

STATE OF ILLINOIS
BEFORE THE ILLINOIS COMMERCE COMMISSION

SPRINT COMMUNICATIONS L.P. d/b/a)
SPRINT COMMUNICATIONS COMPANY)
L.P., SPRINTCOM, INC., WIRELESSCO,)
L.P., NEXTEL WEST CORP., and NPCR,)
INC.,)
Complainants,)
vs.)
ILLINOIS BELL TELEPHONE COMPANY)
D/B/A AT&T ILLINOIS)
Respondent.)

Docket No. 07-0629

**SPRINT COMMUNICATIONS L.P. D/B/A SPRINT COMMUNICATIONS COMPANY
L.P., SPRINTCOM, INC., WIRELESSCO, L.P., NEXTEL WEST CORP.,
AND NPCR, INC.'S**

EXHIBIT 2.0

PUBLIC REBUTTAL TESTIMONY OF MARK G. FELTON

1 **I. INTRODUCTION**

2

3 **Q. PLEASE STATE YOUR NAME AND BUSINESS ADDRESS.**

4 A. My name is Mark G. Felton. My business address is 6330 Sprint Parkway, Overland
5 Park, Kansas 66251.

6

7 **Q. ARE YOU THE SAME MARK G. FELTON THAT FILED DIRECT**
8 **TESTIMONY AND EXHIBITS ON MARCH 25, 2008?**

9 A. Yes.

10

11 **Q. WHAT IS THE PURPOSE OF YOUR REBUTTAL TESTIMONY?**

12 A. The purpose of my Rebuttal Testimony is to respond to the direct testimony of
13 AT&T's witnesses Mr. Jason Constable, Ms. Deborah Fuentes Niziolek, Mr. Lance
14 McNiel, Mr. Curtis Read, and Mr. Scott McPhee. I also will rebut portions of the
15 redlined agreement provided with AT&T's testimony that are not addressed in the
16 testimony of the AT&T witnesses nor in any of their exhibits including the matrix of
17 changes that Mr. McPhee claims that AT&T made to the Kentucky ICA -- JSM-3.
18 Ultimately, the Commission must reject changes proposed by AT&T in its redlined
19 Kentucky ICA that have no basis in the Merger Commitments.

20

21 **Q. HOW IS YOUR REBUTTAL TESTIMONY ORGANIZED?**

22 A. I will respond to each of the proposed modifications to the Kentucky ICA raised by
23 each of the AT&T witnesses. In addition, I will provide further factual background to
24 the bill and keep and facility sharing arrangements in the Kentucky ICA as discussed
25 in Mr. McPhee's direct testimony.

26

27 **Q. DO YOU HAVE ANY GENERAL STATEMENT PRIOR TO ADDRESSING**
28 **THE SPECIFIC TESTIMONIES OF AT&T'S WITNESSES?**

29 A. Yes. Sprint continues to believe that AT&T's proposed changes are overbroad and
30 go beyond the intent and scope of the Merger Commitments. However, in the spirit
31 of cooperation and to narrow the issues to those that are most important to Sprint,
32 Sprint agrees to accept AT&T's proposed changes except as otherwise noted. I have
33 taken the matrix attached to Mr. McPhee's testimony, JSM-3, and inserted Sprint's
34 comments regarding the proposed change. I attach the updated matrix with Sprint's
35 comments in it as Exhibit MGF 2.1. In many instances, Sprint does not agree with
36 AT&T's rationale for a particular change but does not disagree with the change itself.
37 However, because of the massive amounts of changes proposed by AT&T and the
38 limited time that we have had to go through all these changes, Sprint reserves its
39 rights to disagree with changes not identified. I note in the matrix the changes that
40 Sprint accepts, the changes that Sprint rejects, the changes that we take no position
41 on, and the issues we consider closed. However, I know that the negotiators are
42 continuing to discuss these issues and the open items remain fluid. Finally, Sprint

43 notes that AT&T has numerous references to a particular “product” not being
44 available in Illinois and, therefore, the associated language is deleted. Sprint is
45 certainly less concerned about the product name than it is about the functionality
46 AT&T is obligated to provide and, in the absence of sufficient time to conduct a more
47 thorough review, trusts that AT&T has incorporated the appropriate language for such
48 functionality into the proposed agreement.

49

50 **Q. ARE THERE INSTANCES WHERE AT&T MADE CHANGES IN THE**
51 **REDLINE CONTRACT BUT DID NOT DETAIL THOSE CHANGES IN THE**
52 **TESTIMONY OF ITS WITNESSES OR INCLUDE REFERENCE TO THE**
53 **CHANGES IN THE MATRIX ATTACHED TO MR. MCPHEE’S DIRECT**
54 **TESTIMONY, JSM-3?**

55 A. Yes. While Mr. McPhee describes JSM-3 as a “matrix of the changes AT&T has
56 redlined into the Sprint Kentucky ICA” (McPhee Direct, p. 17), I have identified
57 several instances where changes were made by AT&T but were not detailed in JSM-3
58 or in the testimony of the AT&T witnesses. This is concerning because AT&T has
59 made changes with potential significant impacts to Sprint that are neither described in
60 the testimony or in the matrix JSM-3. Moreover, this is evidence of the problems
61 caused by AT&T making such significant changes to the Sprint Kentucky ICA in
62 violation of the spirit and the terms of the Merger Commitments.

63

64 **Q. CAN YOU DESCRIBE SOME OF THE CHANGES THAT AT&T MADE TO**
65 **THE SPRINT KENTUCKY ICA THAT ARE NOT REFERENCED IN**
66 **WITNESS TESTIMONY OR THE MATRIX JSM-3?**

67 A. Yes. For example, AT&T deleted Section 6.9.1 and 6.9.1.1 from Attachment 3 of the
68 Kentucky ICA and added Section 6.2 entitled “Switched Access Traffic” into its
69 redline of the Kentucky ICA. In the Kentucky ICA, in Section 6.9.1.1, Sprint and
70 BellSouth agreed to exchange computer to phone traffic and phone to computer
71 traffic using a bill and keep mechanism until such time as the FCC made a
72 determination on the jurisdiction of the described traffic. Section 6.9.1.1 of the
73 Kentucky ICA describes the compensation method as: “the Parties shall utilizing a
74 bill and keep mechanism for compensating each other for such traffic (neither Party
75 will bill the other Party for the phone end of computer to phone or phone to computer
76 interexchange telecommunications traffic.)”

77

78 **Q. WHAT IS THE SIGNIFICANCE OF SECTION 6.9.1.1 IN THE KENTUCKY**
79 **ICA?**

80 A. The description of how bill and keep works in Section 6.9.1.1 from the Kentucky ICA
81 which is stricken by the AT&T redline is very telling. It describes bill and keep as a
82 “mechanism for compensating each other for such traffic” where “neither Party will
83 bill the other Party” for the described traffic. Of course, that is exactly what Sprint
84 believes a bill and keep billing arrangement to be. Neither party bills the other party
85 for the traffic but it is a mechanism for compensating each other for the exchange of

86 traffic. This very clear description of bill and keep in Section 6.9.1.1 of the Kentucky
87 ICA provides additional evidence as to the intent of the parties in Section 6.1 of the
88 Kentucky ICA that bill and keep be the mechanism for compensation for the
89 exchange of traffic. There is no mention of a rate being charged. Also, balance of
90 traffic of phone to computer or computer to phone traffic is not a prerequisite to the
91 bill and keep mechanism for compensating each other for the traffic exchanged. This
92 section is further evidence to rebut AT&T's claims that a balance of traffic is a
93 necessary prerequisite for bill and keep arrangements.

