection" in the 1996 Act. Rather, the FCC adopted the definition of "interconnection" in 47 C.F.R. § 20.3 pursuant to its authority to regulate commercial mobile radio service, and it did so in 1994, two years before the 1996 Act was enacted.[6] The only definition of "interconnection" that is relevant here is the one in 47 C.F.R. § 51.5, which limits interconnection to the physical linking of networks and excludes the transport of traffic.

Q. IS THERE ANYTHING ELSE IN THE FCC'S DISCUSSION OF INTERCONNECTION IN THE *LOCAL COMPETITION ORDER* THAT SHEDS LIGHT ON THE RELATIONSHIP BETWEEN INTERCONNECTION AND TRANSIT?

A. Yes. The FCC's discussion of interconnection in the *Local Competition Order* refutes Sprint's position that section 251(c)(2) encompasses or requires transit service. In the Notice of Proposed Rulemaking that raised the questions that the FCC answered in the *Local Competition Order*, the FCC sought comment on the relationship between "interconnection" and "transport and termination."[7] Some commenters argued that "interconnection" in section 251(c)(2) should be defined to include not only the physical linking of facilities, but also the transport and termination of traffic across that link.[8] One such commenter, CompTel, contended that "it would make no sense for Congress to

[6] *See* 59 FR 18495 (April 19, 1994).

[7] *Id.* ¶ 174.

[8] *Id.*

require an incumbent LEC to engage in a physical linking with another network without requiring the incumbent LEC to route and terminate traffic from the other network."[9] This is essentially the argument Sprint makes here when it contends that the interconnection requirement in section 251(c)(2) implies that AT&T will route and terminate to Sprint traffic originated by third parties.

The FCC, as I noted above, ruled that "the term 'interconnection' under section 251(c)(2) refers only to the physical linking of two networks for the mutual exchange of traffic," and does not include the transport or termination of traffic. When it made that ruling, the FCC explained why it rejected CompTel's argument:

> We . . . reject CompTel's argument that reading section 251(c)(2) to refer only to the physical linking of networks implies that incumbent LECs would not have a duty to route and terminate traffic. That duty applies to all LECs and is clearly expressed in section 251(b)(5).[10]

That point is critically important, and it defeats Sprint's position here.

Q. HOW SO?

A. Because it says that the duty to route traffic under the 1996 Act is imposed *not* by section 251(c)(2), but by section 251(b)(5). And section 251(b)(5) has nothing to do with transit traffic. Rather, it requires LECs to enter into reciprocal compensation arrangements – arrangements, as section 252(d)(2) explicitly states, for the "reciprocal recovery by each carrier of costs associated with the transport and termination *on each carrier's network facilities of calls that originate on the network facilities of the other carrier*." (Emphasis

[9] *Id.*

[10] *Id.* ¶ 176.

added.) As applied here, in other words, AT&T's *only* duty under the 1996 Act to route traffic to or from Sprint is its duty with respect to traffic the parties exchange directly between each other. The FCC could not have made more clear that section 251(c)(2) imposes no transit duty on AT&T.

Q. IN LIGHT OF WHAT YOU HAVE EXPLAINED, HOW SHOULD THE AUTHORITY RESOLVE ISSUE I.C(2)?

A. Sprint's position on this issue hinges on its contention that the interconnection requirement in section 251(c)(2) of the 1996 Act somehow comprises or implies a duty to provide transit service. The FCC's definition of the term "interconnection," however – including both what interconnection is and what it is not – refutes Sprint's contention. In addition, I have shown that when the FCC has been called upon to address the specific question of whether an ILEC must provide transit service in order to fulfill its duties under section 251(c)(2), it has answered in the negative. Accordingly, this Authority should resolve the issue in favor of AT&T by rejecting the transit language Sprint proposes for the ICA and ruling that the parties' ICA is not required to address AT&T's provision of transit service to Sprint.

Q. IS THE AUTHORITY FREE TO RESOLVE THE ISSUE IN FAVOR OF SPRINT IF IT BELIEVES THAT WOULD BE PREFERABLE?

A. That is a legal question, and AT&T will address it in its briefs. It is my understanding, however, that AT&T will argue in its briefs not only that the definition of "interconnection" in the FCC's rules is controlling here, and thus requires the Authority to resolve the issue in favor of AT&T, but also that the FCC's decisions not to treat

transit service as part of interconnection constitute a ruling that no such regulation is appropriate, and therefore preempts state commissions from deciding otherwise.

Q. AT THE BEGINNING OF YOUR DISCUSSION, YOU MENTIONED THAT IN ADDITION TO REQUIRING INTERCONNECTION UNDER SECTION 251(c)(2), THE 1996 ACT ALSO INCLUDES AN INTERCONNECTION REQUIREMENT IN SECTION 251(a)(1). COULD A STATE COMMISSION USE THE INTERCONNECTION REQUIREMENT IN SECTION 251(a)(1) AS A BASIS FOR A TRANSIT REQUIREMENT IN AN ICA?

A. Actually, transit is arguably more germane to section 251(a)(1) than to section 251(c)(2), because section 251(c)(2) concerns only direct interconnection, while section 251(a)(1) also concerns indirect interconnection, which entails transiting. Sprint apparently does not rely on section 251(a)(1), however, and there is a good reason for that. The 1996 Act requires ILECs to negotiate, and thus authorizes state commissions to arbitrate, matters concerning the requirements set forth in sections 251(b) and 251(c), but not section 251(a). This is a legal point, and it will be further developed in AT&T's briefs if necessary. Essentially, though, the bottom line is that the requirements Congress imposed on all telecommunications carriers in section 251(a) – including the interconnection requirement in section 251(a)(1) – are not subject to mandatory negotiation and arbitration under the 1996 Act and cannot form the basis for any state commission-imposed provisions in an interconnection agreement.

Q. DO ANY POLICY CONSIDERATIONS BEAR ON THE AUTHORITY'S RESOLUTION OF THIS ISSUE?

A. Ultimately, this is primarily a legal issue. Sprint may argue, however, that whatever doubt there may be about the legal question, the Authority should require AT&T to provide transit service under the ICAs at cost-based rates because AT&T's provision of

transit service is indispensable. According to this argument, it is crucial for carriers throughout the state to be able to exchange traffic through an intermediary lest they all have to interconnect directly, and AT&T must be that intermediary.

A decision by this Authority's sister commission in Georgia refutes any such argument. In the Georgia proceeding, Neutral Tandem, a competitive provider of transit service, complained that a CLEC, Level 3, refused to interconnect directly with Neutral Tandem, as Neutral Tandem claimed it was required it to do. Level 3 maintained that it was willing to interconnect with Neutral Tandem *indirectly*, through AT&T, and should not be required to interconnect directly. The Georgia Public Service Commission ("GPSC") rejected Level 3's objection and ordered it to interconnect directly with Neutral Tandem. The GPSC's discussion is pertinent here:

> Neutral Tandem is a provider of transit services. Its carrier customers use its service to transport calls that originate on one of their networks and terminate on the network of another. AT&T also provides transit services and is interconnected directly with the other telecommunications companies as a result of its historic position in the market. It would not serve any purpose for a carrier to transport a call originating on its network through Neutral Tandem if that call still must be transported through AT&T in order to terminate on Level 3's system. The carrier would simply use AT&T as the transit provider and exclude Neutral Tandem from the process. Therefore, indirect interconnection is not a reasonable option for Neutral Tandem. . . . The Commission finds that subject to the condition that Neutral Tandem pays all of the reasonable costs for interconnection, direct interconnection is reasonable. . . .
>
> The Commission finds as a matter of fact that: (1) the service provided by Neutral Tandem offers a competitive option to the ILEC for other carriers, improves the reliability of the system by providing redundancy and the investment that Neutral Tandem has made in Georgia enhances economic development within the state; . . . [and] (5) the transit service provided by Neutral Tandem is 'essentially the same' as the transit service that AT&T

provides . . . .[11].

The GPSC thus recognized that AT&T is not the only transit provider. On the contrary, there is a competitive market for the provision of transit service, and it would distort that market – indeed, would be anti-competitive – to require one of the service providers, AT&T, provide the service at regulated rates. Neutral Tandem currently operates in Tennessee at five different locations,[12] and does so at tariffed rates for transit services that are higher than the rates AT&T proposes for its transit service.[13]

Q. HOW SHOULD THE AUTHORITY RESOLVE THIS ISSUE?

A. It should rule that any transit service that AT&T provides to Sprint will be pursuant to terms, conditions and rates set forth in a commercially negotiated transit agreement, and not inserted into the ICAs the Parties are arbitrating in this proceeding.

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 THE EVENT THIS AUTHORITY DETERMINES THAT THE PARTIES' ICA SHOULD INCLUDE TERMS AND CONDITIONS FOR THE PROVISION OF TRANSIT SERVICE, WHAT RATES SHOULD BE APPLIED FOR TRANSIT?

A. Because neither section 251(b) nor section 251(c) of the Telecommunications Act, nor any FCC regulation implementing the 1996 Act, imposes a transit obligation on AT&T,

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[11] Order Mandating Direct Interconnection, Docket No. 24844-U (GPSC Aug. 27, 2007), at 8-9, 11.

[12] http://www.neutraltandem.com/aboutUs/markets.htm

[13] Neutral Tandem – Tennessee, LLC, Access Services Tariff, T.R.A. No. 1, Original Sheet 70, Section 4.1.1 (A). http://www.neutraltandem.com/regulatory/tariffs.htm

transit rates are not subject to TELRIC-based pricing methodology. Such traffic is appropriately exchanged and compensated pursuant to rates established between the parties in a separate commercial agreement. In the event this Authority determines that transit services should be incorporated in this ICA, AT&T's proposed rates for transit service should be incorporated into the ICA, which are the same rates contained in the expired AT&T and Sprint ICA.

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. WHAT IS THIS ISSUE?

A. When Sprint sends transit traffic through AT&T to a third party carrier for termination, reciprocal compensation is due to the terminating carrier from the originating carrier. However, the call may look to the terminating carrier like a call that was originated by AT&T, thus prompting the terminating third party to seek reciprocal compensation from AT&T – particularly if Sprint has not entered into appropriate compensation arrangements with the third party carrier. AT&T, however, should not be subject to any expenses – including the expense of defending against claims brought by the third party carrier – resulting from Sprint's failure to enter into compensation arrangements with third party carriers with which it exchanges traffic. Accordingly, AT&T proposes language that would require Sprint *either* to enter into compensation arrangements with third parties with which it exchanges traffic through AT&T's network *or* to indemnify

AT&T for any costs it incurs as a result of Sprint's failure to enter into such agreements. Sprint, however, opposes AT&T's proposed language.

Q. WHAT IS THE BASIS FOR SPRINT'S OBJECTION?

A. In its Position Statement in the DPL, Sprint states, "Federal law does not require Sprint to establish ICAs with AT&T's subtending carriers as a pre-requisite to indirect interconnection. AT&T is not entitled to indemnification for costs that AT&T should not be paying a terminating carrier in the first place."

Q. HOW DO YOU RESPOND?

A. Sprint does not, and cannot, dispute that in the circumstances addressed by AT&T's proposed language, it is Sprint, and not AT&T, that owes compensation to the terminating carrier. Nor does Sprint dispute that the terminating carrier may nonetheless seek compensation from AT&T if it does not have an appropriate compensation arrangement with Sprint. It may be true that federal law does not require Sprint to enter into compensation arrangements with third party carriers to which Sprint sends traffic – but AT&T is not asking the Authority to require Sprint to enter into such arrangements. Rather, Sprint is asking the Authority to require Sprint *either* to enter into such arrangements, *or*, if it chooses not to do so, to bear the natural consequences of its decision not do to so. This is a perfectly reasonable proposal, and under section 251(c)(2) of the 1996 Act, the question for the Authority is whether AT&T's proposed language is a just, reasonable and non-discriminatory interconnection term – not whether it is something that is already required by federal law.

As for Sprint's comment that it should not have to indemnify AT&T for making payments to the terminating carrier that AT&T should not make in the first place, that misses the point. If Sprint does not enter into appropriate compensation arrangements with the carriers to which it sends traffic, AT&T may incur expenses defending against claims – even unsuccessful claims – that those carriers assert against AT&T. Also, Sprint's failure to enter into appropriate compensation arrangements exposes AT&T to a risk of being ordered – even if erroneously – to pay compensation charges to those carriers – or even of paying bills in error and then, upon discovery of the error, being unable to recoup the payments. In the situation addressed by AT&T's language, it is Sprint, not AT&T, that should be exposed to the risk of such losses.

Q. BUT WHAT IF AT&T'S LOSS IS NOT TRACEABLE TO SPRINT'S FAILURE TO ENTER INTO THE COMPENSATION ARRANGEMENTS THAT AT&T MAINTAINS IT SHOULD HAVE?

A. Then Sprint will not be obliged to indemnify AT&T.

Q. YOU SAY THAT AT&T'S LANGUAGE DOES NOT REQUIRE SPRINT TO ENTER INTO COMPENSATION ARRANGEMENTS WITH THIRD PARTIES. BUT DOESN'T AT&T'S PROPOSED LANGUAGE FOR SECTION 4.1 BEGIN BY SAYING, "SPRINT HAS THE SOLE OBLIGATION TO ENTER INTO TRAFFIC COMPENSATION ARRANGEMENTS WITH THIRD PARTY CARRIERS, PRIOR TO DELIVERING TRANSIT TRAFFIC TO AT&T-9STATE FOR TRANSITING TO SUCH THIRD PARTY CARRIERS"?

A. Yes, it does. The point of that sentence though is that as between Sprint and AT&T, the obligation is Sprint's – not AT&T's. If the Authority wants AT&T to clarify that language, it will. The remainder of section 4.1 makes clear, though, that the intent is not to say that AT&T will not transit Sprint's traffic if it does not enter into these

compensation arrangements, but rather is to say that any such arrangements are for Sprint to make, and that if Sprint does not do so, it must indemnify AT&T.

Q. AT&T'S PROPOSED LANGUAGE IN SECTION 4.1 ALSO STATES THAT AT&T IS NOT LIABLE FOR CALL TERMINATION CHARGES IN THE EVENT THAT SPRINT FAILS TO ENTER INTO TRAFFIC COMPENSATION ARRANGEMENTS WITH THIRD PARTY TERMINATING CARRIERS. WHY IS THIS LANGUAGE NECESSARY?

A. In order to try to minimize the likelihood of potential disputes. AT&T's language makes clear that AT&T will not act as a billing "clearinghouse" for traffic it transits from Sprint to a third party carrier.

Q. AT&T HAS ALSO PROPOSED INDEMNITY LANGUAGE IN SECTION 5.3[14] AS IT WOULD APPEAR IF THE AUTHORITY REQUIRES THE ICA TO INCLUDE TRANSIT TERMS, ADDRESSING THE SITUATION WHERE SPRINT IS TERMINATING THIRD PARTY ORIGINATED TRANSIT TRAFFIC. WHAT DOES THIS LANGUAGE ADDRESS?

A. AT&T's proposed indemnity language in section 5.3 of the Transit Traffic Service Exhibit addresses situations where calls are exchanged without accurate and complete Calling Party Number ("CPN"). When AT&T is providing a transit service, AT&T will pass CPN to Sprint if it is received from a third party originating carrier. However, AT&T does not have control over whether or not it receives accurate CPN from the originating carrier. If the originating carrier does not provide complete and accurate CPN to AT&T, AT&T has no means to forward complete and accurate CPN to Sprint. AT&T's proposed section 5.3 simply acknowledges this limitation, and provides that

[14] Section 5.3 is in the CLEC Transit Exhibit; the same language appears in section 5.2 in the CMRS Transit Exhibit.

Sprint will not penalize or charge AT&T for traffic AT&T transits that is missing complete and accurate CPN.

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. WHAT IS THE PARTIES' DISAGREEMENT CONCERNING TERMS AND CONDITIONS FOR AT&T'S PROVISION OF TRANSIT SERVICE?

A. For the reasons I discussed in connection with Issue I.C.(2), the ICA should include no terms or conditions governing AT&T's provision of transit service to Sprint. If the Authority determines otherwise, however, the parties have a disagreement concerning what those terms and conditions should be.

AT&T has proposed robust terms that will provide clarity and certainty as to each party's responsibilities. Sprint's proposed language governing AT&T's provision of transit service, in contrast, consists of two bare bones sentences that are inadequate and leave the parties to resolve disputes at a future date.

Q. WHAT SPECIFIC TYPES OF PROVISIONS ARE ADDRESSED IN AT&T'S TRANSIT LANGUAGE?

A. AT&T's proposed language, which is set forth in the DPL Language Exhibit (including the CLEC and CMRS Transit Exhibits), addresses where AT&T offers its transit traffic service, the types of traffic AT&T transits, the rates that apply, and how transit rates will be imposed on the originating carrier. The language also addresses appropriate compensation arrangements between Sprint and the third party carrier, whether Sprint is originating transit traffic to a third party carrier, or receiving transited traffic from a third party carrier. There also are terms addressing the need for all parties in a transit

arrangement to send and deliver accurate and complete CPN information to facilitate billing between the originating and terminating carriers.

