

STATE OF ILLINOIS
BEFORE THE ILLINOIS COMMERCE COMMISSION

* * * * *

Sprint Communications L.P. d/b/a Sprint)
Communications Company L.P.)
)
Petition for Consolidated Arbitration with)
Certain Illinois Incumbent Local Exchange)
Carriers pursuant to Section 252 of the)
Telecommunications Act of 1996.)

Case No. 05-0402

PROPOSED ARBITRATION DECISION
OF SPRINT COMMUNICATIONS L.P. D/B/A
SPRINT COMMUNICATIONS COMPANY L.P.

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PROPOSED ARBITRATION DECISION

By the Commission:

I. Procedural Background

This proceeding was initiated by a Petition for Arbitration (“Petition”) filed with this Commission on June 8, 2004 by Sprint Communications L.P. d/b/a Sprint Communications Company L.P. (“Sprint”), pursuant to subsection 252(b) of the Federal Telecommunications Act of 1996 (“1996 Act”)¹ and 83 Ill. Admin Code § 200.761 to resolve certain open issues in order to enter into an Interconnection Agreement with the following ten Illinois rural incumbent local exchange carriers:

Cambridge Telephone Company	Henry County Telephone Company
C-R Telephone Company	Marseilles Telephone Company
The El Paso Telephone Company	Metamora Telephone Company
Geneseo Telephone Company	Mid Century Telephone Cooperative
Harrisonville Telephone Company	Reynolds Telephone Company

On July 8, 2005, Sprint filed an additional Petition for Arbitration for an Interconnection Agreement with Viola Home Telephone Company, in Docket No. 05-0433, which was consolidated with this docket by the Commission at its July 19, 2005 Regular Open Meeting.

From April 15, 2005 through May 4, 2005, Cambridge Telephone Company, C-R Telephone Company, El Paso Telephone Company, Geneseo Telephone Company, Henry County Telephone Company, Mid Century Telephone Cooperative, Reynolds Telephone Company, Metamora Telephone Company, Harrisonville Telephone Company, Marseilles Telephone Company, and Viola Home Telephone Company

¹ 47 U.S.C. § 252(b).

(collectively "RLEC Petitioners") each filed with the Commission a verified petition requesting extensive relief from certain obligations under the Act.² The RLEC Petitioners had asked the Commission to enter an order staying any obligation they have to negotiate reciprocal compensation or interconnection with Sprint and staying any arbitration proceeding which may have arisen from the RLEC Petitioners and Sprint's inability to agree on certain interconnection matters. The RLEC Petitioners argued that Sprint, in their opinion, was not a telecommunications carrier for the purpose of receiving interconnection services because, as they characterized it, Sprint would "not be providing the interconnected services it seeks to negotiate directly to the public."³

While the request for Declaratory relief was pending, no negotiations took place between the RLEC Petitioners and Sprint for interconnection services.

On July 1, 2005, Cambridge Telephone Company, Henry County Telephone Company, C-R Telephone Company, The El Paso Telephone Company, Geneseo Telephone Company, Mid Century Telephone Cooperative, and Reynolds Telephone Company filed a motion to dismiss the Petition, arguing that Sprint had improperly consolidated the petitions against the carriers and arguing that Sprint was not a carrier for the purposes of receiving interconnection services. Harrisonville Telephone Company, Marseilles Telephone Company, and Metamora Telephone Company orally joined in the Motion. The Motion to Dismiss was denied, only as to that part regarding consolidation, by Administrative Law Judges, John D. Albers and Stephen Yoder ("ALJs"), on July 13, 2005.⁴

On July 13, 2005, The Commission issued its order in response to the Request for Declaratory ruling, and found that

given the manner in which Sprint proposes to serve MCC, Sprint is a telecommunications carrier in this instance with which Petitioners must negotiate under subsections (a) and (b) of Section 251 of the Federal Act.⁵

and ordered

that because Sprint Communications, L.P. d/b/a Sprint Communications Company L.P. is a "telecommunications carrier," Petitioners have an obligation to negotiate with Sprint Communications, L.P. d/b/a Sprint Communications Company

² Consolidated Docket No. 05-0259, *et al.*

³ Respondents' Petitions for Suspension or Modification or in the Alternative Declaratory Order, April 20, 2005, Docket No. 05-0270 (Metamora Telephone Company), April 22, 2005, Docket No. 05-0275 (Harrisonville Telephone Company), and April 25, 2005, Docket No. 05-0277 (Marseilles Telephone Company), ¶ 27. (The Applicants' Petitions were virtually identical).

⁴ Tr. 27.

⁵ Docket No. 05-0259 *et al.*, July 13, 2005, Order, p 14.

L.P., or any similarly situated entity, under subsections (a) and (b) of Section 251 of the federal Telecommunications Act.⁶

In light of the Commission's ruling in consolidated Docket No. 05-0259 *et al.*, the remaining portion of the motion was denied by the ALJs on July 22, 2005.

On July 14, 2005, Viola Home Telephone Company filed two additional motions to dismiss, one again alleging that Sprint was not a telecommunications carrier for the same reasons stated in consolidated Docket Nos. 05-0259 *et al.*, and one alleging that the Commission was preempted from arbitrating this matter because Sprint's service will use, in part, Voice Over Internet Protocol technology. On that same day, Harrisonville Telephone Company, Marseilles Telephone Company, and Metamora Telephone Company also filed a Motion to Dismiss alleging that the Commission was preempted from arbitrating this matter because Sprint's service will use, in part, Voice Over Internet Protocol technology. Viola's first motion was denied by the ALJs on July 15, 2005.⁷ The Motion of Harrisonville Telephone Company, Marseilles Telephone Company, and Metamora Telephone Company remained pending, were briefed by all Parties, and are denied as part of this Proposed Arbitration Decision.

On July 15, 2005, the Parties agreed to hold the arbitration proceeding in abeyance for 25 days to allow the Parties time for negotiation, and thereby narrow the issues remaining for arbitration. On August 4, 2005, the Parties reached a consensus scheduled for the remainder of this proceeding.

On August 26 and 29, the Commission received answers from the Respondents to the Petitions.

During the pendency of this proceeding and following negotiations, Sprint reached negotiated Interconnection Agreements with all but three of the carriers against whom Sprint had filed Petitions for Arbitration. On September 2, 2005, Sprint and Cambridge Telephone Company, Geneseo Telephone Company, and Henry County Telephone Company,⁸ and on September 9, 2005, Sprint and C-R Telephone Company, The El Paso Telephone Company, Mid Century Telephone Cooperative, Reynolds Telephone Company, and Viola Home Telephone Company⁹ filed Notices of Resolution of Issues in this docket and filed Interconnection Agreements with this Commission for Approval. As part of the jointly filed Notices of Resolution of Issues, the Parties agreed to hold their portions of this proceeding in abeyance pending the approval of their

⁶ *Id.* at 15.

⁷ Tr. 67.

⁸ On September 2, 2005, Sprint jointly filed Interconnection Agreements for Approval by this Commission with Cambridge Telephone Company, Docket No. 05-0569, Geneseo Telephone Company, Docket No. 05-0570, and, Henry County Telephone Company, 05-0571.

⁹ On September 9, 2005, Sprint jointly filed Interconnection Agreements for Approval by this Commission with C-R Telephone Company, Docket No. 05-0589, The El Paso Telephone Company, Docket No. 05-0590, Mid Century Telephone Cooperative, Docket No. 05-0584, Reynolds Telephone Company, Docket No. 05-0591, and Viola Home Telephone Company, Docket No. 05-0585.

Interconnection Agreements, at which time the interconnection dispute would become moot and resolved. Approval of these eight Interconnection Agreements are pending before this Commission.

Sprint's only remaining Interconnection Agreement differences remain with Harrisonville Telephone Company, Marseilles Telephone Company, and Metamora Telephone Company ("Respondents"). It is Sprint's differences with those Respondents that are addressed in this Proposed Arbitration Decision.

On September 6, 2005, Sprint and the Respondents jointly filed a Joint Disputed Points List outlining the remaining areas of difference between the Parties.

Though the Commission, in its July 13, 2005 Order in Docket No. 05-0259 *et al.*, instructed the Parties to address an outstanding request of "whether or not the [Respondents] may receive waiver of its 251(b)(2) and (5) obligations under 251(f)(2)."¹⁰ in this docket, the remaining Respondents chose "not to pursue the suspension and modification options under 251(f)(2),"¹¹ thus rendering any consideration of those issues moot.

The ALJ's conducted pre-arbitration hearings on July 13, 2005, July 15, 2005 and August 4, 2005 in Springfield, Illinois. On October 6, 2005, an evidentiary hearing was held in this matter in Springfield, Illinois. Sprint presented the testimony and exhibits of James R. Burt. The Respondents presented the testimony and exhibits of Robert Schoonmaker. Staff presented the Testimony of Jeffrey H. Hoagg, Russell W. Murray, Robert F. Koch, and Genio Staranczak. During the evidentiary hearing, Sprint offered two exhibits (including one with one attachment, and another with two attachments),¹² the Respondents offered six exhibits,¹³ Staff offered five exhibits, and Sprint offered eight cross-exhibits. All exhibits, except for one which was withdrawn, were admitted into evidence. The transcript in this proceeding consists of 318 pages, including 10 pages of proceedings which were held *in camera*. The proceeding was marked "heard and taken" on October 6, 2005

II. Jurisdictional Statement

Section 252(b) of the Act addresses the procedures for arbitration between incumbent local exchange carriers ("ILECs") and other telecommunications carriers requesting interconnection. Section 252(b) prescribes the duties of the petitioning party, provides the non-petitioning party an opportunity to respond and sets out time limits. Section 252(b)(4) provides that the state commission shall limit its consideration to the issues set forth in the petition and in the response to the petition and shall resolve each issue by imposing appropriate conditions on the parties as required to implement Section 252(c) - Standards for Arbitration. Section 252(d) sets out pricing standards for

¹⁰ Docket No. 05-0259 *et al.*, July 13, 2005, Order, p 13.