94

95 **Q. ARE THERE ANY REASONS GIVEN BY AT&T TO MAKE THE CHANGES**
96 **OF DELETING SECTION 6.9.1 AND 6.9.1.1 AND ADDING SECTION 6.2**
97 **AND 6.2.1?**

98 A. No. Sprint cannot find any evidence introduced by AT&T in its Direct Testimony or
99 in the matrix attached as JSM-3 related to deleting Sections 6.9.1 and 6.9.1.1 from the
100 Kentucky ICA and adding Sections 6.2 and 6.2.1. In addition, there is no basis in the
101 Merger Commitments for deleting the Kentucky ICA language and adding the
102 redlined sections. The parties' definition of when switched access charges apply and
103 when bill and keep compensation applies is not a state specific rate nor does it fit into
104 any of the other merger condition exceptions. As such, the Commission should reject
105 AT&T's proposed changes noted herein.

106

107 **Q. SHOULD THE COMMISSION ACCEPT THE CHANGES PROPOSED BY**
108 **AT&T TO ATTACHMENT 3?**

109 A. No.

110

111 **Q. WHY NOT?**

112 A. The Kentucky ICA is simply not designed for anything other than a bill and keep
113 arrangement. As I mentioned in my Direct Testimony at page 29, there is no
114 provision for converting the bill and keep arrangement to an alternative reciprocal
115 compensation arrangement and AT&T's proposed changes to Attachment 3 are
116 insufficient to convert the agreement to something other than a bill and keep based
117 agreement. Moreover, the bill and keep compromise approach enabled the parties to
118 steer clear of certain other disputed issues, such as the billing for BellSouth-
119 originated intraMTA traffic that BellSouth hands off to an interexchange carrier for
120 termination to Sprint. AT&T's resolution to these related issues is unacceptable to
121 Sprint and has no basis in the Merger Commitments. Finally, Sprint's proposed
122 changes in my Exhibit 1.2 are all that are necessary to comply with the Merger
123 Commitments, while AT&T's changes go far beyond those that would be justified
124 under the Merger Commitments.

125

126 **Q. DOES MR. MCPHEE’S TESTIMONY PROVIDE THE RATIONALE FOR**
127 **AT&T’S PROPOSED CHANGES?**

128 A. Mr. McPhee’s testimony and his attached matrix provide little assistance, since it is
129 clear that AT&T made some changes simply to comport with their current policies or
130 offers, and not due to the stated exceptions in the Merger Commitments.

131

132 **Q. CAN YOU PROVIDE AN EXAMPLE OF AT&T MAKING CHANGES TO**
133 **THE KENTUCKY ICA WITHOUT PROVIDING A SPECIFIC REASON**
134 **UNDER THE MERGER COMMITMENTS FOR THE CHANGES?**

135 A. Yes. AT&T added Sections 4.2.4 through 4.2.11 in Attachment 7 – Billing that
136 requires a party that disputes a bill received from the other party to deposit the
137 disputed amounts into an interest bearing escrow account, until the dispute is
138 resolved. Exhibit JSM-3 on page 16 of 27 lists the reason for adding the escrow
139 sections as “State-Specific Laws/Regulations”. AT&T, however, did not refer to any
140 Illinois billing rule or statute that requires such a contractual provision. Nor did
141 AT&T here even refer to a Commission arbitration decision as the reason for making
142 this change. On the contrary, the escrow process appears to simply implement
143 AT&T’s current policy with respect to billing disputes and, since there is no basis in
144 the Merger Commitment for adding Sections 4.2.4 to 4.2.11 to the Kentucky ICA,
145 those changes should be rejected.

146

147 **Q. GENERALLY, WHAT SHOULD THE COMMISSION DO WITH**
148 **LANGUAGE ADDED TO OR DELETED BY AT&T FROM THE**
149 **KENTUCKY ICA THAT AT&T HAS NOT TIED TO A MERGER**
150 **COMMITMENT EXCEPTION OR HAS JUST NOMINALLY MENTIONED A**
151 **REASON IN EX. JSM-3?**

152 A. The Commission should reject the change. The Merger Condition requires AT&T to
153 make available “any entire effective Interconnection Agreement, whether negotiated
154 or arbitrated” to any requesting telecommunications carrier subject to certain
155 exceptions mentioned in the Merger Commitment. Obviously, additions or deletions
156 made by AT&T to the Kentucky ICA that are not tied to any of the Merger Condition
157 exceptions must be rejected out of hand. Additions or deletions to the Kentucky ICA
158 that make vague references to OSS Attributes/Limitations, state-specific
159 laws/regulations, performance plans or technical feasibility must be scrutinized
160 carefully by the Commission to determine, for example, if there is some real OSS
161 issue or if there is an Illinois Commission Rule or statute that prohibits
162 implementation of a specific provision from the Kentucky ICA into Illinois. My
163 attorneys will expand upon this further but it is Sprint’s position that an arbitration
164 ruling issued by this Commission or any other Commission regarding an issue that
165 does not result in a state specific price does not satisfy the Merger Condition
166 exception of a state law or state regulatory requirement. It is also Sprint’s position
167 that a Commission decision arising out of the specific facts and language presented in
168 an arbitration between two parties does not rise to the level of state law or regulatory

169 requirement. While a general issue that AT&T is disputing here may be the same that
170 was raised and ruled upon in an arbitration proceeding between AT&T and another
171 CLEC, Sprint does not view such a ruling as prohibiting the parties from negotiating
172 and agreeing to another resolution of the issue. Moreover, the parties in that case
173 may have offered different proposed language than what Sprint is proposing or have
174 supported their language with facts that differ from the facts that Sprint could present.
175 The Merger Commitments are meant to reduce the transaction costs of the requesting
176 carrier, which in this case are the Sprint entities. Sprint is willing to accept the
177 Kentucky ICA language even in instances where more favorable arbitration decisions
178 in Illinois would otherwise result in a more favorable Illinois provision for Sprint than
179 what is contained in the Kentucky ICA. In other words, the Merger Commitment acts
180 to make entire effective agreements available to requesting parties like Sprint. It is
181 not an opportunity for either party to eliminate portions of the agreement that are not
182 favorable to it. The assumption should be that the Kentucky ICA language is the
183 starting point and that additions or deletions should be entertained only if there is
184 evidence brought by AT&T that shows one of the Merger Commitments exceptions
185 applies. And since AT&T received the benefit of the Merger Approval, it should bear
186 the burden to establish that one of the exceptions should apply. We believe that such
187 an interpretation comports with the intent and the language of the Merger
188 Commitments.

