

STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION

IN RE: THE PETITION OF :
SPRINT COMMUNICATIONS L.P. D/B/A :
SPRINT COMMUNICATIONS COMPANY L.P. : 05-0402
FOR CONSOLIDATED ARBITRATION UNDER : 05-0433
THE TELECOMMUNICATIONS ACT TO : (Consolidated)
ESTABLISH TERMS AND CONDITIONS FOR :
INTERCONNECTION WITH CERTAIN ILLINOIS :
INCUMBENT LOCAL EXCHANGE CARRIERS. :

**ANSWER TO PETITION FOR ARBITRATION
BY HARRISONVILLE TELEPHONE COMPANY
MARSEILLES TELEPHONE COMPANY AND
METAMORA TELEPHONE COMPANY**

NOW COME Respondents, Harrisonville Telephone Company, Marseilles Telephone Company and Metamora Telephone Company (jointly, "RLECs") and for their Answer to the Petition for Arbitration filed herein by Sprint Communications L.P. d/b/a Sprint Communications Company L.P. ("Sprint") state as follows:

1. Sprint's Petition for Arbitration was not numbered in such a way as to be conducive to a standard Answer with admissions and denials of factual allegations in numbered paragraphs. Therefore, except to the extent the RLECs filing this Answer specifically admit a factual allegation from Sprint's Petition for Arbitration in the statements which they make or adopt below, said RLECs deny the remaining allegations of fact and the legal arguments contained in Sprint's Petition for Arbitration and each of them.

2. For the convenience of the ALJs and the parties, the RLECs filing this Answer adopt the statements contained in the prefatory or introductory paragraphs (except the identification of the RLECs making this filing) on pages 1-2 of the Verified Answer filed herein on August 26, 2005, by C-R Telephone Company, The El Paso Telephone Company,

Mid-Century Telephone Cooperative, Inc. and Reynolds Telephone Company as their own statements.

3. For the convenience of the ALJs and the parties, the RLECs filing this Answer adopt the statements contained in the section entitled "I. Identity of Parties" on pages 2-3 of the Verified Answer filed herein on August 26, 2005, by C-R Telephone Company, The El Paso Telephone Company, Mid-Century Telephone Cooperative, Inc. and Reynolds Telephone Company as their own statements.

The RLECs filing this Answer are represented by Troy A. Fodor and E.M. Fulton, Jr. as shown on the signature page hereof. Pursuant to Commission Rule 761.130, the RLECs state that they agree to accept service by electronic means as provided for in Section 761.1050.

4. For the convenience of the ALJs and the parties, the RLECs filing this Answer adopt the statements contained in the section entitled "II. Jurisdiction" on page 3 of the Verified Answer filed herein on August 26, 2005, by C-R Telephone Company, The El Paso Telephone Company, Mid-Century Telephone Cooperative, Inc. and Reynolds Telephone Company as their own statements.

5. For the convenience of the ALJs and the parties, the RLECs filing this Answer adopt the statements contained in the section entitled "III. Procedural History" on pages 3-6 of the Verified Answer filed herein on August 26, 2005, by C-R Telephone Company, The El Paso Telephone Company, Mid-Century Telephone Cooperative, Inc. and Reynolds Telephone Company as their own statements.

6. For the convenience of the ALJs and the parties, the RLECs filing this Answer adopt the statements contained in the section entitled "IV. Summary of RLECs Position" on pages 6-8 of the Verified Answer filed herein on August 26, 2005, by C-R Telephone Company,

The El Paso Telephone Company, Mid-Century Telephone Cooperative, Inc. and Reynolds Telephone Company as their own statements.

7. For the convenience of the ALJs and the parties, the RLECs filing this Answer adopt the statements contained in "Issue No. 1: Is Sprint A Telecommunications Carrier Within The Meaning Of Section 153(44) Of The Act?" under the section entitled "V. Issues To Be Arbitrated" on pages 8-23 of the Verified Answer filed herein on August 26, 2005, by C-R Telephone Company, The El Paso Telephone Company, Mid-Century Telephone Cooperative, Inc. and Reynolds Telephone Company as their own statements.

