STATE OF ILLINOIS

BEFORE THE ILLINOIS COMMERCE COMMISSION

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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

BRIEF ON EXCEPTIONS
OF SPRINT COMMUNICATIONS L.P. D/B/A
SPRINT COMMUNICATIONS COMPANY L.P.

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TABLE OF CONTENTS

I. Introduction 1

II. Exceptions 2

Exception No. 1 - The Respondents Filed A Late Proposed Order. 2

Exception No. 2 - Issue 4: Should the Agreement Include Language Specifically Requiring Sprint to Indemnify the RLECs From the Action of Third-Parties? 3

Exception No. 3 - Issue 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? 6

Exception No. 4 - Issue 6a: If the Parties Interconnect on an Indirect Basis, What Call Records Should be Provided? 14

III. Conclusion 18

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NOW COMES Sprint Communications L.P. d/b/a Sprint Communications Company L.P. ("Sprint"), by and through its attorneys, and pursuant to Sections 761.430[1] and 200.820[2] of the Commission's Rules of Practice (83 Ill. Adm. Code 761.430) respectfully submits this Brief on Exceptions to the Administrative Law Judges' ("ALJs") Proposed Arbitration Decision ("PAD") issued on October 26, 2005 in the above-captioned proceeding and states as follows:

I. INTRODUCTION

Sprint appreciates the time and effort that went into the PAD, and even though it does not accept and include all of Sprint's proposals, Sprint commends the ALJs for the well-reasoned analysis contained in the PAD. Beyond being well-reasoned, the PAD reviews the issues in a clear and concise manner, provides a generally accurate and detailed summary of the positions of the parties, and in most instances reaches conclusions that are consistent with applicable requirements under the Telecommunications Act of 1996.[3]

The PAD correctly recognizes that "[u]pon review of the record evidence in the current docket, the Commission sees no reason to deviate from its determination in Docket No. 05-0259 *et al* (cons.)."[4] In that determination, the Commission noted that, "Sprint and MCC's [Sprint's initial last-mile provider] interest in competing in certain of the more rural exchanges in Illinois is significant in that it represents one of the first, if not the first, competitive landline ventures

[1] 83 Ill. Admin Code § 761.430.

[2] 83 Ill. Admin Code § 200.820.

[3] 47 U.S.C. § 251, *et seq*.

[4] PAD, p. 6.

into the relevant exchanges."[5] To ensure that the first competitive landline ventures into the exchanges of the Respondent Rural Local Exchange Carriers ("RLECs") Harrisonville Telephone Company, Marseilles Telephone Company, and Metamora Telephone Company (collectively, "Respondents"), are economically viable and place the competitive offerings on an equal footing with the established RLECs, Sprint believes that good public policy and the record developed in this case requires a few modifications to the PAD. Sprint takes exception to the following findings and conclusions reached by the ALJs.

II. EXCEPTIONS

Exception No. 1 - The Respondents Filed A Late Proposed Order.

When concluding the evidentiary hearing in this proceeding, the ALJ's specifically noted that "briefs and draft proposed orders are due October 18."[6] On October 18, Sprint, the Respondents, and Staff each submitted a Brief. However, only Sprint and Staff submitted proposed orders in a timely fashion. On October 21, 2005, three days after all other parties had submitted their proposed orders and briefs, the Respondents submitted a proposed order, noting in an e-mail to the other parties that it was submitted "at the request of ALJ Albers." The Respondents did not file a Motion with this late submission, nor did they explain why such was not filed when it was due. Sprint believes it is important to note in the record that the Respondents failed to file their proposed order in a timely fashion.

Suggested Replacement Language:

Sprint respectfully recommends that the last paragraph of the Introduction set forth in the PAD be modified as follows:

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[5] Docket No. 05-0259 *et al.*, July 13, 2005, Order, p 11 (An Administrative amendment to the Order was made on July 19, 2005. This Amendment did not substantively modify the conclusions or holding of the Commission) (Hereinafter, "Order")

[6] Tr. 314.

> At the October 6, 2005 evidentiary hearing, counsel for Sprint, the RLECs, and Staff each entered an appearance. James Burt, Director of Regulatory Policy for Sprint/ United Management Company, testified on behalf of Sprint. Robert Schoonmaker, President and Chief Executive Officer of GVNW Consulting, Inc.[7], testified on behalf of the RLECs. Staff called to testify Jeffrey Hoagg, Principal Policy Advisor in the Commission's Telecommunications Division, Genio Staranczak, Principal Economist in the Telecommunications Division, Robert Koch, an Economic Analyst in the Telecommunications Division, and Russell Murray, an Engineering Analyst in the Telecommunications Division. At the end of the October 6 hearing, the record was marked "Heard and Taken." Sprint, the RLECs, and Staff each submitted a Brief[8] and Sprint and Staff timely submitted draft proposed arbitration decisions. Three days later the Respondents late filed a draft proposed arbitration decision, without filing a Motion for Instanter. A Proposed Arbitration Decision was served on the parties.