189

190 **II. RESPONSE TO THE TESTIMONY OF MR. JASON CONSTABLE**

191

192 **Q. ON PAGE 6 OF HIS DIRECT TESTIMONY, MR. CONSTABLE ADDRESSES**
193 **AT&T'S PROPOSED CHANGE IN REGARDS TO THE ESTABLISHMENT**
194 **OF POINTS OF INTERCONNECTION (ATTACHMENT 3, SECTION 2.8.1).**
195 **DOES SPRINT AGREE TO THIS CHANGE?**

196 A. No.

197

198 **Q. WHY NOT?**

199 A. First, Section 2.8.1 does not deal with Virtual Points of Interconnection (“POIs”) as
200 Mr. Constable contends, it deals with physical POIs. Next, while Sprint recognizes
201 and respects the fact that the Illinois Commerce Commission (“ICC” or
202 “Commission”) approved language in the MCIMetro arbitration case referenced by
203 Mr. Constable that POIs must be on the ILECs network, arbitration cases are between
204 two parties and based upon the unique set of facts and circumstances between those
205 parties. In fact, in the arbitration case cited, 04-0469, the Commission conclusion
206 states that “[n]either MCI nor SBC now contests Staff’s proposed language.”¹

207 Certainly, a matter where the Commission accepted language agreed to by SBC and

¹ Arbitration Decision, *MCIMetro Access et al. Petition for Arbitration of Interconnection Rates, Terms and Conditions, and Related Arrangements with Illinois Bell Tel. Co. Pursuant to Section 252(b) of the Telecommunications Act of 1996* (Docket 04-0469) (ICC Nov. 30, 2004) (“MCI Arbitration Decision”), p. 79.

208 MCI does not rise to the level of a state-specific regulatory requirement. And as I
209 stated earlier, Sprint does not believe that an arbitration decision (if this even can be
210 considered to be a Commission decision on a disputed issue) rises to the level of state
211 “regulatory requirement.” Moreover, this arrangement is obviously technically
212 feasible as AT&T makes such an interconnection point available in its 9-state former
213 BellSouth territory. As I stated in my Direct Testimony, Illinois law addresses
214 technical feasibility and states that if a method of interconnection is utilized in one
215 jurisdiction by a wireline affiliate then it is presumed to be technically feasible in
216 Illinois.² Finally, the arrangement that allows Sprint to locate POIs in Sprint long-
217 distance points of presence (“POPs”) within five miles of a BellSouth tandem or end-
218 office was a freely negotiated arrangement that can be ported into Illinois.

219 **Q. DOES SPRINT AGREE WITH AT&T’S PROPOSED CHANGE TO DELETE**
220 **MUCH OF ATTACHMENT 3, SECTION 2.9.5.1 REGARDING THE**
221 **SHARING ARRANGEMENT FOR TWO-WAY INTERCONNECTION**
222 **FACILITIES?**

223 A. No. Sprint understands that AT&T Illinois does not charge for individual trunks and,
224 therefore, this Section 2.9.5.1 would be inapplicable in that regard. However, the
225 sharing arrangement contained in Section 2.9.5.1 also applies to the underlying
226 interconnection facilities over which the trunks are provisioned and, therefore, Sprint
227 does not agree to this deletion. My direct testimony at pages 31-33 explained why the

² See Felton Direct, pp. 34-35 citing Section 13-801.

228 50% sharing factor contained in Section 2.9.5.1 is not a state specific price and thus
229 cannot be modified on that basis. Moreover, Sprint disputes AT&T's claims of OSS
230 attributes and limitations as a reason for not porting this arrangement. If AT&T's
231 billing systems are capable of utilizing a factor based upon proportionate usage of the
232 facilities as AT&T's proposed change to Section 2.9.5.1 suggests, then certainly it is
233 capable of utilizing the 50% factor provided for in the Kentucky ICA. With respect
234 to the claim of a state specific regulatory requirement, Sprint relies on its position that
235 an arbitration decision is not a state specific regulatory requirement. Moreover, the
236 MCI Arbitration Decision states that the parties do not contest Staff's proposed
237 language.³ Thus, this was not a contested issue for the Commission that the
238 Commission determined.

239 **Q. WHAT IS SPRINT'S RESPONSE TO AT&T'S PROPOSAL TO MODIFY**
240 **ATTACHMENT 3, SECTION 2.9.8.2.1, SECTIONS 2.9.8.2.3-2.9.8.3.3,**
241 **SECTION 2.9.8.2.6, SECTIONS 2.9.11.6 – 2.9.11.6.4, AND SECTION 6.4,**
242 **DEALING WITH SEPARATE TRUNK GROUPS FOR ACCESS TRAFFIC**
243 **AND SECTIONS 2.9.7, 2.9.7.1, AND 2.9.7.3.3 DEALING WITH SEPARATE**
244 **TRUNK GROUPS FOR TRANSIT TRAFFIC?**

245 A. Sprint does not agree with AT&T's proposed changes to the language regarding IXC
246 and transit trunking configurations. Mr. Constable's rationale for the changes seem to
247 be a mixture of OSS limitations and Illinois regulatory requirements. Mr. Constable

³ MCI Arbitration Decision, p. 79.

248 offers little other than a billing concern in support of the purported OSS limitation.
249 However, as I point out in my Direct Testimony, Illinois law requires incumbents like
250 AT&T to provide “services, facilities, or Interconnection Agreements or
251 arrangements”⁴ that the ILEC or its affiliates negotiated in another state under the
252 terms and conditions, but not the stated rates. Today, under the Kentucky ICA, Sprint
253 operates under the provisions that AT&T has deleted to allow for more efficient
254 trunking and facilities arrangements for the parties. The billing reasons cited by Mr.
255 Constable are addressed already in the Kentucky ICA as it requires in Section
256 2.9.11.6.4 of Attachment 3 for the parties to track and report “through the use of
257 factors set forth in Section 6 of this Attachment, the jurisdictional nature of the
258 combined traffic on the Feature Group D facilities procured in Sprint’s capacity as an
259 interexchange carrier.” Since it is technically feasible to use factors in the Kentucky
260 ICA and the parties utilize those factors to determine the jurisdiction of traffic on
261 feature group D trunks, then it is feasible to utilize those factors and the same
262 language in Illinois. Mr. Constable goes on to cite the same MCIMetro arbitration
263 case as the basis saying separate trunking is an Illinois regulatory requirement. As I
264 address earlier in my testimony, arbitration cases are based on unique facts and
265 circumstances and have little bearing on this proceeding to enforce the Merger
266 Commitments.

⁴ See Felton Direct, p. 35, citing Section 13-801(b)(2) of the Illinois Public Utilities Act.

267 **Q. DOES SPRINT AGREE WITH AT&T'S ADDITION MENTIONED ON PAGE**
268 **15 OF MR. CONSTABLE'S TESTIMONY IN ITS PROPOSED**
269 **COLLOCATION ATTACHMENT REQUIRING 50% OF THE NON-**
270 **RECURRING CHARGES FOR COLLOCATION SPACE TO BE PAID**
271 **BEFORE CONSTRUCTION CAN BEGIN?**

272 A. No. AT&T has presented no evidence that its OSS cannot be modified to
273 accommodate receipt of a collocation order without being accompanied by 50%
274 payment. Simply because the system now rejects an order without 50% payment
275 does not rise to the level of an OSS attribute or limitation. Moreover, since the
276 BellSouth OSS allows for orders without 50% payment, it is evidence that it is
277 technically feasible for AT&T to offer such an arrangement in Illinois. In addition,
278 payment arrangements are not the same as a price as AT&T claims. On this basis, the
279 Commission should reject AT&T's proposed change.

280

281 **III. RESPONSE TO THE TESTIMONY OF MS. DEBORAH FUENTES**
282 **NIZIOLEK**

283

284 **Q. DOES SPRINT HAVE ANY ISSUES WITH THE AT&T PROPOSED**
285 **CHANGES TO THE GENERAL TERMS AND CONDITIONS OF THE**
286 **PORTED ICA AS DESCRIBED IN MS. NIZIOLEK'S DIRECT TESTIMONY?**

287 A. Generally speaking, with the exception of the definition of the effective date and the
288 related issue as to when Sprint obtains the benefits of the Merger Commitments,

289 Sprint has no issues with most of the changes to the General Terms and Conditions
290 proposed by Ms. Niziolek. However, Sprint and AT&T have not specifically
291 discussed the General Terms and Conditions.

