AT&T TENNESSEE

DIRECT TESTIMONY OF PATRICIA H. PELLERIN

BEFORE THE TENNESSEE REGULATORY AUTHORITY

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

AUGUST 31, 2010

ISSUES

I.A(1), I.B(1), I.B(2)(a), I.B(2)(b)(i),
I.B(3), II.A, III.A(1), III.A(2),
III.A(3), III.A.1(1), III.A.1(2),
III.A.7(1), III.A.7(2), III.E(1),
III.E(2), III.G, III.H(1), III.H(2),
III.H(3), III.I(1)(a), III.I(1)(b),
III.I(2), III.I(3), III.I(4), III.I(5)

I. INTRODUCTION

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

A. My name is Patricia H. Pellerin. I am employed as an Associate Director – Wholesale Regulatory Support by The Southern New England Telephone Company d/b/a AT&T Connecticut ("AT&T Connecticut"), which provides services on behalf of AT&T Operations, Inc. – an authorized agent for the AT&T incumbent local exchange company subsidiaries. My business address is 1441 North Colony Road, Meriden, CT 06450.

Q. PLEASE SUMMARIZE YOUR BACKGROUND AND EXPERIENCE.

A. I attended Middlebury College in Middlebury, Vermont and received a Bachelor of Science Degree in Business Administration, magna cum laude, from the University of New Haven in West Haven, Connecticut. I have held several assignments in Network Engineering, Network Planning, and Network Marketing and Sales since joining AT&T Connecticut in 1973. From 1994 to 1999 I was a leading member of the wholesale marketing team responsible for AT&T Connecticut's efforts supporting the opening of the local market to competition in Connecticut. I assumed my current position in April 2000.

Q. HAVE YOU PREVIOUSLY TESTIFIED IN ANY REGULATORY PROCEEDINGS?

A. Yes. I have testified on several occasions before the public utilities commissions of Alabama, California, Connecticut, Florida, Georgia, Illinois, Kansas, Kentucky, Michigan, North Carolina, Ohio, Oklahoma, Texas and Wisconsin.

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(1), I.B(1), I.B(2)(a), I.B(2)(b)(i), I.B(3), II.A, III.A(1), III.A(2), III.A(3), III.A.1(1), III.A.1(2), III.A.7(1), III.A.7(2), III.E(1), III.E(2), III.G, III.H(1), III.H(2), III.H(3), III.I(1)(a), III.I(1)(b), III.I(2), III.I(3), III.I(4), III.I(5).

II. DISCUSSION OF ISSUES

DPL ISSUE I.A(1)

What legal sources of the parties' rights and obligations should be set forth in section 1.1 of the CMRS ICA and in the definition of "Interconnection" (or "Interconnected") in the CMRS ICA?

Contract Reference: CMRS GTC Part A, section 1.1; GTC Part B, Definitions

Q. WHAT IS THE PARTIES' DISAGREEMENT CONCERNING THE PARTIES' RIGHTS AND OBLIGATIONS IN THE CMRS ICA?

A. While AT&T and Sprint agree that 47 C.F.R Part 51 applies to the parties' CMRS interconnection agreement ("ICA"), the parties disagree about whether 47 C.F.R Part 20 also applies to that ICA. Sprint contends the ICA should reflect compliance with Part 20, and AT&T contends it should not.

Two provisions in the CMRS ICA reflect this disagreement. The first is section 1.1 of GTC Part A, which reads as follows, with the language in bold italics proposed by Sprint and opposed by AT&T:

> 1.1 This Agreement specifies the rights and obligations of the Parties with respect to the implementation of their respective duties under Sections 251 and 252 of the Act and the FCC's Part ***20 and*** 51 regulations.

The second provision that reflects the parties' disagreement about the Part 20 Rules is a definition in GTC Part B. AT&T proposes:

> "Interconnection" means as defined at 47 C.F.R. § 51.5.

Sprint proposes:

> "Interconnection" ***or "Interconnected"*** means as defined at 47 C.F.R. §***§ 20.3 and*** 51.5.

47 C.F.R. § 20.3 is one of the FCC's Part 20 Rules, and it includes a definition of "Interconnection" or "Interconnected." Sprint contends that that definition applies to the parties' Section 251/252 CMRS ICA, and AT&T disagrees.[1]

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

A. Sprint asserts that the parties' negotiations addressed the FCC's Part 20 regulations and that the ICA should so reflect. AT&T, on the other hand, maintains that the source of the parties' rights and obligations in the ICA is limited to the 1996 Act and the FCC's implementing regulations (*i.e.*, Part 51 only).

Q. IS AT&T'S POSITION SUPPORTED BY THE LANGUAGE OF THE 1996 ACT AND BY FCC RULINGS?

A. Yes. The 1996 Act and the FCC's rulings concerning local exchange carrier ("LEC")-CMRS interconnection support AT&T's position.

Q. PLEASE EXPLAIN.

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[1] At one point during the parties' negotiations, AT&T inadvertently agreed to Sprint's proposed definition. Although AT&T has been unable to reconstruct how that occurred, even after consultation with Sprint, it had to be inadvertent, because AT&T has at all times maintained that the FCC's Part 20 rules play no role in a section 251/252 ICA, and that necessarily encompasses the definition in 47 C.F.R. § 20.3. When AT&T caught the mistake, Sprint agreed to restore the dispute to the DPL. AT&T appreciates that courtesy, and notes that Sprint has not been disadvantaged in any way by the change.

A. I am not an attorney and am not offering legal opinions on this or other issues I address in my testimony. Rather, I explain my understanding of the 1996 Act and related FCC orders from my position as a fact witness. In passing the 1996 Act (*i.e.*, sections 251 and 252), Congress delegated to the FCC the authority to promulgate rules for implementation, which the FCC did in Part 51. The FCC promulgated its Part 20 regulations following Congress' passing of section 332 in 1993, and not pursuant to the 1996 Act. Such additional rights as Sprint may have under Part 20 regulations therefore are not, and need not be, reflected in the parties' ICA.

In considering whether and to what extent sections 251 and 252, rather than section 332, should govern LEC-CMRS interconnection, the FCC concluded that, "sections 251 and 252 will facilitate consistent resolution of interconnection issues for CMRS providers and other carriers requesting interconnection."[2] That statement strongly implies that "consistent resolution of interconnection issues" for CMRS providers and CLECs is the goal. That goal would be undermined if CMRS providers were provided special interconnection rights in an ICA under the FCC's Part 20 regulations. In addition, the FCC stated that it "may revisit its determination not to invoke jurisdiction under section 332 to regulate LEC-CMRS interconnection rates" if "the regulatory scheme established by sections 251 and 252 does not sufficiently address the problems encountered by CMRS providers

[2] First Report and Order, *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, 11 FCC Rcd. 1549 (1996), *subsequent history omitted*. ("*Local Competition Order*") at ¶ 1024. Some people refer to this order as the *First Report and Order*.

in obtaining interconnection on terms and conditions that are just, reasonable and nondiscriminatory."[3] To date, the FCC has not revisited its determination to regulate LEC-CMRS interconnection under section 251 (Part 51) rather than section 332 (Part 20).

Q. DO THE ARBITRATION STANDARDS IN THE 1996 ACT SHED ANY ADDITIONAL LIGHT ON THIS ISSUE?

A. Yes. Section 252(c)(1) of the 1996 Act provides that when a state commission arbitrates an interconnection agreement, it must ensure that its resolution of the issues "meet the requirements of section 251 . . . including the regulations prescribed by the [FCC] pursuant to section 251 . . . ." As I have explained, the FCC's Part 51 regulations were prescribed pursuant to the 1996 Act, *i.e*. pursuant to the authority Congress conferred on the FCC in section 251. The FCC's Part 20 regulations, on the other hand, were not. Thus, the 1996 Act specifically directs state commissions to give effect to the Part 51 regulations, and not to the Part 20 regulations, when it resolves arbitration issues.

Q. DOES ANY ADDITIONAL CONSIDERATION SUPPORT AT&T'S POSITION ON THIS ISSUE?

A. Yes. The contract provision in GTC Part A section 1.1 is actually a factual recital. It states, "This Agreement specifies the rights and obligations of the Parties with respect to the implementation of their respective duties under Sections 251 and 252 of the Act and the FCC's Part 51 regulations" – and Sprint would add a reference to Part 20. As a factual matter, if the Authority agrees with

[3] *Id.* at ¶ 1025.

AT&T that the parties' interconnection in the ICA is pursuant to section 251 and not section 332, as it should, the CMRS ICA will not, to the best of my knowledge, include any provisions that are pursuant to Part 20 rather than Part 51. In other words, not only does AT&T maintain that the CMRS ICA *should not* give Sprint CMRS any interconnection rights that are not available under Part 51, but AT&T also believes that it in fact *does not*. Thus, an additional reason for not including Sprint's proposed reference to Part 20 in section 1.1 is that it would make the provision at issue factually inaccurate.

Q. HOW SHOULD THE AUTHORITY RESOLVE ISSUE I.A(1)?

A. The Authority should reject Sprint's language in GTC Part A section 1.1 and in the GTC Part B definition of "Interconnection" (or "Interconnected") that would mistakenly direct that the parties' rights and obligations in the CMRS ICA reflect the FCC's Part 20 regulations, which were promulgated pursuant to section 332 and not the 1996 Act.

DPL ISSUE I.B(1)

What is the appropriate definition of Authorized Services?

Contract Reference: GTC Part B Definitions

Q. WHAT IS THE STATUS OF THE PARTIES' DISAGREEMENT REGARDING THE DEFINITION OF THE TERM "AUTHORIZED SERVICES" IN THE CMRS ICA?

A. AT&T has considered Sprint's position that the definition of "Authorized Services" in the CMRS ICA should be reciprocal and offers the following revised definition to address Sprint's concern:

> "Authorized Services" means those CMRS services that Sprint provides pursuant to Applicable Law and those services that AT&T-9STATE provides pursuant to Applicable Law. This Agreement is solely for the exchange of Authorized Services traffic between the Parties.

AT&T is hopeful Sprint will accept this language, resolving the parties' dispute for the definition of Authorized Services in the CMRS ICA.

Q. WHAT IS THE PARTIES' DISAGREEMENT REGARDING THE DEFINITION OF "AUTHORIZED SERVICES" OR "AUTHORIZED SERVICES TRAFFIC" IN THE CLEC ICA?

A. Sprint contends the appropriate term to define in the CLEC ICA is "Authorized Services" and that its definition properly captures the mutual nature of the parties' services. AT&T, on the other hand, contends the CLEC ICA should define the term "Authorized Services Traffic" based on how the term is used in the ICA.

Q. WHAT IS THE BASIS FOR AT&T'S POSITION?

A. "Authorized Services" is not a term AT&T uses in its CLEC ICAs, because, unlike CMRS providers, CLECs and ILECs are authorized to provide similar landline services, making the distinction between them unnecessary. However, since the parties agree that the CLEC ICA is solely for the purpose of exchanging certain traffic between the parties, AT&T agreed to include "Authorized Services Traffic" to refer to the traffic exchanged between the parties pursuant to the ICA. AT&T's definition of "Authorized Services Traffic" makes clear what specific traffic types are exchanged pursuant to the ICA; any other traffic types are excluded.[4] The traffic types are specifically identified and listed in AT&T's

[4] AT&T objects to including in the ICA its provision of transit traffic service to Sprint. *See* Issue I.C(2), addressed by AT&T witness Scott McPhee. If the Authority

definition to provide contractual certainty and clarity, as well as to address what traffic types are governed by the ICA. AT&T's definition is consistent with the traffic types for which the ICA contains terms, conditions, and rates.

Q. WHY DOES AT&T OBJECT TO SPRINT'S DEFINITION OF "AUTHORIZED SERVICES" FOR THE CLEC ICA?

A. Sprint would define "Authorized Services" in the CLEC ICA to mean "those services which a Party may lawfully provide pursuant to Applicable Law." That definition is unnecessarily vague. The CLEC ICA sets forth the terms, conditions, and rates for the exchange of specific *traffic* types governed by the ICA. A party may argue that it may "lawfully provide" a traffic type that is not included in the ICA, such as a new traffic category that may be identified at some point in the future and the rating, routing, and/or billing of which are not addressed by the ICA. Sprint's vague definition of "Authorized Services" could result in the parties exchanging traffic pursuant to the ICA, but for which there are no terms, conditions, or rates, which would likely lead to disputes.

Q. YOU STATED THAT SPRINT'S DEFINITION OF "AUTHORIZED SERVICES" IS TOO VAGUE FOR THE CLEC ICA. IS IT ALSO TOO VAGUE FOR THE CMRS ICA?

A. Yes. AT&T's proposed language for the CMRS ICA specifically indicates that, with respect to Sprint, Authorized Services is limited to CMRS services, while Sprint's definition would improperly broaden the type of services and traffic to be

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rules that transit traffic service must be included in the ICA, AT&T would agree to add transit traffic to the definition of Authorized Services Traffic.

covered by the CMRS ICA to include services provided by Sprint's non-CMRS affiliates.

Q. HOW SHOULD THE AUTHORITY RESOLVE ISSUE I.B(1)?

A. Sprint should accept AT&T's revised definition of the term "Authorized Services" for the CMRS ICA, resolving the CMRS portion of this issue. If not, the Authority should adopt AT&T's definition, because it is clearer than Sprint's.

The Authority should adopt AT&T's definition of the term "Authorized Services Traffic" for the CLEC ICA and reject Sprint's definition of "Authorized Services." AT&T's term and definition accurately depict the types of traffic the parties will exchange pursuant to the ICA, while Sprint's term is too vague.

DPL ISSUE I.B(2)(a)

Should the term "Section 251(b)(5) Traffic" be a defined term in either ICA?

Contract Reference: GTC Part B Definitions

Q. WHAT IS THE PARTIES' DISAGREEMENT CONCERNING THE INCLUSION OF "SECTION 251(b)(5) TRAFFIC" AS A DEFINED TERM IN THE ICAS?

A. The parties disagree about whether the ICAs should include a definition of the term "Section 251(b)(5) Traffic." AT&T contends that the ICAs should define the term, and Sprint contends they should not.

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

A. AT&T maintains that the parties' rights and obligations regarding reciprocal compensation are derived specifically from section 251(b)(5) of the 1996 Act. It is therefore appropriate for the ICAs to define and use the term "Section 251(b)(5) Traffic," as AT&T proposes, for traffic exchanged between the parties that is

subject to section 251(b)(5) reciprocal compensation.[5] In contrast, Sprint proposes to use the terms "IntraMTA Traffic" in the CMRS ICA and "Exchange Access," "Telephone Exchange Service," and "Telephone Toll Service" in the CLEC ICA, none of which are grounded in section 251(b)(5). Sprint asserts that the term "Section 251(b)(5) Traffic" is unnecessary in the ICAs.

Q. HOW SHOULD THE AUTHORITY RESOLVE ISSUE I.B(2)(a)?

A. The Authority should rule that the parties' ICAs will define and use the term "Section 251(b)(5) Traffic," because that is the proper term to reflect the parties' rights and obligations regarding reciprocal compensation under the 1996 Act.

DPL ISSUE I.B(2)(b)(i)

If so, what constitutes Section 251(b)(5) Traffic for the CMRS ICA?

Contract Reference: GTC Part B Definitions

Q. ASSUMING THE AUTHORITY HAS FOUND THAT THE CMRS ICA SHOULD INCLUDE THE DEFINED TERM "SECTION 251(b)(5) TRAFFIC," WHY IS AT&T'S PROPOSED DEFINITION APPROPRIATE?

A. AT&T's proposed definition properly reflects the traffic exchanged between the parties that is subject to section 251(b)(5) reciprocal compensation, based on the best approximation of the locations of the originating and terminating parties to a call. For the AT&T end of a call, which is a landline end user, the location is certain. AT&T's language reflects that the AT&T end user is located at the serving end office switch. For the Sprint end of a call, which is a mobile line, the

[5] The parties' disputes regarding AT&T's proposed definitions of "Section 251(b)(5) Traffic" are addressed in subparts (b)(i) and (b)(ii) for the CMRS and CLEC ICAs, respectively. I address the CMRS definition in my testimony, and Mr. McPhee addresses the CLEC definition.

end user's location cannot be determined with complete precision. Therefore, AT&T's language appropriately deems the Sprint end user's location to be at the cell site that served the end user at the beginning of the call. This is consistent with the FCC's conclusion that "the location of the initial cell site when a call begins shall be used as the determinant of the geographic location of the mobile customer."[6]

Q. IF SPRINT'S TERM "INTRAMTA TRAFFIC" WAS SIMPLY RENAMED "SECTION 251(b)(5) TRAFFIC," WOULD THAT RESOLVE THIS ISSUE?

A. No. AT&T agrees it is appropriate to include a separate definition of "IntraMTA Traffic" in the ICA;[7] thus, it would not be workable to simply rename Sprint's term "IntraMTA Traffic" to "Section 251(b)(5) Traffic." In addition, the parties disagree as to whether IntraMTA Traffic is subject to section 251(b)(5) reciprocal compensation when traffic is carried by an IXC.[8] In order to further explain the problem with Sprint's proposed definition, it is important to understand what a Major Trading Area, or "MTA," is.

Q. WHAT IS A MAJOR TRADING AREA?

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[6] *Local Competition Order* at ¶ 1044.

[7] The parties' dispute regarding the definition of IntraMTA Traffic is reflected as Issue I.B(4) and is addressed by Mr. McPhee.

[8] The parties' dispute regarding the compensation associated with IntraMTA Traffic carried by an IXC is reflected as Issue III.A.1(1), which I address below.

A. The parties have agreed to define the term Major Trading Area "as defined in 47 C.F.R. § 24.202(a)."[9] Simply, a Major Trading Area represents a geographic area established by the FCC for wireless licensing purposes. There are 51 MTAs in the United States and its island territories (46 in the continental U.S.). In Tennessee there are whole or parts of five MTAs. Under the FCC's reciprocal compensation rules, MTAs are used to define CMRS calls that are subject to reciprocal compensation in essentially the same way that local exchange areas are used to define landline calls that are subject to reciprocal compensation.

Q. WITH THAT BACKGROUND, WHAT IS THE PROBLEM WITH SPRINT'S PROPOSED DEFINITION WITH RESPECT TO THE APPLICATION OF RECIPROCAL COMPENSATION RIGHTS?

A. Sprint's proposed definition would deem the mobile end user's location to be at the parties' point of interconnection ("POI"), rather than at the cell site to which the mobile end user is connected at the beginning of the call. The problem is that the parties' POI may not be at all indicative of the MTA associated with the mobile end user's actual location, particularly if the mobile end user is outside the state at the beginning of a call. Using Sprint's definition of "IntraMTA Traffic" (even if renamed "Section 251(b)(5) Traffic") rather than AT&T's definition of "Section 251(b)(5) Traffic" thus would incorrectly identify some calls as

[9] 47 C.F.R. § 24.202(a) provides that "[t]he MTA service areas are based on the Rand McNally 1992 Commercial Atlas & Marketing Guide , 123rd Edition, at pages 38–39, with the following exceptions and additions:" (Exceptions omitted.)

IntraMTA Traffic and subject to reciprocal compensation when they should instead be identified as InterMTA Traffic subject to access charges.[10]

Q. HOW SHOULD THE AUTHORITY RESOLVE ISSUE I.B(2)(b)(i)?

A. The Authority should adopt AT&T's definition of the term "Section 251(b)(5) Traffic" for the CMRS ICA, because it most accurately identifies the originating and terminating points of a call for purposes of applying reciprocal compensation. There is a separate issue regarding whether reciprocal compensation applies to 1+ IntraMTA Traffic that AT&T routes to an interexchange carrier ("IXC") for termination to Sprint, which I address below for Issue III.A.1(1). The Authority should adopt AT&T's proposal to use the term "Section 251(b)(5) Traffic" regardless of how it resolves Issue III.A.1(1).[11]

DPL ISSUE I.B(3)

What is the appropriate definition of Switched Access Service?

Contract Reference: GTC Part B Definitions

Q. WHAT IS THE PARTIES' DISAGREEMENT CONCERNING THE DEFINITION OF THE TERM "SWITCHED ACCESS SERVICE"?

A. The parties disagree about whether the defined term "Switched Access Service" should be limited to service provided to an IXC, as the ICAs define that term. Sprint contends that Switched Access Service is limited to service provided to an IXC, and AT&T contends it is not. This dispute applies to both ICAs.

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[10] The parties also dispute the appropriate compensation for InterMTA Traffic, which is reflected under Issues III.A.3(1) and III.A.3(2), addressed by Mr. McPhee.

[11] There is only one word in AT&T's definition of "Section 251(b)(5) Traffic" that is relevant to the 1+ IntraMTA Traffic issue – "directly." If the Authority decides for Issue III.A.1(1) that Sprint's position prevails, the only modification to AT&T's proposed definition of "Section 251(b)(5) Traffic" would be the deletion of the word "directly."

Q. HOW DO THE ICAS DEFINE THE TERM "INTEREXCHANGE CARRIER"?

A. The parties have agreed to define the term "Interexchange Carrier" as "a carrier (other than a CMRS provider or a LEC) that provides, directly or indirectly, interLATA or intraLATA Telephone Toll Services." Thus, neither Sprint nor AT&T would be considered an IXC for services provided pursuant to the ICAs.

Q. THE ICAS DEFINE IXC WITH RESPECT TO INTERLATA OR INTRALATA TOLL SERVICES. WHAT IS A LATA?

A. The parties have agreed to define the term "Local Access and Transport Area (LATA)," which was originally established pursuant to the 1984 Modified Final Judgment ("MFJ") breaking up the former Bell System, as defined at 47 C.F.R. § 51.5.

> A Local Access and Transport Area is a contiguous geographic area
>
> (1) Established before February 8, 1996 by a Bell operating company such that no exchange area includes points within more than 1 metropolitan statistical area, consolidated metropolitan statistical area, or State, except as expressly permitted under the AT&T Consent Decree; or
>
> (2) Established or modified by a Bell operating company after February 8, 1996 and approved by the Commission.

There are 195 LATAs in the continental United States, more than four times the number of MTAs.

