

September 15, 2008

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Sent Via Electronic Mail and Federal Express Mail

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Public Utility Commission of Oregon
550 Capital Street NE #215
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Re: ARB 830 - Exceptions of Sprint Communications Company L.P.

Dear Sir/Madam:

Enclosed please find an original and one copy of the following documents being filed on behalf of Sprint Communications L.P.:

- 1) Exceptions of Sprint Communications Company L.P.
- 2) Certificate of Service.

Should you have any questions, please feel free to contact the undersigned at any time.

Very truly yours,

GRAHAM & DUNN PC



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BEFORE THE PUBLIC UTILITY COMMISSION OF OREGON

RECEIVED

SEP 15 2008

**IN THE MATTER OF SPRINT)
COMMUNICATIONS COMPANY L.P.)
PETITION FOR ARBITRATION OF)
AN INTERCONNECTION AGREEMENT)
WITH CENTURYTEL OF OREGON, INC.)**

ARB 830

Public Utility Commission of Oregon
Administrative Hearings Division

**EXCEPTIONS OF
SPRINT COMMUNICATIONS COMPANY L.P.**

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**Exceptions of Sprint Communications Company L.P.
to the Arbitrator's Decision**

Sprint Communications Company L. P. ("Sprint"), by and through its attorneys, pursuant to Section 252(b) of the Federal Communications Act of 1996¹ (the "Act"), respectfully submits, its Exceptions to Arbitrator's Decision issued September 6, 2008 in the above-captioned proceeding and states as follows:

I. ARGUMENTS

The following contains Sprint's Exceptions regarding the Arbitrator's Decision for the following issues presented for arbitration and resolution by the Commission: Issues 2, 4, 5, 6, 8, 13, 14 and 16.

Issue 2: What are the appropriate terms for indemnification and limitation of liability?

Related Agreement Provisions: Article III Sections 30.1 and 30.3

For Issue 2 the Arbitration found that:

Sprint is correct that its past agreement to similar provisions with other carriers is not dispositive in this case, and that the indemnification provisions in its tariffs and wholesale contracts are different because they hold the party who controls the content liable for the content. But the more salient point is the fact that Sprint can protect itself by including similar indemnification provisions in its tariffs and customer contracts, while CenturyTel's only protection lies in its ICA with Sprint. I therefore find that CenturyTel's proposed section 30.1(ix) is reasonable and should be included in the parties' ICA.

Sprint's objects to the Arbitrator's finding because it assumes that Sprint should be placed in the middle and liable for actions over which Sprint not only has no control

¹ 47 USC § 252(b)(3).

but is actually prohibited from taking action to control.² Moreover, CenturyTel's only protection does not stem from its interconnection agreement with Sprint. As noted in Sprint's Reply Brief, rejecting CenturyTel's proposed language will not render CenturyTel without a remedy.³ As is appropriate and consistent with sound public policy, any justifiable remedy may be pursued against the person or entity that has control over the content transmitted. Thus, CenturyTel (or Sprint) would be free to seek relief directly from the person that transmitted the content that gives rise to the actions that may cause a party to incur costs. The fact that Sprint is in a contractual chain between CenturyTel and the end user should not result in Sprint being liable for actions of the end user.

Issue 4: What Direct Interconnection Terms should be included in the Interconnection Agreement?

Related Agreement Provisions: Article IV Sections 2.2.2, 2.2.3, 2.2.4, 2.3.2.1, 2.3.2.4, 3.3.2.1, 3.3.2.2, and 3.4.2.1.1

Sprint does not object to the direct interconnection language proposed by the Arbitrator for the interconnection agreement, and agrees that it balances the right to establish a point of interconnection, for direct interconnection, on CenturyTel's network with the obligation to select a technically feasible point or points as necessary. However, because the Arbitrator indicated there was some confusion over Sprint's position, Sprint believes it is necessary to clarify its position. First, in footnote 50 on page 10, the Arbitrator states:

² Under the Wiretap Act and Electronic Communications Privacy Act (ECPA), 18 U.S.C. §2510 Sprint would be precluded from monitoring the content transmitted by end users. In addition, the Communications Decency Act, 47 U.S.C. § 230, immunizes carriers from claims made based on content transmitted by end users making indemnification unnecessary.

