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January 9, 2009

Sent Via Electronic Mail and Federal Express Mail

Filing Center
Public Utility Commission of Oregon
550 Capital Street NE #215
Salem OR 97308-2148

Re: ARB 830 - Sprint Communications Company L.P.'s Brief Regarding Relevance and Significance of Interconnection Agreements

Dear Sir/Madam:

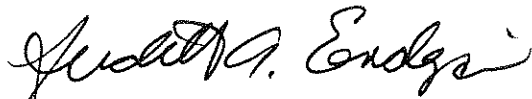
Enclosed please find an original and five copies of the following documents being filed on behalf of Sprint Communications L.P.:

- 1) Sprint Communications Company L.P.'s Brief Regarding Relevance and Significance of Interconnection Agreements; and
- 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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SEATTLE ~ PORTLAND ~ TACOMA

BEFORE THE PUBLIC UTILITY COMMISSION OF OREGON

**IN THE MATTER OF SPRINT)
COMMUNICATIONS COMPANY L.P.)
PETITION FOR ARBITRATION OF) ARB 830
AN INTERCONNECTION AGREEMENT)
WITH CENTURYTEL OF OREGON, INC.)**

**SPRINT COMMUNICATIONS COMPANY L.P.'S
BRIEF REGARDING RELEVANCE AND SIGNIFICANCE OF
INTERCONNECTION AGREEMENTS**

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Sprint Communications Company L.P.'s
Brief Regarding Relevance And Significance Of Interconnection Agreements

Sprint Communications Company L. P. ("Sprint"), respectfully submits its Brief Regarding Relevance And Significance Of Interconnection Agreements that are the subject of the granted request for official notice.

In a telephone conference on December 11, 2008, the Administrative Law Judge ("ALJ") notified the parties that the Oregon Public Utility Commission ("Commission") is reconsidering its resolution of Issues 4, 5, and 7 in Order No. 08-486. In accordance with ORS 756.568, the ALJ asked the parties whether they would like to present additional evidence or argument related to these issues. In a telephone conference held on December 17, 2008, Sprint requested that the Commission take official notice of four interconnection agreements ("ICA" or "ICAs") that have been filed with the Commission in the following dockets: ARB 585, ARB 463, ARB 232, and ARB 209. OAR 860-014-0050(1)(e) allows the ALJ and the Commission to take official notice of "documents and records in the files of the Commission," which clearly include these interconnection agreements. As noted in the Conference Report issued December 17, 2008 granting the request for official notice, CenturyTel did not object to Sprint's request but did request the opportunity to respond. In the Conference Report, Judge Wallace established a procedural schedule for filing briefs to address the relevance and significance of the four interconnection agreements.

Sprint requested the Commission take official notice of these interconnection agreements when reconsidering its resolution of Issues 4, 5 and 7. Reconsideration of those issues seems necessary because of the dispute between the parties over a provision

in the final ICA required to be filed pursuant to Order No. 08-486. CenturyTel contends that it should not have to pay for facilities to third party providers and transiting fees in cases of indirect interconnection beyond its serving area boundary because of the Commission's resolution of Issues 4 and 5. CenturyTel had, in fact, agreed to do so during the negotiation process when it is the originating carrier. The issue of indirect interconnection cost responsibility was never disputed during the arbitration herein so it could not have been encompassed in the resolution of Issue 7. That issue dealt only with whether CenturyTel could impose a threshold limit for indirect interconnection, which was resolved against CenturyTel by the Arbitrator in the Proposed Decision. The Arbitrator did not rule on the question of cost responsibility apportionment as she did with respect to Issues 4 and 5 regarding direct interconnection. In fact, the Arbitrator expressly stated in footnote 49 that her resolution of those issues was limited to direct interconnection.¹ In Order No. 08-486, however, the Commission issued somewhat ambiguous language in its resolution of Issue 7 that CenturyTel now claims allows it to avoid its agreed-upon responsibilities with respect to indirect interconnection. The four ICAs that the Commission should consider here demonstrate that CenturyTel has agreed to bear the indirect interconnection costs at issue for other carriers in other ICAs. They also refute CenturyTel's claim that Sprint is requesting a superior form of interconnection.