Q. DO AT&T'S ACCESS TARIFFS DEFINE INTEREXCHANGE CARRIER THE SAME AS THE PARTIES' ICAS?

A. No. AT&T's state access tariff defines interexchange carrier as follows:

> The term "Interexchange Carrier (IC)" or "Interexchange Common Carrier" denotes any individual, partnership, association, joint-

> stock company trust, governmental entity or corporation engaged for hire in intrastate communications by wire or radio, between two or more exchanges.[12]

Similarly, AT&T's federal access tariff defines interexchange carrier as follows:

> The terms "Interexchange Carrier" (IC) or "Interexchange Common Carrier" denotes any individual, partnership, association, joint-stock company, trust, governmental entity or corporation engaged for hire in interstate or foreign communication by wire or radio, between two or more exchanges.[13]

In other words, for the purpose of providing switched access service (which AT&T only offers pursuant to tariff), any carrier that provides service between exchanges (*i.e.*, interexchange service) is an interexchange carrier, including LECs. Accordingly, AT&T's switched access tariffs apply to any carrier, including Sprint, that uses its network to access AT&T's network for the purpose of originating or terminating an interexchange call, *i.e.*, one that begins and ends in different exchanges (or MTAs for CMRS); the tariff is not limited to "IXCs" as defined in the parties' ICAs.

Q. WHAT WOULD BE THE EFFECT OF LIMITING THE APPLICATION OF THE TERM "SWITCHED ACCESS SERVICE" TO IXCS?

A. If the term "Switched Access Service" were limited to an offering of access to an IXC (as the ICAs define IXC), then no traffic exchanged directly between the parties would ever be considered Switched Access Service traffic and, therefore, the tariffs would never apply. However, when AT&T and Sprint directly

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[12] *See*, Bellsouth Telecommunications, Inc. Access Services Tariff for Tennessee, Section E2.6, Sixth Revised Page 23, Effective May 18, 2000.

[13] *See*, Bellsouth Telecommunications Inc. FCC Tariff No. 1, Section 2.6, 6th Revised Page 2-62, Effective January 1, 1998.

exchange traffic that originates and terminates in different local calling areas within a LATA (*i.e.*, intraLATA toll) pursuant to the CLEC ICA, that interexchange traffic is properly considered Switched Access Service traffic subject to switched access tariffs. In the context of the CMRS ICA, traffic exchanged between the parties that originates and terminates in different MTAs within a LATA (*i.e.*, InterMTA intraLATA) would properly be considered Switched Access Service traffic.

Q. DO THE PARTIES HAVE RELATED ISSUES REGARDING COMPENSATION FOR SWITCHED ACCESS SERVICE TRAFFIC?

A. Yes. Issues III.A.3(1) and III.A.3(2) address the applicability of access charges to InterMTA Traffic for the CMRS ICA. Issue III.A.4(1) addresses the compensation rates, terms and conditions to be included in the CLEC ICA relative to Switched Access Service traffic. All of these issues are addressed by Mr. McPhee, so I will not discuss them here.

Q. WHAT IS THE BASIS OF SPRINT'S POSITION?

A. Sprint asserts that switched access service tariffs are only applicable to IXCs, and Sprint is never an IXC. In addition, since the parties will interconnect and exchange traffic pursuant to the ICAs, the tariffs will never apply to the parties – even if the ICAs reference the tariff.

Q. DO YOU AGREE?

A. No. As I explained above, AT&T's switched access tariffs apply to interexchange carriers as the tariffs define that term – and that includes LECs such as Sprint. It is not unusual for an ICA to reference a tariff for rates, terms and conditions. In

this situation, a service may be addressed in the ICA, but the rates, terms and conditions of the tariff govern (*i.e*., "pursuant to" the tariff). For example, AT&T's language in Attachment 3 section 6.4.1.1 of the CMRS ICA[14] references Switched Access Services in the context of the access tariffs, but does so in a scenario for which there is no IXC involvement. This provision, if adopted, will direct the parties' arrangement, while the tariffs' terms, conditions, and rates govern the actual service at issue.

Q. HOW SHOULD THE AUTHORITY RESOLVE ISSUE I.B(3)?

A. The Authority should adopt AT&T's definition of "Switched Access Service" for both ICAs and reject Sprint's definition. Sprint's definition would improperly exclude both parties from the offering of Switched Access Service to one another.

DPL ISSUE II.A

Should the ICA distinguish between Entrance Facilities and Interconnection Facilities? If so, what is the distinction?

Contract Reference: GTC Part B Definitions; Attachment 3, section 2.2

Q. IN THE CONTEXT OF THIS ISSUE, WHAT ARE "FACILITIES"?

A. Facilities are the physical medium – for example, copper wire or fiber optic cable – through which telecommunications are transmitted. Facilities are used for the transmission of telecommunications between locations, including, for example, between two AT&T offices or between an AT&T office and a Sprint switch location. AT&T witness James Hamiter has an extensive discussion of what

[14] Since the majority of contract sections referenced in my testimony concern Attachment 3, the Authority can assume any unidentified contract section references relate to Attachment 3.

facilities are, and how they differ from trunks, in the introductory section of his direct testimony.

Q. WHAT DO YOU MEAN BY "OFFICE"?

A. An office is a telecommunications carrier's building in which there is a switch. For example, an AT&T building in which there is a tandem switch may be referred to as a tandem office.

Q. WHAT FACILITIES ARE THE SUBJECT OF THIS ISSUE?

A. This issue concerns "entrance facilities," which are facilities that run from a CLEC's or CMRS provider's switch location to an ILEC's office – in this instance, AT&T's. An entrance facility is used to transport traffic from the CLEC or CMRS switch location (or point of presence ("POP")) in the LATA to the point at which the CLEC's or CMRS provider's network interconnects with the ILEC's network – the so-called "point of interconnection," or "POI." An entrance facility may be very short, measured in feet, or it may be very long, stretching for blocks or even miles.

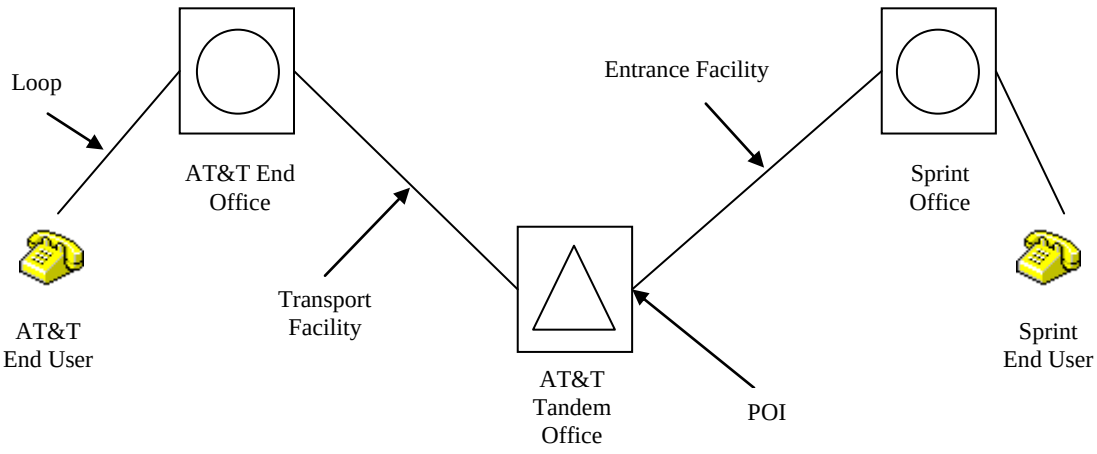
Q. WHY IS SUCH A FACILITY CALLED AN ENTRANCE FACILITY?

A. Because it is the entrance into the ILEC's network for the interconnected CLEC or CMRS provider.

Q. CAN YOU PROVIDE A DIAGRAM THAT ILLUSTRATES THIS?

A. Certainly. The diagram below, which is simplified but illustrative, shows part of AT&T's network – an end office that serves the AT&T customer via a "loop" (a wire or cable) that connects the customer with that end office, and a transport facility connecting the AT&T end office with an AT&T tandem office (tandem

switches connect other switches). Sprint's switch location is connected with the AT&T tandem office by means of an entrance facility, which serves to transport traffic between the Sprint switch location and the point in the AT&T tandem office at which the parties' networks are interconnected. Physically, there is no difference between the entrance facility and the other transport facility between the AT&T end office and the AT&T tandem (except that one might be higher capacity than the other). The entrance facility is an entrance facility because it provides Sprint with an entrance into AT&T's network at the POI.



Q. PHYSICALLY, WHERE EXACTLY IS THAT POINT OF INTERCONNECTION?

A. The POI might be, for example, at the trunk interconnection point for a tandem switch, which may be at a distribution frame, or at another cross-connect point in the tandem office.

Q. HOW CAN SPRINT OBTAIN THAT ENTRANCE FACILITY?

A. There are three ways. Sprint can install the facility itself, it can obtain the facility from a third party provider, or it can obtain the facility from AT&T.

Q. IS IT A REALISTIC OPTION FOR SPRINT TO PROVIDE ENTRANCE FACILITIES ITSELF, RATHER THAN OBTAINING THEM FROM AT&T?

A. Absolutely. As I will explain, the FCC has found that carriers can economically provision entrance facilities themselves and do not need to obtain them from the ILEC.

Q. WHAT IS THE PARTIES' DISAGREEMENT CONCERNING ENTRANCE FACILITIES?

A. Sprint objects to using the term entrance facilities in the ICAs at all. Instead, Sprint seeks to define interconnection facilities as though there is no distinction between entrance facilities and interconnection facilities. With Sprint's proposed language, if Sprint chooses to obtain interconnection facilities (which are really entrance facilities) from AT&T, Sprint wants the Authority to require AT&T to provide those (entrance) facilities to Sprint at cost-based, *i.e.,* TELRIC-based, rates.[15] I will explain the difference between entrance facilities and interconnection facilities, and AT&T will show through my testimony and its briefs that any requirement that AT&T price entrance facilities at cost-based rates would be contrary to law.

Q. DOES THIS ISSUE APPLY BOTH TO THE SPRINT CLEC ICA AND THE SPRINT CMRS ICA?

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[15] TELRIC stands for Total Element Long Run Incremental Cost.

A. Yes. As of today, there is no difference between the principles governing entrance facilities for CLECs and entrance facilities for CMRS providers.[16] I will note, though, that there is one change that might be made to my diagram to depict Sprint CMRS rather than Sprint CLEC. Historically, when ILECs have interconnected with CMRS providers, the parties have actually established not just the one POI shown in my diagram, but also a second POI, at the CMRS provider's switch. In the CMRS scenario, the CMRS provider is seen as handing off its traffic to the ILEC at the CMRS provider's POI on the ILEC network, and the ILEC is seen as handing off its traffic to the CMRS provider at the ILEC's POI on the CMRS network. Thus, my diagram could show a second POI at the point where the Entrance Facility hits the Sprint switch location.[17] This does not, however, affect my discussion of this issue.

Q. CAN YOU PROVIDE A DIAGRAM THAT DEPICTS BOTH ENTRANCE FACILITIES AND INTERCONNECTION FACILITIES?

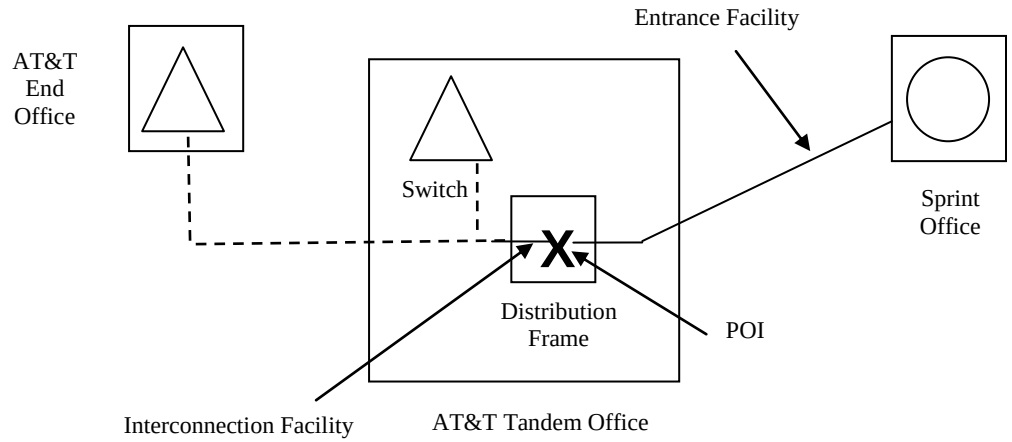
A. Certainly. Zooming in on a portion of the previous diagram, the diagram below shows an AT&T tandem office with the POI established at a distribution frame cross-connect point. Each carrier is responsible for the facilities on its side of the POI.[18] The entrance facility connects from the CLEC switch location to the cross-

[16] As I will discuss, incumbent LECs were at one time required to provide entrance facilities as unbundled network elements ("UNEs"). CMRS providers, however, could not obtain entrance facilities, because the FCC ruled that CMRS providers were not entitled to UNEs. Now, entrance facilities are no longer available as UNEs to anyone.

[17] *See* my testimony below for Issue III.H(3) for a discussion and diagram specific to the CMRS interconnection arrangement.

[18] *See* Docket No. 03-00585, *Petition for Arbitration of Cellco Partnership d/b/a Verizion Wireless* ("CMRS Docket"), Order on Reconsideration dated July 21, 2008 ("CMRS Recon Order") at page 5.

connect point (*i.e.*, the POI). The interconnection facility consists of the cross-connect itself, without which the CLEC would not be able to exchange traffic between its customers and AT&T's. The dotted lines represent facilities on AT&T's side of the POI for which AT&T is responsible.



Q. YOU SAY IT WOULD BE CONTRARY TO LAW FOR THE AUTHORITY TO REQUIRE AT&T TO PROVIDE ENTRANCE FACILITIES TO SPRINT AT COST-BASED RATES. IS THIS PRIMARILY A LEGAL ISSUE, THEN?

A. It is in large part a legal issue, and it is one that has been heavily litigated throughout the country for the last several years. For that reason, my testimony will put the issue in context and outline the law as I understand it, but will not delve as deeply into the law as AT&T's briefs will. Also, as I will explain, important policy considerations strongly support AT&T's position.

Q. HAS THERE BEEN A LEGAL RULING BY A COURT THAT DICTATES THE RESULT HERE?

A. Yes. As I further discuss below, the United States Court of Appeals for the Sixth Circuit has ruled that AT&T cannot lawfully be required to provide entrance

facilities at cost-based rates. Since Tennessee is in the Sixth Circuit, that decision must be followed here. I will go on and discuss the issue, but at the end of the day, the resolution of this issue is a foregone conclusion.

Q. WHAT GAVE RISE TO THE CURRENT DEBATE ABOUT ENTRANCE FACILITIES?

A. The rules that the FCC promulgated in 1996 to implement the network element unbundling requirement in section 251(c)(3) of the 1996 Act required incumbent LECs to provide entrance facilities to CLECs as a UNE at cost-based (or TELRIC-based) rates. In 2005, however, after the courts rejected its 1996 UNE rules (and several subsequent sets of UNE rules), the FCC released its *Triennial Review Remand Order (*"*TRRO*"),[19] which established that ILECs were no longer required to provide entrance facilities as UNEs, because the unavailability of entrance facilities would not impair CLECs in their ability to provide service. With this "declassification" of entrance facilities, which remains the law today, there was no longer a basis for requiring ILECs to provide entrance facilities at TELRIC-based rates.

However, competing carriers, such as Sprint, have seized on a side comment in the *TRRO* to argue that even though ILECs are no longer required to provide entrance facilities as UNEs under section 251(c)(3), they must now provide those same facilities at TELRIC-based rates pursuant to section 251(c)(2), which governs interconnection. According to this theory, entrance facilities are

[19] Order on Remand, *Unbundled Access to Network Elements; Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, 20 FCC Rcd 2533 (2005) ("*TRRO*").

seen as "interconnection facilities" (a term the FCC used in the comment on which the CLECs rely),[20] and since ILECs must provide interconnection facilities at TELRIC-based rates under section 251(c)(2), the argument goes, entrance facilities must – even though no longer subject to unbundling as network elements – be provided at TELRIC-based rates for purposes of interconnection.

Q. WHAT IS AT&T'S POSITION?

A. From AT&T's perspective, the CLEC position is contrary to common sense, contrary to sound policy, contrary to law, and based on a misreading of the FCC comment on which the CLEC position relies.[21] It simply makes no sense that the FCC, having decided that ILECs were no longer required to provide CLECs with entrance facilities as cost-based UNEs because CLECs could economically provide such facilities themselves, would turn around and hold that ILECs had to provide *the very same facilities* at cost-based rates under another label. And indeed, the FCC's comment in the *TRRO* that the CLECs contend represents such a turn-about does not say what the CLECs claims it says. As I mentioned earlier, the Sixth Circuit's February 23, 2010 decision in an appeal brought by AT&T's ILEC affiliate in Michigan (*Michigan Bell Tel. Co. v. Covad Commcn's*[22]) affirmed that AT&T is not required to provide entrance facilities at TELRIC-based rates. Since Tennessee is included in the Sixth Circuit, the Authority is

[20] *TRRO* at ¶ 140.

[21] Generally, when I use the term "CLEC" in my discussion of this issue, I do not intend to exclude CMRS providers. Rather than repeatedly refer to a "CLEC or CMRS provider" position or switch location, for example, I use CLEC for short.

[22] *Michigan Bell Tel. Co. v. Covad Commc'ns Co*., 597 F.3d 370, 379-81 (6th Cir. 2010).

bound to rule that Sprint is not entitled to entrance facilities at TELRIC-based rates pursuant to the parties' ICAs.

Even putting aside the Sixth Circuit's decision, as a matter of policy, Sprint's position that ILECs must provide facilities between Sprint's switch locations and AT&T's network at TELRIC-based pricing is directly at odds with the fundamental aims and purposes of the 1996 Act. Under the 1996 Act, incumbent LECs, in order to facilitate local competition, must provide to their competitors at cost-based rates those things that are available (at least as a practical matter) only from the incumbents. Interconnection with the incumbent – *i.e.*, a physical linkage with the incumbent's network – is available only from the incumbent, so the ILEC must provide it at TELRIC-based rates. Those elements of the incumbent's network that pass the FCC's impairment test are available only from the incumbent, so the incumbent must provide access to those elements as UNEs at TELRIC-based rates.

Conversely, that which the competing carrier can economically provide for itself or obtain in the marketplace is not subject to TELRIC-based pricing. That is precisely why the FCC, having determined in the *TRRO* that entrance facilities (as well as other former UNEs, such as local switching) could be self-provisioned or were readily available from alternate sources, declassified those network elements. To require ILECs to provide at cost-based rates things that CLECs can economically provide for themselves is not only not required; it is positively anti-competitive. Given that there is a competitive market for the

provision of entrance facilities, as the FCC found, and as confirmed by the Sixth Circuit, it would be anti-competitive to require one seller in that marketplace, the ILEC, to provide its product at cost.

That, though, is what Sprint is seeking to accomplish here with its definition and use of the term "Interconnection Facilities." The FCC made a conclusive, binding determination in the *TRRO* that carriers can provide their own entrance facilities, and that ILECs therefore cannot be required to provide them as UNEs at TELRIC-based rates. To then turn around and argue that those *very same facilities* should be provided at TELRIC-based pricing under another provision of the 1996 Act is, at best, nonsensical.

Q. IS THERE ANY FCC SUPPORT FOR YOUR VIEW THAT TO REQUIRE ILECS TO PROVIDE ENTRANCE FACILITIES AT COST-BASED RATES WOULD BE CONTRARY TO THE GOALS OF THE 1996 ACT?

A. Yes. The ultimate purpose of the local competition provisions in the 1996 Act is to spur sustainable, facilities-based competition – competition by carriers using their own facilities. The FCC recognized this in the *TRRO*:

> In this Order, the Commission takes additional steps to encourage the innovation and investment that comes from facilities-based competition. By using our section 251 unbundling authority in a more targeted manner, this Order imposes unbundling obligations only in those situations where we find that carriers genuinely are impaired without access to particular network elements and where unbundling does not frustrate sustainable, facilities-based competition. This approach satisfies the guidance of courts to weigh the costs of unbundling, and ensures that our rules provide the right incentives for both incumbent and competitive LECs to invest rationally in the telecommunications market that best allows

for innovative and sustainable competition.[23]

Q. YOU GAVE THE IMPRESSION THAT THE CLEC POSITION ON THIS ISSUE RELIES HEAVILY ON THE FCC'S COMMENT IN PARAGRAPH 140 OF THE *TRRO*. IS THERE ANYTHING IN THE ACTUAL INTERCONNECTION LANGUAGE IN THE 1996 ACT, OR IN ANY FCC RULE, THAT SUPPORTS THE CLEC POSITION?

A. No. Interestingly enough, what Sprint is asking for here is not authorized either by any language in the 1996 Act or by any FCC rule. Section 251(c)(2) requires ILECs to "provide, for the facilities and equipment of any requesting telecommunications carrier, interconnection with the [ILEC's] network . . . at any technically feasible point within that network." Nothing about that language suggests that the ILEC has a duty to provide a facility for the requesting carrier to use to get to that technically feasible point within the ILEC's network. The only facilities mentioned are the requesting carrier's.

As for the FCC's rules, nothing in them suggests that ILECs have a duty to provide entrance facilities, either. Quite the opposite, the FCC's rule defining "interconnection" to mean the physical linking of two networks very strongly suggests that interconnection does *not* include transmission facilities between the two networks.

Thus, at the end of the day, Sprint's request for entrance facilities at TELRIC-based rates rests solely on Sprint's reading – misreading, actually – of a comment in the *TRRO.*

Q. PLEASE SUMMARIZE AT&T'S POSITION ON THIS ISSUE.

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[23] *TRRO* ¶ 2.

A. The Sixth Circuit affirmed that AT&T is not required to provide entrance facilities at TELRIC-based rates, and the Authority should respect that decision. In addition, the FCC conclusively determined in the *TRRO* that requesting carriers are not impaired if they do not have access to entrance facilities at cost-based rates, because they can economically provide those facilities themselves. Based solely on a self-serving reading of a side comment in that order, Sprint asks the Authority nonetheless to require AT&T to provide Sprint with entrance facilities at cost-based rates, purportedly pursuant to the interconnection requirement in section 251(c)(2) of the 1996 Act. The Authority should reject Sprint's request. Such a requirement would be unlawful, anti-competitive, in contravention of the goals of the 1996 Act, unsupported by the language of section 251(c)(2), contrary to the FCC's definition of "interconnection," and is not a reasonable reading of the FCC comment on which Sprint relies.