Q. DOES AT&T'S PROPOSED TRANSIT LANGUAGE ADDRESS ANY NETWORK PROVISIONING OR ROUTING TERMS?

A. Yes. Without terms governing the ordering, provisioning and servicing of trunking pertaining to transit service, the parties would have no way to track and treat transit traffic. Section 6.0 of AT&T's proposed transit language for each ICA addresses that subject, and Section 7.0 provides terms for the provision of direct trunking between Sprint and another LEC when the volume of traffic between those carriers reaches a threshold of twenty-four (24) or more trunks. Such a provision is a reasonable limit for transit traffic; once reached, the two carriers should seek direct interconnection between each other. This provision allows AT&T to effectively manage its network in order to offer transit services to all CLECs and CMRS providers as an alternative to directly interconnecting with smaller third party carriers.

Q. HAS SPRINT OBJECTED TO AT&T'S LANGUAGE?

A. Sprint has not accepted it, but Sprint's position statement on the DPL does not actually state that AT&T's language should be rejected, and certainly does not suggest that anything is wrong with it.

Q. WHAT LANGUAGE DOES SPRINT PROPOSE TO GOVERN AT&T'S PROVISION OF TRANSIT SERVICE TO AT&T?

A. Sprint proposes two sentences. One sentence states only that AT&T will transit Sprint's Authorized Services traffic, and the other states only that a party providing transit service

under the ICA will charge the originating party only the applicable transit rate for the traffic.

Q. WHAT IS WRONG WITH SPRINT'S LANGUAGE?

A. Putting aside the use of the disputed term "Authorized Services," Sprint's language comes nowhere close to providing the detail that is necessary to govern one party's provision of transit service to the other. In that connection, I would point out that AT&T's proposed language comes from AT&T's commercial transit agreement, which many CLECs have executed, either in the form AT&T proposes here or with slight modifications. If those carriers thought that AT&T's provision of transit service could be adequately dealt with in two sentences, they presumably would not have accepted the detail that AT&T is proposing here.

Q. HOW SHOULD THE AUTHORITY RESOLVE THIS ISSUE?

A. If the Authority decides that the ICAs should include language governing AT&T's provision of transit service to Sprint, which it should not, then the Authority should rule that AT&T's proposed language will be included in the ICA and that Sprint's woefully inadequate proposal should not.

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. SPRINT'S PROPOSED ICA LANGUAGE IN ATTACHMENT 3, SECTIONS 2.8.4(d)[15], 4.2 AND 4.3 WOULD REQUIRE AT&T TO ACCEPT TRAFFIC THAT IS TRANSITED BY SPRINT FROM A THIRD PARTY, AS WELL AS POSSIBLY REQUIRE AT&T TO USE SPRINT AS A TRANSIT PROVIDER FOR AT&T-ORIGINATED TRAFFIC. WHY DOES AT&T OPPOSE THOSE PROVISIONS?

A. Because the language proposed by Sprint provides for a service that Sprint currently does not offer. Sprint's proposed language in CLEC section 2.5.4(d) makes this clear, *"**As of the Effective Date of this Agreement Sprint is not a provider of Transit Service to either AT&T-9STATE or a Third Party. However, Sprint reserves the right to become a Transit Service provider in the future…."*** The language simply acts as a placeholder for a service that Sprint may – or may not – offer at some point during the term of the ICAs, and as such, serves no practical purpose.

Q. ARE THERE OTHER CONCERNS WITH SPRINT'S PROPOSED SECTION 2.8.4(d)?

A. Yes. Sprint's language provides, after a 90-day notice from Sprint to AT&T, that Sprint will commence transit services for third party carriers. What Sprint's language does *not* provide, however, is how the parties would operate under such a service, or at what rates. As with Sprint's language in Issue I.C(2) above regarding AT&T's provision of transit service, Sprint's purposed language for its own hypothetical future provision of transit service includes no provisions whatsoever governing how the Parties will route, record or bill for traffic destined to or from Sprint's transit service. So even though Sprint

[15] This section reference is for the proposed CLEC ICA, the same Sprint proposed language is found in section 2.5.4(a) in the CMRS ICA.

proposes, after sufficient notice to AT&T, that the parties will exchange Sprint transit service traffic, the ICA lacks any terms and conditions to implement such exchange. Sprint's proposal is clearly inadequate for the parties to use in the event Sprint decides to initiate its "transit service."

Q. CAN AT&T PROPOSE LANGUAGE THAT WOULD ADDRESS ITS CONCERNS WITH SPRINT'S LANGUAGE?

A. Yes. AT&T proposes language to provide that, in the event Sprint were to give AT&T the 90-day notice that Sprint proposes, the parties would work to amend the ICA to contain complete and appropriate provisions for Sprint's provision of transit service. The 90-day period that Sprint's language already includes should be sufficient to arrive at an appropriate amendment. AT&T proposes additional language to Sprint's proposed (and currently AT&T-disputed) language as shown below in bold underline:

> ***(d) Sprint as a Transit Provider. As of the Effective Date of this Agreement Sprint is not a provider of Transit Service to either AT&T-9STATE or a Third Party. However, Sprint reserves the right to become a Transit Service provider in the future, and will provide AT&T-9STATE a minimum of ninety (90) days notice before Sprint begins using Interconnection Facilities to provide a Transit Service for the delivery of Authorized Services traffic between a Third Party and AT&T-9STATE.*** **As promptly as practicable after AT&T-9STATE's receipt of such notice, the parties will negotiate an amendment to this Agreement setting forth just, reasonable and non-discriminatory terms and conditions to govern Sprint's delivery of such traffic to AT&T-9STATE, with any disagreements concerning the language to be included in said amendment to be subject to resolution by the Commission in a proceeding that the Parties will seek to expedite.[16]**

[16] AT&T's willingness to include ICA language related to *Sprint's* provision of transit service as a reasonable term of Sprint's section 251(c)(2) interconnection with AT&T is fully consistent with, and does not waive, AT&T's position that nothing in the 1996 Act requires AT&T to provide transit service and that AT&T's provision of transit service is not subject to inclusion in the ICA.

Such language would enable Sprint to provide transit service at some point in the future, yet at the same time, ensure that the ICA appropriately incorporates complete terms and conditions for the exchange of this traffic.

Q. WITH RESPECT TO THE SPRINT CMRS ICA, AT&T HAS PROPOSED LANGUAGE IN SECTIONS 2.3.2.3 AND 2.3.2.4 LIMITING SPRINT TO DELIVERING ONLY ITS END USERS' TRAFFIC TO AT&T. WHY IS THIS APPROPRIATE?

A. Because the CMRS ICA is for the exchange of CMRS-only traffic, between AT&T and Sprint. AT&T's language provides that Sprint cannot aggregate the traffic of other (wireline) carriers for termination to AT&T.

DPL ISSUE I.C(1)

What are the appropriate definitions related to transit traffic service?

Contract Reference: GTC Part B Definitions

Q. BOTH PARTIES PROPOSE A DEFINITION FOR "THIRD PARTY TRAFFIC." WHAT IS THE DIFFERENCE BETWEEN AT&T'S PROPOSAL AND SPRINT'S PROPOSAL?

A. AT&T's proposed definition for Third Party Traffic accurately describes what is contemplated under the ICA. It properly describes Third Party Traffic as traffic originated by a third party carrier and carried by AT&T across its network for termination to Sprint, or traffic originated by Sprint and carried by AT&T for termination to a third party carrier. In each instance, AT&T is providing a transiting service, facilitating indirect interconnection between Sprint and other carriers. Sprint's definition, on the other hand, provides that third party traffic may be transited by either AT&T or Sprint. As I just discussed under Issue I.C(6) above, Sprint currently does not provide a transit

service, so it is inappropriate for the ICA to define Third Party Traffic to include Sprint as a transit service provider. Unless and until Sprint initiates its own transit service, the ICA should define Third Party Traffic to include only AT&T as a transit service provider; the parties may revise transit-related provisions as appropriate if the ICA is amended to incorporate Sprint's transit service.

Q. SPRINT PROPOSES DEFINITIONS FOR "TRANSIT SERVICE" AND "TRANSIT SERVICE TRAFFIC," WHICH AT&T OPPOSES. WHY DOES AT&T DISPUTE THESE DEFINITIONS?

A. They are duplicative of "Third Party Traffic" which each party has already proposed for inclusion in the ICA. The term "Third Party Traffic" adequately addresses scenarios where AT&T may provide indirect interconnection between Sprint and third party carriers.

Q. BESIDES BEING DUPLICATIVE OF "THIRD PARTY TRAFFIC," ARE SPRINT'S PROPOSED DEFINITIONS FOR "TRANSIT SERVICE" AND "TRANSIT SERVICE TRAFFIC" OBJECTIONABLE FOR OTHER REASONS?

A. Yes. Both of Sprint's definitions refer to "Authorized Services" traffic, the definition of which the parties dispute. As discussed in more detail by AT&T witness Patricia Pellerin, Sprint proposes that "Authorized Services" traffic include all traffic that a party may "lawfully provide pursuant to Applicable Law." However, not all lawful traffic can be transit traffic. For example, interLATA traffic is lawful traffic, but cannot be transit traffic; because transiting is for the transport of intraLATA traffic only. Yet Sprint's proposed definition for Transit Service Traffic would allow for interexchange interLATA traffic to be transited. Sprint should not be allowed to evade tariffed switched access charges by routing interexchange traffic over local interconnection trunk groups, which

are not intended for access traffic and do not permit AT&T to bill access charges to Sprint. Sprint's definition would inappropriately expand the scope of traffic that can be transited, and would result in disputes and inappropriate intercarrier compensation charges.

AT&T's proposed definition for Transit Traffic Service appropriately defines the categories of traffic eligible for the service. Specifically, the categories of traffic subject to being transited are Section 251(b)(5) Traffic, ISP-Bound Traffic, and CMRS-bound traffic within the same LATA. By clearly defining the appropriate categories of traffic subject to being transited, AT&T's proposed definitions will provide clear guidance as well as avoid future disputes.

DPL ISSUE I.B.(2)

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

Contract Reference: GTC – Part B – Definitions

Q. WHAT IS THE ISSUE?

A. AT&T proposes to include the defined term "Section 251(b)(5) Traffic" in both the CLEC and the CMRS ICAs, and Sprint is opposed to including the term in either ICA. Subpart (a) of the issue asks whether the term should be defined in either ICA, and subpart (b) asks what the definition should be in each ICA, if a definition is to be included.

Q. ARE YOU ADDRESSING THE ENTIRE ISSUE?

A. No. AT&T witness Patricia Pellerin addresses subpart (a), and explains why both ICAs should include the defined term "Section 251(b)(5) Traffic." Ms. Pellerin also explains why AT&T's definition of that term for the CMRS ICA should be adopted. I explain why AT&T's definition of Section 251(b)(5) Traffic for the CLEC ICA should be adopted. In other words, I am addressing only I.B(2)(b)(ii).

Q. GENERALLY SPEAKING, WHAT IS INTERCARRIER – OR RECIPROCAL – COMPENSATION AS USED IN TELECOMMUNICATIONS?

A. "Intercarrier compensation" – which to my knowledge is not defined in a statute or FCC regulation – is used to refer to the financial mechanism telecommunications carriers use to compensate each other for completing the calls of their end users to end users of other carriers. As an example, if John, a customer of ABC Phone Co., picks up the phone and calls his friend, Mary, who happens to be a subscriber to XYZ Phone Co., then both carriers' networks are utilized in the completion of that call. John is the "cost-causer" because he initiated the call. John pays his retail subscription fees to his carrier, ABC Phone Co. In order to complete the call to Mary, ABC Phone Co. hands the call off to XYZ Phone Co., which then incurs switching and call termination costs on its network. XYZ Phone Co. incurred a cost in terminating the phone call to Mary, but XYZ Phone Co. did not cause the cost to be incurred. ABC Phone Co. compensates XYZ Phone Co. for its expenses incurred to complete ABC Phone Co.'s customer's call. At a high level, such expense recovery mechanisms are called intercarrier compensation; the expense recovery associated with a local telephone call is called reciprocal compensation. The originating carrier "reimburses" the terminating carrier for completing the call on behalf

of the originating carrier. Thus, reciprocal compensation is designed for cost recovery. Depending upon the physical location of the calling and called end users, a call is generally jurisdictionalized as either a local (intra-exchange) or inter-exchange call, with a few exceptions for specific types of calls – such as "FX" or foreign exchange calls – separately identified and treated for compensation purposes.[17]

Q. WHY DOES AT&T PROPOSE TO USE THE DEFINED TERM "SECTION 251(b)(5) TRAFFIC?"

A. As Ms. Pellerin explains, AT&T proposes to use that term to refer to traffic subject to reciprocal compensation under Section 251(b)(5) of the 1996 Act.

Q. WHAT DEFINITION OF SECTION 251(B)(5) TRAFFIC DOES AT&T PROPOSE FOR THE CLEC ICA?

A. AT&T proposes the following definition:

> "Section 251(b)(5) Traffic" shall mean Telecommunications traffic exchanged over the Parties' own facilities in which the originating End User of one Party and the terminating End User of the other Party are:
>
> both physically located in the same ILEC Local Exchange Area as defined by the ILEC Local (or "General") Exchange Tariff on file with the applicable state Commission or regulatory agency;
>
> or both physically located within neighboring ILEC Local Exchange Areas that are within the same common mandatory local calling area. This includes but is not limited to, mandatory Extended Area Service (EAS), mandatory Extended Local Calling Service (ELCS), or other types of mandatory expanded local calling scopes.

Q. WHAT IS THE BASIS FOR THE DEFINITION?

[17] An FX – or Foreign Exchange – service allows a carrier to have a local presence in a given calling area even though it is not physically located in that area. This is done by assigning an NPA-NXX that is local to the desired calling area, even though the actual end user may be located in a distant exchange or LATA. Please see my testimony under Issue III.A.5 for further discussion of this subject.

A. AT&T's 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). 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. Previously, the traffic subject to reciprocal compensation under Section 251(b)(2) was what we called "local" traffic. The FCC changed the terminology, though not the actual scope of Section 251(b)(5), in the *ISP Remand Order*. There, the FCC removed the potentially ambiguous term "local" from its reciprocal compensation rule, but Section 251(b)(5) traffic remains traffic that originates with and terminates to end users physically within the same ILEC mandatory local calling scope. Rulings by the FCC have characterized traffic as either being included within the scope of Section 251(b)(5) traffic, or as being beyond the scope of Section 251(b)(5) traffic. For instance, the FCC clarified that dial up traffic bound for ISPs is not Section 251(b)(5) traffic.[18]

Q. DOES SPRINT INDICATE THAT IT BELIEVES ANYTHING IS WRONG WITH AT&T'S DEFINITION OF "SECTION 251(b)(5) TRAFFIC" FOR THE CLEC ICA?

[18] *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. No. Sprint opposes the inclusion of *any* definition of "Section 251(b)(5) Traffic" in the ICAs, but I am not aware of any objection – certainly none is mentioned in Sprint's position statement on the DPL – to the particular definition AT&T is proposing.

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. SHOULD THE ICA CONTAIN COMPLETE TERMS AND CONDITIONS TO IDENTIFY AND BILL FOR DIFFERENT CATEGORIES OF INTERCARRIER TRAFFIC EXCHANGED BETWEEN THE PARTIES?

A. Yes. In order to properly identify and bill for the various categories of traffic subject to different intercarrier compensation treatment, the ICA must contain clear and complete terms for each type of traffic. AT&T's proposed language for Attachment 3, sections 6.1 -6.1.7, 6.2.2 – 6.2.2.2, and 6.8.1 – 6.8.4 provides for appropriate reciprocal compensation for Section 251(b)(5) Traffic, as well as ISP-Bound traffic which I discuss in more detail under Issue III.A.2. In addition to identifying the specific traffic subject to reciprocal compensation, AT&T's proposed language formalizes the parties' responsibility to include CPN, addresses compensation for traffic that is switched at more than one tandem switch,[19] and provides for appropriate billing arrangements for termination of Section 251(b)(5) Traffic and ISP-Bound traffic. The billing provisions in sections 6.8.1 through 6.8.4 provide that the parties will use actual recordings for purposes of generating bills to

[19] Multiple Tandem Access ("MTA")

each other, and the steps either Party may take in the event one disputes the other's intercarrier compensation charges.