¹¹ Respondent Exhibit 2.0, In. 400-403.

¹² One of which has a proprietary version.

¹³ Two of which had proprietary versions.

interconnection and network element charges, transport and termination of traffic and wholesale prices.

(c) Standards for Arbitration.--In resolving by arbitration under subsection (b) any open issues and imposing conditions upon the parties to the agreement, a State commission shall--

(1) ensure that such resolution and conditions meet the requirements of Section 251, including the regulations prescribed by the [Federal Communications] Commission pursuant to Section 251;

(2) establish any rates for interconnection, services, or network elements according to subsection (d); and

(3) provide a schedule for implementation of the terms and conditions by the parties to the agreement.¹⁴

In addition, the Commission has adopted rules and procedures for such arbitrations in 83 83 Ill. Admin Code § 761. The foregoing federal and state provisions apply to this proceeding.

III. Issues in Dispute

In the Petition, the Joint Disputed Points List, the Parties identified eight issues for resolution. During the evidentiary hearing, two of these issues were resolved by the parties and six remained. These remaining issues are addressed below.

1. This Commission has already determined that Sprint is a telecommunications carrier with which Petitioners must negotiate under subsections (a) and (b) of Section 251 of the Federal Act.

(i) Parties Positions and Proposals

(A) Sprint

A little more than three months ago, in ruling on a request for a declaratory ruling brought by the Respondents in this proceeding, the Commission found that

given the manner in which Sprint proposes to serve MCC, Sprint is a telecommunications carrier in this instance with which Petitioners must negotiate under subsections (a) and (b) of Section 251 of the Federal Act.¹⁵

and ordered

¹⁴ 47 U.S.C. § 252(c).

¹⁵ Docket No. 05-0259 *et al.*, July 13, 2005, Order, p 14.

that because Sprint Communications, L.P. d/b/a Sprint Communications Company L.P. is a "telecommunications carrier," Petitioners have an obligation to negotiate with Sprint Communications, L.P. d/b/a Sprint Communications Company L.P., or any similarly situated entity, under subsections (a) and (b) of Section 251 of the federal Telecommunications Act.¹⁶

Less than two months ago, the Commission "denied the Application for Reconsideration and Rehearing by Metamora Telephone Company, Harrisonville Telephone and Marseilles Telephone Company filed on August 12, 2005,"¹⁷ seeking to overturn the Commission's July 13, 2005 Order.

Now, in this docket, Sprint notes that the Respondents seek yet a third bite at the apple.

Q. Do the ILECs continue to maintain their positions that Sprint is not a telecommunications carrier in relation to the services it proposes to offer to MCC/Mediacom?

A. Yes they do. . . .¹⁸

This issue is the identical issue to that considered by this Commission and raised by these same Respondents against Sprint in consolidated Docket Nos. 05-0259 *et al.*, and this Sprint believes that the Respondents should be barred from relitigating the fact that the Commission found Sprint to be a telecommunications carrier under the doctrines of *collateral estoppel*, and *res judicata*, as well as law of the case.

The doctrine of *collateral estoppel* bars re-litigation of the same issue, but in a subsequent case, when, as is the case in the instant proceeding: (1) the issue decided in the prior case is identical to the one in the second case; (2) the party against whom *estoppel* is being asserted was a party to the prior adjudication; and (3) there was a final judgment on the merits.¹⁹ The doctrine of *res judicata* provides that a final judgment on the merits by a court of competent jurisdiction acts as an absolute bar to a subsequent action between the same Parties, when that judgment is between the same Parties, and it involves the same claim, or the same cause of action.²⁰ This doctrine promotes judicial economy by preventing repetitive litigation.²¹

¹⁶ *Id.* at 15.

¹⁷ Docket No. 05-0259 *et al.*, Aug. 26, 2005, Notice of Commission Action.

¹⁸ Direct Testimony of Robert C. Schoonmaker, Respondent Exhibit 1.0, In. 68-71.

¹⁹ *Nowack v. St. Rita High School*, 197 Ill.2d 281, 390; 757 N.E.2d 471 (2001); See also, *DuPage Forklift Service v. Material Handling Services*, 195 Ill.2d 71, 77; 744 N.E.2d 845 (2001)).

²⁰ *Ariva v. Madigan*, 209 Ill.2d 520, 533, 809 N.E.2d 88 (2004); *Nowack*, 197 Ill.2d at 389.

²¹ *Ariva*, 209 Ill.2d at 533.

While recognizing that the Commission is not rigidly bound by principles of *res judicata*, and *collateral estoppel*,²² Sprint nevertheless contends that they should apply to the instant proceeding. It is Sprint's position that it would be arbitrary and capricious for the Commission to change direction at this juncture without some compelling new evidence. As Staff's witness, Dr. Genio Staranczak noted in his rebuttal testimony, "I am unaware of any new circumstances that could cause the commission [to depart from its previous decision finding Sprint is a telecommunications carrier]."²³

While the Respondents argue that the Commission made its decision in consolidated Docket No. 05-0259 *et al.*, "without the benefit of testimony,"²⁴ they once again fail to acknowledge that the only sworn evidence filed in consolidated Docket No. 05-0259 *et al.* were two signed and sworn affidavits entered by Sprint; one executed on April 28, 2005 by James R. Burt, Sprint's Director-Regulatory Policy; and, an additional affidavit executed on May 19, 2005, by James D. Patterson, Sprint's Vice President – Carrier and Wholesale Markets. These affidavits were filed along with, and as part of, Sprint's pleadings in that docket and thus were part of the record upon which the Commission based its conclusions.²⁵ Mr. Burt reiterated in this matter that Sprint continues to make services available to last mile providers on an indiscriminate basis.²⁶ Consequentially, the Commission's logic in the Declaratory Ruling finding that Sprint is providing telecommunications services, and as such is a telecommunications carrier, remains unchallenged.²⁷

Sprint notes that the Respondents have not presented any new evidence that was not already presented to this Commission in the affidavits of Mr. Burt and Mr. Patterson in consolidated Docket No. 05-0259 *et al.* In fact the evidence presented in the instant proceeding, especially that of Mr. Burt,²⁸ elaborated on those affidavits and further demonstrate that "given the manner in which Sprint proposes to serve MCC, Sprint is a telecommunications carrier in this instance with which Petitioners must negotiate under subsections (a) and (b) of Section 251 of the Federal Act."²⁹

Though the Respondents argue that this Commission has no jurisdiction to order arbitration because the service Sprint will be providing will utilize the Voice Over Internet **Protocol**, Sprint calls the Commission's attention to Sprint's Response in Opposition to Motions to Dismiss, filed on August 19, 2005. Further, the direct testimony of Mr. Burt specifically discusses, without contradiction or rebuttal, that the differences between

²² *United Cities Gas Co. v. ICC*, 163 Ill.2d 1, 22-23 (1994); *Illinois American Water Co. v. ICC*, 772 N.E. 2d 390, 395 (2nd Dist. 2002).

²³ Staff Exhibit 3.0, In.89-95.

²⁴ Respondent Exhibit 1.0, In.75.

²⁵ 83 Ill Adm. Code 200.700.

²⁶ Tr. 197.

²⁷ In fact, Sprint filed a tariff on October 18, 2005 making its interconnection services available. The Commission may take administrative notice of this tariff filing.

²⁸ See, *in general*, Burt Direct Testimony, Sprint Exhibit 1.0, In. 92-773 and Burt Rebuttal Testimony, Sprint Exhibit 1.1.

²⁹ Docket No. 05-0259 *et al.*, July 13, 2005, Order, p 14.

utilizing the Voice Over Internet ***Protocol*** versus offering a VoIP Service (which Sprint is not offering), is that “the terms Internet Telephony and/or VoIP are usually used to describe voice services that utilize the public Internet. . . . By contrast, the proposed service does not use the public Internet as its transport mechanism.”³⁰ In fact, Mr. Burt testified, the service [which Sprint will be offering] does not require the customer to invest in a broadband connection and a computer, which the customer would have to purchase to utilize an Internet-based Voice over Internet Protocol (“VoIP”) service.”³¹

As Mr. Burt testified,

The proposed service is not cable modem service, and does not provide connection to the public Internet as is the case with cable modem service. Cable modem service provides customers with high speed access to the Internet, over the fixed cable network of the cable company. In contrast, the proposed services are local voice telephone services that are indistinguishable from the Plain Old Telephone Service (“POTS”) provided by the RLECs and other local exchange carriers. Customers can use the same type of telephones used by the RLECs’ customers. The customers of the proposed service will only be able to originate and terminate calls from the customer’s premises as the RLECs’ customers currently do. The proposed services do not require the customer to have broadband Internet connection, and do not require a computer at either end of the potential voice telephone call. The customer’s “telephone number” is fixed to his or her physical location, and therefore, the proposed services are not “mobile.”³²

Unlike Vonage customers, Sprint’s customers will not “have a device that they can take anywhere in the world and connect to a broadband Internet connection anywhere in the world.”³³ The service Sprint will be offering with its last mile provider, Mediacom, “by definition is non-nomadic, meaning you can’t transport it around. You can’t move it around. In fact, the Mediacom tariff on file in the state of Illinois specifically restricts customers” from moving their service from one location to another.³⁴

For the reasons stated in Sprint’s Response in Opposition to Motions to Dismiss, filed on August 19, 2005, and Mr. Burt’s testimony, Sprint’s position is that it is not a Broadband or VOIP Service, as those terms are commonly used and as addressed in

³⁰ Sprint Exhibit 1.0, In. 527-530.