Q. YOU HAVE EXPLAINED THE DISTINCTION BETWEEN ENTRANCE FACILITIES AND INTERCONNECTION FACILITIES. DO YOU HAVE ANY COMMENTS REGARDING SPRINT'S DEFINITION OF "INTERCONNECTION FACILITIES"?

A. Yes. First, of course, is Sprint's incorrect assertion that the term entrance facilities has no place in the parties' ICAs because entrance facilities is a UNE concept unrelated to interconnection. I have already explained why Sprint is wrong in this regard. In addition, Sprint would define "Interconnection Facilities" to include everything and anything between its switch and AT&T's switch. With Sprint's definition, for example, AT&T would even be obligated to provide Sprint with unbundled dedicated transport between non-impaired wire centers en route to

the office where the parties have established a POI – simply because Sprint used a portion of those facilities to transport its traffic. Of course, Sprint should not be entitled to dedicated facilities between non-impaired wire centers, because the FCC removed such facilities from the ILECs' unbundling obligations. As with entrance facilities, it would be anti-competitive for Sprint to obtain dedicated transport at TELRIC-based pricing.

Second, Sprint expands its definition of the term "Interconnection Facilities" to include facilities that are beyond the parties' POI (which is how Sprint first improperly defines the term) when Sprint routes traffic to AT&T destined to terminate with a third party carrier.[24] It makes absolutely no sense to define interconnection facilities differently depending on the nature of the traffic being carried over those facilities. Nor does Sprint's interconnection with AT&T extend to another party's POI, which is what Sprint's definition would require. The FCC defined interconnection to be the linking of two parties' networks for the mutual exchange of traffic, excluding transport and termination[25] and Sprint's definition of "Interconnection Facilities" (*i.e.*, the facilities used for interconnection) is not compliant with that rule.

Q. HOW SHOULD THE AUTHORITY RESOLVE ISSUE II.A?

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[24] AT&T objects to including in the ICA its provision of transit traffic service to Sprint. *See* Issue I.C(2), addressed by Mr. McPhee. Even if the Authority rules that transit traffic service must be included in the ICA, Sprint's definition of "Interconnection Facilities" to include facilities between AT&T and a third party's POI is inappropriate.

[25] 47 C.F.R § 51.5.

A. The Authority should adopt AT&T's separate definitions of "Entrance Facilities" and "Interconnection Facilities" for the parties' ICAs, because they are consistent with the Sixth Circuit's decision and the FCC's *TRRO* and accurately represent the facilities at issue: Entrance Facilities are used to transport traffic between Sprint's location and the parties' POI on AT&T's network; Interconnection Facilities provide the link between Sprint's network and AT&T's network, and do not include transport. Sprint's definition of "Interconnection Facilities" to include transport between Sprint and AT&T should be rejected, because it is inconsistent with the Sixth Circuit's conclusion that what Sprint is defining is actually entrance facilities and not interconnection facilities. Sprint's language should also be rejected, because it improperly includes in the definition of Interconnection Facilities transport from AT&T's network to a third party's POI when terminating Sprint-originated transit calls.

DPL ISSUE III.A(1)

As to each ICA, what categories of exchanged traffic are subject to compensation between the parties?

Contract Reference: Attachment 3, Sprint section 6.1.1, AT&T CMRS section 6.1.1

Q. CONSIDERING THE CMRS ICA FIRST, WHAT CATEGORIES OF TRAFFIC DOES EACH PARTY PROPOSE TO IDENTIFY AS SUBJECT TO COMPENSATION BETWEEN THE PARTIES?

A. AT&T's language sets forth the specific categories of telecommunications traffic subject to compensation between the parties, including Section 251(b)(5) Traffic, IXC traffic, and InterMTA Traffic. Sprint, on the other hand, offers two sets of Authorized Services traffic classifications depending on how billing will be

handled. If the Authority determines that only two categories of billable traffic are necessary, Sprint proposes that the ICA categorize traffic as Authorized Services Terminated Traffic, Jointly Provided Switched Access Service Traffic, and Transit Traffic. (Indeed, Sprint does appear to propose three categories if the Authority determines that two categories are necessary.) If more than two billable categories of traffic are necessary, Sprint proposes to separately identify IntraMTA Traffic, InterMTA Traffic, Information Services traffic, Interconnected VoIP traffic, Jointly Provided Switched Access Service Traffic, and Transit Traffic.

Q. PLEASE EXPLAIN AT&T'S PROPOSAL TO IDENTIFY THE CATEGORIES OF COMPENSABLE TRAFFIC AS SECTION 251(b)(5) TRAFFIC, IXC TRAFFIC AND INTERMTA TRAFFIC?

A. The establishment of the appropriate classifications of traffic is critical to ensuring application of the appropriate rates. AT&T's three simple categories of telecommunications traffic are easily understood and accurately reflect the different compensation mechanisms applicable to each traffic type. Section 251(b)(5) Traffic is subject to reciprocal compensation. IXC traffic is subject to meet point billing, so the parties can each bill the appropriate rate elements to an IXC carrying a jointly provided switched access call. And InterMTA Traffic is long distance traffic subject to access charges. There is no need to separately identify non-telecommunications traffic, since all traffic exchanged between the parties is treated as telecommunications traffic for the purpose of compensation.

Q. PLEASE EXPLAIN THE TWO SETS OF TRAFFIC CLASSIFICATIONS THAT SPRINT PROPOSES FOR THE CMRS ICA.

A. Sprint proposes two alternative sets of classifications for the CMRS ICA (one set with three classifications, which are different than AT&T's, and another set with six classifications), depending on the number of billable categories "deemed necessary." Sprint has offered no guidance upon which the Authority could rely to determine whether two or more than two billable categories of traffic are appropriate for the CMRS ICA, so it is unclear what Sprint actually advocates. Nor has Sprint yet explained why either of its proposals is appropriate.

Sprint's proposal if the Authority determines that only two billable categories of traffic are necessary actually reflects three categories: "Authorized Services Terminated Traffic," "Jointly Provided Switched Access traffic," and "Transit Service Traffic." Sprint includes IntraMTA Traffic, InterMTA Traffic, Information Services traffic, and Interconnected VoIP traffic combined together in the category of "Authorized Services Terminated Traffic."

If more than two billable categories of traffic are necessary, Sprint proposes that its single large bucket of "Authorized Services Terminated Traffic" (if there are only two billable categories of traffic) be split into four separate buckets. The other two categories are the same as above, for a total of six traffic classification categories.

Q. WHY SHOULD THE AUTHORITY ADOPT AT&T'S CMRS TRAFFIC CLASSIFICATIONS AS SET FORTH IN SECTION 6.1.1?

A. Because AT&T's traffic classifications not only are simpler than Sprint's approach, they also represent the appropriate way to categorize traffic exchanged between the parties for the purpose of intercarrier compensation and provide the

parties with the best way to apply the proper rates based on call jurisdiction. As I stated above, the establishment of the appropriate classifications of traffic is critical to ensuring application of the appropriate rates. To this I would add that AT&T's proposed classifications are in common use today and familiar to the Authority and carriers. While that alone is not a sufficient reason to adopt them, the Authority should not depart from the typical classifications unless Sprint provides a sound reason to do so, which it has not yet done and, in any event, I do not believe there is any such reason.

Q. WHY SHOULD THE AUTHORITY REJECT SPRINT'S ALTERNATIVE TRAFFIC CLASSIFICATIONS?

A. Sprint CMRS offers two alternative sets of classifications, with no guidance to the Authority regarding how to determine which set would actually apply to the parties' traffic. Sprint's proposal for when there are two billable categories inappropriately combines traffic types that are jurisdictionally distinct (*e.g.*, IntraMTA Traffic and InterMTA Traffic), treating them the same for compensation purposes. And its proposal for more than two billable categories creates an unnecessary distinction between telecommunications traffic and non-telecommunications traffic. Sprint's language in its section 6.1.1 would likely lead to disputes regarding what traffic category applies to a particular call.[26]

[26] If the Authority concludes for Issue I.C(2) that AT&T must offer Transit Traffic Service to Sprint in the CMRS ICA, AT&T would agree to include Transit Traffic (as AT&T defines that term; *see* Issue I.C(1)) as an additional traffic type to be listed in AT&T's CMRS Attachment 3 section 6.1.1.

Q. WITH RESPECT TO THE CLEC ICA, WHAT CATEGORIES OF TRAFFIC DO THE PARTIES PROPOSE TO BE SUBJECT TO COMPENSATION BETWEEN THE PARTIES?

A. AT&T does not propose specific language to list the categories of traffic subject to compensation between the parties under the CLEC ICA. Instead, AT&T's proposed CLEC classifications are reflected in contract language set forth in other issues (addressed by Mr. McPhee):

- Section 251(b)(5) Traffic / ISP-Bound Traffic (Issues III.A.1(3) and III.A.2);
- Telephone Toll Service traffic, both intraLATA and interLATA (Issues III.A.4(2) and III.A.4(3));
- Foreign Exchange ("FX") Traffic (Issue III.A.5); and
- Other telecommunications traffic, *e.g.*, 8YY traffic, Switched Access Service traffic (Issues III.A.6(1) and III.A.6(2)).

Similar to its proposal for traffic categories for the CMRS ICA, Sprint offers two sets of Authorized Services traffic classifications for the CLEC ICA, again depending on how billing will be handled. If the Authority determines that only two categories of billable traffic are necessary, Sprint proposes that the ICA categorize traffic as Authorized Services Terminated Traffic, Jointly Provided Switched Access Service Traffic, and Transit Traffic. If more than two billable categories of traffic are necessary, Sprint proposes to separately identify Telephone Exchange Service Telecommunications traffic, Telephone Toll Service Telecommunications traffic, Information Services traffic, Interconnected VoIP traffic, Jointly Provided Switched Access Service Traffic, and Transit Traffic.

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

A. AT&T's categories of traffic for the CLEC ICA accurately reflect the different compensation mechanisms applicable to each traffic type, as indicated by the bullet list above. Section 251(b)(5) Traffic, including ISP-Bound Traffic, is subject to reciprocal compensation. Telephone Toll Service traffic is long distance traffic subject to switched access charges. FX Traffic, which is not subject to section 251(b)(5) and also is not typical Telephone Toll Service traffic, is categorized separately.[27] And other types of traffic are subject to differing terms, *e.g.*, 8YY traffic is subject to switched access charges. There is no need to separately categorize non-telecommunications traffic, since all traffic exchanged between the parties is treated as telecommunications traffic for the purpose of compensation.

Sprint has offered no guidance upon which the Authority could rely to determine whether two or more than two billable categories of traffic are appropriate for the CLEC ICA. Nor has Sprint explained why either of its proposals is appropriate.

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

A. The Authority should adopt AT&T's language in CMRS Attachment 3 section 6.1.1. AT&T's traffic classifications represent the appropriate way to categorize traffic exchanged between the parties for the purpose of intercarrier compensation and provide the parties with the best way to apply the proper rates based on call jurisdiction. The Authority should reject Sprint's proposed language for

[27] FX traffic is the subject of Issue III.A.5, addressed by Mr. McPhee.

(Authorized Services) traffic categories in both the CMRS and CLEC ICAs. Sprint's proposal for two billable categories ignores the important jurisdictional distinction between local and toll calls (IntraMTA and InterMTA for CMRS), treating them the same for compensation purposes. And Sprint's proposal for more than two billable categories of traffic creates an unnecessary distinction between telecommunications traffic and non-telecommunications traffic.

DPL ISSUE III.A(2)

Should the ICAs include the provisions governing rates proposed by Sprint?

Contract Reference: Attachment 3, Sprint sections 6.2 – 6.2.4

Q. WHAT IS THE PARTIES' DISAGREEMENT CONCERNING SPRINT'S PROPOSED LANGUAGE GOVERNING USAGE RATES SET FORTH IN SECTIONS 6.2 TO 6.2.4?

A. An ICA should provide the parties with certainty for a set period of time and not be subject to one carrier's opportunistic desire to select a different rate(s) as it may become available at some different point in time (or that it discovers after it agreed to other rates). But instead of providing that certainty, Sprint's proposed language would require AT&T to bill Sprint the lowest rate from several options for each category of traffic, thus requiring AT&T to keep track of a variety of rates outside of the four corners of the ICA. Sprint's proposal would also unfairly and inappropriately provide Sprint with a reduced rate and refund under certain circumstances.

Q. WHAT IS YOUR UNDERSTANDING OF SPRINT'S PROPOSAL FOR ESTABLISHING USAGE RATES?

A. As reflected in its language for section 6.2.2, Sprint proposes that AT&T only be allowed to bill Sprint the lowest rate of four alternatives that might be applicable at a particular point in time, even if that rate is not captured in the ICA. Specifically, AT&T would be forced to determine, and then bill, the lowest rate available among the following four sources: (a) the rate in the Pricing Schedule;[28] (b) the rate the parties might negotiate as a replacement rate and include in the ICA; (c) the rate AT&T charges any other telecommunications carrier for the same category of traffic; or (d) the rate established by the Authority based upon an AT&T cost study, whether pursuant to this arbitration or any additional cost proceeding. Even though Sprint has populated certain rates or referenced a tariff in its Pricing Sheet, this is misleading. With Sprint's language in section 6.2.2, Sprint would not be bound by its own Pricing Sheet rates unless they were the lowest of the four options Sprint proposes.

Q. PLEASE EXPLAIN AT&T'S OBJECTION TO THIS PROPOSAL.

A. Sprint's proposal would obligate AT&T to bill rates that are different than the rates set forth in its Pricing Sheets, provided those rates are lower than those in the Pricing Sheets. The only legitimate source for rates is the Pricing Sheets that are incorporated in the ICAs (option (a)), and those rates should not be optional; AT&T should only be obligated to bill and Sprint should then be obligated to pay the rates set forth in the Pricing Sheets that are incorporated into the ICAs.

[28] Sprint's "rates" actually appear in its Pricing Sheet and not in the Pricing Schedule. Similar discrepancies in nomenclature appear elsewhere in both parties' language, which can be corrected when the parties conform the ICAs to the arbitration award.

Sprint's option (b) is nonsensical. If the parties had negotiated rates and populated them in the Pricing Sheets, then Sprint's option (a) would be applicable; thus, option (b) serves no legitimate purpose. And as I explained for option (a), rates in the Pricing Sheets should not be optional.

Sprint's option (c) is unacceptable because AT&T has no obligation to charge all carriers the same rate. In fact, the imposition of such a duty would undermine the negotiation process that is a cornerstone of the 1996 Act and would subvert the FCC's "All-or-Nothing Rule," which provides that a carrier cannot adopt preferred elements of another carrier's ICA piecemeal.[29]

Sprint's option (d) is objectionable with respect to all traffic not subject to reciprocal compensation, *e.g.*, toll / InterMTA Traffic. AT&T is not obligated to exchange such traffic at cost-based rates.

And even though Sprint's option (d) is not objectionable in principle solely with respect to reciprocal compensation, it nevertheless is unnecessary even for that traffic because AT&T has offered Sprint the FCC's single rate of $0.0007 for Section 251(b)(5) Traffic and ISP-Bound Traffic. Sprint itself proposes $0.0007 as a negotiated rate for Information Services traffic in its Pricing Sheets, but fails to recognize that the same rate also applies to Section 251(b)(5) Traffic.

[29] *See* Second Report and Order, *Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, CC Docket No. 01-338, 19 F.C.C. Rcd. 13,494, (rel. July 13, 2004). ("All-or-Nothing Order"); *see also* 47 C.F.R. 51.809(a) ("All-or-Nothing Rule").

Q. PLEASE DESCRIBE SPRINT'S PROPOSAL FOR A TRUE-UP OF RATES.

A. Sprint's proposed language in its section 6.2.3 provides for a true-up of usage rates (*i.e.*, refunds) between the effective date of the ICA and the date when AT&T updates its billing system to reflect the new, reduced rates. Retroactive rate reductions and associated refunds would be applied under either of two conditions. First, a true-up would apply if the Authority established rates in conjunction with its approval of an AT&T cost study. And second, Sprint would receive a refund if AT&T charged lower rates to any other telecommunications carrier for the same service, but those rates had "not [been] made known to Sprint" before executing the ICAs. Sprint's language does not state how other carriers' rates would be "made known to Sprint," either before or after ICA execution, but presumably this language seeks to impose an affirmative duty on AT&T to disclose to Sprint every conceivable rate that might exist in the market, or face the consequence that Sprint would be entitled to a refund if a lower rate in fact existed and had "not [been] made known to Sprint."

Q. WHY IS SPRINT'S TRUE-UP LANGUAGE INAPPROPRIATE FOR THE ICAS?

A. It is not for Sprint to decide if or when retroactive rate adjustments and refunds are appropriate. If the Authority orders AT&T to perform a cost study to determine the reciprocal compensation rates for Sprint's ICA(s), it is for the Authority to decide whether to order a true-up and, if so, how. In addition, Sprint's proposal that it receive a true-up in the event AT&T has lower rates with another telecommunications carrier that Sprint did not know about before

executing the ICAs, is ludicrous. Sprint is only entitled to another telecommunications carrier's rates if it elects to adopt that carrier's ICA in its entirety pursuant to section 252(i) and the FCC's "All-or-Nothing Rule." Furthermore, AT&T has no affirmative obligation to inform Sprint of other telecommunications carriers' rates. Those rates already are publicly available in any event, and Sprint, in the exercise of due diligence, had the ability to investigate those rates and explicitly propose them for inclusion in these ICAs. AT&T should not be penalized for Sprint's failure to do so.

Q. DOES AT&T OBJECT TO THE SYMMETRICAL APPLICATION OF USAGE RATES AS SET FORTH IN SPRINT'S SECTION 6.2.4?

A. AT&T does not object to the general concept of symmetrical usage rates; however, Sprint's language in its section 6.2.4 is objectionable when viewed in the context of Sprint's other pricing terms. For example, in its CMRS Pricing Sheet, Sprint includes an entry for Land-to-Mobile [L-M] InterMTA Traffic, but no entry for Mobile-to-Land [M-L] InterMTA Traffic. Thus, Sprint would be entitled to charge AT&T for termination of L-M InterMTA Traffic, but AT&T would not be able to charge Sprint a symmetrical rate for M-L traffic it terminates from Sprint. This disparate and inappropriate rate treatment would be permissible pursuant to Sprint's section 6.2.4. It is more appropriate to address rate symmetry in language directly addressing compensation for particular traffic types, as AT&T proposes in, for example, its language in Attachment 3 section 6.2.2.1 of the CMRS ICA.

Q. HOW SHOULD THE AUTHORITY RESOLVE ISSUE III.A(2)?

A. The Authority should reject Sprint's proposed language in its sections 6.2.2 through 6.2.4. An ICA should provide the parties with certainty for a set period of time, and Sprint's proposal subverts that purpose. In addition, Sprint's language violates the FCC's All-or-Nothing Rule and improperly provides for a retroactive true-up to the effective date of the ICAs for the difference between the initial contracted rate and any future rate Sprint might elect.

DPL ISSUE III.A(3)

What are the appropriate compensation terms and conditions that are common to all types of traffic?

Contract Reference: Attachment 3, Sprint sections 6.3.1, 6.3.5, 6.3.6.1, AT&T CLEC section 6.1.1, 6.3.1[30]

Q. WHAT IS THE PARTIES' DISAGREEMENT CONCERNING THE COMPENSATION TERMS AND CONDITIONS COMMON TO ALL TYPES OF TRAFFIC?

A. The parties generally agree that it is preferable to bill for traffic exchanged between the parties based on actual usage recordings and to use alternate methods only when necessary. The parties disagree, however, about how the ICAs should memorialize this understanding. In addition, Sprint objects to AT&T's proposed language in section 6.1.1 of the CLEC ICA that sets forth specific terms and conditions regarding the parties' responsibilities with respect to Calling Party Number ("CPN").

[30] Note: Attachment 3 in the CLEC currently has two sections 6.3.1. The first section 6.3.1 is AT&T language to which Sprint objects that is addressed under Issues III.A(1) and III.A(2). The second section 6.3.1 appears farther down in Attachment 3 and is reflected with Sprint's numbering. A portion of this language is agreed, and a portion is AT&T language to which Sprint objects. As indicated on the DPL Language Exhibit for this Issue III.A(3), it is the language reflected in this second section 6.3.1 that needs to be decided here.

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

A. Sprint asserts that its language in sections 6.3.1, 6.3.5, and 6.3.6.1 provides the necessary terms and conditions for the parties to a) accurately bill the originating party for usage, b) appropriately bill, apportion and share facility costs, and c) bill other ICA services. Sprint has not explained its objection to AT&T's proposed language.

Q. IS SPRINT'S POSITION SUPPORTED BY ITS PROPOSED CONTRACT LANGUAGE?

A. No. Sprint's proposed language merely states that the parties will use some unidentified surrogate method to classify traffic and render usage bills when actual usage data is not available, but it does not describe how the parties will do so. Thus, contrary to Sprint's assertion, it does *not* provide the essential terms for the parties to bill for usage in the absence of actual traffic data. Specifically, Sprint's language simply says: "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." Far from providing the "necessary terms and conditions" of a method, this language is no agreement at all. It leaves completely to another day how the parties will deal with the matter. That is a wholly inadequate and inappropriate way to deal with it. An ICA should spell out clearly and precisely the parties' rights and obligations in order to provide certainty and avoid unnecessary disputes and disruptions in the future. Furthermore, Sprint's language (such as it is) only

addresses usage billing, which is point a) above. It does not address billing for facilities or other ICA services.

Q. WHAT IS THE BASIS FOR AT&T'S POSITION?

A. The reason AT&T objects to Sprint's approach – which is essentially just an agreement to try to agree in the future – is set out in the last answer. AT&T's proposal, in contrast, spells out with specificity precisely how the parties will proceed where measurement is not possible. It leaves nothing to an undefined future agreement. AT&T's language setting forth the specific process the parties will use when actual usage data is not available for billing is addressed in other language based on the category of traffic being billed. For example, AT&T's surrogate billing process for CMRS Section 251(b)(5) Traffic is set forth in sections 6.3.2 through 6.3.6. The parties dispute regarding this process is reflected in Issue III.A.1(2), addressed in my testimony below.