In addition, the RLECs filing this Answer specifically deny and demand strict proof and an opportunity to conduct discovery and cross-examine Sprint's witnesses at an evidentiary hearing with respect to the factual allegations of Sprint to the effect that: (1) Sprint provides telecommunications service to end users through the marketing efforts of other competitive service providers (Sprint Petition p. 9), in that such statement is contrary to information provided by Sprint; (2)MCC does not have an end office switch (Sprint Petition p. 14), in that as a matter of law MCC does have a switch - Sprint's switch, and MCC is essentially reselling Sprint's switching services to its end users; (3) Sprint provides exchange access to the general public and other providers similar to Mediacom's affiliate, MCC Telephony of Illinois, Inc.(Sprint Petition p. 14); (4) the subscriber's calls never travel over the Internet (Sprint Petition p. 15); (5) the service is not mobile (Id.); (6) the VoIP technology used by Sprint and MCC is not limited to devices connected to or used to access the Public Internet; (Id.); (7) Sprint will provide plain old telephone service to end users using VoIP technology (Id.); and (8) Sprint and MCC's voice service is not dependent upon the Public Internet (Id.).

8. For the convenience of the ALJs and the parties, the RLECs filing this Answer adopt the statements contained in "Issue No. 2: Does Section 251(a) of the Act require the RLECs to interconnect directly or indirectly with Sprint for the exchange of traffic?" under the section entitled "V. Issues To Be Arbitrated" on pages 23-24 of the Verified Answer filed herein on August 26, 2005, by C-R Telephone Company, The El Paso Telephone Company, Mid-Century Telephone Cooperative, Inc. and Reynolds Telephone Company as their own statements.

In addition, the RLECs filing this Answer make the following additional statements and arguments:

a. Section 251(a) imposes only a duty to allow for a physical linking of the "facilities and equipment" of two telecommunications carriers, directly or indirectly. Section 251(a) does not require the exchange of traffic between networks.

b. The FCC has specifically addressed this issue in a contested case between AT&T and Atlas Telephone Company/Total Telecommunications Services, Inc., and the United States Court of Appeals for the District of Columbia Circuit has affirmed. AT&T Corp. v. F.C.C., 317 F.3d 227, 234-235 (D.C. Cir. 2003). The Court's analysis was stated in a clear and concise manner and admits of no other interpretation. The Court's analysis reads as follows:

Section 251(a)(1) provides in part that "[e]ach telecommunications carrier has a duty ... to interconnect directly or indirectly with the facilities and equipment of other telecommunications carriers." In the Order, the Commission interpreted this duty to "interconnect" as referring "solely to the physical linking of two networks, and *not* to the exchange of traffic between networks." 16 F.C.C.R. 5726 at para. 23 (emphasis in original).

Atlas/Total argues that "the duty ... to interconnect" in Section 251(a)(1) "encompasses the duty to exchange traffic" between networks,

not just the duty to establish a physical linkage between networks. Atlas/Total contends that (1) the history of the requirement of interconnection and the legislative history of Section 251 both indicate that to “interconnect” means to exchange traffic, and (2) the meaning given to “interconnect” in the Order (a) ignores the phrase “or indirectly” in Section 251(a)(1), and (b) does not comport with 47 C.F.R. Section 51.5. We review the Commission’s interpretation of “interconnect” under the two-step test of *Chevron*, 467 U.S. at 842-43, 104 S.Ct. at 2781-82, looking first to the intent of the Congress and then, if the term is still ambiguous, determining whether the agency’s construction of the statute is a reasonable one. Here we need not go beyond the first step.

As the Commission points out, both the text of Section 251(a)(1) and the structure of Section 252 strongly indicate that to “interconnect” and to exchange traffic have distinct meanings. The former section [251(a)(1)] refers only to “facilities and equipment.” [cite omitted]. The latter section [252], which establishes pricing standards for agreements between carriers, provides separately for “interconnection and network elements charges” (Section 252(d)(1)). Section 252 thus contemplates the very distinction between physical linkage and exchange of traffic the Commission applied in the Order.