Exception No. 2 - Issue 4: Should the Agreement Include Language Specifically Requiring Sprint to Indemnify the RLECs From the Action of Third-Parties?

While not necessarily fully agreeing with the language proposed by Staff's Witness Jeffery H. Hoagg for Section 18.7 of the Interconnection Agreement, Sprint takes only a limited exception to the PAD's recommendation to adopt such language. In the PAD, the ALJs accepted the suggestion by Mr. Hoagg to "require replacement of all general references to LMPs [Last Mile Providers] with specific references to MCC."[9] Despite the PAD and Mr. Hoagg's assertions to the contrary, such a requirement would limit the application of the Interconnection Agreement resulting from this Arbitration to a single last mile provider—MCC.

The language proposed by staff would limit the applicability of the Interconnection Agreement to the arrangement whereby Sprint provided service in the Respondent's exchange

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[7] Mr. Schoonmaker states that GVNW Consulting, Inc. is a consulting firm specializing in working with small telephone companies.

[8] In light of the statutory deadline in this matter, the schedule provided for only one round of briefs.

[9] Staff Exhibit 2.9, ln. 151-152.

utilizing MCC as the last mile provider. Throughout this proceeding, and throughout ICC Docket No. 05-0259 *et al.*, Sprint has maintained that it continues to make services available to last mile providers on an indiscriminate basis.[10] If Sprint is required to use MCC in the Interconnection Agreement, in place of LMP, Sprint would be required to enter into negotiation with the Respondents if and when another last mile provider[11] were to contact Sprint desiring to enter into a similar business relationship that Sprint has with MCC. Such a requirement could directly conflict with the Commission's Order in Dockets 05-0259 *et al*, in which the Commission stated that it "fully expects Sprint to continue to indiscriminately offer these services, as its affidavits state, to those entities that are capable of providing the 'last mile.'".[12]

The PAD's conclusion that a requirement to include MCC in place of LMP in the Interconnection Agreement would "preserve the current Commission practice that each individual interconnection agreement is a unique contract between two providers of local services," fails to recognize that the Interconnection Agreement that is at issue in this arbitration is between Sprint and the Respondents. Neither MCC, nor any other last mile provider, is a service provider subject to the terms and conditions of this Interconnection Agreement. Sprint and each of the Respondents are the service providers covered under this Interconnection Agreement.

Mr. Hoagg's testified that including specific references to MCC "should not unduly disadvantage Sprint in any efforts to enter into business arrangements similar to those currently

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[10] Tr. 197.

[11] For example, a non-CMRS wireless provider, a broadband over power line provider, or even another cable television provider.

[12] Docket No. 05-0259 *et al.*, Order, p. 14.

in effect with MCC."[13] However, Mr. Hoagg also noted that "Sprint could opt into the instant agreement . . . with nothing more than name changes."[14] In other words, Sprint would have to "opt into" its own agreement with the same RLEC. Thus, by Mr. Hoagg's own admission, requiring that the Interconnection Agreement exclusively apply to Sprint's relationship with MCC, arguably would require Sprint to receive consent from the Respondents to amend the current, or enter into an entirely new, Interconnection Agreement each and every time another last mile provider seeks to offer Sprint's service in the Respondents' service territory. Presumably, such a new agreement or amendment would have to be brought to this Commission for its approval—a time consuming process that would waste this Commission's scarce resources.

If Staff and the Commission's concerns are that neither the Commission nor the Respondents would have knowledge of which last mile provider Sprint was planning to use, Sprint would be willing to place such information in its Illinois Tariff,[15] or otherwise notify the Commission of any additional business relationships with last mile providers in the territory of the applicable RLECs.

Requiring that the Interconnection Agreement exclusively apply to Sprint's relationship with MCC would complicate matters significantly if Sprint were either to offer service in its own name or sell services to additional last mile providers. If the objective is to ensure that Commission and the Respondents know the identity of the last mile provider, Sprint's proposal can accomplish that objective. Sprint sees no reason to make Sprint renegotiate, submit for

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[13] Staff Exhibit 2.0, ln. 145-156.

[14] *Id*., ln. 157-159.

[15] Sprint Communications L.P. d/b/a Sprint Communications Company L.P., Ill. C. C. Tariff No. 9.

