JUDITH A. ENDEJAN
206.340.9694
jendejan@grahamdunn.com

July 24, 2008

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 - Reply Brief of Sprint Communications Company L.P.

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) Reply Brief.
2) Certificate of Service.

The Reply Brief is being filed pursuant to a July 23, 2008 ruling of ALJ Sarah Wallace granting Sprint's request for a one-day extension. No counsel for Sprint, or other Sprint employee, has reviewed the Reply Brief of CenturyTel, filed on July 23, 2008 prior to the time of filing the enclosed Sprint Reply Brief.

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

Very truly yours,

GRAHAM & DUNN PC

Judith A. Endejan

JAE/dtd
Encs.
M38624-1071688

Pier 70
2801 Alaskan Way ~ Suite 300
Seattle WA 98121-1128
Tel 206.624.8300
Fax 206.340.9599
www.grahamdunn.com
SEATTLE ~ PORTLAND

BEFORE THE PUBLIC UTILITY COMMISSION OF OREGON

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

REPLY BRIEF OF SPRINT COMMUNICATIONS COMPANY L.P.

Judith A. Endejan - OSB #072534
Graham & Dunn PC
2801 Alaskan Way ~ Suite 300
Seattle WA 98121-1128
Tel: 206-624-8300
Fax: 206-340-9599
Email: jendejan@grahamdunn.com

Kristin L. Jacobson
Sprint Nextel
San Francisco, CA 94105
Tel: 707-816-7583
Email: kristin.l.jacobson@sprint.com

Janette W. Luehring
6450 Sprint Parkway
Mailstop: KSOPHN0304 - 3B653
Overland Park, Kansas 66251
Tel: 913-315-8525
Fax: 913-523-9631
Email: janette.w.luehring@sprint.com

Reply Brief of Sprint Communications Company L.P.

Sprint Communications Company L. P. ("Sprint"), by and through its attorneys, pursuant to Section 252(b) of the Federal Communications Act of 1996[1] (the "Act"), respectfully submits, its Reply Brief in the above-captioned proceeding and states as follows:

I. ARGUMENTS

On February 28, 2008, Sprint Communications Company L. P. ("Sprint"), filed the above-captioned Petition for Arbitration ("Petition"), seeking to have the Commission establish certain terms and conditions of a proposed Interconnection Agreement Between Sprint and CenturyTel of Oregon, Inc. ("CenturyTel" or "Respondent") for the State of Oregon (hereafter, Sprint and CenturyTel are collectively referred to as the "Parties"). On July 16, 2008 the Parties filed their Opening Briefs in this matter, in response to CenturyTel's Opening Brief Sprint states the following:

Issue 1: Should disputes under the Interconnection Agreement be submitted to the Commission or to commercial arbitration?

Related Agreement Provisions: Article III Sections 20.3, 20.4, and 20.5

Sprint proposed that disputes under the Interconnection Agreement be submitted to the Commission for resolution.[2] CenturyTel continues to submit that commercial arbitration should be *required* in certain circumstances. As Sprint explained in testimony and its Opening Brief, the Act provides for a process for addressing disputes. Under Section 252(b) of the Act, the authority to arbitrate Interconnection Agreement terms and

[1] 47 USC § 252(b)(3).

[2] Petition for Arbitration of Sprint Communications Company, L.P., p. 10-11, Sprint/1, Burt/13.

rates is delegated to the state commission.[3] Further, federal courts and the Federal Communications Commissions ("FCC") have clarified that this delegated authority includes the ability to resolve disputes that arise under Sections 251/252 Interconnection Agreements.[4] Given the Commission's expertise in addressing interconnection related issues, it is appropriate that any disputes emanating from the Interconnection Agreement be brought before and resolved by the Commission. CenturyTel's requested language attempts to eliminate Sprint's rights under the Act to seek review of a Commission decision that it does not have jurisdiction or its right to take a dispute to the FCC if the Commission refuses to act.