In ruling on Issue 4, the Arbitrator stated: "I note that this language is not intended to preclude multiple POIs if required by technical and operational constraints,

¹ In the Matter of Sprint Communications Company L.P. Petition for Arbitration of an Interconnection Agreement with CenturyTel or Oregon, Inc, Arbitrator's Decision, Sep 2, 2008, at 10, fn. 49 ("I also find that, given my resolution of Issue 7, these provisions should *apply to direct interconnection only* and not both direct and indirect interconnection as CenturyTel's proposes.") (emphasis added)

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.”² Therefore, the fact that CenturyTel provides “other carriers” with the same type of interconnection requested by Sprint disproves any CenturyTel claim regarding “superior service.” CenturyTel’s testimony and briefing support this conclusion.³

The ICAs in ARB 585 - (CenturyTel of Eastern Oregon, Inc., CenturyTel of Oregon, Inc. and Verizon Wireless LLC, d/b/a Verizon Wireless (“VZW”) (effective date of June 1, 2004)) and ARB 463 – (CenturyTel of Eastern Oregon, Inc., CenturyTel of Oregon, Inc. and RCC Holdings, Inc. (“RCC”) (effective date of February 1, 2002)) contain similar language that obligates CenturyTel to pay third party tandem costs when it indirectly interconnects with another carrier. Neither ICA contains any provision requiring direct interconnection when a certain level of traffic is achieved⁴, as CenturyTel requested in this arbitration.

² *Id.*

³ Watkins 12/CenturyTel 34 (As I have discussed earlier...the conclusion is that incumbent LECs are not required to provision superior arrangements at the request of *competing carriers*.) (emphasis added); CenturyTel Reply Brief at 13 (“...the interconnection cannot be a superior form of interconnection (i.e no more than “equal to” that provided by CenturyTel to itself, an affiliate, or another carrier) (47 U.S.C. § 251 (c)(2)(C))”); CenturyTel 15/Stephen E. Watkins 8 (“...the Act only requires the ILEC to establish the POI with a requesting competitive carrier at a technically feasible point *within* the ILEC’s network and, *in addition*, that such interconnection be “no more than equal” to what the ILEC does for itself and *other carriers*.” (italics in original) (bold emphasis added); Century Tel 15/Stephen E. Watkins 9 (“...another criterion is that the interconnection requirements are confined to the “no more than equal” to provision based on the interconnection arrangements that the ILEC provides to itself or with *other carriers*.”) (emphasis added); CenturyTel Opening Brief at 24 (“Based on this record, no doubt can exist that Sprint is seeking to obtain forms of interconnection that would be superior to that which CenturyTel provides to itself or *other carriers*.”) (emphasis added)

⁴ See In the Matter of Verizon Wireless, LLC and CenturyTel of Eastern Oregon, Inc. and CenturyTel of Oregon, Inc. Negotiated Interconnection Agreement, Submitted for Commission Approval Pursuant to Section 252(e) of the Telecommunications Act of 1996, Interconnection Agreement, ARB 585, July 9, 2004, [hereinafter “VZW agreement”] and In the Matter of RCC Holdings, Inc. and CenturyTel of Oregon, Inc. Negotiated Interconnection Agreement, Submitted Pursuant to Section 252(e) of the Telecommunications Act of 1996, Interconnection Agreement, ARB 463, Dec 11, 2002, [hereinafter “RCC agreement”]

The ICAs between VZW and RCC are substantially similar and they both allow VZW or RCC to select indirect interconnection using transit service provided by a third party:

Section 3.3 - The Parties may exchange Local Traffic through an indirect interconnection via a common third party access tandem provider. The originating Party will be responsible for payment of any transit charges (including Tandem Switching) assessed by the third party carrier for use of the third party carrier's tandem switch and facilities for the exchange of Local Traffic. The Parties agree that if and at such time as the Commission enters a final, binding, and non-appealable order ("Final Commission Order") determining that payment for transiting charges for the exchange of Local Traffic is to be made by a Party different than the Party on whose network the call originates, the Parties shall compensate each other in accordance with the Final Commission Order retroactive to the effective date of the Final Commission Order.⁵

Section 3.3. - The Parties may transit Local Traffic through a common third party access tandem provider. The originating Party will be responsible for payment of any transit charges (including tandem switching) assessed by the third party carrier for use of the third party carrier's tandem switch and facilities for the exchange of Local Traffic. The Parties agree that at such time as the Commission enters a final, binding and non-appealable order ("Final Commission Order") determining that payment for transiting charges for the exchange of Local Traffic is to be made by a Party different than the Party on whose network the call originates, the Parties shall compensate each other in accordance with the Final Commission Order retroactive to the effective date of the Final Commission Order.⁶

The ICAs also state that VZW or RCC "may request a point of direct interconnection in the CenturyTel service areas, or may indirectly interconnect with CenturyTel's network via a third party Tandem Switch."⁷ Further, indirect interconnection is not subject to a specific threshold; rather, Section 3.4 of each agreement provides that:

In the case where the Parties exchange Local Traffic indirectly through a common third party tandem, if traffic volumes grow to a point where it necessitates a direct

⁵ VZW agreement, at 5-6.