AT&T agrees with Sprint's language in section 6.3.1 as far as it goes. However, AT&T proposes additional language for needed clarity regarding the parties' responsibilities to record actual traffic measurements on traffic each terminates from the other. That language simply indicates that each party will record its terminating minutes of use ("MOU") for calls received from the other party, and, unless otherwise provided, each party will use procedures that record and measure actual usage for billing purposes.

In the CLEC ICA, AT&T also proposes language in its section 6.1.1 that provides additional specifications setting forth how the parties will handle CPN

for traffic they exchange. (CPN is necessary to properly jurisdictionalize and rate a call.) For example, AT&T's language states that neither party will manipulate the CPN it passes to the other party. Any such manipulation of CPN could affect the classification of a call as local or toll, resulting in application of the wrong usage rate and incorrect billing. In addition, AT&T's language requires the parties "to cooperate with one another to investigate and take corrective action" where a third party carrier is suspected of manipulating and/or misrepresenting CPN. AT&T's language thus seeks to minimize the potential for fraud associated with CPN. Sprint has not stated why it objects to this provision – the inclusion of which should be non-controversial – unless Sprint intends to manipulate/misrepresent CPN (which AT&T does not believe to be the case).[31]

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

A. The Authority should adopt AT&T's additional clarifying language in section 6.3.1 of both ICAs, as well as its language setting forth CPN specifications in section 6.1.1 of the CLEC ICA. The Authority should reject Sprint's language in its sections 6.3.5 and 6.3.6.1, because the lack of a usage billing process clearly set forth in the ICAs – an omission that would result from Sprint's language – would likely lead to billing disputes.

[31] Although AT&T is not suggesting that Sprint intends to manipulate or misrepresent CPN, the ICA that results from this arbitration will be open to adoption by other carriers pursuant to section 252(i). It is thus necessary and appropriate for the ICA to include protections from fraud in the event an adopting carrier was complicit in fraudulent behavior.

DPL ISSUE III.A.1(1)

Is IntraMTA traffic that originates on AT&T's network and that AT&T hands off to an IXC for delivery to Sprint subject to reciprocal compensation?

Contract Reference: Attachment 3, AT&T sections 6.2.3.1.7

Q. PLEASE DESCRIBE THE TRAFFIC THAT IS THE SUBJECT OF THIS ISSUE.

A. This issue concerns what I will call "IntraMTA IXC calls." For present purposes, an IntraMTA IXC call is a call from an AT&T local exchange (landline) customer to a Sprint CMRS (mobile) customer in the same MTA,[32] but in a rate center that is a toll or long distance call for the calling party. Because the call is a toll call, the calling party dials "1+" and the call is handed off by his local exchange carrier, AT&T, to his chosen interexchange carrier ("IXC"), which in turn delivers the call to Sprint for termination to its customer.

Q. PLEASE PROVIDE A SIMPLE EXAMPLE OF AN INTRAMTA IXC CALL IN TENNESSEE.

A. Knoxville and Johnson City are not in the same AT&T local calling area, but both are in MTA 44, so a call from an AT&T landline customer in Knoxville to a Sprint mobile Johnson City telephone number is an IntraMTA call. Since Knoxville is in LATA 474 and Johnson City is in LATA 956, the call would also be an interLATA call. Because AT&T (the ILEC) does not carry interLATA traffic, [33] AT&T would hand the call off to an IXC for delivery to Sprint, and it

[32] I explain what is meant by "MTA" in my testimony above for Issue I.B(2)(b)(i).

[33] While AT&T's ILECs may provide specific services over LATA boundaries (e.g., 271 (f), 271 (g) services), those services do not affect the example used above.

would be the IXC of the caller's choice. Thus, a call from an AT&T end user in Knoxville to a Sprint end user with a Johnson City telephone number, located in Johnson City at the beginning of the call, would be an interLATA IntraMTA IXC call.[34]

Q. WHAT IS THE PARTIES' DISAGREEMENT ABOUT INTRAMTA IXC CALLS?

A. Sprint contends it is entitled to charge AT&T reciprocal compensation for transporting on its network and terminating to its customers IntraMTA calls that originate on AT&T's network and are routed to Sprint via an IXC. AT&T disagrees, and maintains that neither Sprint nor AT&T should be charging the other party for these calls.

Q. WHAT IS THE BASIS FOR SPRINT'S POSITION, AS YOU UNDERSTAND IT?

A. Generally, a call that originates on AT&T's network and that terminates on Sprint's network in the same MTA, or vice versa, is subject to reciprocal compensation. As I understand it, Sprint's position is that this general rule applies to the calls at issue here (land to mobile), because they originate on AT&T's network and terminate on Sprint's network in the same MTA. In Sprint's view, in other words, it makes no difference that the calling party dialed a toll call or that the call was carried by an IXC.

[34] For simplicity, I use an example that makes it clear that the AT&T caller is placing a toll call to the Sprint end user. In this example, at the beginning of the call the Sprint end user is located in the same city where the Sprint telephone number is assigned, but that would not have to be the case. Any toll call (based on telephone number assignment) from an AT&T end user in Knoxville to a Sprint end user located in Johnson City at the beginning of the call would be an interLATA IntraMTA call carried by an IXC.

Q. WHAT IS THE BASIS FOR AT&T'S POSITION?

A. As I will explain, Sprint is mistaken, because an IntraMTA IXC call is not an AT&T call, and thus is not a call for which AT&T bears financial responsibility. Rather, it is the IXC's call, for which the IXC is responsible. The IXC charges the calling party a toll charge for carrying the call from one exchange to another, and the call, rather than being subject to reciprocal compensation between AT&T and Sprint, falls within the access regime. This is reflected in the FCC's reciprocal compensation rule for CMRS traffic, which, as I will explain, does not subject IntraMTA IXC calls to reciprocal compensation.

Q. HOW IS YOUR TESTIMONY ON THIS ISSUE ORGANIZED?

A. I will begin by reminding the Authority of the basic difference between reciprocal compensation calls and access calls, and I will explain why an IntraMTA IXC call falls within the access regime. In doing so, I will provide diagrams of three scenarios: an IntraMTA call routed directly between the parties, an InterMTA IXC call, and an IntraMTA IXC call. I will then show that the FCC's reciprocal compensation rule governing CMRS traffic does not apply to IntraMTA IXC calls. Finally, I will identify persuasive authorities that hold that IntraMTA IXC calls are not subject to reciprocal compensation.

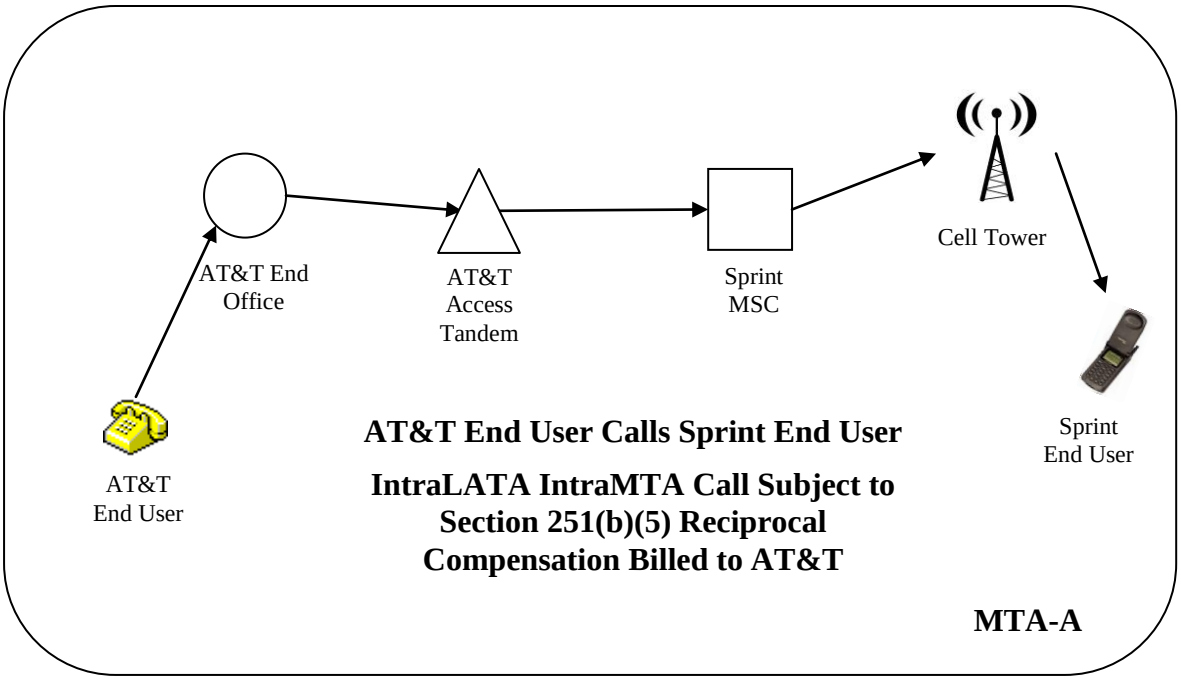
Q. WHAT IS THE BASIC DIFFERENCE BETWEEN A RECIPROCAL COMPENSATION CALL AND AN ACCESS CALL?

A. When a LEC's customer makes a local call,[35] the LEC (AT&T in this instance) is compensated for the call through its charges to that customer. When the call is terminated by another carrier – Sprint, for example – that second carrier incurs costs for transporting the call from the point at which the carriers' networks interconnect and for terminating the call to its customer. Since the originating LEC is paid for this call by its customer, the originating LEC compensates the terminating carrier for its contribution to the call by paying that carrier reciprocal compensation, which compensates the terminating carrier for the costs it incurred to transport and terminate the call. Diagram 1 below depicts such a call.[36] An AT&T end user calls a Sprint end user in the same MTA, and the call is routed directly between the parties. MTAs define local calling areas for CMRS providers, so this call is subject to reciprocal compensation. The parties have no disagreement about this.

DIAGRAM 1

[35] As the Authority is aware, the term "local traffic" is still commonly used to refer to traffic subject to reciprocal compensation under section 251(b)(5) of the 1996 Act, even though the term "local" no longer has the legal significance it once did. The FCC ruled in 1996 that reciprocal compensation under section 251(b)(5) applied only to "local" telecommunications. *Local Competition Order* at ¶¶ 1033-1038. This became problematic later, when the FCC turned its attention to ISP-bound traffic in the *ISP Remand Order*. There, the FCC deleted the word "local" from its reciprocal compensation rules and clarified that reciprocal compensation applies to all telecommunications except those excluded by section 251(g) of the 1996 Act. That still translates loosely into "local traffic," however, so the term remains in common use, and I use it throughout this testimony.

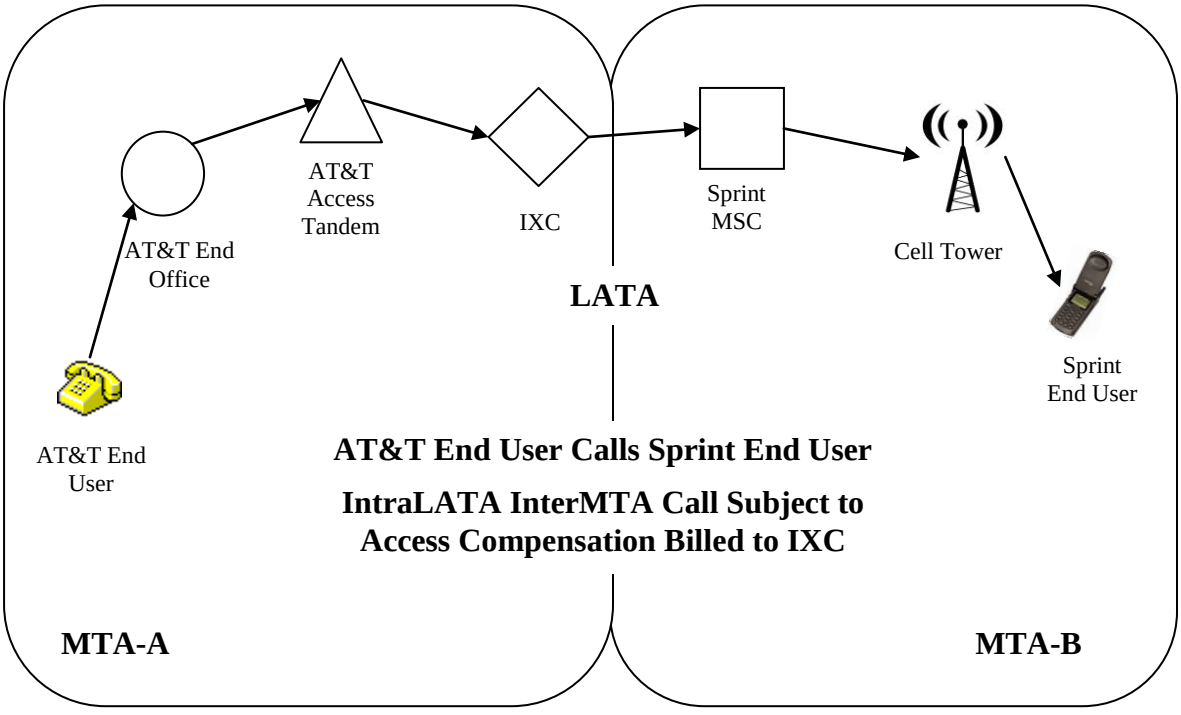
[36] The label Sprint "MSC" in this and subsequent diagrams refers to Sprint's Mobile Switching Center, which performs the end office switching function.



The model for intercarrier compensation on non-local (a/k/a "long distance" or "toll" or "access") calls is dramatically different. When a LEC's end user customer makes a toll call to a customer of another carrier, an IXC transports the call from the originating LEC to the terminating carrier. Because the call is a toll call, the calling party does not compensate its local exchange carrier (here, AT&T) for that specific call; rather, the calling party pays a toll charge to the IXC that she picked to carry her long distance calls. This is not the LEC's call. Instead, just as the originating carrier of a local call shares its revenue for the call with the carrier that terminated the call, the IXC, having received compensation for the call from its customer – the calling party – shares that revenue with the originating carrier and the terminating carrier by paying them access charges, *i.e.*, charges for providing access to their networks.

Diagram 2 below depicts such a call. Here, an AT&T end user calls a Sprint end user by making a toll "1+ call" to the Sprint end user's phone number. AT&T hands off the call to the calling party's chosen IXC, which provides interexchange transport and then delivers the call to Sprint.[37] This particular call happens to be an intraLATA InterMTA call.[38]

DIAGRAM 2



Q. WHEN THE END USER DIALS A LOCAL CALL, AS IN DIAGRAM 1, OF WHAT COMPANY IS SHE ACTING AS A CUSTOMER?

[37] To keep the diagram simple, I assume Sprint has a direct interconnection with the IXC. If Sprint does not have direct interconnection with the IXC, it may use a tandem provider (*e.g.*, AT&T) to effectuate indirect interconnection.

[38] I could also have shown this call as an interLATA InterMTA call routed to an IXC. The parties' disputes regarding compensation for InterMTA traffic routed directly between the parties (*i.e.*, without routing to an IXC) are reflected in Issues III.A.3(1), III.A.3(2), and III.A.3(3), addressed by Mr. McPhee.

A. Her local exchange carrier. The local call is covered by the rate she pays her local phone company for providing local exchange service.

Q. WHEN THE END USER DIALS A TOLL CALL, AS IN DIAGRAM 2, OF WHAT COMPANY IS SHE ACTING AS A CUSTOMER?

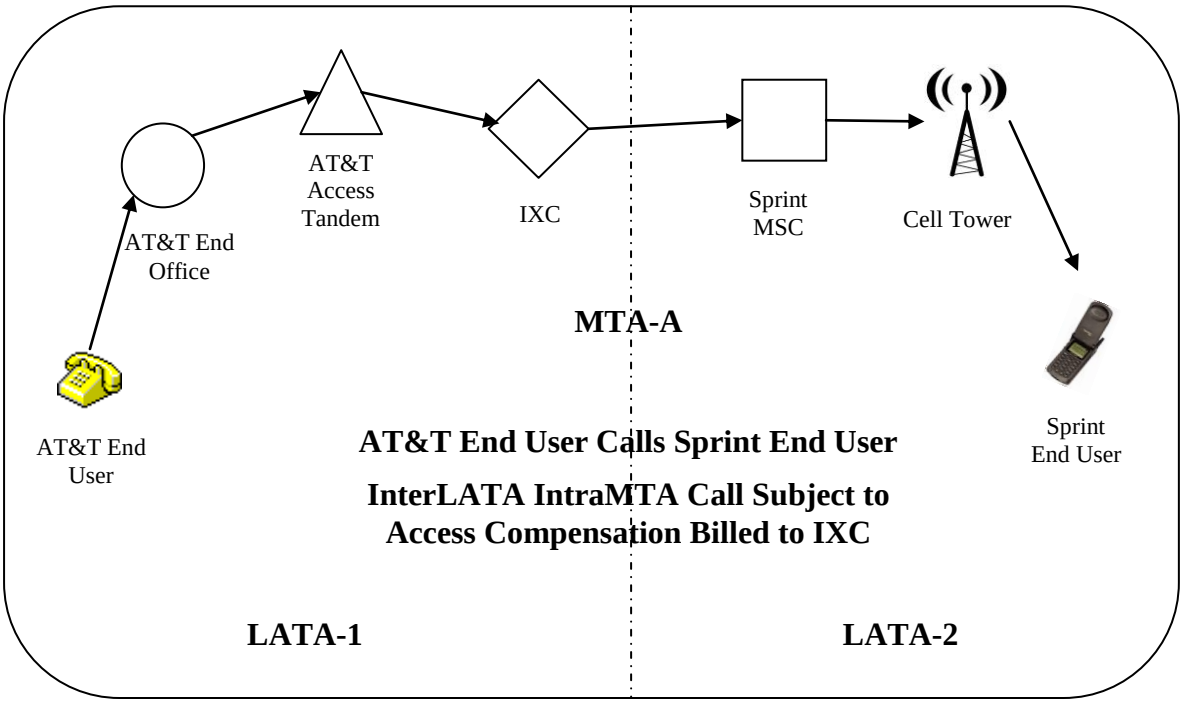
A. Her selected long distance carrier, which charges her a toll for the call. When the calling party dials a toll "1+" call, she may or may not be conscious of the fact that she is making the call in her capacity as a customer of her chosen long distance company, but she is. Her local exchange carrier is merely providing exchange access to her long distance company.

Q. WHICH MODEL FITS AN INTRAMTA IXC CALL THAT ORIGINATES ON AT&T'S NETWORK – THE RECIPROCAL COMPENSATION MODEL OR THE ACCESS MODEL?

A. The access model. When the calling party makes this call, she does so in her capacity as a customer of her long distance company. To be sure, the calling party is also a local exchange customer of AT&T, but by definition, the call is carried from AT&T to Sprint by an IXC, because the customer who placed the call placed it as an IXC call. Diagram 3 below depicts such a call. As the diagram illustrates, the call is made by an AT&T end user who calls a Sprint end user in the same MTA. The AT&T customer, however, is in LATA #1, while the Sprint customer is in LATA #2. The call is carried across the LATA boundary by the IXC (*i.e.*, the long distance company picked by the calling party). AT&T receives no revenue for this specific call from the calling party. Instead, the revenue goes to the IXC. Because the call is a toll call, the calling party does not compensate AT&T for that specific call; rather, the calling party pays a toll

charge to the IXC that carried the long distance call. AT&T, in turn charges the IXC for originating access, because AT&T is providing the IXC with (exchange) access to its network for call origination.

DIAGRAM 3



Q. IS THE CALL SUBJECT TO RECIPROCAL COMPENSATION?

A. No. As I explained above, a LEC on whose network a local call originates pays a terminating carrier reciprocal compensation when the terminating carrier makes a contribution to the LEC's call – and it is the LEC's call because the calling party makes the call as a customer of that LEC. On an IntraMTA IXC call, in contrast, the person who placed the call does not place the call in her capacity as the LEC's customer, but in her capacity as the IXC's customer. The LEC (AT&T) obtains no revenue from its end user customer for that call, so the LEC does not owe

reciprocal compensation to the terminating carrier (Sprint). AT&T is providing exchange access to the IXC for this call, and AT&T therefore charges the IXC originating access.

Q. SINCE IT IS AN ACCESS CALL, DOES SPRINT RECOVER TERMINATING ACCESS CHARGES FROM THE IXC?

A. The answer to that question is that Sprint "should" be able to recover terminating access charges from the IXC – because Sprint is providing terminating access for the IXC's call. Unfortunately, though, Sprint is typically unable to recover terminating access charges.

Q. WHY NOT?

A. The FCC has ruled that CMRS providers are not permitted to tariff access charges, and no FCC rule requires IXCs to pay CMRS providers access charges. As a result, the FCC ruled that a CMRS provider can recover terminating access charges from an IXC only if the CMRS provider and the IXC have entered into a contract that provides for such charges. Typically, as I understand it – and for obvious reasons – IXCs decline to enter into such agreements.

Q. WHEN DID THE FCC MAKE THAT RULING?

A. In 2002, in a case in which Sprint argued that it should be allowed to impose access charges on IXCs. The case was *In the Matter of Petitions of Sprint PCS and AT&T Corp. for Declaratory Ruling Regarding CMRS Access Charges*, 17 FCC Rcd. 13192 (rel. July 3, 2002). I will refer to this as the *Sprint Access Charge* case.

Q. YOU SAID IT IS UNFORTUNATE THE CMRS PROVIDER TYPICALLY CANNOT RECOVER TERMINATING ACCESS. WHY IS IT UNFORTUNATE?

A. Because I believe it is Sprint's inability to recover terminating access charges from the IXC that gives rise to the issue we are debating here. I am confident that if Sprint were able to charge the IXC terminating access for the calls we are talking about, Sprint would not be pushing to charge AT&T reciprocal compensation.

Q. IS IT UNFAIR THAT SPRINT CANNOT CHARGE IXCS TERMINATING ACCESS CHARGES WHEN IT TERMINATES THEIR CALLS?

A. That is a matter of opinion. I do note that in the *Sprint Access Charge* case, the FCC stated (at ¶14),

> CMRS carriers have never operated under the same calling party's network pays (CPNP) compensation regime as wireline LECs. Under a CPNP regime, LECs are compensated for terminating calls by the carrier of the customer that originates the call, not by the customer receiving the call. In contrast, since the advent of commercial wireless service, and continuing today, CMRS carriers have charged their end users both to make and to receive calls. Until 1998, when Sprint PCS first approached . . . IXCs about payment for terminating access service, all CMRS carriers recovered the cost of terminating long distance calls from their end users, and not from interexchange carriers.