³¹ Sprint Exhibit 1.0, In.109-111.

³² *Id.*, In. 510-522.

³³ Tr. 133.

³⁴ Tr. 135.

the FCC's *Vonage Order*³⁵ or in the United States Supreme Court's recent decision in *National Cable & Telecomms. Ass'n v. Brand X Internet Services*.³⁶ Thus, Sprint believes that this Commission has jurisdiction to consider this Petition.

(B) Respondents

The ALJ's indicated that the Parties did not have to summarize the positions of the other parties in their Proposed Arbitration Decisions.³⁷

(C) Staff

The ALJ's indicated that the Parties did not have to summarize the positions of the other parties in their Proposed Arbitration Decisions.³⁸

(ii) Analysis and Conclusion

On July 13, 2005, this Commission found that

given the manner in which Sprint proposes to serve MCC, Sprint is a telecommunications carrier in this instance with which Petitioners must negotiate under subsections (a) and (b) of Section 251 of the Federal Act.³⁹

and ordered

that because Sprint Communications, L.P. d/b/a Sprint Communications Company L.P. is a "telecommunications carrier," Petitioners have an obligation to negotiate with Sprint Communications, L.P. d/b/a Sprint Communications Company L.P., or any similarly situated entity, under subsections (a) and (b) of Section 251 of the federal Telecommunications Act.⁴⁰

As Staff's witness, Dr. Staranczak testified there have not been "any new circumstances that could cause the commission [to depart from its previous decision that Sprint is a telecommunications carrier]."⁴¹

³⁵ *FCC Memorandum Opinion and Order, In the Matter of Vonage Holdings Corporation, Petition for Declaratory Ruling Concerning an Order of the Minnesota Public Utilities Commission*, WC Docket No. 03-211, Adopted: November 9, 2004, Released: November 12, 2004 ("Vonage Order").

³⁶ ___ U.S. ___, 125 S. Ct. 2688; 162 L. Ed. 2d 820 (2005).

³⁷ Tr. 317-318.

³⁸ Tr. 317-318.

³⁹ Docket No. 05-0259 *et al.*, July 13, 2005, Order, p 14.

⁴⁰ *Id.* at 15.

⁴¹ Staff Exhibit 3.0, ln.89-95.

Though the Respondents argue, in both their brief and their motion to Dismiss that this Commission has no jurisdiction to order arbitration because the service Sprint will be providing will utilize the Voice Over Internet Protocol, we note that Sprint will not be providing an Internet service, as that term is discussed in *Vonage Order* nor a broadband service, as that term is discussed in the *National Cable & Telecomms. Ass'n v. Brand X Internet Services*.⁴² Unlike the services discussed in the *Vonage Order* and in *Brand X*, the service Sprint will be providing does not transit the public Internet,⁴³ does not require a broadband connection,⁴⁴ and is non-nomadic.⁴⁵ As Mr. Burt characterized it, the Service Sprint will be providing is “local voice telephone services . . . indistinguishable from the Plain Old Telephone Service (“POTS”) provided by the” Respondents.

Because Sprint Communications, L.P. d/b/a Sprint Communications Company L.P. is a “telecommunications carrier,” and because the service Sprint will be offering is a local voice telephone service, Respondents had an obligation to negotiate with Sprint, under subsections (a) and (b) of Section 251 of the Act and this Commission has an obligation, and has jurisdiction, under Section 252 of the Act to arbitrate this proceeding.

2. Should the definition of local traffic include traffic defined by the Commission as EAS traffic?

This issue was resolved at the evidentiary hearing.⁴⁶

3. Is it appropriate for Parties to unilaterally modify the Agreement to self effectuate a change-of-law?

(i) Parties Positions and Proposals

(A) Sprint

Sprint notes that it has agreed with the Respondents on the first portion of Section 18.6 of the Interconnection Agreement,⁴⁷

18.6. Change-of-law. If a federal or state regulatory agency or a court of competent jurisdiction issues a rule, regulation, law or order which has the effect of canceling, changing, or superseding any material term or provision of this Agreement then the Parties shall negotiate in good faith to modify this Agreement in a manner consistent with the form, intent, and purpose of this Agreement and as necessary to comply with such change-of-law.

⁴² ___ U.S. ___, 125 S. Ct. 2688; 162 L. Ed. 2d 820 (2005).

⁴³ Sprint Exhibit 1.0, ln.527-530.

⁴⁴ Sprint Exhibit 1.0, ln.109-111.

⁴⁵ Tr. 135.

⁴⁶ Tr. 179.

⁴⁷ Sprint Exhibit 1.0, ln. 912-913; Respondents Exhibit 1.2.

Under this language, if there were to be a change in the law or in the interpretation of the law by “a federal or state regulatory agency or a court of competent jurisdiction,” the Parties would be required to “negotiate in good faith” a modification to the Interconnection Agreement.

Sprint notes that the Respondents, rather than allow for negotiation to modify the agreement, seek additional language which upon

(i) any such action staying this Agreement or the ICC orders that precipitated the execution of this Agreement by the Parties; (ii) any such action reversing, overturning or materially altering the ICC orders that precipitated the execution of this Agreement by the Parties; (iii) any such action having the effect of clarifying or changing the law with respect to ILEC's obligations to negotiate, interconnect and/or pay reciprocal compensation under Section 251 of the Act in connection with the type of traffic contemplated by Sprint's business arrangement with MCC Telephony of Illinois, Inc.; or (iv) any such action granting ILEC a suspension of such obligations,⁴⁸

as the Respondents' witness testified, “terminate the Agreement automatically.”⁴⁹

Sprint has some very real issues and problems with the Respondents suggested language, giving them the unilateral right to terminate service to Sprint (and consequently to Sprint's customers). Staff's witness, Dr. Staranczak, shared this concern that “customers served by Sprint or MCC under the agreement might be deprived of service in the event that the RLECs were permitted to summarily cease their performance under the agreement as a result of one these events.”⁵⁰ As Sprint's witness, Mr. Burt testified, if any of the events that the Respondents suggest including in Section 18.6.1 were to happen,

the RLECs would like to be sole judge and jury regarding the interpretation and implementation of any such change, it's totally conceivable that the RLECs could immediately stop the flow of voice traffic between Sprint and the RLECs based on their own interpretation of an order. It is Sprint's position that any order be appropriately interpreted and implemented to minimize end-user impact.⁵¹

At the hearing, Respondents questioned whether traffic between Sprint and the Respondents would continue to flow and suggested that traffic could be exchanged on a

⁴⁸ For the full text of the Respondents proposed language for Section 18.6.1, please see Respondent Exhibit 1.1.

⁴⁹ Respondents Exhibit 2.0, In. 231-233.

⁵⁰ Staff Exhibit 3.0, In. 135-138.

⁵¹ Sprint Exhibit 1.0, In. 963-968.

non-local access basis. Mr. Burt dispelled that notion, stating that routing the calls over the toll network would result in higher costs for Mediacom and Sprint, and that the “customer experience” would be different in that both the Respondent’s end-users and the Sprint/Mediacom end-users would have to make toll-calls and incur toll charges for traffic originating and terminating within the same local calling area.⁵² While the Respondents’ proposal “has certain very disturbing implications,”⁵³ it is also contrary to FCC and Commission determinations.

The FCC’s rules have placed an affirmative obligation on the Respondents, as incumbent local exchange carriers to “include in an arbitrated or negotiated agreement a provision that permits the agreement to be amended in the future to take into account changes in Commission or state rules.”⁵⁴ A refusal to include such, and Sprint considers a self effectuating change-of-law termination clause such a refusal, is, if proven to a state commission, a violation of the duty to negotiate in good faith.⁵⁵

Sprint pointed out that this Commission has, on at least two occasions rejected proposals similar to that put forth by the Petitioners in the instant proceeding. In the Interconnection Arbitration between SBC and Sage Telecom, Inc., SBC’s proposed change-of-law language that would have rendered “the affected Provision(s) shall be immediately invalidated, modified or stayed consistent with the action” that invoked the change of law provision.⁵⁶ The Commission rejected SBC’s proposal stating:

In contrast to the *immediate* disability imposed by the foregoing text, Sage’s intervening law provisions provide for good faith renegotiation between the Parties, at the discretionary request of either party. Because it would not immediately disrupt the working relationship created by the ICA, Sage’s proposal is markedly superior. It would allow the Parties a reasonable opportunity to consider the ramifications of regulatory change and arrange for a smooth transition accommodating such change. Moreover, no transition may be warranted, since changes to regulatory requirements and standards do not always obligate carriers to rearrange the rights and duties they established by contract.⁵⁷

The Commission found likewise in the arbitration between MCI Metro Access Transmission Services, Inc. and SBC, concluding,

As we previously have held, to effectuate intervening law events, change-of-law procedures should require the Parties to enter into

⁵² Tr. 171.

⁵³ Staff Exhibit 3.0, In. 138.

⁵⁴ 47 C.F.R. § 51.301(c)(3).