⁶ RCC agreement at 5.

⁷ VZW agreement at 2, RCC agreement at 2.

Type 2 Wireless Interconnection between CenturyTel and VZW or if such a direct Type 2 Wireless Interconnection is otherwise required, then CenturyTel and VZW shall establish a POI within CenturyTel's local exchange serving area.⁸

If traffic volumes grow to a point where it necessitates a direct Type 2 Wireless Interconnection between CenturyTel and RCC or if such a direct Type 2 Wireless Interconnection is otherwise required, then CenturyTel and RCC shall establish a POI within CenturyTel's local exchange serving area.⁹

These ICAs **do not** include any terms similar to those CenturyTel unsuccessfully sought to impose on Sprint that require additional POIs based on a DS1 volume. Nor do they limit indirect cost responsibilities to their service area boundary.

Two other ICAs (**ARB 232** – CenturyTel and Sprint Spectrum LP (approved July 18, 2000) and **ARB 209** – CenturyTel and Nextel West Corp. (dated early 2000)) demonstrate that CenturyTel has not sought the type of interconnection limitations it requested here, and has been happy to live with very broad interconnection terms.¹⁰

The ICAs in ARB 232 and 209 simply state:

“Whereas, SPCS [Nextel] provides a point of interconnection in the CenturyTel service areas, or interconnects with CenturyTel’s network via a third party tandem switch.”¹¹

“Interconnection arrangements to be determined by SPCS [Nextel] and CenturyTel.”¹²

⁸ VZW agreement at 6

⁹ RCC agreement at 5

¹⁰ See In the Matter of the Interconnection and Reciprocal Compensation Agreement between Sprint Spectrum LP and CenturyTel of Oregon, Inc. and CenturyTel of Eastern Oregon, Inc., submitted for Commission Approval pursuant to the telco act of 1996, Arb 232 (approved July 18, 2000) [hereinafter “Sprint Spectrum Agreement”] and In the Matter of the Negotiated Interconnection and Reciprocal Compensation Agreement between Nextel West Corp. and CenturyTel submitted for Commission Approval pursuant to the Telecommunications Act of 1996, ARB 209 (approved May 4, 2000) [hereinafter “Nextel Agreement”].

¹¹ Sprint Spectrum Agreement at 3 and Nextel Agreement at 3.

¹² Sprint Spectrum Agreement at 20 and Nextel Agreement at 20.

Certainly the Sprint ICA should not contain limitations that other carriers did not have in their ICAs or CenturyTel would be providing superior service to them.

No doubt CenturyTel will argue that these four ICAs are not relevant because they are with wireless entities, rather than a CLEC like Sprint. The law, however, does not distinguish interconnection provided to a wireless carrier from that provided to a wireline carrier. Rather 47 CFR 51.305 states "An incumbent LEC shall provide, for the facilities and equipment of *any requesting telecommunications carrier*, interconnection with the incumbent LEC's network..." (emphasis added) Wireless providers are telecommunications carriers under the FCC rules.¹³ Interconnection must be offered to all competing carriers on a nondiscriminatory basis, including wireless providers.¹⁴

Additionally, the FCC has said that ILECs cannot discriminate between wireless and non-wireless carriers:

On the other hand, price differences based not on cost differences but on such considerations as competitive relationships, the technology used by the requesting carrier, the nature of the service the requesting carrier provides, or other factors not reflecting costs, the requirements of the Act, or applicable rules, would be discriminatory and not permissible under the new standard. Such examples include the imposition of different rates, terms and conditions based on the fact that the competing provider does or does not compete with the incumbent LEC, or offers service via wireless rather than wireline facilities. We find it would be

¹³ "CMRS providers meet the statutory definition of "telecommunications carriers." . . . Incumbent LECs must accordingly make interconnection available to these CMRS providers in conformity with the terms of sections 251(c) and 252, including offering rates, terms, and conditions that are just, reasonable and nondiscriminatory." *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, Interconnection between Local Exchange Carriers and Commercial Mobile Radio Service Providers*, CC Docket Nos. 96-98, 95-185, First Report and Order, 11 FCC Rcd, 15499 at ¶ 1012 (1996) ("*Local Competition Order*" or "*First Report and Order*").