Q. WHAT IS CPN?

A. When one telecommunications carrier hands off a call to another, not only is the telecommunication itself exchanged, but so is a "signal" – a stream of data that communicates from one network to the other routing and destination information and other data relating to the call.[20] One piece of information that may be communicated in a signal is CPN – Calling Party Number. "Carriers use this information to ascertain whether calls are subject to access charges or reciprocal compensation,"[21] because the calling party's number identifies the exchange area in which the call originated and so allows the terminating carrier to determine whether the call is local (subject to reciprocal compensation or long distance (subject to access charges).

Q. WHY SHOULD CARRIERS PROVIDE CPN INFORMATION WITH THEIR INTERCARRIER TRAFFIC?

A. As one state commission has explained:

> CPN is crucial because compensation for local calls differs from compensation for toll (long distance) calls. AT&T Texas (as well as other

[20] "In any telephone system . . . some form of signaling mechanism is required to set up and tear down the calls." Newton's Telecom Dictionary (25th ed. 2009) ("Newton's") at 1010 (definition of "Signaling"). Among other functions, signals transmit routing and destination signals over the network. *Id*. at 1012 (definition of "Signaling System 7"). Today, most signaling is done on a data network that overlies, but is separate from, the telecommunication network itself. *Id*. at 1011 (definition of "Signaling").

[21] *In re Petition of WorldCom, Inc. Pursuant to Section 252(e)(5) of the Communications Act for Preemption of the Jurisdiction of the Virginia State Corporation Commission Regarding Interconnection Disputes with Verizon Virginia Inc*., 17 FCC Rcd. 27039, ¶ 186 (rel. July 17, 2002).

> carriers) depends on the CPN to determine whether to rate a call as local or toll. If traffic does not include any CPN information, the terminating carrier cannot determine the jurisdiction of the call [local or toll] and therefore cannot apply the appropriate rate. Generally, no charges apply to local calls (per the ICA's "bill and keep" provision), while access charges apply to toll calls. The higher access charges create a financial incentive to avoid categorization of a call as toll. Absent some contractual provision addressing traffic of unknown origin, toll traffic without proper CPN would avoid access charges. To address this problem, the ICA treats traffic without proper CPN as toll and applies access charges to the traffic by default.[22]

Q. WILL ALL CALLS THAT THE PARTIES DELIVER TO EACH OTHER UNDER THE ICAS THEY ARE ARBITRATING INCLUDE CPN?

A. Most will. The parties recognize, however, that they will probably deliver some traffic to each other that does not contain CPN. AT&T proposes language in Attachment 3, sections 6.1.1 – 6.1.3 to address how the parties will compensate each other for such traffic. AT&T's language provides that if less than 90% of the traffic that one party passes to the other includes CPN, then all of that party's traffic with missing CPN will be subject to intraLATA access charges. On the other hand, if at least 90% of a party's traffic has CPN, then the traffic that is missing CPN will be treated as local or intraLATA toll in proportions matching that Party's traffic which is delivered with CPN.[23] This arrangement, which is commonplace in ICAs, recognizes that some traffic will be

[22] Arbitration Award, Docket No. 33323. *Petition of UTEX Communications Corp. for Post-Interconnection Dispute Resolution with AT&T Texas*, (Pub. Util. Com. Texas June 1, 2009), at 3.

[23] For example: Assume that 96% of the traffic AT&T delivers to Sprint has CPN, and 4% is missing CPN. Assume further that of the AT&T traffic that is delivered with CPN, 60% is local and 40% is intraLATA toll. The traffic with missing CPN – the 4% – has to be jurisdictionalized somehow, so 60% of it is treated as local and 40% as intraLATA toll.

missing CPN through no fault of the party that delivers it (thus, the allowance for 10% of a party's traffic to be missing CPN with no consequence), but at the same time provides an incentive for each Party to do what it can to include CPN on the traffic it delivers (by assigning the higher intraLATA access rate to all calls missing CPN if more than 10% of the carrier's traffic falls into that category).

Q. HOW DOES SPRINT PROPOSE TO ADDRESS THE PROBLEM OF MISSING CPN?

A. It doesn't. It appears that the parties have agreed upon the following language, shown in section 6.3.3 on p. 34 of Attachment 3:

> Where SS7 connections exist, each Party will include in the information transmitted to the other Party, for each call being terminated on the other Party's network, where available, the original and true Calling Party Number ("CPN").

However, this language does not address how the parties will treat traffic that is delivered without CPN, or how the parties will determine whether CPN is "available." That is why AT&T has proposed additional language in sections 6.1.1 – 6.1.3 of Attachment 3 to specifically address these issues.

Q. DOES SPRINT PROPOSE A METHOD FOR BILLING UNIDENTIFIED TRAFFIC?

A. No. Sprint's proposed ICA language leaves the issue open for later resolution, as well as potential dispute. Though not directly tied to traffic lacking CPN, Sprint's only proposed language concerning the inability to bill based upon actual and accurate records (which would include traffic exchanged without CPN) is Sprint's proposed section 6.3.6.1 (which is displayed on the DPL Language Exhibit under Issue III.A):

> *Actual traffic Conversation MOU measurement in each of the applicable*

Authorized Service categories is the preferred method of classifying and billing traffic. If, however, either Party cannot measure traffic in each category, then the Parties shall agree on a surrogate method of classifying and billing those categories of traffic where measurement is not possible, taking into consideration as may be pertinent to the Telecommunications traffic categories of traffic, the territory served (e.g. Exchange boundaries, LATA boundaries and state boundaries) and traffic routing of the Parties.

In lieu of providing contractual certainty and clarity in the ICA, Sprint's proposed language punts the issue with no resolution for the treatment of unidentified traffic. In contrast, AT&T's proposed ICA language addressing CPN provides clarity specific to unidentified traffic, and how the parties should proceed when such traffic is exchanged over the parties' local interconnection trunks.

Q. WHAT IS THE BASIS FOR THE TEN PERCENT CPN THRESHOLD PROPOSED BY AT&T IN SECTION 6.1.3?

A. As long as no one is trying to game the system by intentionally stripping CPN from intraLATA toll calls that originate on its network, the percentage of traffic that does not contain CPN is very unlikely to exceed 10%. Thus, AT&T's proposed 10% threshold discourages arbitrage while having little, if any, effect upon the normal course of business. Due to the make-up of today's telephone network signaling systems, the volume of unidentified traffic should be small. The vast majority of all carriers' traffic is technically capable of passing CPN information. The minimal unidentified amount reflects occasional software errors where CPN is not generated at call origination.

Q. WHAT IS AT&T'S CONCERN WITH THE "WE'LL FIGURE IT OUT LATER" APPROACH IN SPRINT'S PROPOSED SECTION 6.3.6.1?

A. Sprint's ICA language does nothing to encourage the parties to ensure that the traffic each delivers to the other will contain accurate CPN. Though Sprint apparently agrees

that the parties should exchange complete and accurate CPN, Sprint's language provides a very large loophole, that being the "where available" phrase. Furthermore, though Sprint agrees that the parties should work cooperatively to correct any problems concerning incomplete or inaccurate CPN, Sprint's proposed language is broad and open-ended, and could be interpreted to allow the exchange of incomplete or inaccurate CPN, for an unlimited period of time, so long as the parties are "working on the problem." Sprint's proposal fails to address two important concerns: (1) traffic deliberately passed without CPN, and (2) traffic passed without CPN by a CLEC lacking motivation to rectify the problem. With respect to the first concern, if all unidentified traffic were subject to "to be determined later" billing, carriers would have an incentive not to pass CPN information on calls that originate on their networks, even though the information is available. By "stripping" the CPN from their intraLATA toll calls, such carriers would be billed for those calls based on some to be determined "surrogate method." This may create an arbitrage opportunity by which carriers could game the compensation regime by paying reciprocal compensation on their intraLATA toll calls instead of the higher access rates that should apply. To reduce the opportunity for arbitrage, billing for unidentified traffic should be based upon the actual traffic patterns of the vast majority of the traffic exchanged between the parties (at least 90% of the call volume) for which it is reasonable to anticipate that CPN is actually available.

Second, if a dispute were to arise, Sprint's language potentially continues the data analysis period indefinitely, during which time its "surrogate method" for traffic without CPN will apply to excessive unidentified traffic. Faced with an uncooperative CLEC

(whether Sprint or any other CLEC that may decide to adopt this ICA pursuant to Section 252(i) of the Act), AT&T's only recourse would be dispute resolution. Yet Sprint's language has no provision for dispute resolution, and there is no indication as to when or how it could be invoked. This is not a reasonable outcome. Moreover, from a practical perspective, it makes more sense to address these logistical issues now rather than waiting for a dispute to occur and diverting resources to dispute resolution in order to resolve the matter.

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 AT&T PROPOSE ICA LANGUAGE TO SEPARATELY IDENTIFY AND COMPENSATE ISP-BOUND TRAFFIC?

A. Yes, it does. Since AT&T has invoked the FCC ISP Compensation Plan described in the *ISP Remand Order* and outlined in its Order 01-131 on August 1, 2003, it is appropriate to distinguish ISP-Bound Traffic that is subject to the rates, terms and conditions of the FCC Plan from other traffic types within the agreement. ISP traffic that originates and is delivered to an ISP within the same local mandatory calling areas is ISP-bound Traffic subject to the FCC Plan, including the FCC's ISP rate of $0.0007 per minute of use ("MOU"). Similar to my discussion on terms and conditions for Section 251(b)(5)

Traffic, AT&T's proposed language for ISP-Bound Traffic provides terms for identifying and billing reciprocal compensation for ISP-Bound Traffic.

Q. ARE ISP-BOUND CALLS SUBJECT TO THE SAME RECIPROCAL COMPENSATION RATE AS SECTION 251(b)(5) TRAFFIC?

A. Yes. Consistent with the *ISP Remand Order,* AT&T has proposed that all Section 251(b)(5) Traffic and all ISP-Bound Traffic be subject to the FCC's ISP rate of $0.0007 per MOU.[24] AT&T's proposed ICA language in Attachment 3, section 6.,3 provides the rates, terms and conditions applicable for both traffic types, and section 6.8 provides terms for billing of both Section 251(b)(5) Traffic and ISP-Bound Traffic.

Q. ARE ALL CALLS TO AN ISP TREATED THE SAME UNDER AT&T'S PROPOSED LANGUAGE?

A. No. Only calls that originate from an end user and terminate to an ISP within the same ILEC mandatory local calling area are subject to the FCC Plan. AT&T's proposed Attachment 3, sections 6.4.4 through 6.4.5 describe scenarios where calls to an ISP would not be subject to the FCC's ISP rate.

Q. DOES SPRINT'S PROPOSED LANGUAGE PROVIDE FOR THE TREATMENT OF ISP-BOUND TRAFFIC?

A. No. Though Sprint has agreed upon a definition for ISP-Bound Traffic, it does not appear that Sprint's proposed compensation terms specifically address this traffic. Sprint's proposed language for intercarrier compensation uses the disputed term "Authorized Services" and appears to provide a multiple-choice of options for intercarrier

[24] See, for example, paragraph 89 of the ISP Remand Order: "The rate caps for ISP-bound traffic that we adopt here apply, therefore, *only* if an incumbent LEC offers to exchange all traffic subject to section 251(b)(5) at the same rate." (footnote omitted)

compensation rates. AT&T witness Patricia Pellerin discusses Sprint's pricing proposals in more detail, but suffice to say Sprint's proposed language for intercarrier compensation rates and terms lacks any contractual certainty. In contrast with AT&T's specific provisions addressing each category of traffic expected to be exchanged via the terms of this ICA, Sprint's proposal attempts to lump many – or all, depending upon which of Sprint's proposals in its Attachment 3, section 6.1 is selected – categories of intercarrier traffic under one ambiguous classification of "those services which a Party may lawfully provide pursuant to Applicable Law." Such a lack of clarity with respect to traffic subject to reciprocal compensation would surely invite disputes.

Q. SHOULD THE ICA CONTAIN SPECIFIC PROVISIONS TO PROVIDE FOR ANY CHANGES TO THE TREATMENT OF ISP-BOUND TRAFFIC PURSUANT TO THE *ISP REMAND ORDER*?

A. Yes, it should. AT&T has proposed appropriate language in Attachment 3, section 6.26 to address the potential modification, replacement or elimination of the pricing scheme set forth in the *ISP Remand Order*. The FCC issued in its *ISP Remand Order* the interim compensation plan I've outlined above, pending the outcome of its Notice of Proposed Rulemaking ("NPRM") that accompanied the *ISP Remand Order*.[25]

The FCC recognized that current market distortions in the intercarrier compensation regime would not be completely addressed within the *ISP Remand Order* regarding the treatment of ISP-Bound Traffic:

> We recognize that the existing intercarrier compensation mechanism for the delivery of this traffic, in which the originating carrier pays the carrier

[25] Developing a Unified Intercarrier Compensation Regime, CC Docket No. 01-92, Notice of Proposed Rulemaking, FCC 01-132.

> that serves the ISP, has created opportunities for regulatory arbitrage and distorted the economic incentives related to competitive entry into the local exchange and exchange access markets. As we discuss in the *Unified Intercarrier Compensation NPRM*, released in tandem with this Order, such market distortions relate not only to ISP-bound traffic, but may result from any intercarrier compensation regime that allows a service provider to recover some of its costs from other carriers rather than from its end-users. Thus, the *NPRM* initiates a proceeding to consider, among other things, whether the Commission should replace existing intercarrier compensation schemes with some form of what has come to be known as "bill and keep." The *NPRM* also considers modifications to existing payment regimes, in which the calling party's network pays the terminating network, that might limit the potential for market distortion.[26]

In reality, then, the FCC's NPRM is a continuation of the FCC's *ISP Remand Order*. The order and rules that result from the NPRM will provide long-term guidance as to the treatment of intercarrier traffic in addition to the interim remedies offered in the *ISP Remand Order*.

> Because the record indicates a need for immediate action with respect to ISP-bound traffic, however, in this Order we will implement an interim recovery scheme that: (i) moves aggressively to eliminate arbitrage opportunities presented by the existing recovery mechanism for ISP-bound by lowering payments and capping growth; and (ii) initiates a 36-month transition towards a complete bill and keep recovery mechanism while retaining the ability to adopt an alternative mechanism based upon a more extensive evaluation in the *NPRM* proceeding.[27]

Because the FCC made clear that it would subsequently issue new rules for intercarrier compensation, it is reasonable and appropriate to anticipate this within the ICA in order to ensure a smooth transition to whatever new compensation mechanism the FCC determines is appropriate for ISP-Bound Traffic. By providing language

[26] FCC ISP Remand Order, ¶ 2. [footnotes omitted]

[27] FCC ISP Remand Order ¶ 7.

acknowledging the FCC's intent to address intercarrier compensation for ISP traffic, including provisions to transition to any new pricing scheme, the parties can avoid disputes and delays in implementing the FCC's findings.

DPL ISSUE III.A.1(4)

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

Contract Reference: Attachment 3, section 6.3.7.

DPL ISSUE III.A.1(5)

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

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

Q. WHAT IS THE DISAGREEMENT ABOUT BILL AND KEEP?

A. Sprint proposes language that would provide for the parties to use bill and keep as their reciprocal compensation arrangement, *i.e.*, to not pay each other reciprocal compensation, if the volumes of Section 251(b)(5) Traffic and ISP-Bound Traffic they are exchanging are roughly balanced. AT&T maintains there should be no bill and keep language in the ICA, *i.e.*, that the parties should bill each other reciprocal compensation even if their traffic at some point becomes roughly balanced. In addition, in case the Authority rejects AT&T's position and concludes the ICA should include bill and keep language, AT&T proposes language that is more reasonable than Sprint's – one of the principal differences being that Sprint's language treats traffic volumes as roughly balanced if they are no more imbalanced than 60%/40%, while AT&T ILEC would draw the line at 55%/45%,

which is consistent both with common sense and with decisions by numerous commissions.

I will first address DPL Issue III.A.1(4), which asks whether the ICA should allow for bill and keep – and I will explain why it should not. Then, in case the Authority decides otherwise, I will explain why Sprint's proposed language is defective and AT&T's proposed language should be adopted instead.

Q. YOU SAY THAT AT&T DOES NOT WANT THE ICAS TO ALLOW FOR BILL AND KEEP, BUT DOESN'T THE 1996 ACT CALL FOR BILL AND KEEP IF TRAFFIC IS ROUGHLY BALANCED?

A. No. The 1996 Act permits parties to agree on bill and keep, and the FCC's rules permit – but do not require – state commissions to impose bill and keep if traffic is roughly balanced. As I will explain, however, there are compelling reasons for not imposing bill and keep.

Q. WHAT ARE THE RELEVANT PROVISIONS OF THE 1996 ACT?

A. Section 251(b)(5) of the 1996 Act requires all local exchange carriers ("LECs") to "establish reciprocal compensation arrangements for the transport and termination of telecommunications." The compensation is for the cost a LEC incurs when it transports and terminates on its network a telecommunication that originates on the network of another LEC.