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.*.

Suggested Replacement Language:

Sprint respectfully recommends that the Commission's Conclusion set forth in the PAD with respect to issue 4, be modified as follows:

> The business model used by Sprint to provide service within the RLECs' exchanges is indeed new to this Commission. While the Commission is in favor of new and innovative relationships to provide service to underserved areas, the Commission is well advised to consider some scenarios not contemplated under usual business arrangements to establish interconnection agreements. Because MCC is not a party to this agreement, the Commission would be ill-advised to ignore any possible fallout that may occur from any action, whether genuine or perceived, from MCC or its customers. The Commission accepts the Staff's retooling of the parties' proposed language regarding this issue~~.~~,
>
> ~~Likewise, the Commission accepts~~ with the exception of Staff's additional recommendation to require the interconnection agreement to use MCC in place of the general LMP term. ~~As Staff stated, such a requirement would not only further reflect our determinations in the Order in Docket No. 05-0259 *et al* (cons.), but will preserve the current Commission practice that each individual interconnection agreement is a unique contract between two providers of local services.~~ Such a requirement would complicate matters significantly if Sprint were either to offer service in its own name or sell services to additional last mile providers and possibly require Sprint and the RLECs to enter into new Interconnection Agreements each time Sprint entered into a contract with a different last mile provider. To assure that the Commission and the RLECs are on notice as to which last mile providers Sprint is using to offer service, the Commission directs Sprint to include a section in its Tariff stating each last mile provider through which service is offered for each exchange.

Exception No. 3 - Issue 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?

The PAD's finding that each party should be financially and physically responsible for the costs associated with carrying traffic on its side of the POI and that the Respondents should

not be required to pay Sprint for the costs of facilities beyond each Respondents' service area, is contrary to the Federal Communications Commission's ("FCC") rules. The FCC requires 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."[16] 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.[17]

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,"[18] 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."[19] While Staff argued that these sections are "grossly out of context"[20]and that "[t]his rule clearly applies to the question of how state Commissions are to set reciprocal compensation rates,"[21] such an interpretation would lead to the absurd result that each carrier's

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[16] 47 C.F.R. § 51.709(a).

[17] 47 C.F.R. § 51.709(b).

[18] 47 C.F.R. § 51.703(b).

[19] Sprint Exhibit 1.0, ln. 1178-1179.

[20] Staff Brief, p. 18.

[21] *Id.*

individual rates for reciprocal compensation would vary depending on the carrier with whom they were interconnecting. In his rebuttal testimony, Mr. Burt discussed this exact distinction:

> Reciprocal compensation charges recover the costs associated with terminating local traffic on a carrier's network and, specifically, recover the terminating carrier's network costs starting at the first point of switching. The interconnection facility is the transmission facility that joins the two networks and is clearly not recovered in the usage-sensitive reciprocal compensation charges. Facility charges are separate and distinct charges from the usage sensitive reciprocal compensation charges. In fact, even if carriers agree to a bill and keep ("B&K") arrangement as opposed to paying each other reciprocal compensation, the question of how carriers share the cost of the interconnection facility remains. Furthermore, when ILECs opted into the FCC's ISP Remand Order, the FCC interim rate, currently $.0007 replaced the usage-sensitive reciprocal compensation elements. This rate, however, does not recover the cost associated with the interconnection facility. Even though carriers compensate each other at $.0007, the rules acknowledge separate and distinct facility charges.[22]

Thus, 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." 47 C.F.R. § 51.709(a).

In Docket No. 04-0469, the Commission rejected this obligation, finding that to allocate the costs of the interconnection facility between carriers points of interconnection, based on their respective percentages of originated traffic, "would depart from the well-established methodology of apportioning the costs to LECs for facilities on their side of the POI."[23] However, such a finding by this Commission is directly contrary to positions taken by this Commission in a wireless interconnection arbitration.

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[22] Sprint Exhibit 1.1, ln. 414-426.

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

In Docket No. 01-0007 this Commission ordered terms where a wireless carrier and an ILEC share the costs of interconnection facilities, based on the usage of such facilities. 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."[24] This approach, the same as Sprint is suggesting in the instant case, is common when wireless carriers interconnect with incumbent carriers. For example, in an Interconnection Agreement between Sprint PCS and Respondent Harrisonville Telephone Company, 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 basic and, if warranted by the actual usage, revise the factor appropriately.[25]

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,[26] as Harrisonville did above, the Respondents have taken the position, and the PAD recommends, that Sprint must absorb 100% of the cost of the transport

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

[25] Sprint Cross-Exhibit 5.