⁵⁵ 47 C.F.R. § 51.301(c).

⁵⁶ *Sage Telecom, Inc. Petition for Arbitration with SBC Illinois*, ICC Docket No. 03-0570, Arbitration Decision, Dec 9, 2003, p. 25.

⁵⁷ *Id.* at 27 (emphasis in original).

negotiations regarding an appropriate contract amendment. *Sage Arbitration Order*, 03-0570, at 26. They should not, as SBC proposes here, permit a party to unilaterally impose its own interpretation of an intervening law event. Negotiations between the Parties are essential to define the parameters of the law and translate them into contract language.⁵⁸

Sprint also asks the Commission, as it did in the Docket 04-0469,⁵⁹ to reject language that would list specific events that would automatically constitute a change of law. As Mr. Burt explained in his testimony,

[f]irst, the RLECs' proposed language is vague and ambiguous. The first subpart (i) and the second subpart (ii) of the RLECs' proposed 18.6.1 both reference "ICC orders that precipitated the execution of this Agreement by the Parties." That phrase in both of the subparts is not specific to any particular docket and could be interpreted to mean any ICC order that is overturned or stayed as long that order was issued before the execution of the Agreement. In subpart (iii), Sprint also is unclear as to the meaning of an action 'clarifying the law.' Sprint is unsure as to whether there is a true change of law if an order or court decision is merely clarified. The confusion raised by the language proposed by the RLECs demonstrates why a specific list of change of law events is inappropriate. Sprint's position is that if one party believes a change of law has occurred then it should utilize the procedures set forth in 18.6 to implement the change. If there is disagreement about whether an event constitutes a change of law, then the dispute resolution provisions of the Agreement should be utilized.⁶⁰

(B) Respondents

The ALJ's indicated that the Parties did not have to summarize the positions of the other parties in their Proposed Arbitration Decisions.⁶¹

(C) Staff

The ALJ's indicated that the Parties did not have to summarize the positions of the other parties in their Proposed Arbitration Decisions.⁶²

⁵⁸ MCI Metro Access Transmission Services, Inc. *Petition for Arbitration with SBC Illinois*, ICC Docket No. 04-0469, Arbitration Decision, Nov. 30, 2004, p. 23.

⁵⁹ *Id.* at 72-73.

⁶⁰ Sprint Exhibit 1.0, In. 980-994.

⁶¹ Tr. 317-318.

⁶² Tr. 317-318.

(ii) Analysis and Conclusion

The agreed upon language in Section 18.6 of the Interconnection Agreement provides for the negotiations between the Parties, essential to define the parameters of the law and translate them into contract language, in the event of a change of law.

The additional language requested by the Respondents would unilaterally terminate the Interconnection Agreement and service to Sprint and Sprint's customers upon a change of law. Such a proposal has some very real issues and problems with which this Commission should be concerned. As this Commission has in the past, to effectuate intervening law events, change-of-law procedures should require the Parties to enter into negotiations regarding an appropriate contract amendment. Likewise we reject the language proposed by the Respondents that would define specific "change of law" events. Such language could cause additional confusion between the parties as to what is and is not a "change of law" event. The question of what is and is not a "change of law" event, like the impact of the "change of law" should be determined through negotiations between the Parties. The agreed upon language in Section 18.6 of the Interconnection Agreement provides for such negotiations between the Parties, and should be made part of the Interconnection Agreement without modification or addition.

4. Should the Agreement include language specifically requiring Sprint to indemnify the Respondents from the action of third-Parties?

(i) Parties Positions and Proposals

(A) Sprint

Sprint and the Respondents have agreed on the first portion of Section 18.7 of the Interconnection Agreement,

18.7 No Third-Party Beneficiaries. This Agreement shall not be deemed to provide any third party with any benefit, remedy, claim, right of action or other right.⁶³

The Respondents seek to add, and Sprint opposes, additional language that specifically requires Sprint to indemnify the Respondents for actions of third-Parties, in some case third-Parties which are the last mile providers.

In consolidated Docket No. 05-0259, the Commission found that "given the manner in which Sprint proposes to serve MCC, Sprint is a telecommunications carrier in this instance."⁶⁴ Despite this ruling, Sprint believes that the Respondents' additional language would treat Sprint differently from the way most requesting competitive

⁶³ Sprint Exhibit 1.0, In. 1008-1010; Respondent Exhibit 1.1.

⁶⁴ Docket No. 05-0259 *et al.*, July 13, 2005, Order, p 14.

carriers are treated in Interconnection Agreements regarding indemnification from the actions of third-Parties.

The first line proposed to be added by the Respondents is:

Sprint has indicated that it has or intends to enter into business arrangements with "last mile" providers.⁶⁵

This line, as Mr. Burt testified, would hamper Sprint by limiting how it may provide service under this agreement.⁶⁶ The agreement, as written, does not require Sprint to use a third-party last mile provider. However this line could cause an element of confusion if Sprint eventually offers service on its own facilities, or through resold services of the incumbent carriers.⁶⁷ Thus, this line is superfluous and should be rejected. For the same reasons, Sprint disagrees with the suggestion made by Staff witness Hoagg that the term "last mile providers" be deleted throughout the contract and replaced with MCC.⁶⁸ Adoption of that language would complicate matters significantly if Sprint were either to offer service in its own name or sell services to additional last mile providers. Sprint sees no reason to make Sprint renegotiate, submit for approval and otherwise incur administrative costs when offering its services indiscriminately as required by the Commission Order in consolidated Docket No. 05-0259 *et al.*

The second line proposed to be added by the respondents is:

Sprint represents and warrants that, in regard to the terms of this Interconnection Agreement, such business arrangements give Sprint the authority to act as if the facilities and end-user customers associated with those business arrangements are Sprint's own facilities and end-user customers.⁶⁹

This line inaccurately depicts the services Sprint will be offering. As Mr. Burt testified,

Sprint under this interconnection agreement is not "acting as if" certain facilities and end-user customers are its own facilities and customers. Under its arrangements with MCC, Service is provided in MCC's name. MCC is responsible for marketing and sales, end-user billing, customer service and the "last mile" portion of the network which includes the MCC hybrid fiber coax facilities, the same facilities it uses to provide video and broadband Internet access. Sprint provides all public switched telephone network (PSTN) interconnection utilizing Sprint's switch (MCC does not

⁶⁵ Sprint Exhibit 1.0, In. 1038-1039; Respondent Exhibit 1.1.

⁶⁶ Sprint Exhibit 1.0, In 1061-1065.

⁶⁷ Tr. 155.

⁶⁸ Staff Exhibit 2, In. 34-44.

⁶⁹ Sprint Exhibit 1.0, In. 1039-1044; Respondent Exhibit 1.1.

own or provide its own switching), and the interconnection agreements it has or is negotiating with incumbent local exchange carriers. Sprint also uses existing numbers or acquires new numbers and provides all number administration functions including filing of number utilization reports (NRUF) with the North American Numbering Plan Administrator (NANPA) and performs the porting function whether the port is from the RLEC or a CLEC to MCC or vice versa. Sprint is also responsible for all inter-carrier compensation including exchange access and reciprocal compensation. Sprint provisions 911 circuits to the appropriate Public Safety Answering Points (PSAP) through the ILEC selective routers, performs 911 database administration and negotiates contracts with PSAPs where necessary. Finally, Sprint places MCC directory listings in the RLEC or third party directories. Accordingly, Sprint is not “acting as if” it owns the last mile facilities. Its business partner in a commercial relationship owns those facilities. Moreover, Sprint is not “acting as if” the end-user customers are Sprint’s own end-user customers. There is no fiction created in the arrangement with MCC that the end-user customer is a Sprint customer. Sprint’s relationship with MCC is set forth in the agreement between those two entities. That arrangement is inconsequential to the interconnection, reciprocal compensation and other duties and obligations set forth in the interconnection agreements between Sprint and the RLECs. Sprint has consistently maintained that it is the responsible party in the interconnection agreements with the RLECs. It is inappropriate to characterize Sprint’s duties and obligations in the interconnection agreement in a manner inconsistent with Sprint’s commercial arrangements. As such, sentence (2) must be rejected.⁷⁰

Sprint notes that Staff agrees with Mr. Burt’s assessment of proposed sentence 2. Without assessing the accuracy of the sentence’s characterization of Sprint’s service offering, Jeffery Hoagg testified that “the ILEC’s legitimate purpose can be achieved without resort to specific characterization of the Sprint/MCC business arrangement.”⁷¹ Mr. Hoagg agreed that this sentence should be eliminated.⁷²

The third line proposed to be added by the Respondents is:

⁷⁰ Sprint Exhibit 1.0, In. 1068-1099.

⁷¹ Staff Exhibit 2.0, In. 91-93.

⁷² *Id.*

ILEC denies that such arrangements are the proper subject of interconnection and reciprocal compensation under Section 251 of the Act.⁷³

Section 1.4 of the Interconnection Agreement, which has been agreed to by both Sprint and the Respondents, provides:

1.4. The Parties enter into this Agreement without prejudice to any positions they have taken previously, including without limitation ILEC's position that it is not legally obligated to negotiate or enter this Agreement, or any position they may take in the future in any legislative, regulatory, judicial or other public forum addressing any matters, including matters related specifically to this Agreement, or other types of arrangements prescribed in this Agreement.⁷⁴

Sprint contends that Section 1.4 provides the reservations requested by the Respondents. There is no compelling rationale nor reason to repeat the reservation in this section. Staff concurs in this position.⁷⁵

The fourth line proposed to be added by the Respondents is:

For traffic originated or terminated by ILEC that is delivered pursuant to such an arrangement, ILEC's responsibilities shall be only to Sprint and not to any such "last mile" provider or its subscribers.