Section 252(d)(2) addresses reciprocal compensation charges. It provides:

(2) Charges for transport and termination of traffic

(A) In general

For the purposes of compliance by an incumbent local exchange carrier with section 251(b)(5) of this title, a State commission shall not consider

> the terms and conditions for reciprocal compensation to be just and reasonable unless—
>
> (i) such terms and conditions provide for the mutual and reciprocal recovery by each carrier of costs associated with the transport and termination on each carrier's network facilities of calls that originate on the network facilities of the other carrier; and
>
> (ii) such terms and conditions determine such costs on the basis of a reasonable approximation of the additional costs of terminating such calls.
>
> (B) Rules of construction
>
> This paragraph shall not be construed—
>
> (i) to preclude arrangements that afford the mutual recovery of costs through the offsetting of reciprocal obligations, including arrangements that waive mutual recovery (such as bill-and-keep arrangements) . . . .

Q. IS THERE ANYTHING IN PARTICULAR IN THE STATUTE TO WHICH YOU WISH TO DRAW ATTENTION?

A. Yes. First, section 252(d)(2)(A) makes clear that AT&T is entitled to recover the costs it incurs to transport and terminate traffic that originates on Sprint's network; otherwise, the Authority cannot "consider the terms and conditions for reciprocal compensation to be just and reasonable." Second, the statute does not require bill and keep under any circumstances. Rather, it requires mutual and reciprocal recovery of transport and termination costs, but adds that that does not preclude bill and keep.

Q. WHAT IS THE RELEVANT FCC RULE?

A. The FCC's rule implementing the bill and keep language in the 1996 Act reads as follows:

> § 51.713 Bill-and-keep arrangements for reciprocal compensation.
>
> (a) For purposes of this subpart, bill-and-keep arrangements are those in which neither of the two interconnecting carriers charges the other for the

> termination of telecommunications traffic that originates on the other carrier's network.
>
> (b) A state commission may impose bill-and-keep arrangements if the state commission determines that the amount of telecommunications traffic from one network to the other is roughly balanced with the amount of telecommunications traffic flowing in the opposite direction, and is expected to remain so, and no showing has been made pursuant to §51.711(b).[28]
>
> (c) Nothing in this section precludes a state commission from presuming that the amount of telecommunications traffic from one network to the other is roughly balanced with the amount of telecommunications traffic flowing in the opposite direction and is expected to remain so, unless a party rebuts such a presumption.

Q. IS THERE ANYTHING IN PARTICULAR IN THE RULE TO WHICH YOU WISH TO DRAW ATTENTION?

A. Yes. The FCC's rule, like the statute, does not require bill and keep under any circumstances. Rather, it merely allows a state commission to impose bill and keep if it finds that the amount of telecommunications traffic from one network to the other is roughly balanced with the amount of telecommunications traffic flowing in the opposite direction, and is expected to remain so.

Q. WHAT ARE THE CONSIDERATIONS UNDERLYING THE FCC'S BILL AND KEEP RULE?

A. The FCC promulgated Rule 51.713 in its 1996 *Local Competition Order*. In its discussion underlying the rule, the FCC stated in pertinent part:

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[28] FCC Rule 51.711generally requires reciprocal compensation rates to be symmetrical – *i.e.*, Sprint charges AT&T the same rate that AT&T charges Sprint. Rule 51.711(b), however, allows for asymmetrical rates if the requesting carrier proves that its transport and termination costs are higher than the incumbent's. Here, the parties agree that their reciprocal compensation rates will be symmetrical. Accordingly, I do not discuss the more complicated bill and keep scenario where rates are asymmetrical.

> Section 252(d)(2)(A((i) provides that to be just and reasonable, reciprocal compensation must "provide for the mutual and reciprocal recovery by each carrier of costs associated with transport and termination." In general, we find that carriers incur costs in terminating traffic that are not *de minimis*, and consequently, bill-and-keep arrangements that lack any provisions for compensation do not provide for recovery of costs. In addition, as long as the cost of terminating traffic is positive, bill-and-keep arrangements are not economically efficient, because they distort carrier's incentives, encouraging them to overuse competing carriers' termination facilities by seeking customers that primarily originate traffic. On the other hand, . . . payments from one carrier to the other can be expected to be offset by payments in the opposite direction when traffic from one network to the other is approximately balanced with the traffic flowing in the opposite direction. In such circumstances, bill-and-keep arrangements may minimize administrative burdens and transaction costs. We find that, in certain circumstances, the advantages of bill-and-keep arrangements outweigh the disadvantages, but no party has convincingly explained to us why, in such circumstances, parties themselves would not agree to bill-and-keep arrangements. We are mindful, however, that negotiations may fail for a variety of reasons. We conclude, therefore, that states may impose bill-and-keep arrangements if traffic is roughly balanced in the two directions . . . .[29]

Q. WHAT ARE THE KEY POINTS IN THAT DISCUSSION FOR AT&T'S POSITION ON BILL AND KEEP?

A. First, the FCC recognizes that the 1996 Act gives AT&T an unqualified right to compensation for its termination costs. Consequently, bill and keep is appropriate only in "certain circumstances," where the savings in "administrative burdens and transaction costs" outweigh the termination charges that AT&T would be foregoing.

Second, the FCC recognizes that bill and keep arrangements are economically inefficient because they distort carriers' incentives by encouraging them to originate more traffic than they terminate.

[29] *Local Competition Order* ¶ 1112.

Third, in those limited circumstances where bill and keep might make economic sense, *i.e.*, where traffic is balanced, so that the savings from the avoidance of administrative burden and transaction costs outweigh the foregone termination compensation, the FCC recognizes that rational carriers would agree to bill and keep.

Q. PLEASE EXPLAIN WHY AT&T IS OPPOSED TO INCLUDING BILL AND KEEP LANGUAGE IN THE ICAS.

A. Sprint and AT&T exchange large volumes of traffic, and in most or all states, AT&T terminates more Sprint traffic (particularly Sprint CMRS traffic) than Sprint terminates AT&T Traffic. As a result, if reciprocal compensation payments are made, AT&T will be the net payee. AT&T believes that the revenue it would lose under a bill and keep regime (revenue to which the 1996 Act clearly entitles AT&T) would significantly outweigh any administrative savings AT&T might enjoy as a result of not having to send reciprocal compensation bills to Sprint or process reciprocal compensation bills from Sprint.

More important, though, AT&T is concerned that if the parties' ICAs – which of course may be adopted by other carriers – allow for bill and keep, carriers will game the system by qualifying for bill and keep (by achieving roughly balanced traffic) and then dumping on AT&T's network large volumes of traffic that AT&T will be obliged to transport and terminate for free.

Q. WHAT ADMINISTRATIVE SAVINGS WOULD AT&T REALIZE FROM A BILL AND KEEP ARRANGEMENT?

A. Almost none. Regardless of whether traffic is billed at reciprocal compensation rates or is subject to bill and keep, the call processing remains the same, including recording and

processing the call usage data. This data is used either for invoicing via the Carrier Access Billing System (CABS) if reciprocal compensation applies, or it is used for monitoring the balance of traffic when a bill and keep arrangement is in effect. Either way, the call data processing and data storage capacity remain the same. Any additional cost to add a reciprocal compensation billing line, including usage and rate information, to an electronic invoice is certainly minimal. That is why I said the revenue AT&T would lose under a bill and keep regime would outweigh any administrative savings AT&T might enjoy.

Q. YOU ALSO MADE THE POINT THAT IF THE ICAS ALLOW FOR BILL AND KEEP, CARRIERS WILL GAME THE SYSTEM BY QUALIFYING FOR BILL AND KEEP AND THEN DUMPING ON AT&T'S NETWORK LARGE VOLUMES OF TRAFFIC THAT AT&T WOULD BE OBLIGED TO TRANSPORT AND TERMINATE FOR FREE. PLEASE EXPLAIN.

A. Assume that the Authority allows bill and keep language in the ICAs, and that as of the Effective Date of the ICAs, traffic is out of balance, so that the parties are paying each other reciprocal compensation. But then, at some point during the term of the ICAs, traffic comes into balance and the parties switch to bill and keep. At that point, Sprint (or a carrier that adopted either Sprint ICA) would have a powerful incentive to maximize the amount of traffic it sends AT&T for termination. As the FCC put it in the passage I quoted above, "bill-and-keep arrangements are not economically efficient, because they distort carrier's incentives, encouraging them to overuse competing carriers' termination facilities by seeking customers that primarily originate traffic."

When the FCC made that observation in 1996, it was eminently sensible, but it was based more on theory than actual experience with reciprocal compensation. Now

that we have 14 years of experience operating under the 1996 Act, the risk of manipulation of the reciprocal compensation system has proven to be all too real.

Q. HOW SO?

A. Just as an example, and as the Authority is no doubt aware, the FCC found in its 2001 *ISP Remand Order* that there was "convincing evidence . . . that at least some carriers have targeted ISPs [Internet Service Providers] as customers merely to take advantage of . . . intercarrier payments" (including offering free service to ISPs and even paying ISPs to be their customers). For that reason, the FCC adopted an intercarrier compensation payment regime for ISP-bound traffic in order "to limit the regulatory arbitrage opportunity presented by ISP-bound traffic."[30]

Here, we are not talking about ISP-bound traffic in particular. The point, though, is that carriers' proven manipulation of the reciprocal compensation system in the context of ISP-bound traffic shows some carriers will go to great lengths to game the intercarrier compensation system for a profit. One form that such manipulation could take would be for a carrier that has a bill and keep arrangement with an ILEC to increase the volume of traffic it sends to the ILEC for termination.

Q. HOW COULD A CARRIER DO THAT?

A. Let's call the carrier that wants to game the system Carrier X. Assume that Carrier X has achieved traffic balance with AT&T (perhaps even by taking measures specifically designed to achieve that balance) and on that basis moves to a bill and keep system as

[30] *See Intercarrier Compensation for ISP-Bound Traffic*, CC Docket Nos. 96-98, Order on Remand and Report and Order, 16 FCC Rcd 9151 at ¶ 2 ("*ISP Remand Order*"), *remanded but not vacated by WorldCom, Inc. v. FCC*, 288 F.3d 429, 432 (D.C. Cir. 2002).

permitted by the Carrier X/AT&T ICA. Once it is on bill and keep, Carrier X could arrange to aggregate local traffic that originates on third party networks and deliver that traffic to the ILEC as if it were Carrier X's traffic. If Carrier X charges those third party originating carriers a rate that is one half of the ILEC's transport and termination rate, the third party originating carriers would cut their termination bills in half, and Carrier X would obtain revenue from the originating carrier.

Q. BUT IF THAT HAPPENED, WOULDN'T THE TRAFFIC EXCHANGED BETWEEN CARRIER X AND AT&T GO OUT OF BALANCE, SO THAT BILL AND KEEP WOULD NO LONGER APPLY?

A. Under Sprint's proposal, apparently not – because Sprint's language includes no mechanism for changing from bill and keep to payment of reciprocal compensation if traffic goes out of balance. Under AT&T's language, the answer is yes in theory, because AT&T's language – which AT&T asks the Authority to consider only if it rejects AT&T's principal position that there should be no bill and keep language in the ICAs – provides that if bill and keep kicks in it will remain in effect only "so long as qualifying traffic between the parties remains in balance."

As a practical matter, however, there is no telling how long it would take to convert from bill and keep to a system of payments. Certainly, it would not happen instantaneously, and an arbitrageur would surely bank on continuing to operate under a bill and keep arrangement for several months, at a minimum, even after traffic went out of balance.

Q. ARE YOU SUGGESTING THAT SPRINT, IN PARTICULAR, WOULD ENGAGE IN SUCH ARBITRAGE?

A. Not necessarily – although I can not exclude the possibility. But even if Sprint would not, the ICAs that emerge from this proceeding will be available for adoption by other carriers, and some of them certainly would try to game the system.

Q. YOU ALLOW FOR THE POSSIBILITY, THOUGH, THAT SPRINT WOULD ENGAGE IN SUCH MACHINATIONS?

A. Yes, I do. After all, Sprint's strong push for bill and keep suggests that Sprint is looking for an unfair economic edge. As the FCC noted in the *Local Competition Order*, in those circumstances where it makes true economic sense for bill and keep to apply – balanced traffic with the administrative savings provided by bill and keep outweighing the differential in inter-company payments – rational parties would agree on bill and keep. In addition to the comment to that effect that I quoted above, the FCC also observed, "Carriers have an incentive to agree to bill-and-keep arrangements if it is economically efficient to do so."[31] Furthermore, this Authority has determined, in two different proceedings, that "bill and keep is not an appropriate billing mechanism, unless the parties through their individual negotiations agree on the use of bill and keep."[32] Sprint's unilateral insistence of bill and keep is inappropriate in the absence of mutual agreement by the parties, or a specific showing that traffic is – and will remain – in balance.

Here we have two sophisticated, rational parties, AT&T and Sprint, in sharp disagreement over bill and keep. Sprint is pushing very hard for it, and AT&T is strongly

[31] *Local Competition Order*, ¶ 1113.

[32] Second and Final Order of Arbitration Awards, *Re: AT&T Communications of the South Central States, Inc.*, Docket Nos. 96-01152 & 96-01271, 1997 WL 78443 (Tenn. R. A.), January 23, 1997; and Final Order of Arbitration Awards, *Re: MCI Telecommunications Corporation*, Docket No. 96-01271, 1997 WL 182585 (Tenn. R.A.), March 7, 1997.

opposed. There is only one plausible explanation for this disagreement: Sprint believes it will profit from a bill and keep arrangement – and not just because Sprint will save some administrative expense – and AT&T believes bill and keep would cost it money. Based on their positions, the obvious inference is that both parties expect Sprint to send more Section 251(b)(5) Traffic to AT&T than it receives from AT&T, and that will make Sprint a net payor – as it should be – under a paying reciprocal compensation arrangement. Sprint is already trying to game the system by advocating a bill and keep arrangement that will spare it from fully compensating AT&T for its costs.

Q. DO YOU HAVE ANY SUPPORT FOR THAT VIEW?

A. Yes, I do. Sprint proposes that traffic be regarded as roughly balanced, so that bill and keep would apply, if the traffic the parties exchange is in a ratio of 60%/40% – in other words, even if AT&T is terminating 50% more traffic than Sprint. As I further discuss below, that is a very large imbalance to call "roughly balanced," and the fact that Sprint is proposing it tells me – and should also tell the Authority – that what Sprint is shooting for is an economic windfall, *i.e.* avoidance of reciprocal compensation payments even if Sprint is sending AT&T a great deal more traffic than AT&T is sending Sprint.

Q. WHAT IS YOUR CONCLUSION ON DPL ISSUE III.A.1(4)?

A. As the FCC has recognized, the one thing to be said in favor of bill and keep is that it *may* save some administrative expense. The downsides far outweigh that upside. Even if no one tries to game the system, bill and keep creates a significant likelihood that the party that terminates more traffic will not be fully compensated for its termination costs, even after taking into account saved administrative expense (if any). In addition, bill and

keep is an invitation to arbitrage. The parties should simply pay each other reciprocal compensation, and their ICAs should include no bill and keep alternative.

Q. IF THE AUTHORITY IS NOT FULLY PERSUADED OF AT&T'S POSITION, IS THERE AN ALTERNATIVE APPROACH THAT WOULD BE REASONABLE?

A. Yes: Require Sprint to prove that if the parties' traffic is roughly balanced, going to bill and keep would actually result in administrative savings that exceed the reciprocal compensation differential that the parties would otherwise be paying each other. As the advocate of bill and keep, Sprint should bear the burden of proving that this case presents that set of "certain circumstances" that the FCC said justify bill and keep. To carry that burden, Sprint should have to show, on the facts of this case, that this is one of those instances where, in the FCC's words, "the advantages of bill-and-keep arrangements outweigh the disadvantages."

Q. HOW WOULD SPRINT DO THAT?

A. Sprint should come up with its own methodology. Basically, though, unless Sprint proves that it is terminating more traffic for AT&T than AT&T is terminating for Sprint, Sprint would need to compare the dollar amount of the revenue loss that AT&T would incur as a result of bill and keep with the dollar amount of the administrative expense saved as a result of bill and keep, and would need to show that the latter amount exceeds the former.

Q. ASSUME FOR THE SAKE OF DISCUSSION THAT THE AUTHORITY FINDS THAT THE PARTIES' ICAS SHOULD PROVIDE FOR A BILL AND KEEP ALTERNATIVE. SHOULD THE AUTHORITY APPROVE THE LANGUAGE PROPOSED BY SPRINT?

A. No. Sprint's proposed language for bill and keep is unreasonable. Therefore, even though AT&T opposes inclusion of any bill and keep language in the ICAs, AT&T has proposed language that should be adopted in preference to Sprint's if the Authority decides that some bill and keep language must be included.