³ Sprint Reply Brief at 5.

There is some confusion over whether Sprint believes that its POI can be outside of CenturyTel's network. Sprint's position on this is unclear. To clarify, for direct interconnection, Sprint's POI must be on CenturyTel's network, as provided by section 251(c)(2)(B).

Although CenturyTel attempted to create confusion regarding Sprint's position regarding the location of the point of interconnection, Sprint has never opposed establishing the point of interconnection for direct arrangements within CenturyTel's network.⁴ Accordingly, the Arbitrator correctly drafted language that requires, for direct interconnection, that Sprint establish a minimum of one point of interconnection per LATA at any technically feasible point within CenturyTel's network.

The Arbitrator also stated that:

I note that this language is not intended to preclude multiple POIs if required by technical and operational constraints, and is not intended to require CenturyTel to provide interconnection service to Sprint that is superior to the service it provides to itself or other carriers.

Sprint agrees that the language should not, and does not preclude multiple POIs. Sprint should be free to establish additional POIs (although not required) if the requested points of interconnection are technically feasible. The Arbitrator appropriately drafted language that permits Sprint to select the point of

⁴ See Sprint/1, Burt/20, 22; Sprint's Initial Brief at 10 and 13 ("Under the FCC rules and orders interpreting those rules, competitive local exchange carriers may elect to interconnect at any technically feasible point within the ILEC's network."); Sprint's Reply Brief at 7.

interconnection based on whether the selected POI is technically feasible.⁵ For the reasons set forth above Sprint requests the Commission adopt the language set forth in the Arbitrator's Decision for Issue 4.

Issue 5: Should Sprint and CenturyTel share the cost of the interconnection facility between their networks based on their respective percentages of originated traffic?

Related Agreement Provisions: Article II Section 2.59; Article IV Sections 2.2.2, 3.2.2, 3.2.5.1, 3.2.5.2, 3.2.5.3, 3.2.5.5, and Article VII I.C.

For Issue 5, the Arbitrator stated:

I find that Sprint is correct that the parties should share the costs of interconnection facilities proportionally based on usage. I disagree, however, that CenturyTel is responsible for a proportional share of interconnection facilities beyond its exchange boundary. CenturyTel should only be responsible for the proportional share for interconnection facilities between CenturyTel's network and its exchange boundary. Sprint must pay 100 percent of the cost of interconnection facilities from CenturyTel's exchange boundary to Sprint's point of presence or switch.

Although the Arbitrator correctly found that the parties should share the costs of the interconnection facilities proportionally based on usage, the Arbitrator then limited CenturyTel's obligation. Sprint disagrees that CenturyTel's obligations to compensate Sprint should be limited to facilities within CenturyTel's network and exchange

⁵ The Arbitrator's selected words "technical and operational constraints" are consistent with the First Report and Order as cited in Sprint's testimony and Briefs. In contrast the FCC has explicitly stated that the term technical feasibility does not include consideration of economic and cost concerns. See Sprint/4, Burt/13. Further, consistent with the determination that Sprint may select a POI at any technically feasible point (or points), CenturyTel's contention that Sprint's position requires CenturyTel to provide a superior interconnection should be rejected. ("The 8th Circuit stated "[a]lthough we strike down the Commission's rules requiring incumbent LECs to alter substantially their networks in order to provide superior quality interconnection and unbundled access, we endorse the Commission's statement that "the obligations imposed by sections 251(c)(2) and 251(c)(3) include modifications to incumbent LEC facilities to the extent necessary to accommodate interconnection or access to network elements.")