Sprint does not find this line necessary. "Since the agreement is between Sprint and the specific RLEC and MCC is not a signatory, it is clear that the RLEC's responsibility [is] to Sprint and not to any last mile provider or end-user customer. Sprint objects to sentence (4) because it is superfluous."⁷⁶

The fifth line proposed to be added by the Respondents is:

Correspondingly, Sprint shall be obligated to comply with all provisions of this Agreement for traffic it originates from and terminates to such "last mile" provider or its subscribers and, notwithstanding any limitation of liability in Section 6 or indemnification of Section 7, Sprint shall be liable to ILEC in the case that ILEC suffers any loss by any action of such "last mile" provider or its subscribers that is inconsistent with Sprint's obligations under this Agreement.

⁷³ Sprint Exhibit 1.0, In. 1044-1046; Respondent Exhibit 1.1.

⁷⁴ Respondent Exhibit 1.1.

⁷⁵ Staff Exhibit 2.0, In. 97-100.

⁷⁶ Sprint Exhibit 1.0, In. 1111-1113.

Again Sprint finds this line to be superfluous. The Respondents expressed concerns regarding the relationship between Sprint and the last-mile provider, in this case MCC. However, as Mr. Burt testified, for example, regarding reciprocal compensation,

Sprint is the proper party to pay and receive reciprocal compensation with the RLECs under the Interconnection Agreement and the language proposed by the RLECs in Section 18.7 should be rejected. As I stated in my September 13 Verified Statement, Sprint is not “acting as if” facilities and customers are its own. The interconnection facilities and equipment actually are Sprint’s facilities and equipment. Section 20 of the Agreement provides the terms and conditions between Sprint and the RLECs for reciprocal compensation. The RLECs thus will look to Sprint and Sprint alone for issues regarding intercarrier compensation. If the RLECs are concerned about MCC asking the RLECs for payment of reciprocal compensation, they should not be.⁷⁷

(B) Respondents

The ALJ’s indicated that the Parties did not have to summarize the positions of the other parties in their Proposed Arbitration Decisions.⁷⁸

(C) Staff

The ALJ’s indicated that the Parties did not have to summarize the positions of the other parties in their Proposed Arbitration Decisions.⁷⁹

(ii) Analysis and Conclusion

Sprint will be executing the Interconnection Agreement and not a third-party. Because Sprint will be executing the document, it is automatically presumed to know the contents of, and its responsibilities under, the contract to which it has chosen to be bound, the standard Third-Party Beneficiaries, the language agreed to between Sprint and the Respondents, adequately protects both parties interests and, without Respondents’ additions, is the only language adopted for this section of the Interconnection Agreement.

5. Should Sprint and the Respondents share the costs of the interconnection facility between their points of interconnection based on their respective percentages of originated traffic?

(i) Parties Positions and Proposals

⁷⁷ Sprint Exhibit 1.1, ln. 291-300.

⁷⁸ Tr. 317-318.

⁷⁹ Tr. 317-318.

(A) Sprint

Despite the fact that it is common for ILECs to share the cost of interconnection facilities based on a carrier's proportionate use of the facility when entering into an Interconnection Agreement with a wireless carrier,⁸⁰ the Respondents have taken the position that Sprint must absorb 100% of the cost of the transport facilities that physically join Sprint's network with those of the Respondents. Sprint objects to this absorbing 100% of such cost and seeks to share the costs of the interconnection facility between their points of interconnection based on their respective percentages of originated traffic, as federal law requires.

Sprint points out that this is such a common practice that it is contained in Respondent Harrisonville's Interconnection Agreement with Sprint PCS. In that Interconnection Agreement Harrisonville agreed to share the costs of interconnection facilities with Sprint PCS based on each carrier's proportionate use of the facilities.

4.2 Shared Facilities Factor

Where facilities are used for two-way traffic, the applicable recurring and non-recurring charges (if any) will be reduced by an agreed upon percentage of traffic terminated on the network of the Party purchasing the 'shared' facilities. This percentage is referred to as the Shared Facilities Factor and is set forth on Attachment 1. The Parties will review this factor on a periodic basis and, if warranted by the actual usage, revise the factor appropriately.⁸¹

Sprint notes that the FCC's rules place the onus on this Commission to "establish rates for the transport and termination of telecommunications traffic that are structured consistently with the manner that carriers incur those costs, and consistently with the principles in §§ 51.507 and 51.509."⁸² The rules further provide:

"the rate of a carrier providing transmission facilities dedicated to the transmission of traffic between two carriers' networks shall recover only the costs of the proportion of that trunk capacity used by an interconnecting carrier to send traffic that will terminate on the providing carrier's network. Such proportions may be measured during peak periods."⁸³

When read in conjunction with Section 51.703(b), which provides, "a LEC may not assess charges on any other telecommunications carrier for telecommunications

⁸⁰ Sprint Exhibit 1.0, In. 1183-1184.

⁸¹ Sprint Cross-Exhibit 5.

⁸² 47 C.F.R. § 51.709(a).

⁸³ 47 C.F.R. § 51.709(b).

traffic that originates on the LEC's network,"⁸⁴ Sprint believes it becomes clear that the cost of the transmission facility is a shared-cost responsibility of the two carriers whose networks are being interconnected. As Mr. Burt testified, "together, these rules dictate that both carriers bear a cost responsibility for the interconnection facility because each party is using the interconnection facility to deliver traffic to the other party."⁸⁵

In another Interconnection Arbitration, this Commission ordered terms where a wireless carrier and an ILEC share the costs of interconnection facilities, based on the usage of such facilities. In Docket No. 01-0007, the Commission "adopt[ed] Verizon [Wireless]'s proposal to charge Ameritech the average rate Ameritech charges Verizon [Wireless] for DS-1 facilities, for that portion of the facilities used to transport Ameritech's traffic. We find that the pricing methodology proposed by Verizon [Wireless] is a reasonable approximation of the cost of the facilities."⁸⁶ However, Sprint notes that when confronted with a similar allocation of costs between a competitive carrier and an incumbent, the Commission, in Docket No. 04-0569, reached a much different result, finding that to find as it did in the Verizon Wireless Arbitration, or to adopt the methodology used in most wireless interconnection agreements "would depart from the well-established methodology of apportioning the costs to LECs for facilities on their side of the POI."⁸⁷ In Docket 04-0469, this Commission expressed concern that "nothing would limit MCI from over-building capacity and charging for all of it, whether or not it is needed. MCI did not refute that contention."⁸⁸ Sprint's witness, Mr. Burt testified that "[i]t is unfortunate that MCI did not rebut that assertion."⁸⁹ Mr. Burt testified, under Sprint's proposed language, the Respondents would only be responsible for the cost associated with traffic originated on its network. Therefore, "even if Sprint 'over-builds,' its network, the RLEC will not be required to pay for that overbuilding."⁹⁰

Sprint points out that other states have found that costs should be allocated, on a balanced basis, between interconnecting carriers. The Maryland Public Service Commission has found in an interconnection arbitration between landline carriers that

Each party is responsible for the cost of delivering its traffic through its network and into the interconnection facility that connects the two networks. The cost of the interconnection facility itself is shared consistent with the rules set forth by the FCC in P 1062 of the 1996 First Report and Order. In sum, those rules require that the carriers share the cost of the interconnection

⁸⁴ 47 C.F.R. § 51.703(b).

⁸⁵ Sprint Exhibit 1.0, In. 1178-1179.

⁸⁶ *Verizon Wireless Petition for Arbitration with Ameritech*, Docket No. 01-0007, Order, May 1, 2001, p 24.

⁸⁷ *MCI Metro Access Transmission Services, Inc. Petition for Arbitration with SBC Illinois*, ICC Docket No. 04-0469, Arbitration Decision, Nov. 30, 2004, p. 104.

⁸⁸ *Id.*

⁸⁹ Sprint Exhibit 1.1, In. 402.

⁹⁰ *Id.* at In. 403-411.

facility based upon each carrier's percentage of the traffic passing over the facility.⁹¹

The Missouri Public Service Commission also agreed that Parties should be financially responsible for traffic originating on that party's network.

The Commission concurs . . . that, in general, each party is solely responsible for the facilities on its side of the POI. Nonetheless, the Commission agrees with Sprint that each party must be financially responsible for its own outgoing traffic. Where the interconnection is via a two-way trunk, the cost of that facility must necessarily be shared.⁹²

The Michigan Public Service Commission

has consistently held that the Parties to an interconnection agreement must share the cost of the facilities that run between their networks on a proportional basis based on the traffic each sends over those facilities. See, e.g., the August 18, 2003 order in Case No. U-13758, in which the Commission quoted from *TSR Wireless, LLC v US West Communications, Inc*, FCC 00-194, as follows:

The Local Competition Order requires a carrier to pay the cost of facilities used to deliver traffic originated by that carrier to the network of its co-carrier, who then terminates that traffic and bills the originating carrier for termination compensation. In essence, the originating carrier holds itself out as being capable of transmitting a telephone call to any end-user, and is responsible for paying the cost of delivering the call to the network of the co-carrier, who will then terminate the call. Under the [FCC's] regulations, the cost of the facilities used to deliver this traffic is the originating carrier's responsibility, because these facilities are part of the originating carrier's network. The originating carrier recovers the costs of these facilities through the rates it charges its own customers for

⁹¹ *Arbitration of US LEC of Maryland Inc. vs. Verizon Maryland Inc.*, Md. P.S.C., 2005 Md. PSC LEXIS 6, Order No. 79813; Case No. 8922 (2005); See also, *Petition of AT&T Communications of Maryland, Inc. for Arbitration*, 2004 Md. PSC LEXIS 13, Order No. 79250; Case No. 8882 (2004).