Q. SO THIS TAKES US TO DPL ISSUE III.A.1(5): "IF SO, WHAT TERMS AND CONDITIONS SHOULD GOVERN THE CONVERSION OF SUCH TRAFFIC TO BILL AND KEEP"?

A. Yes. And the competing language proposals, which appear on the DPL Language Exhibit, are Sprint's proposed section 6.3.7 and AT&T's proposed sections 6.3.7 (for the CMRS ICA) and 6.6 (for the CLEC ICA).

Q. WHAT IS UNREASONABLE ABOUT SPRINT'S PROPOSED LANGUAGE, AND WHY IS AT&T'S LANGUAGE SUPERIOR?

A. Sprint's proposed language is defective in three important ways – all of which are cured by AT&T's language. Specifically:

1. Sprint's proposal treats traffic as in balance, and therefore subject to bill and keep, if it the exchanged traffic "reaches or falls between 60%/40% . . . for at least three (3) consecutive months." That is far too great a disparity to be considered in balance. Under AT&T's language, bill and keep would go into effect if "qualifying traffic between the parties has been within +/-5% of equilibrium (50%) for 3 consecutive months."

2. Under Sprint's language once the parties enter a bill and keep regime, they stay in it for the duration of the contract, even if their traffic goes out of balance. That is unreasonable. Indeed, it would violate the 1996 Act, because it would mean that AT&T would not be compensated for its termination charges as the 1996 Act requires.

Certainly, such an arrangement would provide Sprint (or any party opting into the ICA) a green light to use the provision to engage in the arbitrage opportunities I described above. Under AT&T's language, in contrast, if the parties are on bill and keep and their traffic goes out of balance for three consecutive months, they revert to paying reciprocal compensation. *See* AT&T sections 6.3.7.3 (CMRS) and 6.6.4 (CLEC).

3. Sprint's proposed language states that as of the Effective Date of the ICAs, the parties acknowledge that the traffic they are exchanging is in balance, so that bill and keep will apply. In reality, AT&T makes no such acknowledgment. If Sprint wants bill and keep, Sprint should be required to prove that the parties' traffic is in balance.

Q. PLEASE ELABORATE ON THE FIRST POINT – SPRINT'S PROPOSED 60%/40% VS. AT&T'S PROPOSED 55%/45%.

A. Recall that FCC Rule 713(b) provides:

> A state commission may impose bill-and-keep arrangements if the state commission determines that the amount of telecommunications traffic from one network to the other is roughly balanced with the amount of telecommunications traffic flowing in the opposite direction, and is expected to remain so . . . .

When the FCC promulgated that rule in 1996, it did not specify when traffic is "roughly balanced." Instead, it "conclude[d] that states may adopt specific thresholds for determining when traffic is roughly balanced."[33] This Authority has not promulgated such a threshold. The overwhelming weight of authority among the state commissions that have addressed the question, however, is that to be roughly in balance for purposes

[33] *Local Competition Order*, ¶ 1113.

of Rule 51.713(b), traffic volumes cannot depart from equilibrium by more than +/- 5% – in other words, the cut-off line is 55%/45%. For example:

> Ohio: "The parties have . . . proposed two different thresholds for determining whether local traffic exchanged between the two parties is balanced. Sprint has proposed a 60 percent to 40 percent range while Chillicothe has proposed a 55 percent to 45 percent range. . . . [T]he Commission finds it unreasonable that one party would have to terminate in excess of 50% more of the local traffic exchanged between the two parties than the other party before the traffic is considered imbalanced. The Commission, therefore, finds that Chillicothe's threshold is more reasonable and should be used . . . ."[34]

> Texas: "The Commission finds the threshold SBC Texas has proposed, where traffic is considered to be out-of-balance when the amount of traffic exchanged between the parties exceeds +/-5% away from equilibrium for three consecutive months, is reasonable . . . . The Commission finds that the out-of-balance threshold of +/-15% proposed by the CLEC Coalition would not ensure that traffic is roughly in balance, as required by the FCC."[35]

> Florida: "[The] recommendation that 'roughly balanced' be defined as occurring when originating and terminating local traffic flows between two carriers are within 10 percent appears to be reasonable . . . . [W]e find roughly balanced to mean traffic imbalance is less than 10 percent between parties in any three-month period."[36]

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[34] Arbitration Award, *Petition of Sprint Commc'ns Co. for Arbitration of Interconnection Rates, Terms, and Conditions and Related Arrangements with The Chillicothe Tel. Co.*, Case No. 06-1257-TP-ARB, 2007 Ohio PUC LEXIS 279, at *4 (Ohio Pub. Utils. Comm'n Apr. 11, 2007).

[35] Arbitration Award – Track I Issues, *Arbitration of Non-Costing Issues for Successor Interconnection Agreements to the Texas 271 Agreements*, Docket No. 28821, at 24-25 (Tex. Pub. Util. Comm'n Feb. 23, 2003) (Attachment 6 hereto).

[36] Order on Reciprocal Compensation, *Investigation into Appropriate Methods to Compensate Carriers for Exchange of Traffic Subject to Section 251 of the Telecommunications Act of 1996*, Docket No. 000075-TP, 2002 Fla. PUC LEXIS 748, at *99, 110 (Fla. Pub. Serv. Comm'n Sept. 10, 2002). In another proceeding, Sprint suggested that the reference to 10% could mean a 60%/40% threshold. Plainly, though – as both quoted sentences show – 10% refers to the *difference between* the parties' traffic, i.e., 55%/45%.

> Kansas: The Commission approved an SBC Kansas proposal that, "To be in balance, the traffic exchanged between two carriers must be within 5 percent of equilibrium."[37]

These decisions reflect simple common sense. As the Ohio commission pointed out, if traffic is at 60%/40%, that means one carrier is terminating 50% more traffic than the other – for example, for every 4,000,000 minutes of traffic that Sprint is terminating for AT&T, AT&T is terminating 6,000,000 minutes of traffic for Sprint. Sprint's view that this is rough balance is absurd. Indeed, it demonstrates that what Sprint is seeking here is not an economically rational bill and keep system that (as the 1996 Act requires) ensures that each carrier is compensated for its termination costs and that does away with billing only because the saving in administrative expense outweighs the payment differential. Rather, Sprint is seeking an unfair and unwarranted economic advantage.

Q. PLEASE ELABORATE ON YOUR SECOND POINT – THE FACT THAT SPRINT'S LANGUAGE DOES NOT PROVIDE FOR A RETURN TO BILLING AND PAYING RECIPROCAL COMPENSATION IF THE PARTIES CONVERT TO BILL AND KEEP AND TRAFFIC THEN GOES OUT OF BALANCE.

A. I would like to think that this is an oversight on Sprint's part, but I fear it is not. The omission creates exactly the arbitrage scenario I described above. If Sprint's language were adopted, Sprint (or a carrier adopting Sprint's ICA) could, through calculated routing of traffic, qualify for bill and keep and then arrange to deliver increased volumes

[37] Arbitrator's Determination in Phase II on Interconnection, Subloop and 911 Issues, *Petition of CLEC Coalition for Arbitration against Southwestern Bell Tel. under Section 252(b)(1) of the Telecommunications Act of 1996*, Docket Nos. 05-BTKT-365-ARB et al., 2005 Kan. PUC LEXIS 689, at ¶ 46 (Kan. Corp. Comm'n June 6, 2005). No party took exception to the Arbitrator's resolution of the issue, and the Commission affirmed it. Order No. 16, Commission Order on Phase II Intercarrier Compensation, Subloop and 911 Issues, Docket Nos. 05-BTKT-365-ARB *et al.*, (Kan. Corp. Comm'n July 18, 2005).

of traffic to AT&T for termination on AT&T's network – for free. And AT&T could do nothing about it, because once the parties are on bill and keep under Sprint's language, there is no way out without Sprint's agreement, which it would have no incentive to give.

Q. BUT DOESN'T AT&T'S LANGUAGE SUFFER FROM A SIMILAR DEFECT, IN THAT ONCE THE PARTIES GO OFF BILL AND KEEP, THEY COULD NOT RETURN TO IT?

A. AT&T's language assumes that as of the Effective Date of the ICAs, the parties will be paying each other reciprocal compensation, because AT&T does not believe Sprint will establish in this proceeding that traffic is currently balanced. AT&T's language provides for the parties to switch to bill and keep if traffic goes in balance and stays in balance for three months, and it then provides that if traffic goes out of balance for three consecutive months, reciprocal compensation payments will resume. It is true that AT&T's language does not provide for the parties to then return to bill and keep a second time, but that is not a defect. Rather, if a carrier's traffic is going in and out of balance then this in itself is proof that the carrier should not qualify for bill and keep – period. Carriers that get bill and keep should not get it on an interim basis, but should be able to demonstrate that traffic is in balance and consistently so. In other words, the presumption is that if a carrier's traffic is in and out of balance that the carrier should not qualify for bill and keep. As FCC Rule 713(b) provides, "the amount of telecommunications traffic from one network to the other is roughly balanced with the amount of telecommunications traffic flowing in the opposite direction, and is *expected to remain so*." AT&T's language already provides sufficient wiggle room for Sprint to re-gain a balance of traffic by requiring that 3 months in a row be out of balance before returning to reciprocal

compensation. Such fluctuations in traffic do not merit a conclusion that the traffic is "roughly balanced" and "is expected to remain so", and bill and keep should therefore not apply.

Q. YOUR THIRD POINT WAS THAT THE PARTIES' TRAFFIC IS NOT IN BALANCE AS OF THE EFFECTIVE DATE OF THE ICA, AS SPRINT'S LANGUAGE STATES?

A. I would prefer to keep the burden where it should be by saying that Sprint must show that the traffic is in balance – or will be in balance as of the Effective Date – and I believe Sprint cannot do so.

Q. BUT DOESN'T THE FCC'S RECIPROCAL COMPENSATION RULE SAY THAT THE AUTHORITY CAN PRESUME TRAFFIC IS BALANCED?

A. Yes. FCC Rule 51.713(c) provides, "Nothing in this section precludes a state commission from presuming that the amount of telecommunications traffic from one network to the other is roughly balanced with the amount of telecommunications traffic flowing in the opposite direction and is expected to remain so, unless a party rebuts such a presumption."

Q. IS THERE ANY REASON THAT SUCH A PRESUMPTION SHOULD NOT BE MADE?

A. I will note three reasons. First, for the reasons I have discussed – especially including the risk of under-compensation and arbitrage – state commissions should, at a bare minimum, be wary of bill and keep. If the Authority decides, as AT&T urges, that the ICA should include no bill and keep language, it will not have occasion to reach the question whether traffic is balanced. But if the Authority decides to make some provision for bill and keep, it should ensure that bill and keep applies only when it demonstrably makes economic

sense. And one part of that would be clear proof that traffic is balanced – not some presumption.

Second, it would be a mistake to presume that the traffic AT&T exchanges with Sprint CMRS is roughly balanced. Historically – and this is a matter of common knowledge – people make more calls from their cell phones than they receive on their cell phones. As a result, incumbent carriers have historically terminated much more CMRS traffic than CMRS providers have terminated ILEC-originated traffic. The disparity used to be in the 70%/30% range. The gap is narrowing, but it still exists. A presumption of balance in the CMRS world would be absolutely without basis.

Third, the proven tendency of carriers to game the reciprocal compensation system is another reason not to presume that traffic is balanced. When the FCC stated in 1996 that state commissions were not precluded from making the presumption, one might reasonably have imagined that, at least in theory, the volumes of traffic exchanged between two landline carriers would, by and large, be roughly equal. There was no compelling reason to believe otherwise. Now that we know, however, that carriers manipulate traffic in order to profit from a system that is merely supposed to compensate the terminating carrier for its costs, the more plausible presumption is that traffic between two carriers is not balanced.

Q. PLEASE SUMMARIZE AT&T'S POSITION ON DPL ISSUES III.A.1(4) AND III.A.1(5).

A. The 1996 Act expressly and reasonably provides that terminating carriers are entitled to recover, in the form of reciprocal compensation, the costs they incur for transporting and

terminating other carriers' traffic. The statute also states, however, that that requirement shall not be construed to preclude bill and keep.

In keeping with the statute, the FCC established a rule that permits state commissions to impose bill and keep if traffic is roughly balanced. At the same time, though, the FCC recognized that the benefits of bill and keep are limited; that bill and keep is economically inefficient; and that in those limited circumstances where bill and keep does make economic sense, parties can be expected to agree to it voluntarily.

AT&T is not willing to agree to bill and keep voluntarily, because it believes bill and keep will deprive it of the recovery of termination costs to which it is entitled and that any administrative benefit will be substantially outweighed by that loss. AT&T is also legitimately concerned that a bill and keep arrangement would promote arbitrage that would harm AT&T and disserve the purposes of the 1996 Act. AT&T therefore urges the Authority to rule that the parties' ICAs should not provide for bill and keep under any circumstances.

If the Authority overrules AT&T's objection and decides that bill and keep language must be included in the ICAs, it should adopt AT&T's language rather than Sprint's, which is unreasonable for the reasons I have discussed.

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. WHAT IS AT ISSUE?

A. The parties disagree as to how Foreign Exchange ("FX") traffic should be treated under this ICA. FX traffic is not subject to reciprocal compensation under Section 251(b)(5) of the 1996 Act, and AT&T therefore proposes ICA language that excludes FX traffic from reciprocal compensation. Sprint, on the other hand, does not differentiate FX traffic from other "Authorized Service" traffic and so would improperly subject FX traffic to the same reciprocal compensation treatment as Section 251(b)(5) Traffic.

Q. WHAT IS FX TRAFFIC?

A. FX is the industry term for locally-dialed calls that originate in one local exchange and terminate to another local exchange. An FX call therefore travels to an exchange that is not local, called "foreign," to the originating exchange. Imagine that Mary's Pizzeria business telephone number has a virtual presence in John's local calling area by having a telephone number that is from the same rate center as John's telephone number, even though Mary's Pizzeria is physically located in a different local calling area. Therefore, when John calls Mary's Pizzeria, John is simply dialing a local telephone number**.** The key is that FX traffic is dialed by the originating caller as a local telephone number, and thus the dialing end user does not incur any toll charges for placing the call.

Q. HOW DOES AT&T PROVIDE FX SERVICE?

A. AT&T offers FX service through its retail tariff, basically charging the recipient of the FX call a discounted, flat and usage sensitive combination rate for the toll charges that would have applied if the call had been placed as an ordinary toll call. AT&T provisions its FX service via a dedicated circuit from the end office where the customer's NPA-NXX is assigned to the end user's premises, which are outside the service area of the end

office to which the NPA-NXX is assigned. Therefore, when another party calls that end user's telephone number, the call is routed to the proper resident end office switch, and from there the call is diverted over the dedicated circuit to the end user's remote location.

Q. HOW DO CLECS TYPICALLY PROVIDE FX SERVICE?

A. CLECs could establish competing FX service in the same manner as AT&T, by building dedicated circuits to deliver dial tone outside the local calling scope. Instead, however, CLECs typically create an "'FX-type"' arrangement by reassigning the telephone number to a switch that is different than the "home" central office switch where that NPA-NXX is assigned as a local number. The assignment of NPA-NXX codes is governed by the North American Numbering Code Administrator.[38] The CLEC tells the Code Administrator where it wishes to obtain numbers, and the Code Administrator goes to its database of available numbers for that location and makes the appropriate NPA-NXX assignment. To provide FX service, the CLEC takes the assigned NPA-NXX code and deploys it in a switch miles away from the geographic location to which it applies.

Q. WHAT IS THE PURPOSE OF CLECS' "FX-LIKE" SERVICE FROM THE POINT OF VIEW OF THE END USER THAT BUYS THE SERVICE?

A. The end result of CLECs' FX-type service and AT&T's dedicated circuit FX service is the same: it allows an end user customer to be assigned a telephone number and to receive calls as if he or she was located in a given exchange, regardless of the physical location of that customer. From the point of view of the end user that obtains the service,

[38] The North American Numbering Code Administrator is currently Neustar Technologies, working under a governmental grant of authority from the North American Numbering Council, comprised of the U.S., Canadian, Caribbean and Mexican telecommunications regulatory agencies.

the objective is to enable callers to make what would otherwise be a toll call as if it were a local call – with no toll charge – typically, in order to induce potential callers to call.

Q. WHY ARE FX AND FX-LIKE CALLS NOT SUBJECT TO RECIPROCAL COMPENSATION?

A. Because the determinant of whether a call is or is not subject to reciprocal compensation is the actual geographic location of the calling party and the called party. An FX or FX-like call "appears" local to the network, because the called party has been assigned a phone number that theoretically belongs to the exchange area in which the calling party is located, but the call in fact crosses an exchange boundary and therefore is not subject to reciprocal compensation.