[26] Sprint Exhibit 1.0, ln. 1183-1184.

facilities that physically join Sprint's network with those of the Respondents. This position ignores the fact that Sprint is only required to provide a single Point of Interconnection ("POI") per LATA, yet if it elects to directly connects, Sprint will be providing a POI in the Respondent's incumbent territory and then transmitting local calls to Sprint's main POI within the LATA. As explained by Sprint's witness, Mr. Burt:

> When directly interconnecting with the RLEC, Sprint acknowledges a responsibility to establish a POI within the RLEC network and acknowledges an obligation to physically provision the transmission facility on its side of the POI. The provisioning of the interconnection facility may be accomplished in a number of ways. Specifically, Sprint may lease the facility from the RLEC, lease a facility that is jointly provided by the RLEC and a third party, such as an ILEC, or Sprint could construct the facility itself. However, regardless of how Sprint provisions this facility to establish the direct connection with the RLEC, the cost of this facility should be shard by both the RLEC and Sprint since the facility will be used by both parties to exchange local traffic. Specifically, the cost of the transmission facility that will be established between Sprint's switch or Hub location within the LATA and the RLEC network should be jointly shared.[27]

Other states have examined situations similar to the way that Sprint will be carrying traffic from its POI located within the Respondents Territory and another POI which serves as Sprint's main POI and found that costs should be allocated, on a balanced basis, between interconnecting carriers. The Maryland Public Service Commission has found in multiple interconnection arbitrations 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

[27] Sprint Exhibit 1.0, ln. 1146-1158.

> facility based upon each carrier's percentage of the traffic passing over the facility.[28]

Staff also examined this Maryland decision and noted that it discussed this "two POI" arrangement as one of several rationales behind its reasoning.[29]

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.[30]

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:
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> > 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

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[28] *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).

[29] Staff Brief, p 22.

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

> 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 making calls. This regime represents the "rules of the road" under which all carriers operate. Id., p 34.[31]

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.[32]

One of the reasons behind this Commission's deviation from Federal law in Docket 04-0469, may have been a concern, expressed by the Commission, 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."[33] Sprint's witness, Mr. Burt testified that "[i]t is unfortunate that MCI did not rebut that assertion."[34] 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."[35] Thus, the decision in Docket 04-0469 should be distinguished from the instant proceeding, which is more analogous to the Commission' determination in Docket 01-007, in which this Commission ordered parties to an interconnection arbitration to share the costs

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[31] *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).

[32] Sprint Exhibit 1.1, ln. 393-398.

[33] *Id.*

[34] Sprint Exhibit 1.1, ln. 402.

[35] *Id.* at ln. 403-411.

of interconnection facilities, based on the usage of such facilities, as proposed by Sprint in this instant proceeding.

Thus, the Commission should reject the conclusion in the PAD and 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.

Suggested Replacement Language:

Sprint respectfully recommends that the Commission's Conclusion set forth in the PAD with respect to issue 5, be modified as follows:

> The Commission agrees with the recommendation of Sprint. ~~Staff. The Commission finds the prior Order referenced by the RLECs and Staff where it rejected a cost-sharing proposal very similar to the one proposed here by Sprint to clearly summarize the Commission's position. Having found Sprint's arguments and additional cites unpersuasive, the Commission will reject Sprint's proposals for Sections 19.2.10 and 19.2.13. The RLECs' position that each party should be financially and physically responsible for the costs associated with carrying traffic on its side of the POI and that the RLECs should not be required to pay Sprint (other than the agreed rates per minute for reciprocal compensation) for the costs of facilities beyond each RLEC's service area boundaries is reasonable and consistent with past Commission decisions.~~ 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." 47 C.F.R. § 51.709(a). The FCC's rules further provide:
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> > "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." 47 C.F.R. § 51.709(b).
>
> 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," 47 C.F.R. § 51.703(b), 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 this Commission had in Docket No. 04-0569, when we 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 [RLECs] will not be required to pay for that overbuilding."[36]

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.

Sprint's ~~The RLECs'~~ proposed language in Sections ~~19.2.3 and 19.2.6~~ 19.2.10 and 19.2.13 of the draft agreement in the record regarding the sharing of the costs of direct interconnection facilities shall be included in the agreements, and the RLEC's ~~Sprint's~~ proposed language in Sections ~~19.2.10, 19.2.13~~ 19.2.3 and 19.2.6 and its subparts shall be deleted.

Exception No. 4 - Issue 6a: If the Parties Interconnect on an Indirect Basis, What Call Records Should be Provided?