⁹² *SBC Missouri's Petition for Compulsory Arbitration*, 2005 Mo. PSC LEXIS 963, Case No. TO-2005-0336 (2005).

making calls. This regime represents the "rules of the road" under which all carriers operate. *Id.*, p 34.⁹³

As Mr. Burt testified,

the concept of sharing the cost of the transmission facilities that join the two interconnection networks is not a "novel approach" in the industry. While it may not be as well of an established concept in ILEC-CLEC interconnections, it is clearly a well-established practice in ILEC-CMRS interconnections and there is simply no justification for treating the two types of carriers differently with respect to interconnection obligations.⁹⁴

Thus, the Commission should adopt the language proposed by Sprint and allocate costs on a balanced basis between the interconnecting carriers, as required by Federal Law and recognized by other state commissions.

(B) Respondents

The ALJ's indicated that the Parties did not have to summarize the positions of the other parties in their Proposed Arbitration Decisions.⁹⁵

(C) Staff

The ALJ's indicated that the Parties did not have to summarize the positions of the other parties in their Proposed Arbitration Decisions.⁹⁶

(ii) Analysis and Conclusion

The Act and the FCC have given this Commission the responsibility to "establish rates for the transport and termination of telecommunications traffic that are structured consistently with the manner that carriers incur those costs, and consistently with the principles in §§ 51.507 and 51.509."⁹⁷ The FCC's rules further provide:

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

⁹³ *Application of Telnet Worldwide, Inc. for Arbitration with Verizon North, Inc.*, Mi. P.S.C. 2005 Mich. PSC LEXIS 39, MPSC Case No. U-13931 (2005).

⁹⁴ Sprint Exhibit 1.1, ln. 393-398.

⁹⁵ Tr. 317-318.

⁹⁶ Tr. 317-318.

⁹⁷ 47 C.F.R. § 51.709(a).

the providing carrier's network. Such proportions may be measured during peak periods.⁹⁸

When read in conjunction with Section 51.703(b), which provides, "a LEC may not assess charges on any other telecommunications carrier for telecommunications traffic that originates on the LEC's network,"⁹⁹ it becomes clear that the cost of the transmission facility is a shared-cost responsibility of the two carriers whose networks are being interconnected.

The language proposed by Sprint alleviates the concerns that Commission had in Docket No. 04-0569, when it rejected language from a competitive carrier that would have established shared-cost responsibility for transmission facilities. Under Sprint's proposed language, the Respondents would only be responsible for the cost associated with traffic originated on its network. Therefore, "even if Sprint 'over-builds,' its network, the [Respondents] will not be required to pay for that overbuilding."¹⁰⁰

The concept of sharing the cost of the transmission facilities that join the two interconnection networks is not a "novel approach" in the industry. It is required by the FCC's rules and has been recognized by this Commission, in Docket No. 01-0007, and other Commissions. We adopt the language proposed by Sprint requiring an allocation of costs of the interconnection facility between the Parties' points of interconnection based on their respective percentages of originated traffic, as required by Federal Law and recognized by this and other state commissions.

6. Should the Parties exchange traffic on an indirect basis until such time that amount of traffic warrants a direct interconnection?

a. If the Parties interconnect on an indirect basis, what call records should be provided?

b. If the Parties interconnect on an indirect basis how should the transit and transport costs associated with the indirect interconnection be borne?

(i) Parties Positions and Proposals

(A) Sprint

It is Sprint's Position that the Act provides that all telecommunications carriers, including the Respondents, have a duty to connect "directly or indirectly" with other carriers. When it enacted the Act, Congress delegated to this and other state commissions the duty to enforce the interconnection obligations set forth in the Act, subject to federal court review. In doing so, Congress did two things that make plain its

⁹⁸ 47 C.F.R. § 51.709(b).

⁹⁹ 47 C.F.R. § 51.703(b).

¹⁰⁰ *Id.* at ln. 403-411.

intent, as applied to the issues here. First, it made clear that it was passing the Act to open up monopolized markets to competition. Second, mindful that it could not foresee all the innovative arrangements that free competition might unleash, Congress stated the interconnection duty in language that was both broad and flexible enough to accommodate new business models that were unheard of when the Act was passed. Section 251(a) of the Act obligates each telecommunications carrier "to interconnect directly or indirectly with the facilities and equipment of other telecommunications carriers."

As described by Mr. Burt,

Indirect interconnection allows Parties to interconnect and exchange traffic through a third party tandem provider. Specifically, indirect interconnection describes the scenario that exists when the CLEC is physically connected by a dedicated transport facility to a third-party ILEC's tandem to which the RLEC is also typically physically connected by a common transport facility. In an indirect interconnection scenario, there is no dedicated transport facility between the CLEC and the subtending RLEC.¹⁰¹

Sprint points out that this arrangement is similar that which Respondents Marseilles Telephone Company¹⁰² and Metamora Telephone Company¹⁰³ have with U.S. Cellular for the exchange of local traffic:

4.1 The Parties shall exchange local and or incidental non-local traffic under this Agreement by each Party physically connecting its network to a third-party LEC(s), which shall transit the traffic between the two Parties. Each Party shall be responsible for establishing appropriate contractual relationships with this third-party LEC(s) for interconnecting with its network and transiting local traffic over that network to the other Party. Each Party shall be responsible for providing the trunks from its network to the point of interconnection with the third-party LEC(s) network and for paying the third-party LEC(s)' network provider for the costs of transiting local calls that the Party originates.¹⁰⁴

¹⁰¹ Sprint Exhibit 1.0, In. 1290-1296.

¹⁰² Interconnection Agreement between Metamora Telephone Company and U.S. Cellular, submitted to the Commission for Approval in ICC Docket No. 05-0567, Sprint Cross Exhibit 3.

¹⁰³ Interconnection Agreement between Metamora Telephone Company and U.S. Cellular, submitted to the Commission for Approval in ICC Docket No. 05-0568, Sprint Cross Exhibit 4.

¹⁰⁴ Sprint Cross Exhibit 3; Sprint Cross Exhibit 4.

Yet despite such an offering to the wireless carriers, the Respondents, through their witnesses' testimony, state that they "don't believe they should exchange local traffic via indirect interconnection with Sprint under any circumstance."¹⁰⁵

As noted by Staff's Witness, Mr. Hoagg, indirect interconnection, an option guaranteed by Section 251 of the Act, can result in cost savings and efficiencies where the traffic exchanged by the Parties is rather low.¹⁰⁶ In the present instance, Sprint proposed to exchange a small amount of traffic with the Respondents over an indirect connection,¹⁰⁷ while limiting indirect interconnection to only those instances when 1) Sprint is directly interconnected to the tandem which the RLEC subtends; 2) traffic remains low; and 3) when and "if volumes of traffic exchanged between the Parties increases over time making a direct interconnection feasible, Sprint would establish direct connections with the RLEC end offices."¹⁰⁸

(B) Respondents

The ALJ's indicated that the Parties did not have to summarize the positions of the other parties in their Proposed Arbitration Decisions.¹⁰⁹

(C) Staff

The ALJ's indicated that the Parties did not have to summarize the positions of the other parties in their Proposed Arbitration Decisions.¹¹⁰

(ii) Analysis and Conclusion

Under Section 251(a), Sprint has a right, and the Respondents have an affirmative duty, "to interconnect directly or indirectly with the facilities and equipment of other telecommunications carriers."¹¹¹ In light of this federal mandate, and in light of the similar language, to that requested by Sprint, in Interconnection Agreements the Respondents have with wireless carriers, the Commission adopts Sprint's language and position, and Staff's position, and mandates that indirect interconnection be made available in the agreement.

a. If the Parties interconnect on an indirect basis, what call records should be provided?

(i) Parties Positions and Proposals

¹⁰⁵ Respondent Exhibit 1.0, In. 499-500 (emphasis added).

¹⁰⁶ Tr. 290.

¹⁰⁷ Sprint Exhibit 1.0, In. 1308.

¹⁰⁸ *Id.* at In. 1313-1318.

¹⁰⁹ Tr. 317-318.

¹¹⁰ Tr. 317-318.

¹¹¹ 47 U.S.C. § 251(a) (emphasis added).