Atlas/Total argues that the Commission’s definition of “interconnect” ignores the phrase “or indirectly”: “If AT&T were not required to exchange traffic with Atlas or Total, and is not required to establish a physical connection to their facilities, then Section 251(a)(1) would not require AT&T to do anything at all.” But Atlas/Total has no basis for saying AT&T is not required to establish a physical connection with them; the Commission has never said that, and in fact AT&T does connect indirectly with Atlas through a meet point established by Southwestern Bell. Nothing in the Commission’s approach, therefore, deprives the term “indirectly” of a role in the statute. Id.

9. For the convenience of the ALJs and the parties, the RLECs filing this Answer adopt the statements contained in "Issue No. 3: Do the RLECs have a duty to provide number portability, dialing parity and reciprocal compensation to Sprint under Section 251(b) of the Act?" under the section entitled "V. Issues To Be Arbitrated" on page 24 of the Verified Answer filed herein on August 26, 2005, by C-R Telephone Company, The El Paso Telephone Company, Mid-Century Telephone Cooperative, Inc. and Reynolds Telephone Company as their own statements.

10. With respect to Sprint's "Issue No. 4: Are the RLECs exempt from the requirements of Section 251(a) and 251(b) of the Act," the RLECs filing this Answer continue to take the position raised in the prior proceeding that any duty to negotiate the elements of 47 USC Sec. 251(b) is based solely on 47 USC Sec. 251(c)(1). Section 251(b) does not impose an obligation to negotiate. The specific language of Section 251(c)(1) is the sole source of the duty to negotiate. Section 251(c)(1) reads as follows:

(c) ADDITIONAL OBLIGATIONS OF INCUMBENT LOCAL EXCHANGE CARRIERS. --In addition to the duties contained in subsection (b), each incumbent local exchange carrier has the following duties:

(1) DUTY TO NEGOTIATE. --The duty to negotiate in good faith in accordance with section 252 the particular terms and conditions of agreements to fulfill the duties described in paragraphs (1) through (5) of subsection (b) and this subsection. The requesting telecommunications carrier also has the duty to negotiate in good faith the terms and conditions of such agreements.

RLECs have an exemption under Sec. 251(f)(1)(a) that alleviate any duty they would have under Section 251(c), including the Section 251(c) duty to negotiate with respect to elements under Section 251(b).

11. For the convenience of the ALJs and the parties, the RLECs filing this Answer adopt the statements contained in "Issue No. 5: Should the RLECs be required to interconnection with Sprint pursuant to the rates, terms and conditions contained in Sprint's Proposed interconnection agreement?" under the section entitled "V. Issues To Be Arbitrated" on pages 25-26 of the Verified Answer filed herein on August 26, 2005, by C-R Telephone Company, The El Paso Telephone Company, Mid-Century Telephone Cooperative, Inc. and Reynolds Telephone Company as their own statements. The RLECs filing this Answer also specifically adopt as the appropriate form of agreement (if any - and there should be none based

on the legal challenges presented herein) the RLEC language in the Version 2.7 of the present negotiated document which was attached to said Verified Answer.

12. For the convenience of the ALJs and the parties, the RLECs filing this Answer adopt the statements contained in "Issue No. 5A-5G as stated under the section entitled "V. Issues To Be Arbitrated" on pages 26-31 of the Verified Answer filed herein on August 26, 2005, by C-R Telephone Company, The El Paso Telephone Company, Mid-Century Telephone Cooperative, Inc. and Reynolds Telephone Company as their own statements.