The PAD recommends that Sprint be required to provide summary traffic reports to alleviate the Respondents' claim that if indirect interconnection is allowed, they will be subject to a "traffic identification problem [ ] frequently referred to as 'phantom traffic,'"[37] or traffic which is received at a terminating end office but cannot be billed to the appropriate carrier. Such

[36] *Id.* at ln. 403-411.

[37] Respondent Exhibit 1.0, ln. 580-583.

a recommendation ignores the many 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."[38] However, the Respondents failed to mention, in either their direct or rebuttal testimony, that Marseilles Telephone Company had already purchased this equipment.[39] 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."[40] 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.[41] However, the Witness admitted that "in some parts of the country, RLECs do provide detailed call records" to their tandem customers.[42] 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.[43]

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

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[38] Respondent Exhibit 1.0, ln. 608-609.

[39] Sprint Cross Exhibit 8.

[40] Tr. 244.

[41] Tr. 245

[42] Tr. 240.

[43] Tr. 261-262.

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,

> 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.

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.[44] 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. . . . <u>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.</u>[45]

[44] Sprint Cross Exhibit 7.

[45] Sprint Cross Exhibits 4 & 5, § 6.1.

The 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."[46] The PAD recognized that Sprint agreed to provide such reports in other Interconnection Agreements. However, those Interconnection Agreements were the result of negotiation and settlement, as opposed to arbitration.[47] In the negotiation process, Sprint may have agreed to create such reports in exchange for other language that justified the financial cost and administrative burden of such reports.

Other less intrusive methods exist for billing originating carriers, than forcing the originating carrier to develop customized reports. In fact, at least one of the Respondents, Marseilles Telephone Company has already purchased such an alternative[48] that would "give the opportunity to verify [the origin] of traffic,"[49] without the need for Sprint to develop and provide summary traffic reports. As Staff's witness, Russell Murray testified, on cross-examination, there are other additional, and acceptable, methods for accurately billing originating call detail. These include summary reports and call detail records from transit and tandem providers, pass through "Feature Group D Trunking" and equipment used to measure and bill calls.[50] Sprint respectfully requests that the Commission require the Respondents to explore such alternatives, and prove that they are not feasible, before such a burden is placed solely on Sprint.

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[46] Sprint Exhibit 1.0, ln. 1487-1488.

[47] The negotiated Interconnection Agreements were a direct result of Sprint having filed the instant Arbitration Petition. While some carriers were successful in a give and take of negotiation, the instant Respondents were not.

[48] Sprint Cross Exhibit 8.

[49] Tr. 244.

[50] Tr. 263-264.

Suggested Replacement Language:

Sprint respectfully recommends that the last paragraph of Commission's Conclusion set forth in the PAD with respect to issue 6, be modified as follows:

> To solve the phantom traffic problem that may arise with the use of indirect interconnection, the Commission believes that the RLECs should investigate other alternatives, and prove that they are not feasible, before the Commission will place the burden on Sprint to develop and provide summary traffic reports ~~proposed summary traffic reports are reasonable.~~ The Commission notes that Respondent Marseilles Telephone Company has already purchased such an alternative[51] that would "give the opportunity to verify [the origin] of traffic" and the Respondents have agreed to not require comparable reports from wireless carriers. Other possible alternatives include summary reports and call detail records from transit and tandem providers, as well as ~~Sprint will already be providing such reports under interconnection agreements with other ILECs. While~~ the use of FGD trunks each of which would alleviate this problem. ~~as well, the record is unclear on the cost of implementing FGD and the Commission will therefore not require it at this time.~~

III. CONCLUSION

Sprint respectfully requests that the Commission accept the ALJ's Proposed Arbitration Decision with the modifications outlined above. These modifications will allow Sprint to enter into balanced and fair Interconnection Agreements with the Respondents, resulting in the first competitive landline offerings to Illinois telephone users living in the incumbent service territories of the Respondents and helping benefit the evolving telecommunications services and economic development within the state, both long stated goals of the Illinois Commerce Commission, the Legislature, and Governor.

[51] Sprint Cross Exhibit 8.

WHEREFORE, Sprint Communications L.P. d/b/a Sprint Communications Company L.P. respectfully requests that the Commission adopt the Proposed Arbitration Decision, as modified herein, as its final order in this proceeding.

Respectfully submitted,

CLARK HILL PLC

By: _____

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Dated: November 1, 2005

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

NOTICE OF FILING

To: Parties of Record

You are hereby notified that on November 1, 2005, I filed, via the electronic e-docket system, with the Chief Clerk of the Illinois Commerce Commission, the Brief on Exceptions 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 Brief on Exceptions 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 November 1, 2005.

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