Q. DOES SPRINT'S INABILITY TO RECOVER TERMINATING ACCESS CHARGES FROM THE IXC MEAN THAT THESE CALLS REALLY DO NOT FALL INTO THE ACCESS MODEL, AND SO SHOULD BE SUBJECT TO RECIPROCAL COMPENSATION?

A. Clearly not. In fact, in the very decision that held a CMRS provider can only recover access charges if it enters into a contract that provides for such charges, the FCC made clear that the CMRS provider is, nonetheless, providing access. The FCC stated:

> [T]here is a benefit to customers of both IXCs and CMRS carriers when CMRS carriers terminate IXC traffic. Because both carriers charge their customers for the service they provide, it does not necessarily follow that IXCs receive a windfall in situations where no compensation is paid for *access service provided by a CMRS carrier*.[39]

As the italicized language shows, the FCC understands that when an IXC delivers a call to a CMRS provider – including an IntraMTA IXC call – the CMRS provider is providing an access service to the IXC. Because such a call is the IXC's call, the CMRS provider is *not* providing a termination service to AT&T.

Q. WHAT CONCLUSION FOLLOWS FROM THE FOREGOING DISCUSSION?

A. Based on the fundamental principles of intercarrier compensation I have discussed, Sprint should not be permitted to charge AT&T reciprocal compensation on an IXC call that originates on AT&T's network, is routed to Sprint via an IXC, and terminates on Sprint's network in the same MTA.

Q. WHAT ABOUT THE FCC'S RECIPROCAL COMPENSATION RULE FOR CMRS TRAFFIC – DOES IT IMPOSE RECIPROCAL COMPENSATION ON INTRAMTA IXC CALLS?

A. No, it does not. FCC Rule 51.701 provides in pertinent part:

> (a) The provisions of this subpart apply to reciprocal compensation for transport and termination of telecommunications traffic between LECs and other telecommunications carriers.
>
> (b) Telecommunications traffic. For purposes of this subpart, telecommunications traffic means . . . .
>
> (2) Telecommunications traffic *exchanged between a LEC and a CMRS provider* that, at the beginning of the call, originates

[39] *Sprint Access Charge* case ¶ 15 (emphasis added).

and terminates within the same Major Trading Area.[40]

Q. BEFORE YOU TALK ABOUT HOW THAT APPLIES TO INTRAMTA IXC CALLS, CAN YOU EXPLAIN THE REFERENCE TO "AT THE BEGINNING OF THE CALL?" WHAT IS THAT TALKING ABOUT?

A. People often find that confusing. The phrase is referring, not to the *geographic* origin of the call, but to the *temporal* beginning of the call – the moment when the call begins. A CMRS customer may be in motion during the course of a call, so a call that is IntraMTA when the call begins may become InterMTA by the time the call ends, and vice versa. The call is jurisdictionalized, however "at the beginning of the call."

Q. THE RULE STATES THAT TELECOMMUNICATIONS EXCHANGED BETWEEN A LEC AND A CMRS PROVIDER IS SUBJECT TO RECIPROCAL COMPENSATION IF, AT THE BEGINNING OF THE CALL, IT ORIGINATES AND TERMINATES WITHIN THE SAME MTA. DOES THAT DESCRIBE AN INTRAMTA IXC CALL?

A. No.

Q. WHY NOT?

A. Because an IntraMTA IXC call is not "exchanged between a LEC and a CMRS provider." A call is exchanged between a LEC and a CMRS provider if it is the LEC's call that the CMRS provider terminates, or if it is the CMRS provider's call that the LEC terminates. An IntraMTA IXC call is neither of those things. As I have explained, it is not the LEC's call. It is the IXC's call, for which the LEC provides originating access and the CMRS provider provides terminating access.

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[40] 47 C.F.R. § 51.701 (emphasis added).

Q. IS YOUR POINT THAT THERE IS NO EXCHANGE BECAUSE THERE IS NO DIRECT HAND-OFF FROM THE LEC TO THE CMRS PROVIDER?

A. It is true that there is no direct hand-off from AT&T to Sprint, but that is not really the point. In fact, there are reciprocal compensation calls that the originating carrier does not hand directly to the terminating carrier – *i.e.*, transit calls. The point, though, is that in the case of an IntraMTA IXC call, there is no "exchange" between the LEC and the CMRS provider in any sense of the word, because it is the IXC's call from its origination to the handoff from the IXC to the CMRS provider. At no time and in no way is it ever the LEC's call.

Q. SO FAR, YOU HAVE EXPLAINED THAT INTRAMTA IXC CALLS FIT THE ACCESS CHARGE MODEL RATHER THAN THE RECIPROCAL COMPENSATION MODEL, AND THAT THE FCC RULE THAT DEFINES THE CMRS TRAFFIC THAT IS SUBJECT TO RECIPROCAL COMPENSATION DOES NOT ENCOMPASS INTRAMTA IXC CALLS. IS THERE ANY CASE LAW ON THE QUESTION?

A. Yes, there is. There is authority on both sides of the issue. The decisions that support AT&T's position are considerably better reasoned, however – and not just because they support AT&T's position.

Q. HAS THE AUTHORITY EVER ADDRESSED THE ISSUE?

A. Yes. The Authority, in a consolidated arbitration between several independent local exchange carriers ("ICOs") and CMRS providers, ruled:

> Many times LATA boundaries traverse MTAs. When this situation occurs, an intraMTA call that originates in one LATA and terminates in another LATA will necessarily involve an IXC and will be subject to the access charge regime rather than reciprocal compensation. Nevertheless, based upon the plain language of the FCC, a majority of the Arbitrators found that any wireline-wireless traffic that does not cross a LATA boundary and that originates and terminates within the same MTA is subject to

> reciprocal compensation whether or not it is carried by an IXC. For these reasons, a majority of the Arbitrators voted that the reciprocal compensation requirements of 47 U.S.C. § 251(b)(5) apply to land originated intraMTA traffic that is delivered to a CMRS provider via an Interexchange Carrier (IXC) unless the call crosses a LATA boundary.[41]

The CMRS providers petitioned for rehearing, and the Authority affirmed its prior decision.[42]

Q. DO YOU AGREE WITH THE AUTHORITY'S CMRS ORDER?

A. In part. I believe the Authority got it right when it ordered that land-to-mobile interLATA IntraMTA traffic carried by an IXC is subject to switched access charges (assessed to the IXC) rather than reciprocal compensation. However, with all due respect to the Authority, I do not agree with the distinction the Authority made between interLATA and intraLATA IntraMTA traffic when both are carried by IXCs. In both situations, as I explained above, the landline customer is the IXC's customer, not AT&T's. As the Authority stated:

> Access charges were developed to address a situation in which three carriers, typically the originating LEC, the IXC and the terminating LEC, collaborate to complete a long distance call. Reciprocal compensation for transport and termination of calls is intended for a situation in which two carriers collaborate to complete a local call. The FCC has stated that long distance traffic is not subject to the transport and termination provisions of Section 251 of the Act and that the reciprocal compensation provisions of Section 251(b)(5) for the transport and termination of traffic do not apply to interstate or intrastate interexchange traffic. … The FCC also concluded that traffic between LECs and CMRS providers is not subject to interstate access charges unless it is carried by an

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41 Re: Cellco Partnership dba Verizon Wireless et al. Docket No. 03-00585, Order of Arbitration Award dated January 12, 2006 ("CMRS Order"), 2006 WL 707481 Tenn. R. A. Jan 12, 2006), at *11, p. 8.

42 CMRS Recon Order at page 4.

IXC.[43]

Thus, IntraMTA calls carried by an IXC should be subject to switched access charges (assessed to the IXC) rather than reciprocal compensation – independent of LATA boundaries.

Q. CAN YOU GIVE ANOTHER EXAMPLE OF A DECISION THAT SUPPORTS AT&T'S POSITION?

A. Yes. The Public Utility Commission of Texas ("PUCT"), in an arbitration between Fitch Affordable Telecom (Affordable Telecom) and AT&T, ruled:

> The issue before the Commission [PUCT] . . . is whether Affordable Telecom is entitled to reciprocal compensation on intraMTA traffic that is dialed 1+ and handled by a third-party IXC. IntraMTA traffic exchanged directly between a local exchange carrier (LEC) and a CMRS provider through their point of interconnection is subject to the Federal Communications Commission (FCC) reciprocal compensation regime. It is the introduction of a third-party IXC that switches and transports calls between the LEC and the CMRS provider's network facilities that is in dispute in this arbitration. In order to complete 1+ calls between carriers, IXCs are subject to originating and termination access charges (exchange access), instead of the FCC's reciprocal compensation regime.
>
> The Commission acknowledges that FCC Rule 47 C.F.R. 51.701(c) and (3) prescribes the application of reciprocal compensation for the transport and termination of FTA § 251(b)(5) telecommunications traffic as being MTA and "between" the LEC and the CMRS provider. . . .
>
> [T]he Commission . . . adopts the following contract language regarding reciprocal compensation for § 251(B)(5) calls:
>
> 1.27 "Section 251(b)(5) Calls" for the purposes of termination compensation, are Authorized Services pages originating on SBC Texas' network, terminating on Affordable Telecom's network, and that are exchanged directly between the Parties and, at the beginning of the call, originate and terminate within the same

[43] CMRS Order at *10, p. 8.

MTA.[44]

The PUCT's Order was affirmed by the federal district court, and then by the Fifth Circuit. *Fitch v. Pub. Util. Comm'n Texas*, No. 07-50088, 2008 U.S. App. LEXIS 919 (5th Cir. Jan. 16, 2008).

Q. YOU ACKNOWLDGE, THOUGH, THAT THERE IS CASE LAW ON THE OTHER SIDE OF THE ISSUE, DON'T YOU?

A. Yes, and to the extent that Sprint discusses that case law in its direct testimony, I will respond to it in my rebuttal testimony. Generally, the decisions that support Sprint's position on the issue fail to come to grips with the fundamental principles of intercarrier compensation that I have discussed, and consequently rely on a reading of FCC Rule 701(b)(2) that glosses over the significance of the key words, "*exchanged between a LEC and a CMRS provider*," in that rule.

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

A. The Authority should find that AT&T is not obligated to pay reciprocal compensation to Sprint for IntraMTA calls AT&T originates and routes to Sprint via an IXC.

DPL ISSUE III.A.1(2)

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

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[44] Order Approving Arbitration Award with Modification, Docket No. 29415, *F. Cary Fitch d/b/a Fitch Affordable Telecom Petition for Arbitration against SBC Texas under § 252 of the Communications Act* (Pub. Util. Comm'n Tex. Dec. 19, 2005), at 3-4 (footnotes omitted).

Contract Reference: Sprint Pricing Sheet; Attachment 3, AT&T sections 6.2 – 6.3.6, AT&T Pricing Sheet

Q. WHAT IS THE PARTIES' DISAGREEMENT CONCERNING THE COMPENSATION RATES, TERMS AND CONDITIONS TO BE INCLUDED IN THE CMRS ICA FOR TRAFFIC SUBJECT TO RECIPROCAL COMPENSATION?

A. AT&T proposes comprehensive terms and conditions in its sections 6.2 through 6.3.6 to govern the calculation of reciprocal compensation for Section 251(b)(5) Traffic, including the use of a factoring process if Sprint is unable to bill AT&T based on actual usage data. Sprint objects to AT&T's language in its entirety.

Q. HOW SHOULD THE PARTIES COMPENSATE EACH OTHER FOR SECTION 251(b)(5) TRAFFIC EXCHANGED PURSUANT TO THE CMRS ICA?

A. The parties should compensate each other for the Section 251(b)(5) Traffic (as AT&T defines that term) that each party originates and terminates directly to the other party in accordance with AT&T's CMRS ICA Pricing Sheet. AT&T's language in section 6.2.2.1 refers to section 6.2.3 for the appropriate limitations to the applicability of reciprocal compensation. And in section 6.2.3 and its subsections, AT&T provides a list of traffic types that do not constitute Section 251(b)(5) Traffic and that are therefore not subject to reciprocal compensation.

Q. PLEASE EXPLAIN WHY THE TRAFFIC TYPES LISTED UNDER SECTION 6.2.3 ARE NOT SUBJECT TO RECIPROCAL COMPENSATION PURSUANT TO THE CMRS ICA.

A. The traffic types listed under section 6.2.3 are not subject to section 251(b)(5) reciprocal compensation between AT&T and Sprint because the calls are not IntraMTA calls that originate with one party's end users and terminate directly to the other party's end users. Several traffic types listed do not originate and

terminate with the parties' end users (*i.e.*, non-CMRS traffic, Third Party Traffic, non-facilities based traffic, Paging Traffic). Other types are interexchange and/or IXC traffic (*i.e.*, toll-free calls, InterMTA Traffic, 1+ IntraMTA Traffic carried by an IXC). Section 6.2.3 also appropriately provides for the exclusion of any other type of traffic the FCC and/or the Authority has found to be exempt from reciprocal compensation.

Q. WHAT IS AT&T'S PROPOSAL FOR RECIPROCAL COMPENSATION BILLING.

A. AT&T's language provides that each party will record terminating usage (MOU) for all calls it receives from the other party (section 6.3.1, addressed above for Issue III.A(3)). AT&T recognizes, however, that Sprint may not have the ability to measure and bill based on actual usage (section 6.3.2). Accordingly, AT&T proposes a specific method to bill based on a surrogate billing factor (section 6.3.3). AT&T's language describes in detailed text how the surrogate billing factor is to be calculated and applied to the parties' traffic for the purpose of billing reciprocal compensation for Section 251(b)(5) Traffic, and it includes a specific numerical example to demonstrate how the factor will be calculated (section 6.3.4). Finally, AT&T's language provides that, to the extent Sprint uses the surrogate billing factor method to calculate its bills to AT&T (rather than actual usage data), Sprint will itemize its bills to reflect the application of the surrogate billing factor by state and by billing account number ("BAN") (section 6.3.5). Sprint retains the option (and the parties agree that it is preferable) to bill

based on actual terminating usage data rather than using the surrogate billing factor.

Q. WHAT IS SPRINT'S OBJECTION TO AT&T'S PROPOSAL FOR RECIPROCAL COMPENSATION BILLING?

A. Sprint asserts that AT&T's language that provides for calculating reciprocal compensation bills based on a factoring process is unnecessary, because Sprint's language requires the parties to utilize actual traffic measurements.

Q. IS SPRINT'S OBJECTION CONSISTENT WITH ITS PROPOSED LANGUAGE FOR THE CMRS ICA?

A. No. As discussed above for Issue III.A(3), Sprint's language in its section 6.3.6.1 provides for "a surrogate method of classifying and billing those categories of traffic where measurement is not possible." Thus, Sprint's own language, however otherwise vague, clearly provides for reciprocal compensation billing that is not based on actual usage.

Q. WHAT IS AT&T'S PROPOSAL FOR THE RECIPROCAL COMPENSATION RATE?

A. AT&T proposes that the parties compensate one another at the FCC's reciprocal compensation rate of $0.0007 per MOU for Section 251(b)(5) Traffic.

Q. DOES SPRINT CMRS AGREE THAT $0.0007 PER MOU IS THE APPROPRIATE RATE FOR SECTION 251(B)(5) TRAFFIC?

A. Sprint appears to agree that $0.0007 is an appropriate rate for some traffic in some scenarios, but Sprint's pricing proposal, like its proposed traffic categories (discussed above for Issue III.A(1)), is unclear because it is comprised of alternative choices to be made in some unspecified manner at some unspecified time. Sprint's alternatives are confusing because of the numerous variables,

making it difficult to identify just what Sprint believes is appropriate. I will explain AT&T's straightforward pricing proposals, and then I will further discuss my understanding of Sprint's various alternatives.

Q. YOU INDICATED THAT AT&T PROPOSES THE FCC'S RECIPROCAL COMPENSATION RATE. WHY DOES AT&T PROPOSE SEPARATE "TYPE 2B SURROGATE USAGE RATES" FOR M-L TRAFFIC DELIVERED OVER TYPE 2B TRUNKS?

A. Because AT&T does not currently have the ability to measure actual M-L usage delivered to its end offices via Type 2B trunks. In order to achieve an effective rate of $0.0007 per MOU on Type 2B trunks, AT&T uses an estimate of 9,000 MOU per trunk per month times $0.0007 per MOU. That results in AT&T's proposed rate of $6.30 per Type 2B trunk per month.

Q. WHAT IS YOUR UNDERSTANDING OF SPRINT'S PRICING PROPOSAL REGARDING RECIPROCAL COMPENSATION?

A. It is not clear what Sprint is actually advocating as the appropriate rates for reciprocal compensation. As I discussed in my testimony above for Issue III.A(1), Sprint proposes two alternatives for classifying traffic types but does not provide the Authority (or AT&T) with any guidance as to which set of classifications it believes is the proper one. In its proposed Pricing Sheet, however, Sprint provides rates only for one of its classification alternatives – the one with six traffic types. That still does not answer the question as to what reciprocal compensation rate(s) Sprint is advocating, because Sprint has again taken the position that it is entitled to the least of all possible rates in the state (past, present and future), showing the reciprocal compensation rates as simply "TBD."

Q. HOW SHOULD THE AUTHORITY RESOLVE ISSUE III.A.1(2)?

A. The Authority should adopt AT&T's language in sections 6.2 through 6.3.6 because it provides comprehensive terms and conditions to govern the calculation of reciprocal compensation, including a specific mechanism to be used in the event Sprint is unable to bill reciprocal compensation based on actual usage measurements. The Authority should also adopt the rates AT&T proposes in its Pricing Sheet because the rates are clear and easy to understand, the rates are established with certainty for the term of the ICA, and the rates are reasonably based on the FCC's reciprocal compensation rate.

DPL ISSUE III.A.7(1)

Should the wireless meet point billing provisions in the ICA apply only to jointly provided, switched access calls where both Parties are providing such service to an IXC, or also to Transit Service calls, as proposed by Sprint?

Contract Reference: Attachment 3, Sprint sections 7.2.1, 7.2.3, 7.2.5, AT&T sections 6.11.1, 6.11.3 – 6.11.5

Q. WHAT IS THE PARTIES' DISPUTE REGARDING THE APPLICATION OF WIRELESS MEET POINT BILLING PROVISIONS TO TRANSIT SERVICE CALLS?

A. Sprint contends that the parties' Meet Point Billing language in the CMRS ICA should apply to Transit Service calls (as Sprint defines that term) in addition to IXC-carried calls. AT&T contends that the "Wireless Meet Point Billing" provisions are applicable when the parties are providing Switched Access Service to an IXC and should not apply to Sprint's Transit Service calls (if any).

Q. WHAT IS MEET POINT BILLING?

A. Meet Point Billing, as the parties have agreed to use that term in the CMRS ICA,[45] refers to billing arrangements supported by Multiple Exchange Carrier Access Billing ("MECAB") guidelines[46] that are necessary for jointly provided access services. In other words, meet point billing is the manner in which AT&T and a LEC collectively bill a third-party, like an IXC, for services AT&T and the LEC jointly provide. Meet Point Billing permits a LEC such as Sprint to indirectly interconnect with an IXC via AT&T. Sprint provides the originating (or terminating) switching function and transport between its end office (or MSC) and AT&T's access tandem, and AT&T provides tandem switching and transport between its access tandem and the IXC. Each provider bills the IXC for its portion of the service based upon its access tariff or contract rates.[47] Parties must agree to bill pursuant to a Meet Point Billing arrangement; otherwise, IXCs may be overcharged for the jointly provided access service if the parties bill based on different Meet Point Billing arrangements.

Q. SHOULD THE MEET POINT BILLING PROVISIONS EXCLUDE "TRANSIT SERVICE"?

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[45] Attachment 3 section 6.11.1.

[46] The MECAB Guidelines are published by the Ordering and Billing Forum ("OBF"), which is sponsored by the industry Alliance for Telecommunications Industry Solutions ("ATIS"). The MECAB Guidelines are used to implement a meet point billing arrangement between providers.

[47] CMRS carriers may or may not be entitled to bill the IXC, depending on what contractual arrangements they may have. The meet point billing process ensures that the billing records are available for the parties to bill the IXC should they be entitled to do so.

A. Yes. While the parties disagree as to whether the term Transit Service should be defined in the ICA at all,[48] even if Transit Service is defined as Sprint proposes, Transit Service still should not be included in the Meet Point Billing provisions of the CMRS ICA. Sprint defines Transit Service to include all traffic that transits *either* party's network, including non-IXC traffic. If Sprint prevails on this position – which, as Mr. McPhee testifies, it should not – and the CMRS ICA thus includes terms and conditions that permit Sprint to act as a transit provider with respect to AT&T's traffic,[49] AT&T does not agree to participate in Meet Point Billing with Sprint for such traffic. In addition, the ICA describes Wireless Meet Point Billing "as supported by" MECAB guidelines. If the Authority orders AT&T to provide transit traffic service to Sprint pursuant to the ICA,[50] AT&T has proposed language that sets forth detailed terms and conditions regarding the exchange of records necessary for billing.[51] It is therefore improper to include any reference to Transit Service in the Meet Point Billing provisions of the CMRS ICA.

Q. ARE THERE OTHER DISPUTES REFLECTED BY THE PARTIES' PROPOSED LANGUAGE THAT ARE NOT SPECIFIC TO TRANSIT SERVICE?

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48 *See* Issue I.C(1), which is addressed by Mr. McPhee.

49 The parties' dispute regarding whether the ICA should govern Sprint's provision of transit service is reflected as Issue I.C(6), which is addressed by Mr. McPhee.

50 See Issue I.C(2), which is also addressed by Mr. McPhee.

51 See the DPL Language Exhibit for Issue I.C(2), section 3.6 et seq.

A. Yes. There are three minor language disagreements, which are reflected in Sprint's objection to AT&T's proposed language in sections 6.11.3 and 6.11.4, and in both parties' proposed language in 6.11.5.

In section 6.11.3, AT&T refers to its access tandem as the switch where AT&T will provide Meet Point Billing. This is appropriate because AT&T does not provide Meet Point Billing service from its local tandems.