The Code of Federal Regulations, 47 CFR 51.701(a), makes clear what traffic is subject to reciprocal compensation: "telecommunications traffic exchanged between a LEC and a telecommunications carrier other than a CMRS provider, except for telecommunications traffic that is interstate or intrastate exchange access, information access, or exchange services for such access." As discussed above, FX service provides the same functionality as an intraLATA toll call, but without the calling party paying the retail toll charges associated with it. Therefore, FX traffic is intraLATA intrastate access as it allows a caller located in one local exchange to reach an end user in a different local exchange.

Q. WHAT MIGHT BE THE CONSEQUENCES IF CALLS MADE TO SUBSCRIBERS TO A CLEC'S FX-LIKE SERVICE WERE MADE SUBJECT TO RECIPROCAL COMPENSATION?

A. The CLEC could use FX-like service to generate artificially high intercarrier reciprocal compensation revenues from the originating network (AT&T's) without having to charge

the CLEC subscriber for the benefits of the FX-like service. This would create precisely the type of arbitrage and imbalanced competition that the FCC and some state commissions have sought to avoid in the regulations surrounding intercarrier compensation.

Q. IF FX CALLS ARE INTRASTATE ACCESS, WHY DOES AT&T PROPOSE BILL AND KEEP INSTEAD OF THE APPROPRIATE SWITCHED ACCESS CHARGES?

A. AT&T's proposal for bill and keep is actually a compromise for the parties. While I have explained why it is inappropriate for a CLEC to charge AT&T reciprocal compensation for FX traffic, AT&T also understands how FX services are commonly used by CLECs. That is, CLECs often provision FX telephone numbers for dial-up ISPs.[39] FX telephone numbers allow for an ISP's end users throughout a specific LATA to make a local call to the ISP, which is typically located at only one location in the LATA. AT&T recognizes that applying switched access charges to a CLEC for FX traffic would likely result in those charges being passed on to ISP dial-up end users as toll charges. Applying toll charges to customers dialing their ISP would not be in the best interest of making internet access affordable to end users in areas beyond the ISP's physical location. Bill and keep for FX traffic therefore does not inappropriately compensate a CLEC, as reciprocal compensation would, nor does bill and keep harm those dial-up ISP end users that benefit from FX services.

Q. IS AT&T ATTEMPTING TO DICTATE SPRINT'S LOCAL CALLING AREAS?

[39] Though dial-up internet service is not as common as it was a few years ago, it still exists. AT&T's advocates bill and keep here the same as it has in other states.

A. No. Each local exchange carrier has the ability to define its own local calling areas for purposes of its retail calling plans, and AT&T's proposed contract language so provides under Attachment 3 section 6.1.5. AT&T does not dispute Sprint's right to assign NPA-NXX codes associated with one local calling area to subscribers that physically reside in another local calling area. AT&T's concern is not the assignment of such numbers or the service provided by Sprint to its customers. Rather, it is the appropriate intercarrier compensation associated with the delivery of calls to those customers. Calls that appear to be local because of the NPA-NXX assigned, but that are terminating to customers physically located outside of the originating party's local calling area, should not be classified as local calls subject to local reciprocal compensation.

Q. DOES AT&T'S PROPOSED BILL AND KEEP REGIME FOR FX AND FX-LIKE SERVICES EXTEND TO ISP-BOUND FX TRAFFIC?

A. Yes. Bill and keep is the appropriate mechanism for both voice and ISP-Bound FX traffic. As I previously discussed, ISP-Bound traffic is appropriately limited to ISP calls that originate and terminate to an ISP physically located within the same local mandatory calling area. As ISP-Bound FX calls travel beyond the local mandatory calling area, they are subject to the same bill and keep regime as voice FX calls.

Q. IS IT APPROPRIATE TO INCLUDE TERMS IN THE ICA TO SEGREGATE AND TRACK FX TRAFFIC?

A. Yes. Because FX Traffic is a distinct category of traffic subject to a different compensation mechanism than other categories of traffic, it is necessary for the parties to be able to identify the FX traffic each terminates to its respective end users. AT&T has

also proposed audit terms in order to ensure accurate application of the FX factor to intercarrier compensation billings.

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. SHOULD ATTACHMENT 3 CONTAIN TERMS AND CONDITIONS FOR SWITCHED ACCESS SERVICE TRAFFIC?

A. Yes. Switched access service involves traffic destined either to an interexchange carrier ("IXC") or traffic from an IXC. It is appropriate to address this category of traffic in the ICA in order to ensure its proper routing and compensation.[40]

Q. HOW SHOULD COMPENSATION FOR SWITCHED ACCESS TRAFFIC BE ADDRESSED?

A. The ICA should be clear and concise as to what traffic falls under switched access compensation, and what traffic does not. AT&T's proposed language in Attachment 3 section 6.9 provides a clear and inclusive statement: "**N**either Party shall represent switched access services traffic (e.g. FGA, FGB, FGD) as **Section 251(b)(5) Traffic** for purposes of payment of reciprocal compensation." The provision is clear that switched access service traffic is not subject to the same reciprocal compensation rate as Section 251(b)(5) and ISP-Bound traffic. AT&T's proposed sections 6.4.1 and 6.23.1 of the

[40] AT&T witness Mark Neinast addresses appropriate trunking of Switched Access Services traffic under Issue II.F.

same attachment provide that switched access traffic is subject to applicable intrastate or interstate switched access charges as set forth in each Party's access tariffs, but not to exceed AT&T's access tariff rates. In addition, Attachment 3, sections 6.23.1.1 through 6.23.1.4 provide specific categories of switched access traffic not subject to these provisions: IntraLATA Toll traffic that is exchanged directly between Sprint and AT&T with no third-party IXC; switched access traffic delivered to AT&T from an IXC where the terminating number is ported to another CLEC and the IXC fails to perform a Local Number Portability ("LNP") query; and switched access traffic delivered to either Sprint or AT&T from a third party CLEC over interconnection trunk groups destined to the other Party.

Q. DOES SPRINT PROPOSE COMPETING LANGUAGE ADDRESSING TERMS AND CONDITIONS FOR SWITCHED ACCESS TRAFFIC?

A. No. Sprint's language addressing the treatment of switched access traffic is minimal, vague and somewhat circular. Sprint's proposed Attachment 3, section 6.9 states "***Except to the extent permitted by law, n***either Party shall represent switched access services traffic (e.g. FGA, FGB, FGD) as ***traffic*** for purposes of payment of reciprocal compensation." As with its definition of "Authorized Services," Sprint relies upon overly general descriptions for categorizing all of its intercarrier traffic – that is, traffic as "permitted by law." Furthermore, Sprint's language includes no provisions whatsoever governing how the parties will route, record or bill for switched access traffic. Without specific terms in the ICA categorizing the various types of traffic that will be exchanged between the parties, Sprint's proposed language is a recipe for disputes. An ICA is the

means by which the parties should specify precisely what types of traffic are "permitted by law" and the appropriate compensation mechanisms for each of those lawful traffic types. To go through the process of negotiating – and arbitrating – contract provisions in order to provide certainty between the parties for a set period of time, yet to ultimately end up with vague generalizations such as Sprint's proposed traffic "type" or "types" is to not complete the task at hand. The purpose of ICA language is to provide specific guidance for terms and conditions of their interconnection arrangement, so that each Party can operate efficiently and without undue disputes. Sprint's language provides none of the certainty that is reasonably expected in an ICA.

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. IS IT APPROPRIATE FOR THE ICA TO CONTAIN CLEAR TERMS FOR THE TREATMENT OF TELEPHONE TOLL SERVICE – OR INTRALATA TOLL TRAFFIC?

A. Yes. As with other categories of traffic, AT&T proposes language that makes clear how intraLATA toll traffic, both intrastate and interstate, is defined and billed. AT&T's proposed language also provides appropriate terms governing Primary Toll Carrier Arrangements, and the exchange of intraLATA 8YY traffic, including appropriate recording and billing provisions, which Sprint's language does not.

Q. HOW DOES AT&T DEFINE TELEPHONE TOLL SERVICE TRAFFIC?

A. Though both parties appear to agree that Telephone Toll Service traffic should be defined in the ICA under Attachment 3, section 6.16.1, the parties disagree what that definition should be. 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 different local or mandatory local calling areas. In other words, the call is intraLATA and interexchange, and is therefore not subject to reciprocal compensation. The parties have agreed in Attachment 3, section 6.16.2 that appropriate intrastate or interstate[41] tariffed switched access rates will apply.

Q. DOES SPRINT AGREE WITH AT&T'S PROPOSED DEFINITION FOR TELEPHONE TOLL SERVICE?

A. No. Sprint objects to defining an intraLATA toll call based upon the location of the calling and called end users. Instead, Sprint proposes in section 6.16.1 that an intraLATA toll call is any call within a LATA that "results in Telephone Toll Service charges being billed to the originating end user by the originating Party."

Q. WHY IS AT&T'S DEFINITION MORE APPROPRIATE?

A. First, AT&T's proposed language follows the basic tenet of determining and applying intercarrier compensation based upon the jurisdiction of the call. Intercarrier compensation is a *wholesale* mechanism that is applied to *traffic exchanged between two carriers*, not to traffic exchanged between two retail end users. Sprint's proposed

[41] Though not common, there are LATAs that cross state boundaries, via FCC-approved LATA boundary waivers, making it possible to have an *intraLATA interstate* call.

definition ignores this premise and attempts to apply a *retail* arrangement to wholesale compensation.

Second, if the parties were to bill based upon Sprint's proposal, charges would apply only when the originating carrier charged its retail customer a toll charge, and the terminating carrier would not always know if intraLATA toll charges were applicable on a specific call, and would therefore 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. Further complicating Sprint's proposal, many carriers today offer wireline services in either "buckets of minutes" or on an unlimited basis at one flat charge for local and long distance calling. Sprint could potentially argue that it does not apply a "Telephone Toll Service" charge upon *any* long distance calls its retail customers make, and therefore avoid paying any compensation whatsoever for this traffic.

Q. DOES SPRINT'S PROPOSED LANGUAGE ADDRESS PRIMARY TOLL CARRIER ("PTC") ARRANGEMENTS??

A. No, it does not. In states where PTC arrangements are mandated by the commission, such as Tennessee, terms and conditions must provide for the treatment of this traffic between AT&T and Sprint. Section 6.18 describes the service, the relationship between AT&T and third party ILEC end users, as well as the provisions applicable to intraLATA toll traffic subject to the arrangement. Included are terms for compensation between AT&T and Sprint when AT&T is acting as a PTC.

Q. SHOULD THE ICA INCLUDE TERMS DETAILING APPROPRIATE RECORDS TO BE EXCHANGED FOR 8XX TRAFFIC?

A. Yes. Sprint's proposed language states that Each Party will provide to the other the appropriate "records necessary for billing intraLATA 8XX customers." While this statement is generally accurate, it is deficient in that it does not identify what those records necessary for billing actually are. In contrast, AT&T proposes detailed language specifying the parties provide to each other IntraLATA 800 Access Detail Usage Data for Customer billing and IntraLATA 800 Copy Detail Usage Data for access billing in Exchange Message Interface ("EMI") format in order to ensure complete and consistent billing data exchanged between AT&T and Sprint. Also, where technically feasible, each Party should provide to the other appropriate records in accordance with industry standards for billing intraLATA 8XX customers. AT&T's proposal reflects these obligations and points to AT&T's intrastate or interstate switched access tariffs for applicable intercarrier compensation rates for the exchange of this traffic.

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

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. HAVE THE PARTIES AGREED UPON A DEFINITION FOR INTERCONNECTED VOICE OVER INTERNET PROTOCOL ("VOIP") SERVICE?

A. Yes. The parties agree that Interconnected VoIP Service shall have the same meaning as in 47 C.F.R. §9.3:

> An interconnected Voice over Internet protocol (VoIP) service is a service that:
>
> (1) Enables real-time, two-way voice communications;
> (2) Requires a broadband connection from the user's location;
> (3) Requires Internet protocol-compatible customer premises equipment (CPE); and
> (4) Permits users generally to receive calls that originate on the public switched telephone network and to terminate calls to the public switched telephone network.

Q. IS INTERCONNECTED VOIP SERVICE TRAFFIC ALSO REFERRED TO AS INTERNET PROTOCOL ("IP") – PUBLIC SWITCHED TELEPHONE NETWORK ("PSTN") TRAFFIC?

A. Yes. IP-PSTN traffic is traffic that originates from the end user's premises in IP format and is transmitted in IP format to the switch of its service provider. The service provider then converts that traffic to circuit-switched format and delivers that traffic (either by itself or by partnering with other service providers) to a LEC on the PSTN for termination over that carrier's circuit-switched network. Stated another way, one end of the call is on an IP network and the other end of the call is on the PSTN.

Q. WHAT IS PSTN-IP-PSTN TRAFFIC?

A. PSTN-IP-PSTN Traffic (also known as "IP-in-the-middle" traffic) is traffic that: 1) originates over a LEC's circuit-switched network; 2) is delivered to an IXC that converts the traffic to IP format, transports that traffic across its network, and reconverts the traffic to the circuit-switched format; and 3) is delivered by the IXC (either by itself or by partnering with other service providers) to a different exchange for termination over a LEC's circuit-switched network. Traffic transmitted in this manner does not undergo any

net protocol change – it both begins and ends in circuit-switched format. This use of IP technology is entirely transparent to the end user and does not enhance or change the content of the communications traffic in question or make the interexchange service any more functional or flexible to the end user. Indeed, the interexchange services that use IP technology in the transport component of the call are marketed, sold, and priced no differently than interexchange services that do not employ IP technology.

Q. FOR PURPOSES OF THIS ICA, DOES IT MATTER WHETHER OR NOT THE FCC HAS MADE A DETERMINATION WHETHER INTERCONNECTED VOIP SERVICE TRAFFIC IS TELECOMMUNICATIONS OR AN INFORMATION SERVICE?

A. No, it does not. First, under GTC Part A, section 1.2 the parties have agreed that "[t]his Agreement may be used by either Party to exchange Telecommunications Service or Information Service." So by agreement, both are already included under the terms of the ICA. Second, the relevant provision in section 1.3 of GTC Part A is that the parties have agreed to exchange Interconnected VoIP Services ("VoIP") traffic under the terms of this ICA. Sprint's proposed editorial statement "***The FCC has yet to determine whether Interconnected VoIP service is Telecommunications Service or Information Service"*** does not provide any contractual guidance for the parties to operate under the ICA. Sprint even acknowledges that the statement has no bearing on the terms of the ICA, as Sprint's very next sentence states "***Notwithstanding the foregoing, t***his Agreement may be used by ***either Party*** to exchange Interconnected VoIP Service traffic." Sprint's proposed sentence in section 1.3 regarding the FCC's lack of a determination on VoIP

traffic has no bearing on the operational terms and conditions for the exchange of VoIP traffic in the ICAs and should therefore not be included in the ICA.

Q. WHAT DOES AT&T PROPOSE FOR CLEC SECTION 1.3?

A. AT&T proposes that CLEC GTC Part A, section 1.3 read "Interconnected VoIP Service. This Agreement may be used by either Party to exchange Interconnected VoIP Service traffic." The parties have agreed on this language.

Q. WHAT DOES AT&T PROPOSE FOR CMRS SECTION 1.3?

A. AT&T has proposed that section 1.3 of the CMRS ICA read "**T**his Agreement may be used by **AT&T** to exchange Interconnected VoIP Service traffic **to Sprint**."

Q. WHY DOES AT&T PROPOSE DIFFERENT LANGUAGE FOR THE WIRELESS ICA THAN WHAT'S AGREED UPON IN THE CLEC ICA?

A. Because the ICA is between AT&T, an ILEC and Sprint, a CMRS carrier. It appropriately addresses only CMRS traffic, either land to mobile or mobile to land, that is exchanged directly between the parties. CMRS traffic, *i.e.* cellular traffic, is not Interconnected VoIP Service traffic and would not be exchanged in the mobile to land direction.

Q. WOULD AT&T HAVE CONCERNS IF SPRINT WERE ALLOWED TO EXCHANGE INTERCONNECTED VOIP SERVICE TRAFFIC IN THE MOBILE TO LAND DIRECTION?

A. Yes. Because Sprint's CMRS entity cannot originate cellular VoIP traffic for exchange with AT&T, such a provision would arguably allow Sprint CMRS to aggregate other carriers' VoIP traffic for termination on AT&T's network.