Under Section 252(e)(5), if the Commission declines jurisdiction, a party may seek resolution before the FCC.[5] Sprint is willing to include a provision that provides for

---

[3] 47 USC Section 252 (b). ("Agreements arrived at through compulsory arbitration. (1) Arbitration. During the period from the 135th to the 160th day (inclusive) after the date on which an incumbent local exchange carrier receives a request for negotiation under this section, the carrier or any other party to the negotiation may petition a State commission to arbitrate any open issues.").

[4] *See, Mich. Bell Tel. Co. v. MCIMetro Access Transmission Serv.*, 323 F3d 348, 355 (6th Cir 2003); *Illinois Bell Tel. Co. v. WorldCom Technologies, Inc.*, 179 F3d 566, 573 (7th Cir. 1999) (amended opinion at 1999 US App LEXIS 20828; 16 Comm Reg 232); *Southwestern Bell Tel. Co. v. PUC*, 208 F3d 475, 479-80 (5th Cir 2000); *Starpower Communications LLC Petition for Preemption of Jurisdiction of the Va. State Corp. Comm'n. Pursuant to Section 252(e)(5) of the Telecommunications Act of 1996*, 15 FCCR 11277, 11279-11280 (2000); and *Core Communications, Inc. v. Verizon Penn, Inc.*, 423 F. Supp 2d 493, 499 (E.D. Pa. 2006).

[5] *See Starpower* at ¶ 7 ("Because the decisions explicitly declined to take any action with respect to Starpower's petitions, however, we are compelled to conclude that the Virginia Commission "'failed to act to carry out its responsibility"' under section 252. Accordingly, the Act requires us in these unique circumstances to assume the jurisdiction of the Virginia Commission and resolve the outstanding interconnection disputes."). *See also Petition of WorldCom, Inc. for Preemption of Jurisdiction of the Virginia State Corporation Commission Pursuant to Section 252(e)(5) of the Telecommunications Act and for Arbitration of Interconnection Disputes with Verizon-Virginia, Inc.*, CC Docket No. 00-218, Memorandum Opinion and Order, 16 FCC Rcd 6224 (2001) ("Section 252(e)(5) directs this Commission to preempt the jurisdiction of a state commission in any proceeding or matter in which a state commission "fails to act to carry out its responsibility under [section 252].'").

commercial arbitration only if the parties agree to that process for a specific dispute at the time that such dispute arises.[6]

Both parties seem willing to agree to commercial arbitration in certain circumstances,[7] and the positions only vary in how broadly the ability to use commercial arbitration should be defined in the Interconnection Agreement. Absent agreement, a party should not be forced into terms requiring commercial arbitration. Such provisions should only be included if agreed to by the parties.[8] CenturyTel points to the order of the Michigan decision in the parties arbitration proceeding to support its position.[9] However, this Commission has specifically provided a process for enforcement of interconnection agreements.[10] Furthermore, under Oregon law CenturyTel is not entitled to mandatory arbitration without Sprint's consent and a party cannot be compelled to undergo mandatory arbitration.[11]

Sprint's position should be adopted, and the Interconnection Agreement language proposed by Sprint should be accepted and reflected in the Interconnection Agreement.

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

Related Agreement Provisions: Article III Sections 30.1 and 30.3

Sprint should not be required to indemnify CenturyTel for certain content over which Sprint has absolutely no control. Sprint recognizes that its tariffs applicable to end

---

[6] Sprint/4, Burt/6-7.

[7] Sprint/4, Burt/9; and CenturyTel/14, Miller/3.

[8] Sprint/4, Burt/6.

[9] CenturyTel Opening Brief at 8.

[10] ICAs OAR 860-016-0050, Petitions for Enforcement of Interconnection Agreements.