AFFIRMATIVE DEFENSES

NOW COME Respondents, Harrisonville Telephone Company, Marseilles Telephone Company and Metamora Telephone Company (jointly, "RLECs") and for their Affirmative Defenses to the Petition for Arbitration filed herein by Sprint Communications L.P. d/b/a Sprint Communications Company L.P. ("Sprint") state as follows:

- I. ILEC has no duty under Section 251 of the Federal Act to negotiate an Interconnection Agreement with Sprint under Sprint's proposed service offering.
 - A. The duty to negotiate under Section 251 of the Federal Act only applies to "telecommunications carriers." Sprint is not a "telecommunications carrier" with respect to its proposed service offering to MCC Telephony of Illinois, Inc. Virgin Island Telephone Corp. v. FCC, 198 F3d 921 (D.C. Cir. 1999).
 - B. The duty to negotiate the elements of 47 USC Sec. 251(b) are based solely on 47 USC Sec. 251(c)(1). Section 251(b) does not impose an obligation to negotiate. The specific language of Section 251(c)(1) is the sole source of the duty to negotiate. Petitioners have an exemption under Sec. 251(f)(1)(a) that alleviate

any duty they would have under Section 251(c), including the Section 251(c) duty to negotiate with respect to elements under Sec. 251(b).

- C. The duty to establish reciprocal compensation arrangements for the transport and termination of telecommunications under Section 251(b)(5) of the Federal Act has been defined by the FCC consistent with Section 251(g) of the Federal Act in Section 51.701(b)(1) of the FCC's rules, 47 CFR Section 51.701(b)(1). Section 51.701(b)(1) of the FCC's rules define the "telecommunications traffic" that is subject to reciprocal compensation. "Information services" are not "telecommunications traffic" under Section 51.701(b)(1) of the FCC's rules. The service to be provided under Sprint's business arrangement with Mediacom/MCC is a VoIP service. VoIP services are information services. *Vonage Holding Corp. v. Minnesota Pub. Utils. Comm'n*, 290 F. Supp. 2d 993 (D. Minn. 2003), affd. on other grounds, 394 F.3d 568 (8th Cir. 2004).

1. The ICC should not require ILEC to negotiate or execute an arbitrated interconnection agreement with Sprint unless and until the FCC answers the question whether VoIP service by a cable company is an information service and that reciprocal compensation applies to such service. The ICC may take this action either based on a conclusion that the FCC has not yet determined that VoIP service by a cable company is a telecommunications service, rather than an information service, or by finding that a suspension is necessary to protect the public interest until such time as the FCC makes such a determination.

2. In the alternative, if the ICC elects not to defer this decision to the FCC, the ICC must allow for full and complete discovery, conduct full evidentiary hearings and determine whether VoIP service by a cable company is an information service. Consistent with the Minnesota Federal District Court, the ICC should find that the underlying service under Sprint's arrangement with Mediacom/MCC is an information service.

D. The ICC should grant ILEC a suspension of any obligation to negotiate and execute an interconnection agreement with Sprint for the type of traffic to be exchanged under Sprint's proposal pursuant to Section 251(f)(2).

II. Direct vs Indirect Interconnection

A. If ILEC is required to negotiate and execute an interconnection agreement with Sprint, ILEC Proposes that any Interconnection must be a Direct Connection with a POI within ILEC's Service Area. Indirect interconnection is inappropriate for small, rural ILECs. Section 251(a) must be interpreted in light of Section 251(c)(2). Section 251(c)(2) provides that:

In addition to the duties contained in subsection (b), each incumbent local exchange carrier has the following duties:

... (2) INTERCONNECTION.--The duty to provide, for the facilities and equipment of any requesting telecommunications carrier, interconnection with the local exchange carrier's network--(A) for the transmission and routing of telephone exchange service and exchange access; (B) at any technically feasible point within the carrier's network; ...”