(A) Sprint

The Respondents claim that if indirect interconnection is allowed, they will be subject to a “traffic identification problem [] frequently referred to as ‘phantom traffic,’”¹¹² or traffic which is received at a terminating end office but cannot be billed to the appropriate carrier. To remedy this alleged problem, the Respondents are asking the Commission to require Sprint to create custom monthly summary traffic report language proposed by the Respondents.¹¹³

Sprint objects to such a requirement in the Interconnection Agreement because there are alternative, and less burdensome, ways of getting the appropriate call origination information. In their direct testimony, the Respondents discuss “equipment that can access the SS7 signaling information that can give the company additional information to verify the origin of the traffic it receives.”¹¹⁴ However, the Respondents failed to mention, in either their direct or rebuttal testimony, that Marseilles Telephone Company had already purchased this equipment.¹¹⁵ While a complete list of the capabilities of this equipment is contained on a copy of the invoice, provided in discovery, it is clear that this software would “give the opportunity to verify [the origin] of traffic.”¹¹⁶ Though it may be possible that Metamora and Harrisonville’s tandem or SS7 providers might be able to provide the information that the Respondents are demanding from Sprint, the Respondents’ witness did not investigate whether or not such reports are available and did not contact the providers nor research the contracts between the Respondents and their providers.¹¹⁷ However, the Witness admitted that “in some parts of the country, RLECs do provide detailed call records” to their tandem customers.¹¹⁸ Staff’s witness, Russell W. Murray testified that if “Feature Group D” were installed, the Respondents themselves could also gain access to the various billing information the Respondents seek.¹¹⁹

As discussed below, if the Parties interconnect on an indirect basis, and if the originating party pays for the transit of a call, call records become important to determine both transiting charges and reciprocal compensation. Clearly, the Commission should require transit provider to provide adequate call detail records/usage information for the terminating provider, whether it is an RLEC or a CLEC, as opposed to mandating the implementation of more costly arrangements, such as the Respondent-suggested summary reports.

Mr. Burt testified that,

¹¹² Respondent Exhibit 1.0, ln. 580-583.

¹¹³ Respondent Exhibit 1.0, ln. 648-649.

¹¹⁴ Respondent Exhibit 1.0, ln. 608-609.

¹¹⁵ Sprint Cross Exhibit 8.

¹¹⁶ Tr. 244.

¹¹⁷ Tr. 245

¹¹⁸ Tr. 240.

¹¹⁹ Tr. 261-262.

Sprint fully agrees that unless the Parties have agreed to a bill and keep arrangement, the terminating carrier is due terminating reciprocal compensation for any local traffic that terminates on its network. Likewise, the transit provider should be compensated for the transit services it provides to allow this form of indirect interconnection. Further, Sprint recognizes that unidentified/unbillable traffic (sometimes referred to as phantom traffic) is an industry-wide problem; however, Sprint believes that the volume of traffic associated with this problem is likely overstated. Nonetheless, to the extent carriers exchange traffic on an indirect basis (the most efficient method for small volumes of traffic) it is Sprint's position that the transit provider has an obligation to provide call detail records to the terminating carrier to allow that carrier to identify all carriers that terminate traffic onto its network. No carrier should terminate traffic for free.

Sprint notes that when the Respondents terminate traffic from such Wireless carriers as AT&T Wireless, Cingular, First Cellular of Southern Illinois, Nextel, Sprint PCS, T-Mobile, U.S. Cellular, and Verizon Wireless, the Respondents rely on monthly summary reports from their tandem (and transiting) carrier SBC.¹²⁰ With these carriers, the Respondents do not require customized reports, but as indicated in Section 6.1 of the Interconnection Agreements Metamora and Marseilles have with U.S. Cellular,

6.1 The Parties will work cooperatively to exchange billing records in standard industry formats regarding calls they originate that terminate on the other Party's network. . . . Neither Party shall be obligated as a result of this Agreement to develop or create new billing formats or records to satisfy any duty or obligation hereunder.¹²¹

Sprint believes that same should apply to Sprint. Mr. Burt testified, "Sprint is not willing nor should Sprint be required to agree to the creation of billing records/summary report that is not imposed on other carriers."¹²² Other less intrusive methods exist for billing originating carriers, than forcing the originating carrier to develop customized reports. Staff's witness, Russell Murray discussed additional, and acceptable, methods for accurately billing originating call detail on cross-examination. These include summary reports, call detail records, pass through "Feature Group D Trunking" and equipment used to measure and bill calls.¹²³

¹²⁰ Sprint Cross Exhibit 7.

¹²¹ Sprint Cross Exhibits 4 & 5, § 6.1.

¹²² Sprint Exhibit 1.0, In. 1487-1488.

¹²³ Tr. 263-264.

(B) Respondents

The ALJ's indicated that the Parties did not have to summarize the positions of the other parties in their Proposed Arbitration Decisions.¹²⁴

(C) Staff

The ALJ's indicated that the Parties did not have to summarize the positions of the other parties in their Proposed Arbitration Decisions.¹²⁵

(ii) Analysis and Conclusion

The Interconnection Agreements Metamora and Marseilles have with U.S. Cellular provides:

6.1 The Parties will work cooperatively to exchange billing records in standard industry formats regarding calls they originate that terminate on the other Party's network. . . . Neither Party shall be obligated as a result of this Agreement to develop or create new billing formats or records to satisfy any duty or obligation hereunder.¹²⁶

Obviously, in the context of these two Interconnection Agreements, the Respondents have found other less intrusive methods exist for billing originating carriers, than forcing the originating carrier to develop customized reports. Staff's witness, Russell Murray discussed additional, and acceptable, methods for accurately billing originating call detail on cross-examination. These include summary reports, call detail records, pass through "Feature Group D Trunking" and equipment used to measure and bill calls.¹²⁷ The Commission declines to force Sprint to develop customize reports and urges the Respondents to explore one of the other methods for billing Sprint in this context.

¹²⁴ Tr. 317-318.

¹²⁵ Tr. 317-318.

¹²⁶ Sprint Cross Exhibits 4 & 5, § 6.1.

¹²⁷ Tr. 263-264.

b. If the Parties interconnect on an indirect basis how should the transit and transport costs associated with the indirect interconnection be borne?

(i) Parties Positions and Proposals

(A) Sprint

Similar to arrangements the Respondents have with the wireless carriers,¹²⁸ Sprint seeks to abide by the Calling Party Network Pays ("CPNP") regime, developed by the FCC for indirect interconnection.

Under this regime, when either an RLEC or Sprint is an originating party, it is responsible for all costs of delivering its originated local traffic to the terminating party. For Sprint-originated indirect traffic routed through a third-party transit provider, Sprint acknowledges its responsibility to pay the transit provider for the costs associated with delivering its traffic to the terminating party's network. These costs typically include a tandem switching charge and charges associated with the common transmission facilities to the subtending RLECs' network. Likewise, the RLECs are obligated to pay any third-party transit costs associated with delivering their originated traffic to Sprint, in addition to compensating Sprint for the use of its network.¹²⁹

Sprint notes that this regime has been upheld by numerous courts and commissions. In *Atlas Telephone Company v. Corporation Commission of Oklahoma*,¹³⁰ the United States Court of Appeals for the Tenth Circuit affirmed the Oklahoma Corporation Commission's decision approving interconnection agreements that required the originating carrier to bear the cost of transporting telecommunications traffic to the terminating carrier without regard to whether the calls were delivered via an intermediate carrier. In other words, the court rejected the RLEC argument that the CMRS providers should be required to pay the additional expense of transporting traffic bound for a CMRS provider across the tandem provider's network. Respondents' proposal here to require Sprint to pay all transiting charges, regardless of which party, Sprint or the Respondents, originate the call, likewise should be rejected.

In *Mountain Communications Inc. v. Qwest Communications*,¹³¹ the FCC addressed the issue of transit costs in a situation involving three carriers. Specifically, the Commission was addressing whether Qwest, a transit provider, would be permitted to charge a portion of those transit costs to the terminating CMRS carrier or whether Qwest should be required to charge all of these costs to the originating LEC. The FCC

¹²⁸ Sprint Cross Exhibits 4 and 5, § 4.1.

¹²⁹ Sprint Exhibit 1.0 at In 1324-1332.

¹³⁰ 400 F.3d 1256 (10th Cir 2005).

¹³¹ 17 FCC Rcd 2091 (2002)

held that Qwest was clearly not responsible for the costs associated with this traffic because the traffic had not originated on Qwest's network. Accordingly, the Commission found that nothing prohibited Qwest from imposing these transit fees on the terminating wireless carrier. However, the Commission went on to note, that in this circumstance, "[t]he CMRS carrier may then seek reimbursement of the costs associated with transport and termination of that traffic from the carriers that originated the transiting traffic in question."¹³² On appeal,¹³³ the United States Circuit Court of the D. C. Circuit expressed confusion over why the FCC would not require Qwest to charge the originating carrier directly. It observed, however, that the net result was the same. "In any event, by indicating that Mountain could charge the originating carrier, it [the FCC] suggested that Mountain was essentially correct in claiming that the originating carrier should bear *all* the transport costs."¹³⁴

Earlier this year, the Pennsylvania Public Utility Commission expressly found that an originating carrier has an obligation to pay the costs associated with its traffic, and that this obligation extended to the payment of transiting fees imposed by an intervening tandem owner in an indirect interconnection arrangement. The Pennsylvania Commission specifically noted that "[t]here is a strong pronouncement on the part of the FCC to unwaveringly adhere to the principle that the originating carrier bears the costs of delivering traffic which originates on its network."¹³⁵

Only a few days ago, the Missouri Public Service Commission, in a case involving a small rural carrier, found that,

[s]ection 251(b)(5) imposes on the Petitioners the duty to establish 'reciprocal compensation arrangements for the transport...of telecommunications.' FCC rules define 'transport' as the transmission of traffic 'from the interconnection point between the two carriers to the terminating carrier's end office switch that directly serves the called party, or equivalent facility provided by a carrier other than an incumbent LEC.' If a rural LEC and wireless carrier were to interconnect directly, the interconnection point ordinarily would be located at the edge of the rural LEC's network. Under a rural LEC's reciprocal compensation obligation, which applies to both 'transport and termination,' the rural LEC would be responsible for that portion of the facility to the extent it is used for land-to-mobile traffic – just as the wireless carrier would be responsible for that portion of the facility to the extent it is used for mobile-to-land traffic. As the FCC General Counsel explained recently to a federal appellate court:

¹³² *Id.* at 2095.