In section 6.11.4, AT&T includes language to address compensation for 800 database queries. If Sprint routes a non-queried 800 call to AT&T, AT&T must perform the query to identify how to route the call. In this situation, it is appropriate to charge Sprint for the query function AT&T performed on Sprint's behalf.

Finally, in section 6.11.5, AT&T provides language to make clear that reciprocal compensation does not apply to Meet Point Billing. This is appropriate since Meet Point Billing is for jointly provided access traffic, which is not subject to reciprocal compensation.[52] Sprint's language states that it will compensate AT&T at the transit rate when Sprint originates calls AT&T transits to third party carriers for termination. This language is not necessary for the Meet Point Billing provisions, since transit traffic compensation will be covered either by a separate commercial agreement or in another section of Attachment 3.[53]

Q. HOW SHOULD THE AUTHORITY RESOLVE ISSUE III.A.7(1)?

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[52] The parties' dispute regarding compensation for IntraMTA calls routed to an IXC is addressed in my testimony above for Issue III.A.1(1).

[53] *See* Mr. McPhee's testimony for Issue I.C(2).

A. The Authority should reject Sprint's language that includes Transit Service in the Meet Point Billing provisions of the CMRS ICA, because Transit Service is a local service, not an access service, and because AT&T does not agree to participate in Meet Point Billing in a situation where Sprint is a transit provider. The Authority should adopt AT&T's language in sections 6.11.3, 6.11.4, and 6.11.5 for the reasons set forth above.

DPL ISSUE III.A.7(2)

What information is required for wireless Meet Point Billing, and what are the appropriate Billing Interconnection Percentages?

Contract Reference: Attachment 3, Sprint sections 7.2.2, AT&T sections 6.11.2

Q. WHAT IS THE PARTIES' DISPUTE REGARDING THE INFORMATION REQUIRED FOR WIRELESS MEET POINT BILLING?

A. AT&T's language identifies five pieces of information required for Meet Point Billing, and Sprint objects to three of them. Specifically, Sprint objects to including Percent Interstate Usage ("PIU"), Percent Local Usage ("PLU"), and 800 Service PIU. In addition, although the parties agree to include a Billing Interconnection Percentage ("BIP"), the parties disagree regarding what default BIP is appropriate. The DPL reflects AT&T's proposal to retain the parties' current default BIP of 95% AT&T and 5% Sprint. Sprint contends that the default BIP should be changed to 50% Sprint and 50% AT&T, consistent with Sprint's flawed proposal for the initial factor used to apportion facility costs for the first six months of the ICA's term.[54] In the interest of resolving this relatively

[54] AT&T disagrees with Sprint's proposal for a default percentage of 50/50 for sharing facilities costs. *See* my testimony below for Issue III.E(1).

insignificant disagreement, AT&T is willing to accept Sprint's proposed default BIP percentages; however that should not be construed as agreement with Sprint's rationale for its proposal, which I discuss briefly below.

Q. WHY ARE PIU, PLU AND 800 PIU NECESSARY FOR MEET POINT BILLING?

A. The parties may route traffic destined for or received from IXCs over the same trunk group that carries non-IXC transit traffic, but the parties may be unable to ascertain jurisdiction mechanically. Therefore, PIU, PLU and 800 Service PIU factors will be used to indicate approximately how much traffic of each type is being carried so that proper billing may be rendered.

Q. YOU MENTIONED THAT THE PARTIES DISAGREE REGARDING THE DEFAULT BIP. PLEASE EXPLAIN.

A. The BIP is a factor required for CABS (Carrier Access Billing System) billing that a wireless carrier may file with the National Exchange Carrier Association ("NECA"). The BIP represents the percentage of mileage sensitive transport charges belonging to each company on the call route utilized when the companies meet point bill to IXCs. In the context of Sprint's ICA, the call route is between Sprint's MSC and AT&T's access tandem within the LATA. With AT&T's proposed DPL language, AT&T would be entitled to bill 95% of the mileage sensitive transport charges between Sprint's MSC and AT&T's access tandem in the LATA, and Sprint would be entitled to bill 5%. Sprint has offered no supporting documentation for its proposed default BIP of 50/50 other than to claim that it should be the same as its equally unsupported shared facility factor. That notwithstanding, as I stated above, AT&T is willing to accept a proposed

default BIP of 50/50, but AT&T disagrees that the shared facility factor should be 50%. (See my testimony below for Issue III.E(1)).

Q. HOW SHOULD THE AUTHORITY RESOLVE ISSUE III.A.7(2)?

A. The Authority should adopt AT&T's language that includes PIU, PLU and 800 PIU factors, because these factors are necessary to identify the appropriate jurisdiction of a call for proper rate application. The Authority should retain the parties' existing default BIP of 95% AT&T and 5% Sprint, because Sprint has provided no documentation to support changing the default BIP to a ratio of 50/50. In the alternative, the Authority should accept Sprint's default BIP percentages, but should do so independent of its analysis of the parties' positions set forth for Issue III.E(1) regarding shared facility costs.

DPL ISSUE III.E(1)

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

Contract Reference: Attachment 3, Sprint sections 2.5.3(a) through 2.5.3(d), AT&T sections 2.3.2.1, 2.3.2.5 – 2.3.2 9

Q. WHAT IS THE DISAGREEMENT BETWEEN THE PARTIES REGARDING HOW SHARED FACILITIES COSTS SHOULD BE APPORTIONED BETWEEN THE PARTIES UNDER THE CMRS ICA?

A. The parties disagree regarding what traffic should be considered when determining each party's relative use of shared facilities, the method to calculate the proportionate use factor (also referred to as the shared facility factor), how often and by what means the factor will be updated, and how billing will be handled. AT&T contends that it is only responsible for recurring facilities costs associated with calls from its end users to Sprint's end users; costs associated with

calls originated by Sprint's end users and by third party carriers are Sprint's responsibility. AT&T's language provides a formula for calculating the shared facility factor ("SFF"), which AT&T will update quarterly. Under this language, each party will render a bill to the other for facilities charges. Sprint, on the other hand, contends that AT&T is responsible for both recurring and nonrecurring facilities costs for all traffic AT&T delivers to Sprint. Sprint's language provides for an initial proportionate use factor of 50%, to be updated by traffic studies no more frequently than every six months. With Sprint's proposal, only one party will bill the other for facilities charges.

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

A. Sprint essentially relies on 47 C.F.R. § 51.703(b), which Sprint contends prohibits AT&T from charging Sprint for traffic originated on AT&T's network. Sprint has not provided evidentiary support for its initial 50/50 allocation of facility costs. In contrast, AT&T believes the cited regulation does not even pertain to this matter. That notwithstanding, AT&T's proposal does reflect allocation of costs based on calls originated on AT&T's network, which is consistent with 51.703(b). AT&T proposes a fair and equitable method of allocating costs to each party based on the principle of cost causation, and calculates the parties' relative use factor based on actual data.

Q. PLEASE DESCRIBE AT&T'S PROPOSAL FOR SHARING FACILITY COSTS.

A. As set forth in AT&T's section 2.3.2.1, each party is responsible for providing facilities on its side of the parties' POI(s) through one of three alternative

methods: a party may lease facilities from the other party (if available), obtain them from a third party, or self-provision them. AT&T will always elect first to use its own facilities. Section 2.3.2.5 provides that AT&T's obligations as an ILEC are limited to its service territory, and its transport obligations are limited based on LATA boundaries.[55] AT&T's language in section 2.3.2.6 provides that when Sprint uses AT&T's facilities, the parties will share the cost based on proportionate use. However, if Sprint elects to obtain facilities from a third party, rather than from AT&T, AT&T should not be obligated to effectively lease facilities from a third party (via Sprint) that it prefers to provide for itself. In sections 2.3.2.7, 2.3.2.8, and 2.3.2.9, AT&T provides specific terms for how the parties will allocate costs based on AT&T's proportionate use of facilities for Section 251(b)(5) Traffic (*i.e.*, directly routed IntraMTA Traffic) compared to all traffic between the parties' networks in the state. AT&T will provide Sprint with a quarterly percentage to represent AT&T's use of the facilities. AT&T will bill Sprint for the entire cost of the facilities, and Sprint can apply AT&T's percentage to bill AT&T.

Q. PLEASE PROVIDE A SIMPLE EXAMPLE OF HOW AT&T WOULD CALCULATE THE SFF.

A. I will use very small numbers to keep the math simple and so it is clear that this is a hypothetical example. Suppose that the total amount of traffic delivered in both directions over the parties' shared facilities in the state is 1,000 MOU over a

[55] AT&T also proposes to limit its financial responsibility to its local calling area or 14 miles, whichever is greater. This limitation of responsibility on Sprint's side of the POI is appropriate, as I explain further in my testimony for Issue III.H(3) below.

three-month period. And suppose that AT&T's end users generate 250 MOU of Section 251(b)(5) Traffic (as AT&T defines that term) to Sprint's end users during that period. AT&T would calculate the SFF as 250 divided by 1000, or 25%. This 25% SFF would be applied prospectively for the next three-month period.

Q. HOW WOULD THE PARTIES APPLY THE SFF FOR THE PURPOSE OF BILLING FOR SHARED FACILITIES?

A. Continuing the hypothetical example above, suppose further that Sprint has leased the facilities from AT&T at a monthly recurring rate of $100. In this example, AT&T would bill Sprint the total $100. Sprint would apply the SFF of 25% and bill AT&T $25. The net result is that Sprint would pay $75 for its 75% use of the facilities, and AT&T would pay $25 for its 25% use of the facilities. This is a simple method that fairly allocates the cost of facilities the parties share.

Q. WHY IS IT APPROPRIATE TO APPLY THE SFF ONLY TO THE FACILITIES' RECURRING RATES AND NOT ALSO TO NONRECURRING CHARGES?

A. Recurring rates reflect the ongoing use of the shared facilities, previously established between the parties, based on the parties' proportionate use of the facilities. The parties agree that the SFF should apply to the recurring rates. In contrast, nonrecurring charges relate to cost recovery of the initial installation of the facilities and are not usage sensitive. Since the SFF is calculated based on actual usage of the facilities, and is revised over time as relative use changes, it is not appropriate to apply the SFF to nonrecurring charges. If Sprint does not want to pay AT&T's nonrecurring facilities charges, it can elect to self-provision the

facilities or obtain them from a third party, as AT&T's language in section 2.3.2.1 provides.

Q. PLEASE DESCRIBE SPRINT'S PROPOSAL FOR FACILITY COST SHARING, AS YOU UNDERSTAND IT.

A. Sprint proposes that the parties share facilities costs within an MTA (as opposed to within a LATA), whether provided by one party directly to the other or obtained from a third party. In Sprint's proposal, all traffic that is delivered over the facilities in both directions is subject to facility cost sharing, including traffic that neither originates nor terminates with AT&T's end users (*i.e.*, transit traffic). Sprint proposes that the proportionate use factor be deemed to be 50% Sprint and 50% AT&T as of the effective date of the ICA. After six months, either party may request that a new SFF be calculated for use prospectively. Thereafter such a request may be made no more frequently than every six months. As for billing, Sprint proposes that the billing party would apply the SFF prior to rendering a bill, so the effect of facility cost sharing would appear as a bill credit to the billed party.

Q. IS AT&T RESPONSIBLE FOR THE COST OF FACILITIES OUTSIDE THE LATA WHERE THE POI IS LOCATED?

A. No. The parties have agreed in section 2.3.2 that the parties will establish at least one POI per LATA where Sprint provides service, and each carrier is responsible for facilities on its side of the POI.[56] AT&T is therefore responsible only for

[56] As I explain in my testimony for Issue III.H(3) below, the parties have established "reciprocal" POIs at each other's offices in the LATA and share the use of the facilities between them. Importantly, the designation of a POI at Sprint's location for land-to-mobile traffic is not consistent with section 251(c)(2) interconnection, and such POIs

certain facility costs *within* a LATA, but is not responsible for any costs outside the LATA. Sprint's language in section 2.5.3(c), when read in conjunction with Sprint's section 2.5.3(a), would improperly burden AT&T with facility costs within the MTA, but outside the LATA – costs that should rightfully be borne by Sprint.

Q. WHY DOES AT&T CONTEND THAT IT IS ONLY RESPONSIBLE FOR FACILITY COSTS ASSOCIATED WITH CALLS FROM ITS END USERS TO SPRINT'S END USERS?

A. There is no question that AT&T is responsible for facility costs on its side of the POI on AT&T's network (in the LATA) for calls its end users place to Sprint's end users. AT&T is not, however, responsible for costs resulting from other carriers' end users making calls to Sprint's end users, because AT&T is not the cost causer for these calls. I address this more thoroughly in my testimony below for Issue III.E(2).

Q. YOU MENTIONED THAT SPRINT RELIES ON 47 C.F.R. § 51.703(b) IN SUPPORT OF ITS POSITION REGARDING SHARING OF FACILITY COSTS? DOES THAT FCC RULE ADDRESS THE FACILITY COSTS AT ISSUE HERE?

A. No. 47 C.F.R. § 501.703, entitled "Reciprocal Compensation obligation of LECs," states as follows:

> (a) Each LEC shall establish reciprocal compensation arrangements for transport and termination of telecommunications traffic with any requesting telecommunications carrier.

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cannot properly serve as a financial demarcation point with respect to facility cost sharing.

> (b) A LEC may not assess charges on any other telecommunications carrier for telecommunications traffic that originates on the LEC's network.

This rule addresses reciprocal compensation obligations for telecommunications traffic that originates on a party's network and terminates to another party's network. Part (b) provides that a LEC may not charge another carrier for calls that originate on its own network. But AT&T is not proposing to charge Sprint for AT&T-originated traffic, either via reciprocal compensation or through calculation and application of the SFF. By stating that its language is consistent with this rule, Sprint appears to be claiming that calls originating with a third party carrier's end users, which AT&T switches and routes to Sprint for termination to Sprint's end users, actually originate on AT&T's network, and that therefore such calls should be attributed to AT&T for purposes of calculating the SFF. But that is simply not the case – those calls originate on the third party's network, which is why it is the third party (and not AT&T) that has the reciprocal compensation obligation to Sprint for this transit traffic.

Q. WHY DOES AT&T OBJECT TO SPRINT'S PROPOSAL FOR DETERMINING THE SFF?

A. Sprint's proposal to use an initial SFF of 50% upon the effective date of the ICA, and to maintain this arbitrary factor for six months, is patently unreasonable. The parties are exchanging traffic over shared facilities today, and there is no legitimate reason for using an arbitrary factor when actual data is available to calculate the factor, apply it prospectively, and update it quarterly, as AT&T proposes. The use of facilities and the associated costs are directly affected by

changes in traffic patterns. Because traffic patterns between carriers are dynamic, a minimum of six months is too long a period to wait to adjust the factor prospectively.

Q. WHY DOES AT&T OBJECT TO SPRINT'S BILLING PROPOSAL?

A. Sprint's billing proposal would require AT&T to modify its billing system just for Sprint. When Sprint leases facilities from AT&T, Sprint's language provides that AT&T would have to adjust its facilities bills to reflect a credit to Sprint for each affected billed circuit based on the SFF. For example, if AT&T's charge for a DS1 circuit was $100 per month and the proportionate use factor was 25%, Sprint's language would require AT&T to show the $100 charge for the DS1 with a $25 credit. AT&T would be required to do this adjustment for each and every circuit billed. There is no reason to change the billing process the parties currently use.

Q. HOW SHOULD THE AUTHORITY RESOLVE ISSUE III.E(1)?

A. The Authority should adopt AT&T's language because it sets forth a fair and equitable method of allocating costs when the parties share the use of facilities. It is based on actual traffic exchanged between the parties over the course of a three-month period, which provides a reasonable balance between the effort that would be required to calculate a factor monthly and the need for accurate billing. And AT&T's billing proposal permits it to continue to bill facilities charges to Sprint the same way it does today (for Sprint and other carriers), avoiding the need for billing system revisions, while providing Sprint the information it needs to bill AT&T. Sprint's language, which is based on an unnecessarily arbitrary 50/50

allocation of costs for at least the first six months of the ICA, with modifications to the SFF no more often than twice a year, and which would require AT&T to modify its billing system just for Sprint, is unreasonable and should be rejected.

DPL ISSUE III.E(2)

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

Contract Reference: Attachment 3, Sprint sections 2.5.3(d) and (e), AT&T section 2.3.2.b (excerpt)[57]

Q. WHAT IS THE FUNDAMENTAL DISAGREEMENT BETWEEN THE PARTIES REGARDING FACILITIES USED TO TRANSPORT TRANSIT SERVICE TRAFFIC?

A. AT&T contends that the cost of facilities between AT&T and Sprint used for the delivery of traffic originated by third party carriers' end users and transited by AT&T for completion to Sprint's end users are attributable to Sprint. Sprint contends that these costs are AT&T's responsibility.

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

A. Sprint asserts that third party originated traffic that AT&T transits and delivers to Sprint for termination to Sprint's end users is deemed to be AT&T's traffic for the purpose of calculating the proportionate use of facilities. In other words, AT&T and the originating third party carrier jointly cause the costs associated with the use of facilities for transit calls between AT&T and Sprint. Therefore, Sprint bears no responsibility for those facility costs.

[57] Only the last sentence of AT&T's section 2.3.2.b is relevant for this issue, as reflected on the DPL Language Exhibit. The remainder of section 2.3.2.b is reflected for Issue II.H(2), addressed by Mr. Hamiter.

Q. WHAT IS THE BASIS FOR AT&T'S POSITION?

A. A call that originates with a third party and that AT&T transits to Sprint should be attributed to Sprint for purposes of calculating the proportionate use of facilities under the CMRS ICA, because, as between AT&T and Sprint, Sprint is the cause of that usage. AT&T has no stake in the call, because neither the calling party nor the called party is AT&T's customer. Moreover, the reason that AT&T must transit the call is that Sprint has elected not to directly interconnect with the third party; it is for this reason that Sprint is the cause of the usage. Also, while the originating carrier is obliged to compensate AT&T for switching the call on the AT&T network, and for any interoffice transport within AT&T's network, the originating carrier does not compensate AT&T for transporting the call to Sprint from the last point of switching on the AT&T network. Accordingly, the facility costs incurred associated with transit traffic that AT&T delivers to Sprint are Sprint's responsibility.

Q. HAS THE FCC ADDRESSED COST RECOVERY FOR FACILITIES USED TO TERMINATE TRANSIT TRAFFIC?

A. Yes. The FCC addressed cost recovery for facilities used to terminate transit traffic in its June 21, 2000 *TSR Wireless Order*[58] and again in its November 28, 2001 *Texcom Order*.[59]

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[58] *TSR Wireless, LLC v. U S West Communications*, Inc., Memorandum Opinion and Order, FCC 00-194, rel. Jun. 21, 2000 ("*TSR Wireless Order*").

[59] *Texcom, Inc., d/b/a Answer Indiana v. Bell Atlantic Corp., d/b/a Verizon Communications*, Memorandum and Order, FCC 01-347, rel. Nov. 28, 2001, ("*Texcom Order*") aff'd in Order on Reconsideration, 17 FCC Rcd. 6275 (2002) ("*Texcom Recon Order*").

Q. BRIEFLY SUMMARIZE THE TSR WIRELESS ORDER.

A. TSR was one of two paging carriers complaining that they were being improperly charged for, among other things, facilities costs associated with LEC-originated calls.[60] The *TSR Wireless Order* affirmed that LECs are not entitled to charge terminating carriers for LEC-originated calls.[61] Importantly, however, the FCC found that the complainants "are required to pay for 'transiting traffic,' that is, traffic that originates from a carrier other than the interconnecting LEC but nonetheless is carried over the LEC network to the paging carrier's network."[62]

Q. YOU MENTIONED THAT THE COMPLAINANTS IN THE TSR CASE WERE PAGING PROVIDERS. DOES THE *TSR WIRELESS ORDER* ALSO APPLY TO CMRS PROVIDERS?

A. Yes. The underlying premise of the FCC's analysis was that CMRS providers were most certainly covered by 47 C.F.R. 51.703(b),[63] so the question was the extent to which section 51.703(b) also applies to paging carriers.[64] In other words, the FCC found that the paging providers are required to pay for facilities used to terminate transit traffic – *just like CMRS carriers do*.

Q. YOU MENTIONED THE FCC'S *TEXCOM ORDER*. HOW IS THAT ORDER RELEVANT HERE?

A. In the *Texcom Order*, the FCC again addressed cost recovery associated with terminating transit traffic, which is the subject of the parties' dispute reflected in

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60 *TSR Wireless Order* at ¶ 2.

61 *Id.* at ¶ 18.

62 *Id.* at n. 70.

63 *Id.* at ¶ 19.

64 *Id.* at ¶ 3.

this issue. The FCC reaffirmed its prior determination from the *TSR Wireless Order* that the transit provider may charge the terminating carrier for calls that do not originate on the transit provider's network.

> Our rules state that a CMRS provider (such as Answer Indiana) is not required to pay an interconnecting LEC (such as GTE North) for traffic that terminates on the CMRS provider's network if the traffic originated on the LEC's network. As we stated in the *TSR Wireless Order*, however, an interconnecting LEC may charge the CMRS carrier for traffic that transits across the interconnecting LEC's network and terminates on the CMRS provider's network, if the traffic did *not* originate on the LEC's network. (Footnotes omitted).[65]

> In the case of third-party originated traffic, however, the only relationship between the LEC's customers and the call is the fact that the call traverses the LEC's network on its way to the terminating carrier. Where the LEC's customers do not generate the traffic at issue, those customers should not bear the cost of delivering that traffic from a CLEC's network to that of a CMRS carrier like Answer Indiana. Thus, the originating third party carrier's customers pay for the cost of delivering their calls to the LEC, while the terminating CMRS carrier's customers pay for the cost of transporting that traffic from the LEC's network to their network.[66]

The *Texcom Order* is directly on point here.

Q. THIS ISSUE IS STATED AS REFERRING ONLY TO SHARED FACILITIES. DOES THE SAME COST CAUSER PRINCIPLE APPLY WHEN THE PARTIES ARE NOT SHARING FACILITES?

A. Yes. In the case of facilities that are not shared between the parties, the cost causer principle would dictate that the party using the facilities for its originating traffic should be responsible for the entire cost. The parties generally agree on this principle, but disagree regarding how the ICA should reflect it.

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65 *Texcom Order* at ¶ 4.

66 *Id.* at ¶ 6.