boundary. Such a conclusion is contrary to what the Act and rules require and inconsistent with compensation obligations under the Act.⁶

As stated in Sprint's Brief and Reply Brief under the "Calling Party's Network Pays" principle the originating carrier is financially responsible for delivering that call to the terminating carrier's network. The obligation to deliver traffic to the other party and to pay the costs of delivering that traffic in an indirect situation was not a disputed issue. Where the carriers are indirectly interconnected, each party will pay the transit charges to a third party tandem provider to deliver its originated traffic to the other party. The network components (tandem switching and related transport) used for such interconnection (essentially in place of the interconnection facility) is outside both parties' networks. CenturyTel will pay the costs (transit charges) outside its network for delivery of its traffic to Sprint's network. The costs in a direct interconnection should not be treated any differently.

The Arbitrator's decision should be modified to require CenturyTel to compensate Sprint for the costs of the direct interconnection facilities used to deliver CenturyTel's originated traffic to Sprint's network, i.e. to a designated Sprint point of presence in the LATA. The Arbitrator adopted Sprint's language except Article II, section 2.59 and Article IV, section 2.2.2. Article IV, section 2.2.2 was addressed in the Arbitrator's decision on Issue 4 and as stated above, the Arbitrator's language adopted for that issue should be affirmed. Sprint requests the Commission adopt Sprint's language for Article II, section 2.59 and otherwise adopt the agreement provisions for Issue 5 as set forth in the Arbitrator's Decision.

⁶ See Sprint's Brief at 16-17 and Sprint's Reply Brief at 15.

Issue 8: Should Sprint be required to reimburse CenturyTel when CenturyTel is acting as a transit provider if CenturyTel compensates third parties for the termination of Sprint-originated traffic?

Related Agreement Provisions: Article VI Sections 3.3.1.3 and 4.6.4.2

For Issue 8 the Arbitrator's Decision states:

Rather than choosing to be "an intermediate broker," CenturyTel argues that it is trying to avoid being "in the middle of the intercarrier compensation dispute that would arise from Sprint's failure [to pay the third-party carrier]." ⁸⁷ I agree with CenturyTel that it is reasonable for the ICA to include provisions that would protect CenturyTel from any adverse economic consequences if Sprint fails to compensate a terminating carrier for traffic that Sprint originates and CenturyTel transits.

Although it appears that the Arbitrator was attempting to avoid placing CenturyTel in the middle, the language proposed by CenturyTel and adopted by the Arbitrator provides exactly the opposite effect. If CenturyTel compensates a third party it may result in a dispute that not only involves the originating and terminating party but also CenturyTel. As stated in Sprint's Reply Brief "Payment of reciprocal compensation for traffic termination is between the carrier that originates the traffic and the terminating carrier. CenturyTel as the transit provider has no obligation to pay terminating compensation to the terminating carrier and the terminating carrier has no right to demand compensation from the transit provider for another carrier's originating traffic."⁷

Including CenturyTel's proposed language creates an opportunity, even an invitation, for carriers that may not otherwise be entitled to compensation from Sprint to seek compensation from CenturyTel and, thus through the indemnification provision, cause Sprint to pay compensation it is otherwise not

⁷ Sprint's Reply Brief at 26-27.

required to pay. As pointed out in Sprint's Initial Brief "CenturyTel, as a transit provider, would have no incentive to challenge the rates and accuracy of the bills for such traffic termination since its intent is to seek reimbursement from Sprint for such charges."⁸ Moreover, the indemnification terms would likely "result in a compensation arrangement that is not "reciprocal" -- CenturyTel would collect compensation for Sprint's originated traffic from Sprint and would not collect compensation from the originating third party for traffic that Sprint terminates."⁹ For the reasons stated herein and in Sprint's Initial and Reply Briefs, CenturyTel's proposed language requiring indemnification to a third party for transit traffic should be rejected.

Issue 13: What are the appropriate rates for transit service?