¹³³ *Mountain Communs., Inc. v. FCC*, 355 F.3d 644 (D.C. Cir. 2004).

¹³⁴ *Id.*, at 649 (emphasis in original).

¹³⁵ *Petition of Cellco Partnership d/b/a Verizon Wireless for Arbitration with Alltel Pennsylvania*, Pa. P.U.C. Docket No. A-310489F7004, Jan. 13, 2005 available on the Internet at <<http://www.puc.state.pa.us/PcDocs/516746.doc>> , p. 33.

Under current intercarrier compensation rules, then, when a wireless customer calls a rural LEC customer, the wireless carrier is responsible for transporting the call and paying the cost of this traffic. And, conversely, when a rural LEC customer calls a wireless customer, the rural LEC is responsible for transporting the call and paying the cost of this transport.

The FCC has made clear that the cost of a direct interconnection facility is to be shared between the two carriers. . . . If rural LECs must bear the cost of transport for land-to-mobile calls with indirect interconnection, it necessarily follows that they must bear the cost of transport for land-to-mobile calls when direct interconnection is utilized.¹³⁶

(B) Respondents

The ALJ's indicated that the Parties did not have to summarize the positions of the other parties in their Proposed Arbitration Decisions.¹³⁷

(C) Staff

The ALJ's indicated that the Parties did not have to summarize the positions of the other parties in their Proposed Arbitration Decisions.¹³⁸

(ii) Analysis and Conclusion

Consistent with other state Commissions and the FCC's CPNP regime, the Commission believes that when either a Respondent or Sprint is an originating party to a call, it should be responsible for all costs of delivering its originated local traffic to the terminating party. For Sprint-originated indirect traffic routed through a third-party transit provider, Sprint has the responsibility to pay the transit provider for the costs associated with delivering its traffic to the terminating party's network. These costs typically include a tandem switching charge and charges associated with the common transmission facilities to the subtending Respondents' networks. Likewise, the Respondents are obligated to pay any third-party transit costs associated with delivering their originated traffic to Sprint, in addition to compensating Sprint for the use of its network, similar to the arrangements the Respondents have with wireless carriers. The Commission adopts Sprint's language for this issue.

¹³⁶ *Petition of Alma Telephone Company for Arbitration with T-Mobile*, Mo. P.U.C. Case No. IO-2005-0468, Oct. 6, 2005, available on the Internet at <<http://www.psc.state.mo.us/orders/10065468.htm>>.

¹³⁷ Tr. 317-318.

¹³⁸ Tr. 317-318.

7. How should EAS traffic be compensated between the Parties?

This issue was resolved at the evidentiary hearing.¹³⁹

8. Should Sprint be required to pay for directory listings at the higher foreign exchange rate contained in the Respondents' tariffs?

(i) Parties Positions and Proposals

(A) Sprint

Sprint notes that the Respondent's Initial Testimony raised a new issue that it is "the position of the RLECs that Sprint should pay the tariff rate, as it may be amended from time to time, for foreign listings in connection with the MCC customers in addition to the ILEC's actual cost of distribution."¹⁴⁰ This issue was not raised in negotiations, not raised in the Respondents response to Sprint's Petition for Arbitration,¹⁴¹ and not raised in the Joint Disputed Points List,¹⁴² in

It is Sprint's position that this issue is improperly raised. Section 252(b)(4) of the Act limits state commission authority to the issues set forth in the petition and the response to the petition.¹⁴³ As noted in the Respondents' Exhibit 1.1, Sprint and the Respondents agreed to language that reads:

24.4 Primary listing information of End-users served through Sprint in the telephone directories will be provided at no charge. Sprint will pay ILEC's Tariffed charges for additional and foreign telephone directory listings.

This agreed to language is consistent with § 251(b)(3) of the Act which requires "the duty to permit all such providers to have nondiscriminatory access to telephone numbers, operator services, directory assistance, and directory listings." As observed by Sprint Witness Mr. Burt,

Per the ILEC's tariffs for Directory Listings they do not charge their own End-users for the Primary listing therefore it would be discriminatory to charge Sprint for a Primary listing. See Attachment JRB-2. In addition the ILEC's own tariff is perfectly clear that the Foreign Exchange Directory Listing charge applies to a listing that is included in the directory of another exchange and not the exchange in which the End-user is provided local service. To charge Sprint for the Primary listing would be contradictory to ILECs own tariffs and the Act. The ILEC's tariffed

¹³⁹ Tr. 179.

¹⁴⁰ Respondent Exhibit 1.0, ln. 724-726.

¹⁴¹ Tr. 247.

¹⁴² Tr. 246.

¹⁴³ 47 U.S.C. § 252(b)(4).

rates for a Foreign Exchange Listing should not apply to Sprint's Primary listings.

Sprint notes that Staff witness Robert F. Koch agreed that the foreign exchange listing charge should not apply when the Sprint/MCC customer is located within one of the Respondents' exchanges.¹⁴⁴ Sprint has offered the Respondents language, for Section 24.5, that "allows for the ILEC's recovery of any demonstrable incremental costs of the directory distribution."¹⁴⁵ Sprint's proposed language allows for recovery of the Respondents directory costs in a fair and nondiscriminatory manner and should be adopted.

(B) Respondents

The ALJ's indicated that the Parties did not have to summarize the positions of the other parties in their Proposed Arbitration Decisions.¹⁴⁶

(C) Staff

The ALJ's indicated that the Parties did not have to summarize the positions of the other parties in their Proposed Arbitration Decisions.¹⁴⁷

(ii) Analysis and Conclusion

The language agreed to between Sprint and the Respondents is consistent with § 251(b)(3) of the Act which requires "the duty to permit all such providers to have nondiscriminatory access to telephone numbers, operator services, directory assistance, and directory listings." The Commission rejects the additional language proposed by the Respondents that would charge Sprint the tariff rate for foreign listings in connection with the MCC customers in addition to the ILEC's actual cost of distribution. The Respondents Tariffs¹⁴⁸ are perfectly clear that the Foreign Exchange Directory Listing charge applies to a listing that is included in the directory of another exchange and not the exchange in which the End-user is provided local service. To charge Sprint for primary listings when the Sprint/MCC customer is located within one of the Respondents' exchanges would be contradictory to the Respondents own tariffs and the Act.

The Commission finds that Sprint's proposed language allows for recovery of the Respondents directory costs in a fair and nondiscriminatory manner and should be adopted, without the Respondents changes or additions.

¹⁴⁴ Tr. 273

¹⁴⁵ Sprint Exhibit 1.1, ln. 615-617.

¹⁴⁶ Tr. 317-318.

¹⁴⁷ Tr. 317-318.

¹⁴⁸ Sprint Exhibit 1.1, attachment JRB-2

IV. Compliance with Arbitration Standards

Pursuant to Section 252(c) of the Act, state commissions are required to apply three standards when resolving open issues and imposing conditions upon parties to an interconnection agreement in arbitration. The first standard requires the agency to ensure compliance with Section 251 and any rules promulgated thereunder. Under the second standard, the state agency is required to establish rates according to Section 252(d). The third standard requires the state agency to provide a schedule for implementation of the terms and conditions by the parties. The Commission has reviewed each of the conclusions reached herein and finds that they are in compliance with the relevant statutes and rules. As a final implementation matter, the parties shall file, no later than fifteen (15) calendar days from the date of service of this arbitration decision, the complete interconnection agreement for Commission approval pursuant to Section 252(e) of the Act.

By Order of the Commission this ____ day of November, 2005.

Chairman

Sprint Communications L.P. d/b/a Sprint Communications Company L.P. respectfully submits to the Illinois Commerce Commission the above Proposed Arbitration Decision and respectfully requests that the Commission adopt the positions held therein.

Respectfully submitted,

CLARK HILL PLC

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STATE OF ILLINOIS

BEFORE THE ILLINOIS COMMERCE COMMISSION

Sprint Communications L.P. d/b/a Sprint)
Communications Company L.P.)
)
Petition for Consolidated Arbitration with)
Certain Illinois Incumbent Local Exchange)
Carriers pursuant to Section 252 of the)
Telecommunications Act of 1996.)
)
Plaintiff,)

Case No. 05-0402

NOTICE OF FILING

To: Parties of Record

You are hereby notified that on October 18, 2005, I filed, via the electronic e-docket system, with the Chief Clerk of the Illinois Commerce Commission, the Proposed Arbitration Decision of Sprint Communications L.P. d/b/a Sprint Communications Company L.P., in the above-captioned docket.

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CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing Proposed Arbitration Decision of Sprint Communications L.P. d/b/a Sprint Communications Company L.P., in the above-captioned proceeding, was served upon the Parties on the attached service list via Electronic Mail on October 18, 2005.

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Petition of Sprint Communications L.P. d/b/a Sprint Communications Company L.P.'s for
Consolidated Arbitration with Certain Illinois Incumbent Local Exchange Carriers

Docket Nos. 05-0402 and 05-0433

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Petition of Sprint Communications L.P. d/b/a Sprint Communications Company L.P.'s for
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Docket Nos. 05-0402 and 05-0433

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Petition of Sprint Communications L.P. d/b/a Sprint Communications Company L.P.'s for
Consolidated Arbitration with Certain Illinois Incumbent Local Exchange Carriers

Docket Nos. 05-0402 and 05-0433

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