B. Sprint's Proposal for Indirect Interconnection through Tandem that ILEC's Network Subtends should be rejected.

III. Transit and Transport Costs Beyond ILEC's Service Area (Indirect Interconnection)

- A. Sprint Proposal that Each Party Pay the Transit and Transport Costs Incurred as a Result of the Traffic that Originate from its End Users, Regardless of the Fact that such Costs are Caused by Sprint's Network Design Decisions should be rejected.
- B. If ILEC is required to negotiate and execute an interconnection agreement with Sprint, and ILEC's Direct only position is not adopted, ILEC Proposes that Sprint Pay all Transit Costs for all Traffic that it originates or terminates under the indirect interconnection.
- C. The ICC should grant ILEC a suspension of any obligation to pay transit and transport costs beyond ILEC's service area under an indirect interconnection pursuant to Section 251(f)(2).

IV. Sharing of the Costs of Facilities Beyond ILEC's Service Area (Direct Interconnection)

- A. Sprint Proposal that the Parties Share the Costs of Direct Interconnection Facilities Proportionately, Regardless of Whether the Facilities are Within ILEC's Service Area or Beyond the POI, and Regardless of the Fact that such Costs are Caused by Sprint's Network Design Decisions should be rejected.
- B. If ILEC is required to negotiate and execute an interconnection agreement with Sprint, ILEC Proposes that Sprint Provide the Facilities Beyond the POI and that ILEC provide the Facilities from ILEC's switch to the POI.
- C. The ICC should grant ILEC a suspension of any obligation to share the costs of facilities beyond ILEC's service area under a direct interconnection pursuant to Section 251(f)(2).

- V. Definition of Local Traffic and Compensation for ILEC Delivery of Sprint Extended Area Service (“EAS”) Traffic
 - A. Sprint Proposal to Include EAS Traffic Within the Definition of “Local Traffic” should be rejected.
 - B. If ILEC is required to negotiate and execute an interconnection agreement with Sprint, ILEC Proposes that EAS Traffic be excluded from the Definition of “Local Traffic” and Provide a Separate Compensation Method Which Reimburses ILEC for Costs Associated with the Delivery of EAS Traffic.
- VI. Reciprocal Compensation – Switching Rates
 - A. Sprint’s Proposal for Bill and Keep should be rejected.
 - B. If ILEC is required to negotiate and execute an interconnection agreement with Sprint, ILEC Proposes to use Average HAI Results for ILEC Group as Proxy for Forward Looking Costs similar to what was done in Docket 00-0233/00-0335.
 - C. The ICC should grant ILEC a suspension of any obligation to establish reciprocal compensation pursuant to Section 251(f)(2).
- VII. Provisions Unique to Sprint’s Business Arrangement with Mediacom/MCC Telephony of Illinois, Inc. If ILEC is required to negotiate and execute an interconnection agreement with Sprint, ILEC Proposes language be included to properly characterize Sprint’s arrangement with Mediacom/MCC and its relation to the interconnection agreement and a self-effectuating change of law provision to protect RLECs in the event of future rulings that such services are not telecommunications services.

PRAYER FOR RELIEF

WHEREFORE, Respondents, Harrisonville Telephone Company, Marseilles Telephone Company and Metamora Telephone Company respectfully request that the Commission enter an order denying the Petition for Arbitration of Sprint Communications L.P. d/b/a Sprint Communications Company L.P. and granting such further relief to the Respondents as the Commission finds to be necessary and appropriate, including but not limited to the grant of appropriate suspensions or modifications of the duties under Section 251 of the Federal Act.

Dated this 26th day of August, 2005.

Respectfully submitted,

/s/ Troy A. Fodor

By: _____

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VERIFICATION

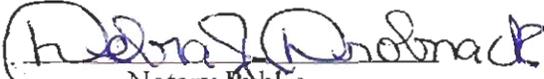
STATE OF ILLINOIS)
)
COUNTY OF SANGAMON) SS

Troy A. Fodor, being first duly affirmed on oath, deposes and states that he is the attorney for Harrisonville Telephone Company, Marseilles Telephone Company and Metamora Telephone Company, that he has read the above and foregoing Verified Answer and knows the contents thereof, and that the same are true to the best of his knowledge, information and belief.



Troy A. Fodor

Subscribed and Sworn to before me
This 26th day of August, 2005.



Notary Public