Related Agreement Provisions: Article VII Section I.B. and I.C

The Arbitrator stated that "the FCC's statement in the *Verizon Arbitration Order* (adopted in 2002) seems to contradict the conclusion that TELRIC is the appropriate rate for transit services. I therefore find that CenturyTel's proposed language for Article VII, section I.B and I.C should be adopted." The statement of the Chief of the Common Carrier Bureau acting on delegated authority was merely stating that the "the Commission has not had occasion to determine whether incumbent LECs have a duty to provide transit service under this provision of the statute, nor do we find clear Commission precedent or rules declaring such a duty." In cases where the FCC has not in

⁸ Sprint's Initial Brief at 29.

⁹ *Id.* at 30.

made a determination this Commission may determine, as many other state commissions have, that CenturyTel is obligated to provide transit service at TELRIC.¹⁰

As acknowledged by the 8th Circuit Court of Appeals:

[A]ll else being equal, if a provision of the Act is vague we are inclined to interpret the provision in a manner that promotes competition. It is undisputed that Congress passed the Act with the intention of eliminating monopolies and fostering competition. . . . Such guidance suggests that we should be wary of interpretations that simultaneously expand costs for competitors (such as a requirement for direct connections) and limit burdens on incumbents (such as a limitation of dialing parity to local exchange boundaries). If a cost is imposed on a competitor, it becomes a barrier to entry and rewards the company who previously benefitted from monopoly protection. Because Congress passed the Act with a clear intent to foster competition, we are more inclined to interpret a vague provision in a manner that reduces barriers to entry.¹¹

The Arbitrator stated that the “the precedent . . . does not provide a clear resolution to this issue.” Consistent with the 8th Circuit’s determination requiring that transit be provided at TELRIC rates reduces barriers to entry and fosters competition. Sprint requests the Commission find that transit service should be provided at TELRIC rates.

Issue 14: What are the appropriate rates for services provided in the Interconnection Agreement, including rates applicable to the processing of orders and number portability?

Related Agreement Provisions: Article VII Section II

Sprint agrees with the Arbitrator’s Decision that the rates CenturyTel’s charges Sprint should be based on a TELRIC cost study and that CenturyTel should be required to file a cost-study within 60 days of the date of the decision. However, Sprint seeks modification on two points.

¹⁰ Sprint Reply Brief at 32.

¹¹ *WWC License, L.L.C. v. Pub. Serv. Comm’n*, 459 F.3d 880 (8th Cir. 2006).

First, the Arbitrator established the CenturyTel proposed rates as the interim rates subject to true-up after submission of a cost study and review of the rates. Sprint proposed that the rates should be set at \$0 subject to true-up upon an approved cost study. CenturyTel did not meet its burden for the non-recurring charges that it submitted.¹² CenturyTel did not file an adequate cost study for its proposed rates nor did it demonstrate that its rates do not exceed forward looking economic costs. The rates proposed by CenturyTel should be set at \$0 subject to true-up after CenturyTel submits appropriate forward-looking cost studies that are evaluated by Sprint and approved by the Commission.

Second, the Arbitrator, addressing the Account Establishment Charge, states “CenturyTel argues that the CLEC account establishment charge is necessary to cover the cost of implementing the terms of the ICA, including reviewing the agreement, introductory calls, setting up accounts, and establishing bill codes. CenturyTel argues that it would not incur these costs unless Sprint was ordering services under the ICA, and therefore Sprint should be responsible for the costs as the “cost-causer.” I agree with CenturyTel and find that a CLEC account establishment charge is appropriate.” As stated in Sprint’s Initial Brief “Sprint does not agree it should be charged another account establishment charge since Sprint has previously ordered service from CenturyTel.¹³ That being said, if the Commission were to authorize such a charge it should be reciprocal since Sprint will also be “taking orders” from CenturyTel.¹⁴ Since the charge would be reciprocal with each party billing the other at the same rate, the Account

¹² 47 CFR Section 51.505(e)(2).