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)

Section 6.1.3 (AT&T CMRS)

DPL ISSUE III.A.6(2)

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

Contract Reference: Attachment 3, Pricing Sheet (Sprint)

Attachment 3 Sections 6.4, 6.4.3 – 6.4.5, 6.23.1 (AT&T CLEC)

Q. PLEASE DESCRIBE THE DISPUTE INVOLVING INTERCONNECTED VOIP TRAFFIC?

A. Though the parties agree – with exception of the CMRS mobile to land direction issue I just discussed – that VoIP traffic will be exchanged between the parties, Sprint proposes that no intercarrier compensation rate applies for this traffic. Sprint justifies its proposal by stating in the DPL that the FCC has not decided what, if any, compensation is applicable, and as such believes such traffic should be exchanged at bill and keep. AT&T seeks to apply intercarrier compensation to VoIP traffic consistent with all other categories of traffic, based not upon the technology of the transmission of the call, but on the jurisdiction of the call based upon the location of the calling and called end users.

Q. IS IT ACCURATE FOR SPRINT TO SAY THE FCC HAS "NOT DECIDED WHAT, IF ANY COMPENSATION IS APPLICABLE"?

A. It is true only from the perspective that the FCC has not decided what, if any *VoIP-specific* compensation is applicable. In other words, the FCC has not come out and said that VoIP traffic *must* be subject to a compensation rate or regime different than PSTN

traffic. Without anything specifying that the parties are to treat VoIP traffic differently than other traffic, it is appropriate to apply current intercarrier compensation terms and conditions to VoIP traffic.

Q. HSA THE FCC SAID ANYTHING THAT SUPPORT'S AT&T'S POSITION IN THIS REGARD?

A. Yes, the FCC has made absolutely clear that until and unless the FCC establishes VoIP-specific intercarrier compensation rules, state commissions arbitrating interconnection agreements are to apply current intercarrier compensation rules – the same rules that apply to all other traffic – to VoIP traffic.

Q. WHEN DID THE FCC SAY THAT?

A. In a decision rendered on October 9, 2009, on a petition brought by a CLEC that asked the FCC to preempt the jurisdiction of a state commission that had abated an arbitration proceeding that involved VoIP issues.[42] The state commission had "declined to consider issues implicating VoIP because it believed that the [FCC] intended to address such issues," and on that basis held the arbitration proceeding in abeyance for an extended period.[43] The CLEC contended that the state commission had thereby "failed to act" in the arbitration, and that the FCC should therefore preempt the state commission and take over the arbitration as permitted by section 252(e)(5) of the 1996 Act. The FCC declined to preempt. Most importantly for present purposes, however, the FCC stated that the

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[42] *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.

[43] *Id*. ¶ 5.

state commission "could have relied on existing law to reach a decision" on the VoIP issues.[44] The FCC further stated, "the lack of regulatory direction from the [FCC] regarding these issues does not, in fact, stand as a legal obstacle to the [state commission's resolution of the arbitration,"[45] and that the state commission "should not wait for [FCC] action to move forward," but instead should "proceed to arbitrate this arbitration in a timely manner, *relying on existing law*."[46]

That is exactly what AT&T's proposed language does, and what AT&T is asking this Authority to do: provide for compensation on VoIP traffic in accordance with existing intercarrier compensation rules.

Q. IS SPRINT CORRECT THAT THIS AUTHORITY DOES NOT HAVE JURISDICTION TO ESTABLISH A RATE FOR VOIP TRAFFIC?

A. The FCC obviously does not think so. AT&T will address this further in its briefs, but it is my understanding the FCC has provided states with authority to arbitrate and adjudicate the terms of an ICA, including establishing intercarrier compensation rates, that are appropriately contained within such an ICA. As both AT&T and Sprint have agreed to the exchange of VoIP traffic under the terms of these ICAs, this Authority can certainly determine proper compensation under the ICAs for this traffic.

Q. HAS THE FCC MADE STATEMENTS THAT SUPPORT REQUIRING COMPENSATION FOR THIS TYPE OF TRAFFIC?

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44 *Id.* ¶ 8.

45 *Id.* ¶ 9.

46 *Id.* ¶ 10.

A. Yes. The FCC's access charge rule states: "Carrier's carrier charges [i.e., access 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."[47] A telecommunications carrier that provides service to VoIP providers – such as when Sprint provides such carriers access to the PSTN - falls squarely under this rule, and a contrary conclusion cannot be squared with the FCC's *Time Warner Order*.[48] In that decision, the FCC held that whether VoIP traffic was classified as an information service or as a telecommunications service was irrelevant to whether a "wholesale telecommunications carrier" providing service to such VoIP providers is entitled to enter into an ICA under the 1996 Act to exchange such traffic with an incumbent carrier like AT&T. The FCC concluded that such *wholesale* carriers are providing "telecommunications service."[49]

The FCC in the *Time Warner Order* also concluded that whether IP-enabled voice traffic is classified as a telecommunications service or an information service is irrelevant because "[t]he regulatory classification of the service provided to the ultimate end user has no bearing on the wholesale provider's rights as a telecommunications carrier to interconnect under section 251."[50] The FCC made clear that an "explicit condition" of

[47] 47 C.F.R. § 69.5(b) (emphasis added).

[48] *In the Matter of Time Warner Cable*, 22 FCC Rcd. 3513, 2007 WL 623570 (FCC 2007) ("*Time Warner Order*").

[49] *See id*. ¶¶ 8-16.

[50] *Id.* ¶ 15.

this right of interconnection is that "the wholesale telecommunications carriers have assumed responsibility for compensating the incumbent LEC for the termination of traffic under a section 251 arrangement between those two parties."[51] And to the extent the telecommunications carrier is providing interstate transport between different local exchanges, the carrier by definition is an "interexchange carrier" providing "interstate . . . telecommunications services." 47 C.F.R. § 69.5(b). As a result, the FCC's access charge rule applies in such circumstances, as a matter of law.

Q. WHAT TYPE OF COMPENSATION IS AT&T ASKING FOR IN THIS PROCEEDING?

A. If an Interconnected VoIP Service call were to originate and terminate in the same local calling area, it should be subject to reciprocal compensation just as a traditional call. If the call were interexchange in nature (e.g., it originated and terminated in different local exchanges), then the relevant access charges should be applied. In short, AT&T recommends that no specialized compensation for Interconnected VoIP Service traffic exist in the ICA.

Q. IS THE FCC CURRENTLY DECIDING IF ANY SPECIALIZED COMPENSATION FOR VOIP TRAFFIC IS NECESSARY?

A. The FCC has already determined that no special compensation arrangements are appropriate for PSTN-IP-PSTN traffic, and the FCC has also developed rules regarding ISP-bound traffic, for which AT&T has proposed language.[52] However, the FCC is

[51] *Id.* ¶ 17.

[52] See my discussion under Issue III.A.2.

currently determining on a going-forward basis if there should be any specialized treatment for IP-PSTN traffic in its *IP-Enabled Services NPRM*.[53]

Q. WOULD SETTING A SPECIAL RATE, SUCH AS $0.0000 PER MOU TO APPLY BILL AND KEEP FOR VOIP TRAFFIC, CREATE A BILLING PROBLEM?

A. Yes. As a technical matter, IP-PSTN and PSTN-IP-PSTN traffic must be routed the same as, and subject to, the same compensation rates as traditional PSTN-PSTN traffic. That is because the PSTN cannot distinguish between traffic it sends to the PSTN and traffic it sends to an IP network. When an end user originates a call, neither the industry nor AT&T's switches have any way of knowing whether the call is destined to an IP-based network or the PSTN, but simply analyzes the number that was dialed and routes the call appropriately. For traffic going the other way, once such traffic terminates to the PSTN, it looks and is treated like all other traffic that terminates to the PSTN. No identifier exists for VoIP traffic that would enable AT&T, or any other carrier, to treat Sprint's traffic different from all other traffic that terminates to the PSTN.

Q. YOU INDICATED THAT SPRINT IS PROPOSING THAT NO COMPENSATION APPLY TO VOIP TRAFFIC. WHAT IS THE BASIS FOR SPRINT'S POSITION, AND HOW DO YOU RESPOND?

A. Sprint's view appears to be that since the FCC has not established compensation rules specifically applicable to VoIP traffic, and since (as Sprint incorrectly sees it) the Authority cannot subject VoIP traffic to compensation in accordance with existing compensation rules that apply to all traffic (which is exactly what the FCC said a state commission should do in the decision I discussed above), VoIP traffic should be

[53] *In the Matter of IP-Enabled Services Notice of Proposed Rulemaking*, WC Docket No. 04-36, released February 12, 2004, FCC 04-28 ("*IP-Enabled Services NPRM*").

exchanged on a bill and keep basis. Sprint's position makes about as much sense as it would make for a shopper who finds a product in a store with no price tag to claim he is entitled to have it for free.

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. PLEASE DESCRIBE SPRINT'S PROPOSAL FOR APPORTIONING THE COSTS OF CLEC INTERCONNECTION FACILITIES.

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. Sprint's proposed PUF coincides with the actual proportion of traffic each Party sends to the other Party over that specific facility. As an example, if AT&T originates 900 minutes of Section 251(b)(5) and ISP-Bound traffic over that facility to Sprint, and Sprint originates 100 minutes of the same types of traffic to AT&T, then under the terms of Sprint's proposed contract language, AT&T would be liable for 90% of the costs associated with that facility.

Q. DOES AT&T OPPOSE SPRINT'S PROPOSAL?

A. Yes. Sprint's proposal is diametrically opposed to the established rule for assigning financial responsibility for each Party's portion of the network. Each Party is financially responsible for the facilities on its side of the Point of Interconnection ("POI"). Neither the Act nor any FCC rule or order provides for use of a Proportionate Use Factor to

apportion financial responsibilities of CLEC interconnection or transport facilities for a Party's facilities to get to the POI. The CLEC is best able to forecast future demand and then build an efficient network that best suits its respective business needs. Sprint seeks to "bill" AT&T for building Sprint's own network facilities by applying a volume-sensitive network charge based on the proportional amount of traffic that AT&T sends to Sprint. With the current balance of traffic, AT&T would pay for most of Sprint's facilities, including capital assets. This is an improper attempt by Sprint to shift its costs to AT&T.

Q. IS SPRINT ATTEMPTING TO IMPOSE A "CMRS MODEL" FOR SHARED FACILITY FACTORS UPON THE CLEC INTERCONNECTION AGREEMENT?

A. Yes, it is. As described by Ms. Pellerin under Issue III.E(1), Sprint's proposal for apportioning facility costs attempts to cover both usage-sensitive costs as well as non-recurring costs. Such a model is entirely inappropriate, as well as unnecessary for the provision of CLEC interconnection facilities. The standard "CLEC model" continues to assign financial responsibility to each party for those facilities on their respective side of the POI.

Q. IS THERE A MECHANISM CURRENTLY IN PLACE TO ALLOW FOR COST RECOVERY ASSOCIATED WITH ONE PARTY USING ANOTHER PARTY'S NETWORK TO EXCHANGE TRAFFIC?

A. Yes. Reciprocal compensation is the current and appropriate mechanism for a carrier to recover the costs associated with the use of another party's network. Reciprocal compensation recovers the costs associated with the *transport and termination* of Section 251(b)(5) and ISP-Bound traffic. So by attempting to apply a PUF to the facilities

between AT&T and Sprint, Sprint is simply trying to gain a double-recovery of the costs associated with deploying its network. First, Sprint recovers costs by charging a PUF based upon traffic imbalances between it and AT&T, and second, it charges reciprocal compensation rates that separately recover the transport and termination of traffic from AT&T to Sprint. Not only would Sprint achieve a double recovery, but AT&T would pay twice for the same terminations.

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. ARE THERE OTHER CONCERNS WITH SPRINT'S PROPOSAL TO IMPLEMENT APPORTIONED FACILITY COSTS TO THE PARTIES?

A. Yes. Sprint attempts to further shift its network costs to AT&T by proposing in its Attachment 3 section 2.8.3(e) that AT&T pay all the cost for facilities that carry third party transit traffic. This is simply another effort by Sprint to shift its network costs to AT&T.

Q. HOW IS THAT?

A. Contrary to Sprint's proposed language, AT&T does not recover costs for facilities through its transit service per minute of use charges. 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. Yet Sprint proposes that AT&T pay for *all* transit interconnection

facilities, even though it is only Sprint customers who benefit from third party transit traffic. This free network is inappropriate; as with other local interconnection facilities, each Party should be responsible for the facilities on its respective side of the POI. Further, as explained by Ms. Pellerin in regard to CMRS facilities, Sprint is the cost-causer of the transit traffic sent by third parties and should bear any responsibility for the facility if the Authority adopts Sprint's proposed PUF concept; if Sprint was interconnected directly with those third parties, then the traffic would not have to transit AT&T's network to Sprint.

Q. WHAT SHOULD BE THE OUTCOME OF THIS PROPOSAL?

A. The Authority should reject Sprint's proposed contract language, as it is contrary to the existing compensation regimes and allows for double-recovery of network costs incurred in the exchange of intercarrier Section 251(b)(5) and ISP-Bound traffic.

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. WHAT IS MEET POINT BILLING?

A. Meet Point Billing ("MPB") is a service AT&T offers to a CLEC so that a CLEC's end user can access an IXC of his or her choice without the CLEC having to be directly interconnected with the IXC. The CLEC provides the originating (or terminating) switching function and jointly provided transport between its end office and AT&T tandem, and AT&T provides tandem switching and dedicated transport between its

tandem and the IXC. Each bills the IXC from its access tariff for the functions each performs, and, presumably, the IXC bills the end user for the call. As such, in a MPB arrangement for IXC traffic, CLEC and AT&T jointly provide the switched access service. For interLATA and intraLATA toll traffic, compensation for the termination of MPB traffic will be at access rates as set forth in each party's own applicable interstate or intrastate access tariffs.

Q. WHY HAS AT&T PROPOSED A CHANGE IN ACCESS SERVICES FROM A MULTI-BILL-MULTI-TARIFF TO A MULTI-BILL-SINGLE TARIFF BASIS?

A. Because the Parties have agreed to conform to guidelines provided in the Multiple Exchange Carrier Access Billing ("MECAB") document. Multiple Bill-Single Tariff is appropriate for billing jointly provided access services to an IXC when those services are provided by two carriers, such as AT&T and Sprint. Each carrier bills the IXC for its portion of the call, using its tariff rates. Typically, Multiple Bill-Multiple Tariff charges are applied to an IXC whenever there are more than two carriers involved in the joint provisioning of access traffic. In this billing arrangement when there are three switched-based providers, one company bills its portion of the service directly to the IXC and one of the other two companies sends one bill for both companies' portion of the service utilizing each company's tariff rates. The Multiple Bill-Multiple Tariff billing arrangement clearly does not represent the billing arrangement that we utilize with Sprint since there are only two companies involved in jointly providing the IXC service, Sprint and AT&T.

AT&T proposes the change from Multiple Bill-Multiple Tariff to Multiple Bill-Single Tariff in order to update the ICA language to be in accordance with current MECAB guidelines and the actual billing arrangement in place.

Q. DOES AT&T PROPOSE OTHER CHANGES FOR MEET POINT BILLING IN ORDER TO UPDATE THE ICA TERMS TO CONFORM TO THE LATEST MECAB GUIDELINES?

A. Yes. AT&T's language in Attachment 3, section 6.25 provides the Parties use and exchange appropriate Exchange Message Interface ("EMI") call detail records when each is the Official Recording Company for a jointly provided access call. Sprint's proposed language, on the other hand, continues to use the no-longer current summary usage data for billing.

The MECAB guidelines were updated in 2002 to eliminate the use of Summary Usage Records ("SURs") and associated processes. AT&T's ICA language conforms to the latest guidelines.

Q. ARE THERE OTHER DISPUTES RELATIVE TO THE PROVISIONING OF MEET POINT BILLING?

A. Yes. The Parties disagree on the appropriate provisions for records retention and the recreation of lost data. AT&T's language in section 6.25.2 provides clear terms governing the Parties' cooperation, as well as the parameters for recreating lost or damaged data using no less than three months and no more than twelve months of prior usage data. While AT&T does keep records for extended periods of time, such records are not readily available for redistribution. AT&T offers to keep records no more than 90 days for redistribution just in case there is a problem incurred by switch based CLECs/ILECs. This is more than a sufficient amount of time because companies like

Sprint receive records daily from AT&T and should be able to quickly identify an issue within this time frame.

AT&T also proposes language in section 6.25.6 addressing compensation for 8YY database queries. If Sprint routes a non-queried 8YY call to AT&T, then AT&T must perform the query in order to properly route the call. When this occurs, it is appropriate for AT&T to charge Sprint for that query function performed on Sprint's behalf. This billing arrangement for 8YY queries is also supported by MECAB.

DPL ISSUE I.B(4)

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

Contract Reference: GTCs Part B Definitions

Q. TURNING NOW TO INTERCARRIER COMPENSATION SPECIFIC TO WIRELESS TRAFFIC, WHAT IS AN "MTA"?

A. The parties have agreed to define the term MTA "as defined in 47 C.F.R. § 24.202(a)." Simply, MTA stands for Major Trading Area and represents a geographic area established by the FCC for purposes of wireless licensing purposes. There are 51 MTAs in the United States and its island territories. The FCC's 1996 *Local Competition Order* established that the geographic scope of "local" traffic for wireless traffic under Section 251(b)(5) of the 1996 Act is an MTA, and therefore intraMTA calls are subject to the reciprocal compensation scheme.