¹⁴ *Id.*; 47 C.F.R. 51.305 (a) An incumbent LEC shall provide, for the facilities and equipment of any requesting telecommunications carrier, interconnection with the incumbent LEC's network: . . . (4) On terms and conditions that are just, reasonable, and nondiscriminatory in accordance with the terms and conditions of any agreement, the requirements of sections 251 and 252 of the Act, and the Commission's rules including, but not limited to, offering such terms and conditions equally to all requesting telecommunications carriers, and offering such terms and conditions that are no less favorable than the terms and conditions upon which the incumbent LEC provides such interconnection to itself.

unlawfully discriminatory, in violation of sections 251 and 252, if an incumbent LEC were to charge one class of interconnecting carriers, such as CMRS providers, higher rates for interconnection than it charges other carriers, unless the different rates could be justified by differences in the costs incurred by the incumbent LEC.¹⁵

It is informative to look at the FCC's discussion of 252(i) regarding wireless and wireline carriers in the First Report and Order. The FCC stated:

In our view, the class of customers, or the type of service provided by a carrier, does not necessarily bear a direct relationship with the costs incurred by the LEC to interconnect with that carrier *or on whether interconnection is technically feasible*. Accordingly, we conclude that an interpretation of section 252(i) that attempts to limit availability by class of customer served or type of service provided would be at odds with the language and structure of the statute, which contains no such limitation. [Emphasis added].¹⁶

Additionally, 47 C.F.R. Section 51.809(a) states that “[a]n incumbent LEC may not limit the availability of any agreement only to those requesting carriers serving a comparable class of subscribers or providing the same service (i.e., local, access, or interexchange) as the original party to the agreement.” [Emphasis added]. These statements further support that the type of carrier, wireline or CMRS, is not relevant in determining the terms for interconnection.

The only distinction the FCC made between wireless carriers and wireline carriers is when it created separate definitions for wireless and wireline for reciprocal compensation purposes under Section 251(b)(5) traffic.¹⁷ Clearly, if the FCC intended

¹⁵ First Report and Order at ¶ 861.

¹⁶ First Report and Order at ¶ 1318.

¹⁷ 47 C.F.R. § 51.701 Scope of transport and termination pricing rules.

(a) The provisions of this subpart apply to reciprocal compensation for transport and termination of telecommunications traffic between LECs and other telecommunications carriers.

(b) *Telecommunications traffic*. For purposes of this subpart, telecommunications traffic means:

(1) Telecommunications traffic exchanged between a LEC and a telecommunications carrier other than a CMRS provider, except for telecommunications traffic that is interstate or intrastate exchange access,

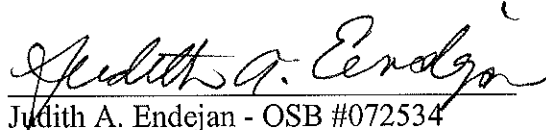
the interconnection rules (e.g. 47 C.F.R. 51.305) to be applied differently to wireless and wireline carriers, the FCC knew how to make such a distinction. Further, the lack of any such differentiation in the rules and orders clearly demonstrates that wireline and wireless carriers have the same interconnection rights.

Finally, CenturyTel might contend that the agreements are “old” and therefore not relevant. The ICAs span over 4 years (from early 2000 to June of 2004). This contention fails because the ICAs remain in effect and continue to govern the relationships between CenturyTel and Sprint Spectrum, Nextel West, VZW and RCC. (It appears that the VZW and RCC ICAs have not been replaced or terminated and are also still effective agreements.) In sum, the age of the four ICAs is meaningless when the issue is CenturyTel’s treatment of other interconnecting carriers. These ICAs show that Sprint is not asking for “superior” treatment and that CenturyTel has accepted cost responsibility for its originating traffic under indirect interconnection.

information access, or exchange services for such access (*see* FCC 01–131, paragraphs 34, 36, 39, 42–43);
or
(2) Telecommunications traffic exchanged between a LEC and a CMRS provider that, at the beginning of the call, originates and terminates within the same Major Trading Area, as defined in §24.202(a) of this chapter.

Respectfully submitted this 9th day of January, 2009.

Respectfully submitted,



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**BEFORE THE
PUBLIC UTILITY COMMISSION OF OREGON**

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

I certify that I have this 9th day of January, 2009 sent the attached Sprint Communications Company L.P.'s Brief Regarding Relevance and Significance of Interconnection Agreements by electronic mail and Federal Express to the following:

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I further certify that I have this day sent the above-referenced documents 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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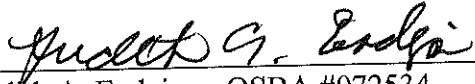
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Dated at Seattle, Washington this 9th day of January, 2009.

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