Q. WHY DOES AT&T OBJECT TO THE LANGUAGE IN SPRINT'S SECTION 2.5.3(d) REGARDING ONE-WAY FACILITIES?

A. Because Sprint's language goes too far in one respect and not far enough in others. Sprint's language goes too far when it includes cost responsibility not only associated with traffic originated by a party's end users, as AT&T proposes, but also for any third party traffic. Sprint's language would obligate AT&T to bear the cost of facilities to terminate traffic to Sprint that AT&T transits on behalf of third party originating carriers. As I explained above, Sprint is the cost causer (as between AT&T and Sprint) in this scenario. AT&T should not be responsible for the facility costs associated with transit traffic it terminates to Sprint simply because the parties utilize one-way facilities. Facility costs associated with this third party traffic should be borne by the cost causer, which is Sprint. AT&T's proposed language at the end of section 2.3.2.b properly states that a party is responsible for one-way facilities associated with the party's *originating* traffic.

AT&T's language also provides that the parties will mutually agree to implement one-way trunking and will do so on a statewide basis; in this regard, Sprint's language is inadequate. Mutual agreement to use one-way trunking is important because the standard interconnection arrangement is two-way for network efficiency reasons. One party should not be permitted to force the other party to use a less efficient network arrangement. Facility cost allocation associated with the use of one-way trunking on a statewide basis is important because the SFF is calculated and applied based on statewide usage. Using one-

way facilities in some locations in the state but not others would invalidate the SFF and result in either over or under billing of shared facilities.

Q. HOW SHOULD THE AUTHORITY RESOLVE ISSUE III.E(2)?

A. The Authority should reject Sprint's language in sections 2.5.3(d) and 2.5.3(e), because it would improperly burden AT&T with the facility costs to deliver transit traffic to Sprint – costs that the FCC has previously found should be borne by Sprint as the cost causer. The Authority should adopt AT&T's language in its excerpt of section 2.3.2.b, because it properly establishes that the parties will implement one-way trunking on a statewide basis upon mutual agreement, and that each party is responsible for the cost of facilities associated with the party's originating traffic.

DPL ISSUE III.G

Should Sprint's proposed pricing sheet language be included in the ICA?

Contract Reference: Sprint Pricing Sheet

Q. WHY DOES AT&T OBJECT TO SPRINT'S PRICING SHEET?

A. The purpose of the ICAs is to provide certainty for both parties, and Sprint's Pricing Sheets subvert that purpose. When the Pricing Sheets are read in conjunction with supporting text in sections 2 and 6 of Attachment 3, it becomes clear that Sprint does not provide a single rate upon which the parties can rely with certainty. Instead, Sprint proposes that it be allowed to pay the lowest of various alternative rates, the majority of which are reflected as "TBD," "None at this time," or "Unknown at this time." In addition, Sprint's language refers to provisions in Attachment 3 reiterating that Sprint would be entitled to rate

reductions as set forth therein. I address these improper rate treatments in my testimony for Issues III.A(2) above and III.H(2) below. Sprint also offers three mutually exclusive rate combinations for AT&T to consider as negotiated rates. All three of these rate packages are defective, and, in any event, such provisions are inappropriate for ICA Pricing Sheets.

Q. HOW SHOULD THE AUTHORITY RESOLVE ISSUE III.G?

A. The Authority should reject Sprint's Pricing Sheets in their entirety, because they are, at best, vague and confusing. Moreover, Sprint's pricing proposals inappropriately permit Sprint to pick and choose whatever rates it likes at whatever time it likes, including the right to refunds, subjecting AT&T to perpetual uncertainty regarding what rates will apply. In contrast, AT&T's proposed Pricing Sheets for the parties' ICAs are clear and easy to understand, they establish rates with certainty for the term of the ICAs, and the usage rates are reasonably based on the FCC's reciprocal compensation rate and AT&T's access rates.

DPL ISSUE III.H(1)

Should Sprint be entitled to obtain from AT&T, at cost-based (TELRIC) rates under the ICAs, facilities between Sprint's switch and the POI?

Contract Reference: Attachment 3, Sprint sections 2.9 – 2.9.4, AT&T CMRS section 2.3.6, AT&T CLEC sections 2.4, 2.4.1

Q. WHAT IS THE PARTIES' DISAGREEMENT REGARDING THE PRICING OF FACILITIES BETWEEN SPRINT'S SWITCH AND THE POI?

A. AT&T contends the facilities between Sprint's switch location and the parties' POI are entrance facilities, which are not subject to TELRIC-based pricing.

Sprint, on the other hand, contends that the facilities between its switch and the POI are interconnection facilities, which AT&T must price at TELRIC-based rates. This issue is directly related to Issue II.A, which I address above.

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

A. Sprint asserts that the facilities between a Sprint switch and the parties' POI are section 251(c)(2) interconnection facilities and that they are, therefore, subject to TELRIC-based pricing.

As I explained in detail above for Issue II.A, the transport facilities between Sprint's switch location and the parties' POI are "entrance facilities," which are not subject to TELRIC-based pricing. Rather than reiterate here AT&T's thorough and rational support for its position, I direct the Authority to my testimony above for Issue II.A.

Q. HOW SHOULD THE AUTHORITY RESOLVE ISSUE III.H(1)?

A. The Authority should order that entrance facilities, which are separate and distinct from interconnection facilities, are not subject to TELRIC-based pricing for the reasons set forth above for this issue and Issue II.A.

DPL ISSUE III.H(2)

Should Sprint's proposed language governing "Interconnection Facilities / Arrangements Rates and Charges" be included in the ICA?

Contract Reference: Attachment 3, Sprint sections 2.9 – 2.9.4

Q. WHAT IS THE PARTIES' DISAGREEMENT REGARDING SPRINT'S PROPOSED LANGUAGE GOVERNING "INTERCONNECTION FACILITIES / ARRANGEMENTS RATES AND CHARGES"?

A. Sprint contends the ICA should include Sprint's language, which would provide Sprint the lowest possible rates for interconnection from a selection of five alternatives that Sprint has identified. AT&T contends it should not.

Q. PLEASE DESCRIBE SPRINT'S PROPOSAL FOR RATE SELECTION ALTERNATIVES.

A. Sprint's proposal for interconnection facility pricing is similar to its proposal for usage pricing, addressed in my testimony above for Issue III.A(2). Sprint's proposed language in section 2.9.1 provides that AT&T would charge Sprint the lowest rate of five alternatives, including (a) its current rates, (b) rates the parties negotiate, (c) rates AT&T charges any other telecommunications carrier for similar services, (d) AT&T's tariffed charges as of June 1, 2010 less 35%, pending Authority approved rates based on a new cost study, or (e) rates in any other interconnection arrangement based on an Authority approved cost study.

Q. PLEASE EXPLAIN AT&T'S OBJECTION TO THESE RATE SELECTION ALTERNATIVES.

A. AT&T objects to Sprint's proposal that would obligate AT&T to bill any rates that are different than the rates set forth in the Pricing Sheets, if any, or in AT&T's tariff (to the extent the tariff applies). The only legitimate source for rates is the Pricing Sheets that are incorporated in the ICAs (option (a)), and those rates should not be optional; AT&T should only be obligated to bill and Sprint should then be obligated to pay the rates set forth in the Pricing Sheets that are incorporated into the ICAs.

Sprint's option (b) is nonsensical. If the parties had negotiated rates and populated them in the Pricing Sheets, then Sprint's option (a) would be

applicable; thus, option (b) serves no legitimate purpose. And as I explained for option (a), rates in the Pricing Sheets should not be optional.

Sprint's option (c) is unacceptable because AT&T has no obligation to charge all carriers the same rate. In fact, the imposition of such a duty would undermine the negotiation process that is a cornerstone of the 1996 Act and would subvert the FCC's "All-or-Nothing Rule," which provides that a carrier cannot adopt preferred elements of another carrier's ICA piecemeal.

Sprint's options (d) and (e) presume that AT&T is obligated to provide entrance facilities at cost-based rates, which it is not, as I explain above for Issue III.H(1).

Q. PLEASE DESCRIBE SPRINT'S PROPOSAL FOR A TRUE-UP OF RATES.

A. Sprint's proposed language in its section 2.9.2 provides for a true-up (*i.e.*, a refund) of facilities rates between the effective date of the ICA and the date when AT&T updates its billing system to reflect the new, reduced rates. Retroactive rate reductions and associated refunds would be applied under either of two conditions. First, a true-up would apply if the Authority established rates in conjunction with its approval of an AT&T cost study. And second, Sprint would receive a refund if AT&T had lower rates with any other telecommunications carrier, but which were "not made known to Sprint" before executing the ICAs – again, ostensibly imposing a duty on AT&T to disclose all possible rates to Sprint or face the possibility of making retroactive refunds. Sprint's language also provides that any work AT&T must perform to bill Sprint the new rates will be at

no charge to Sprint, even if, for example, AT&T incurs costs to effectuate Sprint's network rearrangements made as a prerequisite for Sprint to receive the new rates.

Q. WHY IS SPRINT'S TRUE-UP LANGUAGE INAPPROPRIATE FOR THE ICAS?

A. It is not for Sprint to decide if or when retroactive rate adjustments and refunds are appropriate. If the Authority orders AT&T to perform a cost study to determine the facilities rates for Sprint's ICA(s), it is for the Authority to decide whether to order a true-up and, if so, how. In addition, Sprint's proposal that it receive a true-up in the event AT&T has lower rates with another telecommunications carrier, but that Sprint did not know about before executing the ICAs, is ludicrous. Sprint is only entitled to another telecommunications carrier's rates if it elects to adopt that carrier's ICA in its entirety pursuant to section 252(i) and the FCC's "All-or-Nothing Rule." Furthermore, AT&T has no affirmative obligation to inform Sprint of other telecommunications carriers' rates. Those rates already are publicly available, and Sprint, in the exercise of due diligence, had the ability to investigate those rates and explicitly propose them for inclusion in these ICAs. AT&T should not be penalized for Sprint's failure to do so.

Q. SHOULD AT&T BE OBLIGATED TO PAY FOR SPRINT'S COST OF OBTAINING FACILITIES FROM ANOTHER CARRIER?

A. No. In its section 2.9.3, Sprint seeks to pass-through its costs of obtaining and providing interconnection facilities to AT&T. As I stated above for Issue III.E(1), AT&T should not be required to obtain (or pay for) facilities from another carrier (via Sprint) that it prefers to provide for itself.

Q. HOW SHOULD THE AUTHORITY RESOLVE ISSUE III.H(2)?

A. The Authority should reject Sprint's proposed language in its sections 2.9 through 2.9.4. An ICA should provide the parties with certainty for a set period of time, and Sprint's proposal does the opposite. In addition, Sprint's language violates the FCC's All-or-Nothing Rule and improperly provides for a retroactive true-up to the effective date of the ICAs for the difference between the initial contracted rate and any future rate Sprint might elect.

DPL ISSUE III.H(3)

Should AT&T's proposed language governing interconnection pricing be included in the ICAs?

Contract Reference: Attachment 3, AT&T CMRS section 2.3.6, AT&T CLEC sections 2.4, 2.4.1

Q. WHAT IS THE PARTIES' DISAGREEMENT REGARDING AT&T'S PROPOSED LANGUAGE GOVERNING INTERCONNECTION PRICING?

A. AT&T contends it is appropriate for the ICAs to state that certain facilities are available to Sprint pursuant to AT&T's tariff. Sprint, on the other hand, contends that all interconnection-related pricing must be at TELRIC-based rates.

Q. IS THE PARTIES' DISAGREEMENT THE SAME FOR BOTH THE CLEC AND THE CMRS ICA?

A. No. Because the parties have deployed very different network architectures for their CLEC and CMRS interconnection arrangements, this issue reflects disputes that are distinctly different for each ICA. Because the CLEC dispute is simpler, I will address it first.

Q. WHAT IS THE PARTIES' DISAGREEMENT CONCERNING AT&T'S PROPOSED LANGUAGE GOVERNING INTERCONNECTION PRICING IN THE CLEC ICA?

A. AT&T contends its language stating that entrance facilities are available from AT&T's tariff and that interconnection facilities are priced pursuant to the ICA's Pricing Sheet, is appropriate for the CLEC ICA. Sprint opposes AT&T's language, contending that AT&T must provide Sprint with facilities from its switch to AT&T's office at cost-based rates.

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

A. Both parties' positions regarding AT&T's proposed CLEC language are consistent with their positions for Issues II.A and III.H(1). As I explained in my testimony for those issues, facilities on Sprint's side of the parties' POI (*i.e.*, between Sprint's switch location (or POP) in the LATA and the POI on AT&T's network) are entrance facilities not subject to TELRIC-based pricing. AT&T's language makes the proper distinction between entrance facilities (on Sprint's side of the POI) and interconnection facilities (at the POI).

Q. HOW SHOULD THE AUTHORITY RESOLVE ISSUE III.H(3) FOR THE CLEC ICA?

A. The Authority should adopt AT&T's language for the CLEC ICA, because it is consistent with the principle that each party is responsible for the facilities on its side of the parties' POI. In addition, AT&T's language is consistent with a conclusion in Issue III.H(1) that entrance facilities AT&T provides to Sprint are not subject to TELRIC-based pricing.

Q. WHAT IS THE PARTIES' DISAGREEMENT CONCERNING AT&T'S PROPOSED LANGUAGE GOVERNING INTERCONNECTION PRICING IN THE CMRS ICA?

A. AT&T contends its reference to tariff pricing for the CMRS ICA is appropriate, and Sprint contends all interconnection-related pricing must be cost-based.

Q. YOU MENTIONED THAT THE PARTIES' CMRS ARCHITECTURE IS VERY DIFFERENT THAN THEIR CLEC ARCHITECTURE. PLEASE EXPLAIN.

A. Sprint CLEC and AT&T have implemented a standard section 251(c)(2) interconnection arrangement. This includes the establishment of one or more POIs on AT&T's network that serve as the demarcation points between the parties' networks. In this arrangement, each party is responsible for the facilities on its side of the parties' POI(s).

Sprint CMRS and AT&T, on the other hand, have implemented an interconnection arrangement whereby Sprint delivers traffic to AT&T at a POI on AT&T's network, and AT&T delivers traffic to Sprint at a POI on Sprint's network. Since section 251(c)(2) requires that the POI be established on the ILEC's network, the designation of a POI at the CMRS location for land-to-mobile traffic is not consistent with section 251(c)(2) interconnection.

Q. HAS THE AUTHORITY EVER ADDRESSED THE LOCATION OF THE POI WHEN A CMRS PROVIDER REQUESTS INTERCONNECTION WITH AN INCUMBENT?

A. Yes. In its CMRS Order, the Authority considered where the POI should be located if a CMRS provider establishes a direct connection to an ICO. The Authority concluded:

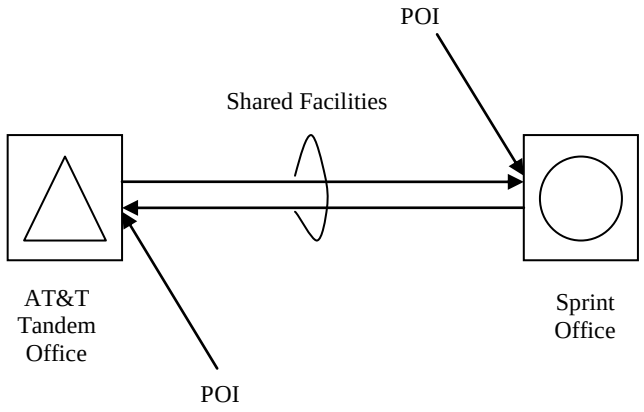
> With regard to Issue 7(A), the Arbitrators voted unanimously that the CMRS providers have the right pursuant to the Act and FCC Rules to designate the point(s) of interconnection at any technically feasible point on the ILECs' network and the CMRS providers shall be responsible for delivering calls to the point of interconnection with the ICO members. The Arbitrators also voted unanimously that the ICO members shall be responsible for delivering calls to the point of interconnection, as they would with any other provider, whether it happens to be an ILEC, CLEC or CMRS provider. As to Issue 7(B), a majority of the Arbitrators voted that the cost for direct connection facilities should be borne by the CMRS provider to the point of interconnection and facilities on the other side of the CMRS provider's point of interconnection should be borne by the ICO member.[67]

Thus, as I explain further below, it is only the POI on AT&T's network that can legitimately be used to determine interconnection pricing.

Q. CAN YOU PROVIDE A DIAGRAM TO REFLECT THE PARTIES' EXISTING CMRS INTERCONNECTION ARRANGEMENT?

A. Yes. As reflected in the simplified diagram below, there are two reciprocal POIs for a single interconnection arrangement, with facilities running between the POIs. Sprint and AT&T have agreed to share the use of these facilities and apportion the costs based on the shared facility factor. I address the parties' dispute regarding how this apportionment should take place in my testimony above for Issue III.E(1).

[67] CMRS Order at * 17, p. 13.



Q. IS THIS A COMMON INTERCONNECTION ARRANGEMENT BETWEEN ILECS AND CMRS CARRIERS?

A. Yes. This arrangement has been implemented by ILECs and CMRS providers throughout AT&T's 22-state footprint[68] and has been operational for many years. It is my understanding that other ILECs interconnect with CMRS providers in this manner as well.

Q. HAS EITHER AT&T OR SPRINT EXPRESSED AN INTEREST IN CHANGING THE CURRENT CMRS INTERCONNECTION ARRANGEMENTS TO THE CLEC (*i.e.*, SECTION 251(c)(2)) MODEL?

A. No.[69] The parties' current interconnection arrangement has been an effective means of interconnection for a long time. Moreover, Attachment 3 section 2.4

[68] The exception is Connecticut, where AT&T and CMRS providers do not share facilities. However, the reciprocal POI architecture in Connecticut is the same as in AT&T's other states, which is the pertinent point here.

[69] If anything, it appears Sprint seeks to impose the CMRS model on its CLEC interconnection. With limited exceptions, Sprint has proposed language in Attachment 3 that is identical for both the CMRS and CLEC agreements. This includes such things as sharing facilities between the parties' offices and using a proportionate use factor to allocate costs, which are distinctly CMRS arrangements.

provides for the parties to continue operating with their current arrangements unless Sprint specifically requests otherwise.

> Pre-existing Arrangements. For Sprint's pre-existing Interconnection arrangements in effect on the Effective Date of this Agreement, until otherwise requested by Sprint, in writing or until such time when the Interconnection described below is not Technically Feasible (e.g., tandem rehoming), AT&T 9-STATE shall continue to provide such pre-existing Interconnection arrangements through the existing Interconnection Facilities and Points of Interconnection established pursuant to the Interconnection agreement that is being replaced by this Agreement. After the Effective Date of this Agreement, AT&T 9-STATE shall provide any new Interconnection Facilities, Points of Interconnection and Interconnection arrangements as Sprint may request pursuant to the terms and conditions of this Agreement.

As a practical matter, I anticipate that the parties will continue to operate with the existing reciprocal POI configuration and the sharing of facilities between them for the foreseeable future.

Q. IS THE FACILITY BETWEEN AT&T AND THE POI AT SPRINT'S SWITCH LOCATION ACTUALLY AN ENTRANCE FACILITY?

A. Yes, and that is at the heart of the parties' dispute. The only legitimate POI (*i.e.*, compliant with section 251(c)(2)) is a POI on AT&T's network. Thus, the facility between Sprint and AT&T, which is on Sprint's side of the legitimate POI, is an entrance facility, as I explain in my testimony for Issue II.A. Despite this, AT&T has previously agreed to share in the cost on Sprint's side of the POI, but only with respect to IntraMTA calls originated by AT&T's end users and routed to Sprint over those facilities.[70] When the facilities are utilized for mobile-to-land

[70] It is for this reason that AT&T's proposed language in section 2.3.2.5 limits its financial obligation on Sprint's side of the POI to 14 miles or AT&T's local calling area, whichever is greater. AT&T should not be obligated to transport its traffic to Sprint a

calls and for transit traffic originating or terminating to Sprint, that is Sprint's responsibility.

Q. WHY DOES AT&T OFFER ENTRANCE FACILITIES TO SPRINT CMRS ONLY FROM THE TARIFF?

A. Because AT&T is not obligated to offer Sprint entrance facilities pursuant to the ICA. As I explain above for Issue II.A, entrance facilities are Sprint's responsibility because they are on Sprint's side of a POI established on AT&T's network in compliance with section 251(c)(2). In addition, entrance facilities may be self-provisioned or obtained from an alternate source. The FCC stated in its *TRRO* that:

> The record in this proceeding also demonstrates that competitive LECs are increasingly relying on competitively provided entrance facilities. … And it appears that incumbent LECs and competitors alike continue to agree that entrance facilities are more competitively available than other types of dedicated transport.[71]

Q. WHEN THE PARTIES BILL EACH OTHER FOR THE SHARED FACILITIES, DO BOTH PARTIES BILL AT AT&T'S TARIFF RATE?

A. Yes. As I explain above for Issue III.E(1), AT&T currently bills Sprint for the facilities (at 100% of the tariff rate), and Sprint then applies the shared facility factor (representing AT&T's share) and bills AT&T (also at the tariff rate). Thus, when AT&T pays Sprint for its (AT&T's) proportionate use of the shared facilities, it does so at its own tariff rate.

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long distance on Sprint's side of the POI, while also paying Sprint for that transport via reciprocal compensation. *See also* my testimony above for Issue III.E(1).

71 *TRRO* at ¶ 139, footnotes omitted.

Q. SPRINT ASSERTS THAT AT&T'S REFUSAL TO PROVIDE SPRINT WITH FACILITIES AT TELRIC-BASED PRICING IS CONTRARY TO THE 1996 ACT'S INTERCONNECTION PRICING STANDARD. DO YOU AGREE?

A. No. The 1996 Act's interconnection pricing standard applies only to interconnection arrangements that comply with the terms of the 1996 Act, and that does not include the arrangement where the POI is on Sprint's network. To apply the 1996 Act's interconnection pricing standard, you must use the POI on AT&T's network as the foundation, and then apply the standard. Sprint is entitled to a TELRIC-based rate only for the interconnection facility (if any) on AT&T's network, not for entrance facilities on Sprint's side of the POI. In this regard, Sprint CMRS is treated in the same manner as Sprint CLEC.