Q. WHAT IS THE NATURE OF THE PARTIES' DISPUTE REGARDING THE DEFINITION OF "INTERMTA TRAFFIC"?

A. The parties agree that the term InterMTA Traffic refers to calls that originate in one MTA and terminate in a different MTA. The term may be applied in the ICA to both land-to-

mobile ("L-M") traffic and mobile-to-land ("M-L") traffic. The dispute centers on how to designate the MTA associated with the mobile end point of a call, since there is no question regarding the MTA associated with the AT&T end user's location, which is fixed. 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 M-L) or terminates (for L-M). 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 AT&T'S DEFINITION OF INTERMTA TRAFFIC APPROPRIATE FOR THE ICA?

A. AT&T's definition provides the most accurate determination of the MTA associated with a mobile end user's actual location for purposes of determining the jurisdiction of a call. Sprint CMRS's use of the parties' POI, which will always be in Tennessee,[54] to designate the mobile caller's MTA may not be at all indicative of the MTA associated with the mobile end user's location, particularly if the mobile end user is outside the state. For example, if a Sprint CMRS end user in Texas calls an AT&T end user in Tennessee, AT&T's definition would use the mobile end user's cell site in Texas to designate the originating MTA, while Sprint CMRS's definition would have the MTA designated at the parties' POI in Tennessee. Sprint CMRS's definition of InterMTA Traffic would

[54] Per CMRS Attachment 3, section 2.3.2, the POI will actually not only be in the same state as the terminating AT&T landline customer, but also in the same LATA, an even *smaller* geographic area than the state boundaries.

improperly exclude calls that actually originate and terminate in different MTAs and should be rejected. AT&T's definition should be adopted.

Q. HAS THE FCC PROVIDED GUIDANCE REGARDING DETERMINING APPROPRIATE END POINTS OF A CMRS CALL FOR PURPOSES OF INTERCARRIER COMPENSATION?

A. Yes. The FCC, in paragraph 1044 of its *Local Competition Order,* acknowledges that the obvious mobile nature of CMRS calls "could make it difficult to determine the applicable transport and termination rate or access charge." In lieu of carriers attempting to determine the precise geographic location of the CMRS devise at call origination, the FCC concludes "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."[55]

Q. HAS THE FCC ADDRESSED SPRINT'S PROPOSAL TO USE THE POI TO DETERMINE THE WIRELESS CALLER'S LOCATION AT THE BEGINNING OF A CALL?

A. Yes, it has. The FCC, in paragraph 1044 of the *Local Competition Order*, describes use of the POI as "an alternative" to the location of the cell site for determining the location of a mobile customer at the beginning of a call. The FCC acknowledges the POI only as an alternative and not as the primary method for determining the location of a mobile customer because it is clearly less accurate than cell site information. As I previously discussed, use of the POI as a geographic determinant would drastically reduce the accuracy of InterMTA call identification, and would greatly reduce the amount of traffic subject to compensation as InterMTA traffic. Sprint's proposed definition, using the FCC's acknowledged second-choice method of identifying mobile calls by the location of

[55] *Local Competition Order,* paragraph 1044.

the POI when a call begins, is simply an attempt by Sprint to reduce its intercarrier compensation obligations for its InterMTA traffic.

Q. DOES AT&T CURRENTLY FOLLOW THE FCC'S RECOMMENDED METHOD FOR IDENTIFYING MOBILE CALLS BY USING CELL SITE DATA TO DETERMINE THE LOCATION OF A MOBILE CUSTOMER AT THE BEGINNING OF A CALL?

A. Yes. AT&T typically works with CMRS carriers and, consistent with the terms of their respective ICAs, conducts traffic studies, typically on a quarterly basis, in order to identify the amount of InterMTA traffic being exchanged in a given state. The parties then agree to apply a factor reflecting the actual InterMTA percentage for traffic originated by the CMRS carrier and terminated to AT&T for purposes of billing intercarrier compensation.

Q. DO THE PARTIES HAVE A SIMILAR DISPUTE REGARDING THE DEFINITION OF "INTRAMTA TRAFFIC"?

A. Yes. The parties' dispute regarding the definition of the term IntraMTA Traffic is virtually identical to their dispute for the term InterMTA Traffic, discussed above. The only difference is that the term IntraMTA Traffic refers to calls that originate in one MTA and terminate in the same MTA. AT&T's definition should be adopted for the same reasons set forth above for InterMTA Traffic.

DPL ISSUE I.B(5)

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

Contract Reference: GTCs Part B Definitions

Q. WHY DOES AT&T PROPOSE THE INCLUSION OF THESE ADDITIONAL DEFINITIONS?

A. Because they specifically address two discrete types of InterMTA traffic that will be exchanged between AT&T and Sprint. There are differences in the routing of InterMTA calls exchanged between the Parties, depending upon whether the call is L-M or M-L.

Q. LET'S START WITH L-M TRAFFIC. WHENEVER AN AT&T END USER DIALS A NON-LOCAL SPRINT CMRS END USER'S TELEPHONE NUMBER, WILL THE CALL BE ROUTED OVER FEATURE GROUP ACCESS TRUNKS?

A. Yes. Using the above example, if an AT&T landline end user residing in Atlanta were to dial a Sprint CMRS customer that has a telephone number local to Dallas, Texas, then the AT&T end user would reach the Sprint end user by dialing the number as a typical "long distance" call; that is, she would dial "1+" and the telephone number of the Sprint end user. That call would be routed over feature group access trunks to the AT&T end user's chosen IXC for termination to Sprint and Sprint's end user.

Q. WHAT HAPPENS WHEN AN AT&T LANDLINE CUSTOMER DIALS A LOCAL SPRINT CMRS TELEPHONE NUMBER?

A. Whenever an AT&T landline end user dials a Sprint CMRS telephone number where both the calling and called telephone numbers are assigned within the same MTA, the call is routed over the Parties' local interconnection. Yet, because of the inherent nature of mobile telephony, that locally-dialed Sprint end user may or may not be physically within the same MTA. If the Sprint end user is outside of their home MTA at the beginning of the call, then the call will cross MTA boundaries for termination, making the locally-dialed call an InterMTA call. AT&T's definition for "Originating Landline to CMRS Switched Access Traffic" accurately captures this call scenario, and applies appropriate compensation terms to these types of InterMTA calls. Though the call is dialed as local, and traverses the Parties' local interconnection, the call is subject to

appropriate switched access charges as the call is not a local (section 251(b)(5)) call subject to reciprocal compensation.

Q. WHY DOES AT&T PROPOSE A DEFINITION FOR "TERMINATING INTERMTA TRAFFIC?"

A. Because, like with "Originating Landline to CMRS Switched Access Traffic," it describes a specific form of traffic that will be exchanged between the Parties. In this case, it is traffic that is M-L, originated by Sprint CMRS and terminated by AT&T. Unlike AT&T, Sprint transports traffic across LATA boundaries, and when it does so, it is acting as an interexchange carrier for its end user traffic. AT&T's definition provides that when Sprint terminates this interexchange traffic to AT&T, it do so by routing it over appropriate Feature Group Access service.

Q. WHAT MIGHT SPRINT ACHIEVE IF ITS OPPOSITION TO AT&T'S DEFINITIONS IN ISSUE I.B.(5) SUCCEEDED?

A. Any lack of clarity describing and administering the distinct types of L-M and M-L traffic exchanged between the Parties would serve to financially benefit Sprint. In the L-M direction, absent clear terms acknowledging that locally-dialed mobile traffic may be terminated beyond the local MTA would allow Sprint to 1) receive reciprocal compensation for that locally-dialed L-M call; and 2) relieve Sprint from its obligation to pay AT&T originating switched access on that interMTA call.

Similarly, without clear terms defining InterMTA traffic in the M-L direction, Sprint would simply pass *all* Sprint-carried traffic – local and interexchange traffic - over the local interconnection, bypassing the switched access regime in place for those interexchange calls.

DPL ISSUE III.A.3(1)

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

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

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

Q. SHOULD TERMINATING INTERMTA TRAFFIC (M-L) BE SUBJECT TO ACCESS CHARGES IF IT IS ROUTED OVER LOCAL INTERCONNECTION OR EQUAL ACCESS INTERCONNECTION TRUNKS?

A. Yes. Under established industry practice, wireless carriers pay terminating access charges to LECs on mobile-to-land InterMTA calls transported on wireless networks. This is fully consistent with settled notions of when a LEC is entitled to a terminating access charge. The interexchange carrier's customer is making the call, and the interexchange carrier is receiving all the end user revenue for the call. The LEC's customer did not make the call, and the LEC receives no revenue for the call from its customer. The wireless company is thus obtaining "access" from the LEC to complete its (the wireless company's) call, and therefore the LEC is entitled to receive compensation from the wireless company to reimburse the LEC for its costs in completing the call.

Q. ARE SWITCHED ACCESS CHARGES FOR INTERMTA TRAFFIC CONSISTENT WITH FCC GUIDANCE?

A. Yes. 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 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." With regard to the rating of mobile traffic, the FCC states "[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."[56]

Q. DOES AT&T PROPOSE TERMS TO ADDRESS TERMINATING INTERMTA (M-L) TRAFFIC?

A. Yes. AT&T's language in Sections 6.4.1.1 and 6.4.1.2 provides that Sprint CMRS should route all InterMTA Traffic over tariffed switched access trunks and not over local interconnection or equal access interconnection trunks, and that such traffic is subject to access charges. In the event Sprint CMRS does improperly route InterMTA Traffic over local interconnection or equal access interconnection trunks, the traffic should still be subject to access charges. Sprint CMRS should not be permitted to avoid legitimate access charges by misrouting its InterMTA Traffic.

Q. WHAT INFORMATION WILL AT&T USE TO CLASSIFY SPRINT CMRS'S TRAFFIC AS EITHER INTRAMTA OR INTERMTA?

A. AT&T proposes language in Section 6.4.1.3 that will facilitate its classification of Sprint CMRS's traffic as either IntraMTA or InterMTA. Section 6.4.1.3 provides that Sprint CMRS will populate the Jurisdictional Information Parameter ("JIP") in the call records for its IntraMTA and InterMTA Traffic to AT&T. AT&T will use JIP as the preferred method to classify calls as IntraMTA or InterMTA for purposes of usage billing. If Sprint CMRS does not supply JIP, AT&T will use the next best available information.

[56] *Local Competition Order*, paragraph 1044.

This may be the Originating Location Routing Number ("OLRN"), the CPN, or any other mutually agreed indicator of the originating cell site or Mobile Telephone Service Office ("MTSO"). Thus, if Sprint CMRS has what it believes to be a more accurate way of identifying the originating location than JIP (or OLRN or CPN), it is welcome to discuss that with AT&T so the parties may agree to use another indicator.

Q. HOW WILL AT&T KNOW IF SPRINT CMRS IS ROUTING INTERMTA TRAFFIC OVER LOCAL INTERCONNECTION OR EQUAL ACCESS INTERCONNECTION TRUNKS?

A. As described in Section 6.4.1.4, AT&T will conduct quarterly traffic studies to determine if Sprint CMRS is routing InterMTA Traffic over local interconnection or equal access interconnection trunks. If Sprint CMRS is routing traffic in that manner, AT&T will use the results of its studies to estimate the percentage of terminating InterMTA Traffic delivered over the local interconnection or equal access interconnection trunks and will bill Sprint CMRS accordingly. AT&T will continue to perform traffic studies quarterly and notify Sprint CMRS of any changes in the factor that will be applied for Sprint CMRS's traffic in the following quarter.

DPL ISSUE III.A.3(2)

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

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

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

DPL ISSUE III.A.3(2)

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

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

Q. SHOULD ORIGINATING INTERMTA TRAFFIC (L-M) BE SUBJECT TO ACCESS CHARGES?

A. Yes. Originating L-M InterMTA Traffic is not subject to reciprocal compensation. When an AT&T end user customer places a local call to a Sprint CMRS customer, but the call is terminated to that Sprint CMRS end user customer in another MTA, AT&T is entitled to originating access charges from Sprint at AT&T's tariffed rates, just as AT&T is entitled to originating access charges on any other long distance call. Paragraph 1043 of the FCC's *Local Competition Order* states that "most traffic between LECs and CMRS providers is not subject to interstate access charges unless it is carried by an IXC, *with the exception of certain interstate interexchange service provided by CMRS carriers, such as some 'roaming' traffic* that transits incumbent LECs' switching facilities . . ." Thus, where the wireless carrier is providing an interexchange service to its customer, the originating landline carrier is due access charges. Roaming is merely one example of such a situation, and the language does not foreclose other examples. Indeed, the FCC's statement that "[i]n this *and other situations* where a cellular company is offering interexchange service, the local telephone company providing interconnection is providing exchange access to an interexchange carrier and may expect to be paid the appropriate access charge" makes that clear. The plain reading of the language demonstrates that in any situation where a wireless provider is offering interstate, interexchange service, it should be subject to appropriate access charges. Sprint is acting as an interexchange provider when it transports a call across MTA boundaries and as such, it owes AT&T appropriate access.

Q. DOES AT&T PROPOSE ICA LANGUAGE TO ADDRESS ORIGINATING INTERMTA TRAFFIC?

A. Yes. AT&T's language provides appropriate terms in Section 6.4.2.1. Because the parties cannot measure originating L-M InterMTA Traffic, AT&T's language provides that it will estimate the volume of such traffic based on a surrogate usage percentage of 6%, which will be applied to the total MOU AT&T delivers directly to Sprint. For lack of any better information, AT&T's proposed language assumes the originating InterMTA Traffic is 50% intrastate and 50% interstate, which will be billed at the relevant rates according to the Pricing Sheet.

Q. ARE THERE ANY POINTS UPON WHICH THE PARTIES AGREE WITH RESPECT TO INTERMTA TRAFFIC COMPENSATION?

A. Only one. The parties agree that they are unable to measure actual usage on InterMTA calls and that, therefore, a factor is needed for billing purposes.

Q. DOES SPRINT AGREE WITH ANY OF AT&T'S LANGUAGE IN SECTION 6.4?

A. No. Sprint's language in Section 6.4 is different than AT&T's language with respect to three basic principles: 1) the application of switched access charges to InterMTA Traffic (M-L and L-M); 2) how to estimate the volume of InterMTA Traffic; and 3) the appropriate rates to apply to InterMTA Traffic.

Q. DOES SPRINT AGREE THAT SWITCHED ACCESS CHARGES ARE APPROPRIATE FOR INTERMTA TRAFFIC IN ANY CIRCUMSTANCES?

A. No. Sprint's language does not provide for any switched access charges to be applied to InterMTA traffic, either originating L-M or terminating M-L, and the charges it does propose are only for call termination. In other words, Sprint proposes that it charge AT&T for originating L-M InterMTA traffic, rather than AT&T charging Sprint for such

traffic. Under Sprint's proposal, AT&T could charge Sprint for terminating M-L InterMTA Traffic, but no charges for InterMTA Traffic would be at access rates in any circumstance.

Q. HOW DOES SPRINT PROPOSE TO ESTIMATE THE VOLUME OF L-M INTERMTA TRAFFIC?

A. Sprint proposes that the parties use a factor of 2% to represent the volume of L-M traffic that is InterMTA (i.e., 98% of the L-M traffic is IntraMTA). On either party's request, but no more often than once per year, Sprint will conduct a traffic study to review the percentage. Any revision to the percentage would be reflected in an ICA amendment.

Q. WHAT IS SPRINT'S PROPOSAL REGARDING THE RATES TO BE APPLIED TO INTERMTA TRAFFIC?

A. Sprint takes a novel approach with respect to the rates to be applied to terminating InterMTA Traffic.[57] For AT&T's bills to Sprint, Sprint's language provides that AT&T will charge the same rate for InterMTA Traffic that it does for IntraMTA Traffic, ignoring that traffic is subject to different intercarrier compensation schemes depending on the jurisdiction of the traffic. As I stated above, rather than AT&T charging originating switched access on L-M InterMTA calls, as AT&T proposes, Sprint's language would authorize it to charge AT&T for these calls. And since Sprint's language states (based on an unsupported presumption) that it costs Sprint more to terminate a L-M InterMTA call than AT&T incurs to terminate a M-L InterMTA call, Sprint is entitled to charge twice the AT&T rate.

[57] The specific rates in dispute are discussed in the testimony of AT&T Witness Tricia Pellerin, under Issue III.G.

Q. DOES THIS CONCLUDE YOUR DIRECT TESTIMONY?

A. Yes.