292

293 **Q. WHAT IS THE PROBLEM WITH AT&T'S PROPOSAL WITH REGARD TO**
294 **THE EFFECTIVE DATE OF THE AGREEMENT?**

295 A. Sprint agrees that this issue is largely legal in nature and Sprint's attorneys will also
296 address the issue in legal briefs. However, Sprint has serious concerns that much of
297 the benefit of the Merger Commitments has already been lost by Sprint due to
298 AT&T's continued delay tactics. Additionally, while the retroactive application of
299 the Kentucky ICA terms and conditions would require effort on the part of both
300 parties, it is not an insurmountable obstacle. At a minimum, Sprint believes the
301 ported ICA should apply retroactively to the date of Sprint's request.

302

303 **Q. WHAT ABOUT MS. NIZIOLEK'S TESTIMONY WITH RESPECT TO THE**
304 **TRRO AMENDMENTS?**

305 A. Again, Sprint has not had the opportunity to review all of AT&T's proposed changes;
306 however, to the extent AT&T's proposed changes comport with the Merger
307 Commitments, Sprint would not have any issues with those changes.

308

309 **IV. RESPONSE TO THE TESTIMONY OF MR. LANCE MCNIEL**

310

311 **Q. DO YOU HAVE ANY RESPONSE TO MR. MCNIEL'S DIRECT**
312 **TESTIMONY?**

313 A. Yes. I have two general comments and one specific issue I will address.

314

315 **Q. WHAT ARE YOUR GENERAL COMMENTS?**

316 A. First, Mr. McNiel discusses, as do the other AT&T witnesses, how complicated and
317 expensive OSS changes are and how much planning and testing they require before
318 implementation. While Sprint understands that that can be the case, Sprint does not
319 believe AT&T has adequately demonstrated the level of effort required for each OSS
320 change it contends would be required to port the Kentucky ICA into Illinois. Sprint
321 does not believe it is sufficient to simply say that AT&T's OSS would have to be
322 modified to support the Kentucky ICA for a particular service and, therefore, the
323 contract needs to be modified to AT&T's Illinois standard agreement. Second, it is
324 my understanding that the parties have largely reached agreement on the OSS
325 provisions, Attachments 6 and 6a.

326

327 **Q. WHAT SPECIFIC ISSUE DOES SPRINT HAVE WITH MR. MCNIEL’S**
328 **TESTIMONY?**

329 A. On page 7, lines 170-178, Mr. McNiel describes how AT&T removed the words
330 “toll-free” from Attachment 6, Section 3.4 regarding contact numbers for its ordering,
331 provisioning, and maintenance centers because all of the centers do not provide toll-
332 free numbers. While this is rather inconsequential in terms of the overall agreement,
333 and I believe that the parties have reached agreement on this issue, it does
334 demonstrate how AT&T has liberally used the OSS exception to modify the
335 agreement beyond what Sprint believes was the intent of the Merger Commitment.
336 Certainly it can’t be that complicated and expensive or involve that much planning
337 and testing to implement toll-free numbers in AT&T’s order, provisioning, and
338 maintenance centers.

339

340 **V. RESPONSE TO THE TESTIMONY OF MR. CURTIS READ**

341

342 **Q. ON PAGE 6, LINES 67 THROUGH PAGE 7, LINE 85, MR. READ**
343 **DESCRIBES THE DELETION OF LANGUAGE REQUIRING AT&T TO**
344 **PROVIDE MAGNETIC TAPE OR DISK WITH SUBSCRIBER LIST**
345 **INFORMATION. DOES SPRINT HAVE ANY PROBLEM WITH THIS**
346 **PROPOSED CHANGE?**

347 **A.** In a general sense, no. However, rather than a simple deletion of the existing
348 language, Sprint believes the language should be replaced with language that reflects
349 AT&T's process to provide substantially the same information in Illinois.

350

351 **VI. RESPONSE TO THE TESTIMONY OF MR. SCOTT MCPHEE**

352

353 **Q. ON PAGE 12, LINES 284 – 287, MR. MCPHEE CONTENDS THAT SPRINT**
354 **DID NOT ALLOW ADEQUATE TIME FOR AT&T TO PREPARE A**
355 **REDLINE OF THE KENTUCKY ICA FOR PORTING PRIOR TO FILING**
356 **ITS COMPLAINT. DO YOU AGREE?**

357 **A.** No. AT&T had one week short of a year to provide Sprint with the proposed changes
358 it felt were necessary to port the BellSouth ICA into the AT&T states. Sprint put
359 AT&T on notice in an e-mail dated January 3, 2007 from Sprint representative Mr.
360 Jim Kite to AT&T representative Ms. Lynn Allen-Flood that it was interested in
361 AT&T's interpretation of the ICA porting Merger Commitment. Specifically, Sprint

362 asked in item 7 of that e-mail for AT&T's interpretation "of the restrictions
363 applicable to porting between BellSouth and AT&T territories (i.e. state pricing,
364 performance plans, and technical feasibility)?"

365

366 **Q. DID AT&T RESPOND TO SPRINT'S REQUEST?**

367 A. Not immediately. Ms. Allen-Flood e-mailed Mr. Kite on January 10, 2007 to state
368 that AT&T was working on getting answers to Sprint's questions. Ms. Allen-Flood's
369 email responding to Mr. Kite's request is attached as MGF Exhibit 2.2. On January
370 26, 2007, Ms. Allen-Flood sent another e-mail to Mr. Kite asking for clarification on
371 Sprint's porting request to which Mr. Kite responded the same day by asking AT&T
372 to identify any specific provisions of the 2001 ICA that AT&T would not consider
373 applicable in a given legacy AT&T state, along with an explanation as to why, and
374 what would apply in a given state in lieu of the identified provision. Mr. Kite's email
375 is attached as MGF Exhibit 2.3.

376

377 **Q. SO, DOES MR. MCPHEE'S CONTENTION THAT SPRINT DID NOT GIVE**
378 **AT&T ADEQUATE TO PREPARE REDLINES OF THE ICA FOR PORTING**
379 **HAVE CREDIBILITY?**

380 A. No.

381

382 **Q. ON PAGES 22-23 OF HIS DIRECT TESTIMONY, MR. MCPHEE INCLUDES**
383 **A DISCUSSION OF THE FCC’S ISP REMAND ORDER AND SUGGESTS**
384 **THAT THE SAME ANALYSIS WITH RESPECT TO PORTING BILL AND**
385 **KEEP INTO ILLINOIS. DO YOU AGREE WITH HIS SUGGESTION?**

386 A. No. There is a clear distinction between a wireless carrier with a legitimate business
387 case based upon revenues from the users of its service and a CLEC serving an ISP
388 whose business case may be built largely upon intercarrier compensation collected
389 from originating carriers whose customers call the CLEC’s end-user, the ISP. Sprint
390 is not seeking to arbitrage or “game” the system. Rather, Sprint is simply attempting
391 to take advantage of a commitment AT&T made to gain merger approval and port the
392 bill and keep compensation arrangement as part of the entire effective Kentucky ICA
393 as required by Merger Commitment 7.1 and for the many reasons that I discussed in
394 my Direct Testimony on pages 25-30. In his Rebuttal Testimony, Mr. Farrar also
395 discusses the reasons why Sprint or any carrier would select a bill and keep
396 arrangement.