[11] *See Sanderson v. Allstate Insurance Company*, 164 Or. App. 58, 989 P.2d 486 (1999).

users may include such provisions. Notwithstanding the foregoing, there is a reasonable, credible distinction. In those particular instances, the end user is the party responsible for the content and should be held responsible for the content he or she transmits over the services provided by Sprint. Imposing such requirements against the person that has control over the content transmitted over the purchased services is appropriate. In this instance, however, Sprint does not have control of the content transmitted by its end users, and it is not appropriate to make Sprint liable for such end user actions.[12]

It is true that in the "gives and takes" of prior negotiations, Sprint has previously agreed to contract language similar to that at issue here. Still, that fact is not dispositive. Otherwise, and among other reasons, this issue would not have been accepted for arbitration. CenturyTel fails to acknowledge that Sprint is seeking to replace the interconnection agreement with SBC that includes the referenced language. The fact that Sprint agreed to such language previously in the "gives and takes" of prior negotiations does not, as a matter of law, prevent Sprint from seeking a change, on a prospective basis, to an "old" position. If a party to a previous agreement wishes to modify its position, one way to properly do it is to seek different terms prospectively upon every opportunity. Sprint is simply doing just that. Under this proper approach, over time, the "old" position will appropriately become a relic of the past. Sprint is not, as CenturyTel would have the Commission believe, treating carriers differently under similar circumstances.

It should be noted here that rejecting CenturyTel's proposed language will not render CenturyTel without a remedy. As is appropriate and consistent with sound public

[12] Sprint/4, Burt 11.

policy, any justifiable remedy may be pursued against the person or entity that has control over the content transmitted.

Issue 3: How should the bill and keep arrangement be incorporated in the agreement?

Related Agreement Provisions: Article VII I.A

This previously disputed item was resolved by the Parties through successful negotiations.

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

As set forth in the *Petition*, Sprint's testimony and *Sprint's Brief*, it is clear that for direct interconnection, Sprint is only required, under the Federal Telecommunications Act of 1996 (the "Act") and FCC rules and orders, to establish one (1) point of interconnection ("POI") per LATA.[13] Courts have recognized that the obligation to allow a carrier to select one (1) POI per LATA is required under the interconnection rules. Section 51.305(a)(2) of the FCC's rules requires an incumbent LEC to provide interconnection "at any technically

[13] *See In Re: Texas SBC 271 Proceeding*, CC Docket No. 00-65, P 78 (Rel. June 30, 2000) (a CLEC has the option to interconnect at only one technically feasible point in each LATA); and *In Re: In the Matter of Developing a Unified Intercarrier Compensation Regime*, "Notice of Proposed Rulemaking," CC Docket No. 01-92, P 112 (Rel. April 27, 2001) (an ILEC must allow a requesting carrier to interconnect at any technically feasible point, including the option to interconnect at a single POI per LATA); *see also* See *In the Matter of Developing a Unified Intercarrier Compensation Regime*, "Further Notice of Proposed Rulemaking," CC Docket No. 01-92, (Rel. March 3, 2005) at ¶87 ("Under section 251(c)(2)(B), an incumbent LEC must allow a requesting telecommunications carrier to interconnect at any technically feasible point. The Commission has interpreted this provision to mean that competitive LECs have the option to interconnect at a single point of interconnection (POI) per LATA. In addition, our rules preclude a LEC from charging carriers for traffic that originates on the LEC's network.")

feasible point within the incumbent LEC's network."[14] In fact, CenturyTel has acknowledged that the current rules allow for one POI per LATA and have argued that the rules should be modified to require more than one POI per LATA, a requirement to establishing a POI in each calling area or that the competing carrier pay all of the transport costs.[15] In the cited FCC *Intercarrier Compensation* proceedings the FCC is restating the current rules and its interpretation of those rules currently are. Those are not the rules today even though CenturyTel may wish that they were. To contend that a competing carrier must always establish a POI on the ILEC's network obliterates the ability to establish an indirect interconnection that is explicitly permitted under Section 251(a). CenturyTel ignores that the obligations under Section 251(c), including the obligation to allow a competing carrier to select one (1) POI per LATA on the ILEC's network, is an obligation on the ILEC that the requesting carrier has the right to invoke.[16] Sprint may elect to indirectly interconnect under Section 251(a) rather than invoke CenturyTel's obligation to permit a direct connection under Section 251(c). CenturyTel cannot force, and has no such right under FCC rules or the Act, Sprint to interconnect under terms for Section 251(c). Sprint's position is consistent with the Court's decision *Atlas Tel. Co. v. Okla. Corp. Comm'n:*

---

[14] 47 CFR Section 51.305; *See also* Sprint/1, Burt/22.