Q. HOW WOULD THE AUTHORITY DETERMINE THE CORRECT PRICING STANDARD IF IT CONSIDERED THE POI TO BE AT SPRINT'S SWITCH LOCATION?

A. I don't know. The 1996 Act requires that the POI be on AT&T's network, and a POI on Sprint's network does not satisfy that requirement. I am not aware of any pricing standard established in the 1996 Act or the FCC's implementing rules that the Authority could legitimately apply in this situation.

Q. HOW SHOULD THE AUTHORITY RESOLVE ISSUE III.H(3) FOR THE CMRS ICA?

A. The Authority should adopt AT&T's language for the CMRS ICA, because providing entrance facilities from the tariff is consistent with the principle that each party is responsible for the facilities on its respective side of the POI on AT&T's network.

DPL ISSUE III.I(1)

If Sprint orders (and AT&T inadvertently provides) a service that is not in the ICA, (a) Should AT&T be permitted to reject future orders until the ICA is amended to include the service? (b) Should the ICAs state that AT&T's provisioning does not constitute a waiver of its right to bill and collect payment for the service?

Contract Reference: Pricing Schedule, sections 1.4.2.1, 1.4.2.2

Q. WHAT IS THE PARTIES' DISPUTE REGARDING WHETHER TO INCLUDE TERMS AND CONDITIONS IN THE ICA TO ADDRESS THE SITUATION WHEN SPRINT ORDERS A PRODUCT OR SERVICE THAT IS NOT IN THE ICA AND AT&T INADVERTENTLY PROVISIONS IT NONETHELESS?

A. AT&T contends that it should be permitted to reject Sprint orders for a product or service not in the ICA until the ICA is amended to include the product or service, even if AT&T previously accepted and provisioned such an order inadvertently. AT&T also contends that the ICA should state that AT&T's provisioning of a product or service that is not in the ICA does not waive its rights to bill and collect payment for that product or service.

Sprint contends that if there is a dispute over products and services it orders, the parties should utilize the dispute resolution provisions of the ICA to resolve the dispute. It also argues that once AT&T has accepted an order and provisioned a product or service not in the ICA, AT&T should be obligated to accept and provision future orders for that product or service as long as Sprint placed its orders in good faith. Sprint also contends that AT&T's language is entirely extraneous and, therefore, there is no need to even consider the issue of AT&T's "waiver" language.

Q. PLEASE PROVIDE SOME CONTEXT FOR AT&T'S PROPOSED LANGUAGE.

A. In section 1.4.2, the parties have agreed that AT&T's obligation to provide products and services to Sprint is limited to those for which rates, terms, and conditions are contained in the ICA. The parties have also agreed in section 1.4.2 that to the extent Sprint ordered a product or service not contained in the ICA, AT&T may reject that order. If the order was for a UNE, Sprint could submit a Bona Fide Request ("BFR") in accordance with the ICA's BFR provisions. If the order was for a product or service available in AT&T's access tariff, Sprint could seek to amend the ICA to incorporate relevant rates, terms, and conditions.

Sections 1.4.2.1 and 1.4.2.2 address what happens in the unlikely event that Sprint orders a product or service not contained in the ICA, and AT&T inadvertently provisions it nonetheless. The introductory portion of section 1.4.2, which is agreed between the parties, is as follows:

> 1.4.2 … In the event that Sprint orders, and **AT&T-9STATE** provisions, a product or service to Sprint for which there are not complete rates, terms and conditions in this Agreement, then Sprint understands and agrees that one of the following will occur: Sprint shall pay for the product or service provisioned to Sprint at the rates set forth in **AT&T-9STATE**'s applicable intrastate tariff(s) for the product or service or, to the extent there are no tariff rates, terms or conditions available for the product or service in the applicable state, then Sprint shall pay for the product or service at **AT&T-9STATE**'s current generic contract rate for the product or service set forth in **AT&T-9STATE**'s applicable state-specific generic Pricing Sheet as published on the AT&T CLEC Online [CLEC] [or AT&T Prime Access (CMRS)] website; or

AT&T's proposed language in sections 1.4.2.1 and 1.4.2.2, to which Sprint objects, is as follows:

1.4.2.1 Sprint will be billed and shall pay for the product or service as provided in Section 1.4.2 above, and AT&T-9STATE may, without further obligation, reject future orders and further provisioning of the product or service until such time as applicable rates, terms and conditions are incorporated into this Agreement as set forth in this Section 1.4.2 above. If Sprint and AT&T-9STATE cannot agree on rates, terms, and conditions either Party may institute the Dispute Resolution provisions as contained in the GT&Cs.

1.4.2.2 AT&T-9STATE's provisioning of orders for such Interconnection Services is expressly subject to this Section 1.4.2 above, and in no way constitutes a waiver of AT&T-9STATE's right to charge and collect payment for such products and/or services.

Q. NOW THAT YOU HAVE PROVIDED SOME CONTEXT, WHAT IS THE BASIS FOR AT&T'S POSITION?

A. It is important to keep in mind in this example that Sprint has ordered, and AT&T has inadvertently provisioned, a product or service that is available to CLECs / CMRS providers, but is not in Sprint's ICA(s). AT&T's language in section 1.4.2.1 provides that AT&T may reject other orders for the same product or service until rates, terms, and conditions for that product or service are incorporated into the ICA. A fundamental purpose of an ICA is to provide the parties with certainty regarding terms, conditions, and rates for services AT&T offers to carriers, including Sprint, pursuant to the 1996 Act. AT&T should not be expected or required to continue providing products and services that are not included in the ICAs simply because it did so once. Nor should AT&T have to waive its rights to be paid for any products and services not in the ICAs that Sprint nevertheless ordered and AT&T inadvertently provisioned.

Q. HOW SHOULD THE AUTHORITY RESOLVE ISSUES III.I(1)(a) AND III.I(1)(b)?

A. The Authority should adopt AT&T's proposed language in Pricing Schedule sections 1.4.2.1 and 1.4.2.2. It is reasonable to permit AT&T to reject a Sprint order for a product or service not in the parties' ICA until the ICA is amended to include the product or service, even if AT&T previously accepted and provisioned an order inadvertently. And it is reasonable that AT&T not waive its rights to charge and collect payment for such a product or service that Sprint in fact ordered and obtained.

DPL ISSUE III.I(2)

Should AT&T's language regarding changes to tariff rates be included in the agreement?

Contract Reference: Pricing Schedule, section 1.4.3

Q. WHAT IS THE PARTIES' DISPUTE REGARDING CHANGES TO TARIFF RATES FOR SERVICES INCLUDED IN THE ICAS?

A. AT&T contends that when an ICA rate is identified as a tariffed rate, any changes to the tariffed rate (whether increase or decrease) should automatically be incorporated into the ICA. AT&T also asserts that if a tariff or tariff rate is withdrawn, the last effective rate should continue to apply during the remaining term of the ICA. Sprint objects to AT&T's language, contending that any tariff rates utilized for the ICA must be frozen for the term of the ICA.

Q. WHAT IS THE BASIS FOR AT&T'S POSITION?

A. The rates for certain services available to Sprint pursuant to the ICAs are established by tariff, and it is appropriate for the most current rates to apply.

When a referenced tariff rate changes, Sprint should be treated in a nondiscriminatory fashion with respect to other telecommunications carriers paying the new tariff rate. If Sprint's tariff rates are frozen when the ICA becomes effective, any tariff rate change will result in discriminatory treatment between Sprint and other carriers. Section 252(d) requires interconnection rates to be "just and reasonable," but it also requires that they be non-discriminatory. In addition, it is appropriate to retain the last rate in effect if a tariff or tariff rate is withdrawn. Otherwise, the parties would be left with no rate for the service at issue, which could lead to otherwise avoidable billing disputes.

Q. HOW DOES AT&T'S PROPOSAL HERE REGARDING TARIFF RATE CHANGES DIFFER FROM SPRINT'S PROPOSAL[72] THAT IT BE PERMITTED TO SELECT THE LOWEST FROM SEVERAL ALTERNATIVE RATES?

A. AT&T's proposal is nondiscriminatory, while Sprint's proposal would give it a competitive advantage over other carriers because it would receive preferential (*i.e.*, discriminatory) treatment. Incorporating tariff rate changes in Sprint's ICAs is a reasonable and fair outcome, because carriers are assured nondiscriminatory treatment when tariff rate changes apply equally to all carriers obtaining tariffed services from AT&T. Moreover, not all tariff rate changes are increases; Sprint will enjoy the benefit of tariff rate reductions as well, just as other carriers do. With Sprint's proposal, which would permit it to select the lowest rate from several alternatives and receive refunds during the term of its ICAs, Sprint would receive preferential treatment with respect to other carriers. Other carriers are not

[72] *See,* for example, Issue III.G, which I address above.

entitled to pick and choose the lowest possible rates they can find, nor are they entitled to refunds during the term of their ICAs – Sprint should not be so entitled either.

Q. HOW SHOULD THE AUTHORITY RESOLVE ISSUE III.I(2)?

A. The Authority should adopt AT&T's language in section Pricing Schedule 1.4.3, because it ensures non-discriminatory treatment among telecommunications carriers paying the tariff rates.

DPL ISSUE III.I(3)

What are the appropriate terms and conditions to reflect the replacement of current rates?

Contract Reference: Pricing Schedule, sections 1.2 – 1.2.3.3

Q. WHAT IS THE PARTIES' DISAGREEMENT CONCERNING THE REPLACEMENT OF CURRENT RATES?

A. The parties disagree regarding how the ICA will treat changes to current rates for Interconnection Services (as that term is defined in the ICA) based on an FCC or Authority order. Sprint contends the parties must adopt the newly ordered rates, and that AT&T bears an obligation to notify Sprint of certain orders. AT&T, on the other hand, contends the parties should be able to retain the current rates if neither party seeks to revise them, and that AT&T has no obligation to notify Sprint of FCC or Authority orders.

Q. HOW DO THE PARTIES DEFINE "INTERCONNECTION SERVICES"?

A. The parties have agreed to define Interconnection Services as "Interconnection, Collocation, functions, Facilities, products and/or services offered under this Agreement." Thus, when the term "Interconnection Services" is used in the

ICAs, it includes significantly more services than what is meant by "Interconnection" in the context of section 251(c)(2) of the 1996 Act and the FCC's implementing rules, but it excludes reciprocal compensation.

Q. PLEASE DESCRIBE AT&T'S PROPOSAL.

A. AT&T's language describes the particular circumstances that would trigger a change to a current rate and how any such rate change would be implemented. It provides a description of what rates would be properly excluded from treatment as current rates, such as interim and TBD rates, since those rates are addressed by other provisions in the Pricing Schedule. It also includes language clarifying that only FCC or Authority orders that are generally applicable – as opposed to those arising from carrier-specific complaints or arbitration proceedings – are encompassed by these provisions.

If an FCC or Authority order changes a rate that is in the ICA, either party may notify the other that it wants to avail itself of the new rate. AT&T's language provides the necessary detail to address how and when such a notification would take place and when the new rate would become effective. If notification is made within 90 days of the order, the new rate is effective as of the order date, with the appropriate retroactive adjustment. However, if notification is delayed beyond 90 days from the date of the order, the new rate would be effective upon execution of the ICA amendment. This provides the parties an unlimited period of time to elect to adopt the new rate, but does not burden the parties with a prolonged period of time where rates are subject to retroactive true-

up. In the event neither party notices the other that it wants to implement the rate change, then the parties will continue to operate at the current rate level. This is important, because parties are free to negotiate rates that are different than Authority-ordered rates, and AT&T's language accommodates this option.

Q. WHAT IS YOUR UNDERSTANDING OF SPRINT'S PROPOSAL?

A. Sprint's language provides that only Interconnection Services rates (as defined in the ICAs) that are set by the Authority in compliance with section 252(d) of the 1996 Act are eligible for adjustment based on an FCC or Authority order. Sprint proposes that either party may notify the other that it wants to implement a new Authority-ordered rate, but, with one exception, does not provide any timeline for when such notification would need to take place. The exception is when Sprint elects not to participate in an FCC or Authority proceeding setting a new rate; in that event, Sprint's language would mandate that AT&T notify Sprint within 60 days of the order. Such notification would have the same effect as a voluntary AT&T notification that it wanted to implement the new ordered rate. Once either party has notified the other, the parties will negotiate an appropriate ICA amendment. Regardless of when notification is made, with Sprint's proposal the new rate would be effective as of the effective date of the order. Finally, Sprint's language addresses, not only the replacement of current rates with newly ordered rates, but also the establishment of completely new rates that do not replace existing rates. Sprint does not describe what would constitute the creation of a new current rate.

Q. SHOULD SECTION 1.2 OF THE PRICING SCHEDULE BE LIMITED TO RATES FOR "INTERCONNECTION SERVICES" ESTABLISHED BY THE AUTHORITY PURSUANT TO SECTION 252(d) OF THE 1996 ACT?

A. No. Sprint seeks to limit the application of the language regarding the replacement of current rates for Interconnection Services to Authority-approved section 252(d) rates, but not all Interconnection Services are subject to section 252(d). For example, collocation, which is offered pursuant to section 251(c)(6), is not subject to section 252 pricing at all. It is therefore appropriate for the Pricing Schedule to address all current rates in the ICA that may be affected by an FCC or Authority order, as AT&T proposes, and not simply those approved by the Authority pursuant to section 252(d).

Q. WHY DOES AT&T OBJECT TO SPRINT'S PROPOSED LANGUAGE REGARDING IMPLEMENTATION OF REPLACEMENT RATES?

A. Sprint's language would obligate AT&T to invoke the notification provision within 60 days of an FCC or Authority order affecting a current rate, even if neither party actually wanted to implement the new rate. Perhaps more importantly, AT&T should not be obligated to keep Sprint informed of FCC or Authority proceedings in which Sprint has decided (for its own reasons) not to intervene. That is not AT&T's responsibility.

Sprint's language also would make the new rate effective on the date of the order and require retroactive adjustments, regardless of when the notification took place. Except in the case above where AT&T would be obligated to notify Sprint within 60 days of an order, Sprint's language does not include any timeline for notification. Thus, for example, two years or more could pass after an order is

issued before either party noticed the other. Yet, under Sprint's language, the new rate would still be effective on the date of the order, requiring retroactive rate treatment for an extended period of time. This is problematic for one party or the other no matter whether the new rate was higher or lower than the existing rate. If the rate was higher, the billed party would most likely not have set aside the funds to pay a substantial retroactive bill it could not have anticipated. And if the rate was lower, the billing party would not have accounted for the need to provide a substantial refund. Either way, Sprint's language does not provide either party with the level of certainty a contract should provide.

Q. HOW SHOULD THE AUTHORITY RESOLVE ISSUE III.I(3)?

A. The Authority should adopt AT&T's language regarding replacement of current rates, because it sets forth comprehensive and reasonable terms and conditions to govern generally applicable future FCC and Authority orders affecting ICA rates. The Authority should reject Sprint's language that 1) limits replacement of current rates to those approved by the Authority pursuant to section 252(d), 2) obligates AT&T to notify Sprint of rate-affecting orders, 3) makes any rate adjustments retroactive to the order date, regardless of when notification was made, and 4) includes undefined new rates that do not replace current rates.

DPL ISSUE III.I(4)

What are the appropriate terms and conditions to reflect the replacement of interim rates?

Contract Reference: Pricing Schedule, sections 1.3.1 – 1.3.5

Q. WHAT IS THE PARTIES' DISAGREEMENT CONCERNING THE REPLACEMENT OF INTERIM RATES?

A. The parties disagree regarding how the ICA will treat changes to interim rates, if any, based on an Authority order. Sprint contends the parties must adopt the newly ordered rates and amend the ICA, with the new rates effective as of the date of the order. No notification is required. AT&T, on the other hand, contends the parties should be able to retain the interim rates if neither party seeks to revise them. If either party notifies the other, the parties shall amend the ICA and implement the new rates, but the effective date of the new rates is based on the timing of the notification.

Q. PLEASE DESCRIBE AT&T'S PROPOSAL.

A. AT&T's proposal for replacement of interim rates is similar to its proposal for replacement of current rates. If an Authority order establishes a rate that is identified in the ICA as interim, either party may notify the other that it wants to avail itself of the new rate. AT&T's language provides the necessary detail to address how and when such a notification would take place and when the new rate would become effective. If notification is made within 90 days of the order, the new rate is effective as of the order date with the appropriate retroactive adjustment. However, if notification is delayed beyond 90 days from the date of the order, the new rate would be effective upon execution of the ICA amendment. This provides the parties an unlimited period of time to elect to adopt the new rate, but does not burden the parties with a prolonged period of time where rates are subject to retroactive true-up. If neither party notices the other that it wants to implement the rate change, then the parties will continue to operate at the existing

interim rate level. This is important, because parties are free to negotiate rates that are different than Authority-ordered rates, and AT&T's language accommodates this option.

Q. WHAT IS YOUR UNDERSTANDING OF SPRINT'S PROPOSAL?

A. Sprint's language would mandate that the parties amend the ICA following an Authority order establishing rates to replace interim rates and provides that the new rates would be effective as of the date of the order.

Q. WHY DOES AT&T OBJECT TO SPRINT'S PROPOSED LANGUAGE REGARDING REPLACEMENT OF INTERIM RATES?

A. AT&T objects to the parties being denied their right to retain the interim rates if both parties agree.

Q. HOW SHOULD THE AUTHORITY RESOLVE ISSUE III.I(4)?

A. The Authority should adopt AT&T's language regarding replacement of interim rates, because it sets forth comprehensive and reasonable terms and conditions to govern future Authority orders affecting interim rates. The Authority should reject Sprint's language that mandates that the parties adopt replacement rates, even if both parties would otherwise agree to retain the existing interim rates.

DPL ISSUE III.I(5)

Which Party's language regarding prices noted as TBD (to be determined) should be included in the agreement?

Contract Reference: Pricing Schedule, sections 1.5.1, 1.5.2

Q. WHAT IS THE PARTIES' DISAGREEMENT CONCERNING THE ESTABLISHMENT OF RATES DESIGNATED AS TBD OR WHEN NO RATE IS SHOWN?

A. The parties disagree regarding how the ICA will treat the establishment of rates for Interconnection Services (as the parties define that term in the ICAs) initially designated as TBD or when no rate is shown. Sprint contends that TBD rates will be established based on an Authority order and that rates left blank are excluded from these provisions. Sprint also contends that the provisioning of services pursuant to the TBD provisions should be reciprocal. AT&T, on the other hand, contends that TBD and blank rates will be replaced when AT&T has established rates and incorporated them into its generic pricing sheets available to all carriers.

Q. WHOSE RATES ARE REFLECTED IN AN ICA'S PRICING SHEET?

A. AT&T's rates. As an ILEC, AT&T is obligated by sections 251 and 252 of the 1996 Act to open its network to requesting telecommunications carriers providing telephone exchange service and/or exchange access and to negotiate (and arbitrate, if necessary) an ICA to memorialize the parties' arrangement. It is therefore appropriate that it is the ILEC's rates that are set forth in the ICA's pricing sheet.

Q. DOESN'T AT&T HAVE RECIPROCAL COMPENSATION OBLIGATIONS WHEREBY IT WOULD BE PAYING SPRINT?

A. Yes. However, reciprocal compensation is not an "Interconnection Service." Moreover, Sprint will charge AT&T the same rate AT&T charges Sprint. Thus it is appropriate to include AT&T's rates in the Pricing Sheet. The single exception is when a carrier proves to a state commission with a compliant cost study that its

costs are sufficiently higher than the ILEC's costs to justify the application of a different rate than the ILEC's rate,[73] which Sprint has not done.

Q. DOES AT&T'S PROPOSED PRICING SHEET REFLECT ANY RATE ELEMENTS DESIGNATED AS TBD?

A. No.

Q. SINCE AT&T'S PRICING SHEET DOES NOT REFLECT ANY RATES AS TBD, WHY DOES THE PRICING SCHEDULE INCLUDE TERMS AND CONDITIONS TO ADDRESS TBD RATES?

A. AT&T proposes TBD language in the Pricing Schedule that is consistent with its generic Pricing Schedule offered to all requesting carriers. There may be circumstances where AT&T and the requesting carrier agree to reflect a rate as TBD or with no rate shown, such as for a new service for which AT&T has not yet established a rate. Once AT&T's rate is established and incorporated into its generic pricing sheet, it is appropriate for that rate to apply to all carriers obtaining that service from AT&T.

Q. YOU HAVE STATED THAT SPRINT HAS PROPOSED RATES DESIGNATED TBD. DOES THAT MEAN THAT THE FINAL PRICING SHEET WILL INCLUDE TBD RATES GOVERNED BY SECTION 1.5 OF THE PRICING SCHEDULE?

A. No. If the Authority adopts AT&T's proposed prices, there will be no need for the Pricing Sheet to reflect any rates as TBD. Even if the Authority were to adopt Sprint's position with respect to certain prices, the Authority could decide to establish interim prices while final prices are being determined. Furthermore, the Authority would most likely provide the specific parameters pursuant to which

[73] *See* 47 C.F.R. § 51.711(b).

the parties would operate until final rates were set, including what retroactive true-up, if any, would be appropriate. Since the parties would comply with any such Authority order, the TBD terms of the ICA would not apply.

Q. WHY DOES AT&T OBJECT TO SPRINT'S LANGUAGE IN PRICING SCHEDULE SECTION 1.5.2 MAKING RECIPROCAL THE APPLICATION OF THE TBD TERMS TO THE PROVISION OF INTERCONNECTION SERVICES?

A. It is AT&T that offers Interconnection Services (as that term is defined in the ICAs) to Sprint, and it is AT&T that will provision Sprint's orders for such services. Sprint will not be provisioning such services to AT&T. Therefore, it is appropriate that section 1.5.2 state that it is AT&T's provision of Sprint's orders that is the subject of section 1.5.

Q. HOW SHOULD THE AUTHORITY RESOLVE ISSUE III.I(5)?

A. The Authority should adopt AT&T's language regarding replacement of rates designated as TBD or for which rates are not shown, because it sets forth reasonable terms and conditions to govern the establishment of rates not set at the time the parties execute the ICAs. The Authority should reject Sprint's language requiring that rates established to replace TBD rates must be approved by the Authority prior to inclusion in the ICAs, omitting any provisions regarding rates left blank, and making the TBD terms reciprocal.

Q. DOES THIS CONCLUDE YOUR DIRECT TESTIMONY?

A. Yes.