397

398 **Q. MR. MCPHEE GOES ON TO DESCRIBE HOW AT&T SUPPORTS BILL**
399 **AND KEEP AS AN APPROPRIATE INDUSTRY WIDE COMPENSATION**
400 **MECHANISM BUT DOESN’T WANT SPRINT TO GAIN AN UNFAIR**
401 **ADVANTAGE (PAGE 23). PLEASE RESPOND.**

402 A. AT&T certainly has the prerogative to offer bill and keep to all carriers with which
403 has interconnection arrangements, even apart from an FCC order. It is likely that

404 many, if not all, carriers would be happy to enter into such arrangement with AT&T.
405 Further, as the nation's largest telecommunications company, AT&T can take the
406 initiative to chart the course for what it states "the FCC seeks to do in the future".

407

408 **Q. ON PAGE 26 OF MR. MCPHEE'S TESTIMONY, HE DISCUSSES WHAT HE**
409 **BELIEVES TO BE SPRINT'S MOTIVATION FOR PURSUING ITS RIGHTS**
410 **UNDER THE MERGER COMMITMENTS. IS HE CORRECT?**

411 A. While he is generally correct that Sprint believed that the Merger Commitments
412 provided additional benefits to Sprint in obtaining interconnection arrangements, I do
413 not agree with the tone of his characterization.

414

415 **Q. PLEASE ELABORATE.**

416 A. First, Mr. McPhee indicates that the parties had reached "agreement in principle" on a
417 new ICA. Mr. McPhee was not personally involved in the negotiations and can only
418 view the level of agreement through the prism of his colleagues who were involved. I
419 was personally involved in every aspect of these negotiations and I know that
420 substantial areas of dispute remained at the time the Merger Commitments were
421 issued and AT&T's merger with BellSouth was consummated. Second, Mr. McPhee
422 states that Sprint was looking to gain "leverage" and a "sweeter deal". In my 9+
423 years of negotiations experience, I am constantly looking for the best deal I can for
424 my company. In fact, I have a fiduciary responsibility to Sprint's shareholders to do
425 so and if I did not do so, Sprint would likely look for a replacement that would.

426 Third, by its own account in the media, AT&T stood to reap *billions* of dollars of
427 expense savings as a result of its merger with BellSouth. Any cost to implement the
428 Merger Commitments is likely a small fraction of that. Lastly, it is obvious AT&T is
429 looking for leverage and the best deal it can achieve. If it were not, Sprint and AT&T
430 would not be involved in this proceeding and others like it in multiple states.

431

432 **Q. MR. MCPHEE DISCUSSES HOW BALANCE OF TRAFFIC “APPEARS” TO**
433 **HAVE BEEN THE REASON SPRINT AND BELLSOUTH AGREED TO THE**
434 **BILL AND KEEP RECIPROCAL COMPENSATION ARRANGEMENT. IS**
435 **THAT TRUE?**

436 A. No.

437

438 **Q. CAN YOU PROVIDE THE ACTUAL BACKGROUND OF WHAT LEAD TO**
439 **THE BILL & KEEP ARRANGEMENT?**

440 A. Yes. I, along with Sprint’s Rebuttal Witness Mr. Randy G. Farrar, will provide the
441 facts surrounding the bill and keep arrangement between Sprint and BellSouth.

442

443 **Q. WHAT IS THE BASIS OF YOUR KNOWLEDGE REGARDING THE**
444 **KENTUCKY ICA?**

445 A. I was the lead Sprint CLEC negotiator in the negotiations between BellSouth, Sprint
446 CLEC and Sprint PCS that resulted in creation of the Kentucky ICA. The Kentucky
447 ICA is simply the regional BellSouth ICA that was filed and approved by the

448 Kentucky Commission. I also worked closely with the lead Sprint PCS negotiator,
449 Mr. Billy Pruitt to integrate the CLEC and CMRS provisions into one seamless ICA.

450

451 **Q. DID YOUR RESPONSIBILITY REGARDING THE KENTUCKY ICA**
452 **CONTINUE AFTER THE AGREEMENT WAS EXECUTED BY THE**
453 **PARTIES AND APPROVED BY THE VARIOUS STATE COMMISSIONS?**

454 A. Yes. After the Kentucky ICA was executed and approved by the various state
455 Commissions, I had either direct or supervisory responsibility to provide contract
456 support as needed to actually implement the agreement between Sprint and BellSouth.
457 In 2003, my responsibilities expanded to include all CLEC and CMRS negotiations
458 with BellSouth and other carriers in the Southeast.

459

460 **Q. WHEN DID THE SPRINT AND BELLSOUTH NEGOTIATIONS BEGIN?**

461 A. Sprint PCS and BellSouth began negotiations of a Florida-specific wireless
462 interconnection agreement late in 1999 with BellSouth providing a draft contract on
463 December 7, 1999. The initial face-to-face negotiations session with BellSouth took
464 place in Atlanta on January 19, 2000. Numerous calls and meetings occurred
465 between the Parties over the next several months. In April, the Parties agreed to reset
466 the negotiations clock to continue discussions under the agreement. Negotiations
467 between Sprint CLEC and BellSouth began on September 14, 1999 with Sprint
468 CLEC's request to negotiate a comprehensive interconnection agreement to replace
469 the existing agreement between the parties.

470

471 **Q. IN YOUR OPINION, WHAT WAS THE MOST SIGNIFICANT ISSUE**
472 **BETWEEN SPRINT PCS AND BELLSOUTH?**

473 A. The most significant issue between Sprint PCS and BellSouth was the compensation
474 rate each Party (as a terminating carrier) should bill the other Party (as an originating
475 carrier) for termination of the originating Party's traffic.

476

477 **Q. WHY WAS THE TERMINATING RECIPROCAL COMPENSATION RATE**
478 **AN ISSUE?**

479 A. BellSouth's position was that Sprint PCS was required to bill BellSouth the same rate
480 for terminating BellSouth customer-originated minutes that BellSouth billed Sprint
481 PCS for terminating Sprint PCS customer-originated minutes.

482

483 **Q. DID SPRINT PCS AGREE WITH THE IDEA OF BILLING BELLSOUTH**
484 **BASED ON THE USE OF A SYMMETRICAL RECIPROCAL**
485 **COMPENSATION RATE?**

486 A. No. Sprint PCS had performed cost studies that indicated that Sprint PCS had
487 additional costs above and beyond the reciprocal terminating compensation rate
488 proposed by BellSouth. Sprint PCS wanted to recover those additional costs. Sprint
489 PCS believed that 47 C.F.R. § 51.711(b) permitted Sprint PCS to charge an
490 asymmetrical rate to recover those additional costs. Therefore, Sprint PCS proposed
491 to charge BellSouth an asymmetrical terminating compensation rate for traffic

492 originated by BellSouth customers that terminated on the Sprint PCS network to
493 Sprint PCS customers. The Parties met on multiple occasions to discuss this issue
494 and Sprint PCS shared its cost model and other pertinent information with BellSouth.