¹³ Sprint/1, Burt/54-55.

¹⁴ Sprint/1, Burt/55.

Establishment charge should be deleted.” Thus Sprint requests the Commission either establish a reciprocal account establishment charge or delete the charge in its entirety.

Sprint requests that the Arbitrator’s Decision for Issue 14 be modified as set forth above.

Issue 16: Do terms need to be included when Sprint utilizes indirect interconnection, and CenturyTel is not provided detailed records, nor is CenturyTel able to identify and bill calls based upon proper jurisdiction?

Related provisions: Sections article IV, Sections 3.3.1.4, 4.5.2.2

The Arbitrator determined that “CenturyTel is a small company that does not currently have the ability to identify traffic using SS7 signaling alone. Sprint’s proposal increases the risk of traffic that is not identifiable and therefore not billable. Accordingly, I adopt CenturyTel’s proposed language for Article IV, sections 3.3.1.4 and 4.5.2.2, and Article VII, Section I.C.” However, the FCC recognized that “to implement transport and termination pursuant to section 251(b)(5), carriers, including small incumbent LECs and small entities, may be required to measure the exchange of traffic, but we believe that the cost of such measurement to these carriers is likely to be substantially outweighed by the benefits of these arrangements.”¹⁵

Furthermore, agreed to provisions in the agreement already obligates Sprint to provide all SS7 signaling information, other billing information where available and will conform to industry standard billing formats.¹⁶ Sprint already provides CPN in its

¹⁵ *In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, CC Docket No. 96-98, FCC 96-325, August 8, 1996, ¶1045.

¹⁶ Interconnection Agreement, Article IV, Section 3.4.4.

signaling.¹⁷ This is adequate information for CenturyTel to bill for any terminating traffic it receives over an indirect interconnection.

Sprint requests the Commission reject the Arbitrator's Decision adopting CenturyTel's language.

III. CONCLUSION

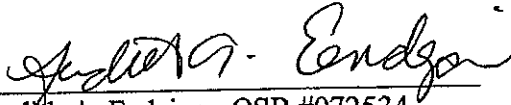
In recognition of the foregoing, Sprint respectfully requests that the Commission:

- a) issue an Order adopting the Arbitrator's Decision modified as requested herein,
- b) direct the Parties to submit a conforming interconnection agreement reflecting the Commission's resolution of the unresolved issues within 30 days of the date of the Commission's Order;
- c) require CenturyTel to submit a forward looking cost study within 30 days of the Commission's Order;
- d) retain jurisdiction of this arbitration and the Parties hereto as necessary to enforce the arbitrated agreement; and
- d) grant such other and further relief as the Commission deems just and proper.

¹⁷ Sprint/4, Burt/61.

Respectfully submitted this 15th day of September, 2008.

Respectfully submitted,



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**BEFORE THE
PUBLIC UTILITY COMMISSION OF OREGON**

In the Matter of	}	Docket No. ARB830
SPRINT COMMUNICATIONS COMPANY L.P.	}	CERTIFICATE OF SERVICE
Petition For Arbitration of an Interconnection Agreement with CENTURYTEL OF OREGON, INC.	}	

I certify that I have this 15th day of September 2008 sent the attached Exceptions of Sprint Communications Company L.P. by electronic mail and Federal Express to the following:

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I further certify that I have this day sent the attached Exceptions of Sprint Communications Company L.P. by mailing a copy properly addressed with first-class postage prepaid and by electronic mail pursuant to OAR 860-013-0070 to the following parties or attorneys of parties:

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CERTIFICATE OF SERVICE Docket No. ARB830

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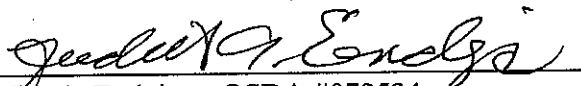
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Dated at Seattle, Washington this 15th day of September, 2008

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