495

496 **Q. DID BELLSOUTH CONCEDE TO THE USE OF ASYMMETRICAL RATES**
497 **ONCE SPRINT PCS SHARED ITS COST STUDY?**

498 A. No. Accordingly, Sprint PCS filed an arbitration Petition before the Florida Public
499 Service Commission on June 23, 2000.⁵

500

501 **Q. Q. WHAT ISSUES WERE CONTAINED IN THE FLORIDA**
502 **ARBITRATION PETITION?**

503 A. There were two issues. The primary issue was the terminating compensation rate that
504 BellSouth would pay Sprint PCS for terminating traffic on the Sprint PCS network
505 that originated on BellSouth's network. The secondary issue was whether BellSouth
506 should be required to exchange access records in the standard industry format.

507

508 **Q. DID THE FLORIDA COMMISSION EVER ISSUE AN ARBITRATION**
509 **DECISION REGARDING THE SPRINT PCS ARBITRATION PETITION?**

510 A. No.

⁵ See *In Re: Petition by Sprint PCS for Arbitration of Certain Terms and Conditions of a Proposed Agreement with BellSouth Pursuant to Section 252 of the Communications Act*, Florida Public Service Commission, Docket No. 000761-TP (filed June 23, 2000).

511

512 **Q. WHY NOT?**

513 A. Because, as a matter of negotiation and compromise BellSouth, Sprint CLEC and
514 Sprint PCS agreed, among other things: 1) to a bill-and-keep arrangement for usage
515 on CLEC local traffic, Internet Service Provider ("ISP")-bound traffic and wireless
516 local traffic that was ultimately incorporated into what has become the Kentucky
517 ICA; and 2) that the cost of interconnection facilities between BellSouth and Sprint
518 PCS switches shall be shared on an equal basis.

519

520 **Q. HOW DID THAT COMPROMISE COME ABOUT?**

521 [REDACTED] After the Sprint PCS arbitration Petition was filed in Florida, BEGIN

522 CONFIDENTIAL INFORMATION [REDACTED]

523 [REDACTED]

524 [REDACTED]

525 [REDACTED]

526 [REDACTED]

527 [REDACTED]

528 [REDACTED]

529 [REDACTED]

530 [REDACTED]

531 [REDACTED]

532 [REDACTED]

533

534

[REDACTED]

535

[REDACTED]

536

A.

[REDACTED]

537

[REDACTED]

538

[REDACTED]

539

[REDACTED]

540

[REDACTED]

541

[REDACTED]

542

[REDACTED]

543

[REDACTED]

544

[REDACTED]

545

[REDACTED]

546

[REDACTED]

547

[REDACTED]

548

[REDACTED] **END CONFIDENTIAL INFORMATION.**

549

Between January of 2001 and approximately late June 2002, the Parties completed

550

the finalization and filing of the new agreements with each state Commission

551

throughout the nine legacy-BellSouth states, which incorporated the agreed upon bill

552

and keep/facility sharing provisions.

553

554 Q. WHAT SECTIONS OF THE KENTUCKY ICA PROVIDE FOR BILL-AND-
555 KEEP BETWEEN SPRINT CLEC, SPRINT PCS AND BELLSOUTH?

556 A. The BEGIN CONFIDENTIAL INFORMATION [REDACTED]
557 [REDACTED] END CONFIDENTIAL INFORMATION is the basis for Sections 6.1
558 and 6.1.1 (as cited in my Direct Testimony) of the Kentucky ICA and, as such, makes
559 no mention of any traffic balance requirement to maintain the bill and keep
560 arrangement. For convenience, I have included Attachment 3, Section 6.1, and 6.1.1
561 below, which provide:

562 6.1 Compensation for Call Transport and Termination for
563 CLEC Local Traffic, ISP-Bound Traffic and Wireless Traffic is
564 the result of negotiation and compromise between BellSouth,
565 Sprint CLEC and Sprint PCS. The Parties' agreement to
566 establish a bill and keep compensation arrangement was based
567 upon extensive evaluation of costs incurred by each party for
568 the termination of traffic. Specifically, Sprint PCS provided
569 BellSouth a substantial cost study supporting its costs. As such
570 the bill and keep arrangement is contingent upon the agreement
571 by all three Parties to adhere to bill and keep. Should either
572 Sprint CLEC or Sprint PCS opt into another interconnection
573 arrangement with BellSouth pursuant to 252(i) of the Act
574 which calls for reciprocal compensation, the bill and keep
575 arrangement between BellSouth and the remaining Sprint
576 entity shall be subject to termination or renegotiation as
577 deemed appropriate by BellSouth.

578 6.1.1 The Parties hereby agree to a bill-and-keep arrangement
579 for usage on CLEC Local Traffic, ISP-bound traffic, and
580 Wireless Local Traffic. Such bill-and-keep arrangement
581 includes any per minute usage rate elements associated with
582 the transport and termination of CLEC Local Traffic, ISP-
583 bound Traffic, and Wireless Local Traffic. Such bill-and-keep
584 arrangement does not include trunks and associated dedicated
585 transport, transit and intermediary traffic, or inter-Major
586 Trading Area traffic.

587 It is the Florida arbitration cost study that is referred to above in paragraph 6.1 of the
588 Kentucky ICA.

589

590 **Q. WHAT SECTIONS OF THE KENTUCKY ICA PROVIDES FOR THE**
591 **EQUAL SHARING OF INTERCONNECTION FACILITY COSTS BETWEEN**
592 **SPRINT PCS AND BELLSOUTH?**

593 A. For wireless network interconnection, Attachment 3, section 2.3.2, provides:

594

595 ... The cost of the interconnection facilities between BellSouth
596 and Sprint PCS switches within BellSouth's service area shall
597 be shared on an equal basis. Upon mutual agreement by the
598 parties to implement one-way Trunking on a state-wide basis,
599 each Party will be responsible for the cost of one-way
600 interconnection facilities associated with its originating traffic.

601 Section 2.9.5.1 provides for the equal sharing of wireline trunking and facilities:

602

603 For two-way interconnection trunking that carries the Parties'
604 Local and IntraLATA Toll Traffic only, excluding Transit
605 Traffic, and for the two-way Supergroup interconnection trunk
606 group that carries the Parties Local and IntraLATA Toll
607 Traffic, plus Sprint CLEC's Transit Traffic, the Parties shall be
608 compensated for the nonrecurring and recurring charges for
609 trunks and facilities at 50% of the applicable contractual or
610 tariff rates for the services provided by each Party. Sprint
611 CLEC shall be responsible for ordering these two-way trunk
groups.

612

613 Q. AT&T HAS FILED IN THESE DOCKETS A COPY OF ITS “PETITION OF
614 THE AT&T ILECS FOR A DECLARATORY RULING”.⁶ HAVE YOU READ
615 AT&T’S FCC PETITION?

616 A. Yes.

617

618 Q. AT&T’S FCC PETITION CLAIMS THAT THE BILL AND KEEP
619 ARRANGEMENT WAS “PREDICATED ON SPECIFIC ASSUMPTIONS BY
620 BELLSOUTH ABOUT THE BALANCE OF TRAFFIC BETWEEN THE
621 BELLSOUTH ILECS AND THE TWO SPRINT ENTITIES IN THE
622 BELLSOUTH REGION”. REGARDLESS OF ANY ASSUMPTIONS
623 BELLSOUTH MAY OR MAY NOT HAVE MADE, WAS EITHER THE
624 THEN-EXISTING OR ANY FUTURE-CONTEMPLATED “BALANCE OF
625 TRAFFIC” BETWEEN THE PARTIES EVER DISCUSSED DURING THE
626 NEGOTIATIONS LEADING UP TO THE FILING OF THE SPRINT PCS
627 ARBITRATION PETITION IN FLORIDA?

628 A. No.

629

⁶ Petition of the AT&T ILECs for a Declaratory Ruling, *In the Matter of Petition for Declaratory Ruling that Sprint Nextel Corporation, Its Affiliates, and Other Requesting Carriers May Not Impose A Bill-and-Keep Arrangement Or A Facility Pricing Arrangement Under the Commitments Approved By The Commission in Approving the AT&T-BellSouth Merger*, at page 1, WC Docket No. 08-23 (filed February 5, 2008) (“AT&T’s FCC Petition”).

630 **Q. WAS EITHER THE THEN-EXISTING OR ANY FUTURE-**
631 **CONTEMPLATED “BALANCE OF TRAFFIC” BETWEEN THE PARTIES**
632 **DISCUSSED OR OTHERWISE AGREED TO AS A PRE-REQUISITE TO**
633 **THE SUBJECT MATTERS REFLECTED IN CONFIDENTIAL EXHIBIT 2.4?**

634 **A. No.**

635

636 **Q. ARE YOU AWARE OF ANY PROVISIONS IN THE KENTUCKY ICA THAT**
637 **RESTRICT THE USE OF THE BILL AND KEEP/FACILITY-SHARING**
638 **PROVISIONS BASED UPON ANY CONSIDERATIONS THAT THE**
639 **EXCHANGE OF TRAFFIC BETWEEN ANY OF THE SPRINT ENTITIES**
640 **AND BELLSOUTH MUST BE, MUST BECOME, OR MUST REMAIN**
641 **“ROUGHLY IN BALANCE” AT ANY POINT IN TIME AS A PRE-**
642 **REQUISITE TO THE BILL AND KEEP/FACILITY-SHARING PROVISIONS**
643 **APPLYING BETWEEN EITHER OF THE SPRINT ENTITIES AND**
644 **BELLSOUTH?**

645 **A. No. No such provisions or pre-requisites were ever agreed to or included in the**
646 **Kentucky ICA.**

647

648 **Q. WERE THERE DISPUTED ISSUES BETWEEN THE SPRINT CLEC AND**
649 **BELLSOUTH THAT REQUIRED AN ARBITRATION PETITION TO BE**
650 **FILED WITH THE STATE COMMISSION?**

651 A. Yes. There were a myriad of issues related to interconnection, resale, collocation,
652 unbundled network elements, and rights-of-way.

653

654 **Q. PLEASE DESCRIBE THE DISPUTED INTERCONNECTION-RELATED**
655 **ISSUES.**

656 A. Generally, the interconnection-related issues included: which party designated the
657 point of interconnection; whether Sprint CLEC should be permitted to exchange
658 multiple jurisdictions of traffic over the same interconnection trunk; the definition of
659 “Local Traffic” for compensation purposes (i.e., whether ISP-bound traffic was
660 subject to reciprocal compensation or switched access traffic); the ability for Sprint
661 CLEC to charge a tandem rate when the area served by Sprint CLEC’s switch is
662 geographically comparable to that served by BellSouth’s tandem switch; the inclusion
663 of internet protocol (“IP”)-Telephony traffic in the definition of switched access
664 traffic; and whether BellSouth would be permitted to require a different
665 interconnection configuration for ISP-bound traffic.

666

667 Q. WHAT WAS THE ISSUE RELATIVE TO ISP TRAFFIC THAT WAS
668 SUBJECT TO NEGOTIATION IN THE KENTUCKY ICA?

669 A. Sprint CLEC and BellSouth disagreed on the appropriate compensation treatment for
670 ISP-bound traffic. Sprint's position was that ISP-bound traffic was local and subject
671 to reciprocal compensation. BellSouth's position was that ISP-bound traffic should
672 not be considered Local Traffic subject to the reciprocal compensation regime but,
673 instead, should be subject to tariff access charges.

674

675 Q. DID SPRINT CLEC AND BELLSOUTH GO TO ARBITRATION ON THE
676 ISSUE OF RECIPROCAL COMPENSATION?

677 A. No. Although the issue of the appropriate treatment of ISP-bound traffic was disputed
678 between the parties, the dispute was resolved after the arbitration Petition was filed
679 but prior to the issue going before the Commission for evidentiary hearing.

680

681 Q. HOW DID THE ISSUE OF RECIPROCAL COMPENSATION COME TO BE
682 RESOLVED?

683 A. The same BEGIN CONFIDENTIAL INFORMATION [REDACTED]
684 [REDACTED] END
685 CONFIDENTIAL INFORMATION provided the resolution of reciprocal
686 compensation for ISP traffic issue. The resulting compromise called for the parties to
687 exchange all CLEC local, ISP-bound, and wireless local traffic on a settlement-free
688 basis (i.e., "Bill and Keep").

689

690 **Q. DOES ATTACHMENT 3, SECTION 6.1 MENTION OR ALLUDE TO THE**
691 **NEED FOR TRAFFIC TO BE BALANCED BETWEEN THE PARTIES FOR**
692 **BILL AND KEEP TO CONTINUE?**

693 A. No.

694

695 **Q. DOES ANY OTHER SECTION OF THE ICA MENTION OR ALLUDE TO**
696 **THE NEED FOR TRAFFIC TO BE BALANCED BETWEEN THE PARTIES**
697 **FOR BILL AND KEEP TO CONTINUE?**

698 A. No.

699

700 **Q. DURING THE NEGOTIATIONS OF THE KENTUCKY ICA, DID SPRINT**
701 **CLEC AND BELLSOUTH DISCUSS BALANCE OF TRAFFIC?**

702 A. No.

703

704 **Q. IS THERE ANY REQUIREMENT WITHIN THE KENTUCKY ICA THAT**
705 **TRAFFIC BE OR REMAIN BALANCED IN ORDER FOR THE BILL AND**
706 **KEEP ARRANGEMENT TO CONTINUE?**

707 A. No.

708

709 **Q. IF THE BALANCE OF TRAFFIC BETWEEN SPRINT CLEC AND**
710 **BELLSOUTH (OR A BALANCE OF TRAFFIC BETWEEN BOTH SPRINT**
711 **ENTITIES AND BELLSOUTH) HAD BEEN A FACTOR IN THE BILL AND**
712 **KEEP ARRANGEMENT, ARE THERE OTHER PROVISIONS YOU WOULD**
713 **HAVE EXPECTED TO BE INCLUDED IN THE KENTUCKY ICA?**

714 A. Yes. If the balance of traffic was critical in the bill and keep arrangement, I would
715 have expected BellSouth to insist on including provisions to a) define what
716 constituted being “in-balance”, and b) for the parties to revert to a reciprocal
717 compensation rate if the exchange of traffic reverted to being “out-of-balance” for a
718 stated period of time (e.g. 3 consecutive months). Furthermore, as I stated earlier,
719 unresolved issues such as the treatment of IntraMTA traffic sent to an IXC would
720 need to be addressed.

721

722 **Q. ARE SUCH PROVISIONS INCLUDED IN THE KENTUCKY ICA?**

723 A. No.

724

725 **Q. HOW ARE THE COSTS OF CLEC INTERCONNECTION FACILITIES**
726 **HANDLED WITHIN THE KENTUCKY ICA?**

727 A. Sprint CLEC and BellSouth agreed to respectively pay for the entire cost of one-way
728 interconnection facilities used to deliver their own originating traffic to the
729 terminating party. The agreement also addresses two types of two-way
730 interconnection facilities – “Two-Way Interconnection Trunking” and “Supergroup

731 Interconnection Trunking”. The cost of both types of two-way interconnection
732 facilities is shared equally between the parties.

733

734 **Q. WHAT IS TWO-WAY INTERCONNECTION TRUNKING?**

735 A. According to Section 2.9.6.2.1 of the Kentucky ICA, Two-Way Interconnection
736 Trunking is:

737 “Two-way interconnection trunking may be utilized by the
738 Parties to transport Local and IntraLATA Toll Traffic between
739 Sprint CLEC’s end office or switch and BellSouth’s access
740 tandem or end office.”

741

742 **Q. WHAT IS SUPERGROUP INTERCONNECTION TRUNKING?**

743 A. According to Section 2.9.8.2.1 of the Kentucky ICA, Supergroup Interconnection
744 Trunking is:

745 “Supergroup interconnection trunking may be utilized by the
746 Parties to transport the Parties combined Local, IntraLATA
747 Toll, Transit, and Switched Access Traffic on a two-way
748 interconnection trunk group between Sprint CLEC’s end office
749 or switching center and a BellSouth access tandem.”

750 The difference between a Supergroup and a Two-Way Interconnection Facility is the
751 ability for the parties to combine multiple types and jurisdictions of traffic on one
752 facility (i.e. a Supergroup facility).

753

754 **Q. IS THE EQUAL SHARING OF TWO-WAY OR SUPERGROUP**
755 **INTERCONNECTION TRUNKING BASED UPON BALANCE OF TRAFFIC?**

756 A. No. In Section 2.9.5.1, the Kentucky ICA provides the following with respect to the
757 sharing of Two-Way and Supergroup Interconnection Trunking:

758 "For two-way interconnection trunking that carries the Parties'
759 Local and IntraLATA Toll Traffic only, excluding Transit
760 Traffic, and for the two-way Supergroup interconnection trunk
761 group that carries the Parties Local and IntraLATA Toll
762 Traffic, plus Sprint CLEC's Transit Traffic, the Parties shall be
763 compensated for the nonrecurring and recurring charges for
764 trunks and facilities at 50% of the applicable contractual or
765 tariff rates for the services provided by each Party. Sprint
766 CLEC shall be responsible for ordering these two-way trunk
767 groups."

768

769 **Q. IS THERE ANY REQUIREMENT IN THE KENTUCKY ICA THAT**
770 **TRAFFIC BE OR REMAIN BALANCED IN ORDER FOR THE COST OF**
771 **TWO-WAY INTERCONNECTION TRUNKING TO BE SHARED**
772 **EQUALLY?**

773 A. No.

774

775 **Q. BASED ON THIS PRIOR DISCUSSION, IS MR. MCPHEE'S ASSERTION**
776 **THAT THE BILL AND KEEP ARRANGEMENT AND THE FACILITIES-**
777 **SHARING PROVISIONS IN THE KENTUCKY ICA BETWEEN SPRINT**
778 **AND BELL SOUTH MUST HAVE BEEN BASED UPON BALANCE OF**
779 **TRAFFIC CORRECT?**

780 A. No.

781

782 **Q. MR. MCPHEE ALSO SUGGESTS ADDING SECTION 6.19. DO YOU**
783 **AGREE WITH THIS CHANGE?**

784 A. No.

785

786 **Q. PLEASE EXPLAIN?**

787 A. I disagree with Mr. McPhee's addition of Section 6.19. That section provides a
788 surrogate billing factor to be used by Sprint to bill AT&T for local traffic. The
789 billing factor in Section 6.19 is based upon AT&T's faulty shared facility factor of
790 .20. As I stated earlier, and even AT&T agrees, the actual balance of traffic is much
791 closer to 50/50. Sprint cannot agree to a factor of .20 to serve as a proxy for local
792 traffic. The impact of this formula and the defective billing factor would be to limit
793 the amount that Sprint could charge AT&T for reciprocal compensation. This is just
794 another example of why bill and keep is the appropriate mechanism.

795

796 **Q. MR. MCPHEE DISCUSSES CHANGES TO SECTIONS 6.1.5.1 AND 6.15 FX**
797 **TRAFFIC THAT HE SAYS AT&T ADDED TO CONFORM WITH A**
798 **COMMISSION DECISION. PLEASE DISCUSS.**

799 A. Yes. AT&T added multiple sections regarding the definitions of and compensation
800 for Foreign Exchange Traffic (“FX Traffic”) 6.15, 6.15.1 to 6.15.8 of Attachment 3 -
801 Local Interconnection. Those sections are not listed in Ex. JSM-3.

802

803 **Q. IS THERE ANYTHING OF INTEREST IN THOSE SECTIONS ADDED BY**
804 **AT&T REGARDING FX TRAFFIC AND HOW THE PARTIES**
805 **COMPENSATE EACH OTHER FOR THAT TYPE OF TRAFFIC?**

806 A. Yes. Section 6.15.3 states: “FX Traffic is not Section 251(b)(5) Traffic and instead
807 the transport and termination compensation for FX Traffic is subject to a Bill and
808 Keep arrangement.” Further 6.15.3.1 states: “To the extent that ISP-Bound Traffic is
809 provisioned via an FX-type arrangement, such traffic is subject to a Bill and Keep
810 arrangement[.] ‘Bill and Keep’ refers to an arrangement in which neither of two
811 interconnecting parties charges the other for terminating FX traffic that originates on
812 the other party’s network.” These provisions are of interest for several reasons. First,
813 the language drafted by AT&T for these sections acknowledges that bill and keep is
814 an arrangement, not a price. Second, the Commission decision cited by AT&T, the
815 MCI Arbitration Decision, does not require a balance of traffic between the parties
816 when implementing bill and keep. There is no mention of the bill and keep
817 arrangement reverting back to a payment for traffic based on a balance of traffic. In

818 fact, FX arrangements established by CLECs for the purposes of making calls to ISPs
819 become local calls for the ILEC customers typically resulted in ILECs originating an
820 overwhelming percentage of the traffic terminated to CLECs serving ISPs. There is
821 no balance of traffic in a typical ILEC/CLEC FX arrangement. A bill and keep
822 arrangement for FX traffic benefits the ILEC as that it does not have to pay reciprocal
823 compensation to the CLEC as evidenced by SBC asking for the bill and keep
824 arrangement be implemented in the MCI Arbitration Decision.⁷ Finally, none of these
825 machinations of AT&T subjecting some types of traffic to reciprocal compensation
826 and FX traffic to bill and keep would be necessary if AT&T agreed with Sprint's
827 request and subjected all non-access traffic to a bill and keep arrangement.

828

829 **Q. MR. MCPHEE STATES THAT THIS CHANGE TO BILL AND KEEP FOR**
830 **FX TRAFFIC ACTUALLY BENEFITS SPRINT. DO YOU AGREE?**

831 A. Sprint agrees that bill and keep is the appropriate mechanism for exchanging FX
832 traffic and all other types of non-access traffic. But, specifically with respect to FX
833 traffic, AT&T knows that Sprint is not in the CLEC business of providing terminating
834 services for ISPs. So, AT&T is not foregoing any access charge revenue (as it asserts
835 the Kentucky ICA calls for access to be applied to FX traffic) by implementing a bill
836 and keep arrangement for FX traffic in Illinois. The change does not benefit Sprint.

⁷ MCI Arbitration Decision, p. 168.

837 Q. **DOES THIS CONCLUDE YOUR REBUTTAL TESTIMONY?**

838 A. Yes.