[15] See *In the Matter of Developing a Unified Intercarrier Compensation Regime*, "Further Notice of Proposed Rulemaking," CC Docket No. 01-92, (Rel. March 3, 2005) at ¶ 90, fn. 292 and 294. ("the incumbent LECs support a requirement that competitive carriers establish a POI in each local calling area or pay the transport costs to reach a POI outside the local calling area.")

[16] *MCI Telcom. Corp. v. Bell Atlantic-Pennsylvania*, 271 F.3d 491, 517 (3d Cir. Pa. 2001) ("Moreover, the fact that § 251(c)(2) permits the CLEC to choose the points in the network at which to interconnect suggests that the Act provides for a balanced resolution in the determination of interconnection points: While the ILEC cannot be required to allow interconnection at technically unfeasible points, similarly the CLEC cannot be required to interconnect at points where it has not requested to do so....The decision where to interconnect and where not to interconnect must be left to WorldCom, subject only to concerns of technical feasibility.").

> The RTCs interpret 47 U.S.C. § 251(c) as imposing a requirement of direct connection on a competing carrier. We disagree. As detailed above, the affirmative duty established in § 251(c) runs solely to the ILEC, and is only triggered on request for direct connection. *The physical interconnection contemplated by § 251(c) in no way undermines telecommunications carriers' obligation under § 251(a) to interconnect 'directly or indirectly.'*[17]

Notwithstanding its non-BOC arguments and its self-serving and unsubstantiated treatment of the FCC's one (1) POI per LATA pronouncements, CenturyTel conveniently omits and does not acknowledge the state commission decisions that have determined that the one (1) POI per LATA concept that Sprint advocates in this Issue 4 is applicable in the context of arbitrations involving rural LECs.[18] CenturyTel's arguments contending LATAs do not apply to non-RBOCs is a red herring. CenturyTel raises the history of the establishment of LATA as a reason that the FCC's declaration that competing carriers are allowed to establish a single POI per LATA is inapplicable to non-RBOCs. One only has to recognize that LATAs were established to ***restrict*** the RBOCs' ability to provide service across LATA boundaries, a restriction that has never applied to non-RBOCs, to realize that CenturyTel's argument fails. A carrier couldn't insist on interconnection in a manner that would require the RBOC to transport traffic across LATA boundaries; however, such a restriction has never applied to CenturyTel and, as a non-RBOC, CenturyTel could transport traffic anywhere without legal or regulatory limitation. Further, the FCC has

---

[17] *Atlas Tel. Co. v. Okla. Corp. Comm'n,* 400 F.3d 1256, 1268 (10th Cir. 2005) (emphasis added). *See also Verizon Arbitration Order* at n. 200 ("The parties' respective obligations to interconnect with each other, however, arise from different provisions of the Act. Incumbent LECs are required by section 251(c)(2) to permit any requesting telecommunications carrier to interconnect 'for the transmission and routing of telephone exchange service and exchange access" with the incumbent's network 'at any technically feasible point within the [incumbent] carrier's network.' Non-incumbent carriers, on the other hand, are required by section 251(a)(1) 'to interconnect directly or indirectly with the facilities and equipment of other telecommunications carriers.'").

[18] Sprint/4, Burt/13.

associated non-RBOC exchanges with LATAs and non-RBOCs have filed requests with the FCC to change such association.[19] Therefore, for some purposes the LATA concept is applicable to non-RBOCs. CenturyTel points to no precedent to show that the FCC's interpretation of its rules permitting a competing carrier to select one POI per LATA does not apply to non-RBOCs. Thus, CenturyTel's contention that the LATA concept has no application to non-RBOCs is inaccurate.

CenturyTel also misses the point when it states that "[c]ontrary to Sprint's argument," nothing within the Act "precludes" multiple POIs or multiple trunk groups for the exchange of local traffic with CenturyTel.[20] Sprint does not contend that the Act "precludes" more than a single POI per LATA, only that it doesn't require more than one POI per LATA. Certainly, a competing telecommunications carrier *may elect* to have more than one (1) POI per LATA; however, CenturyTel fails to recognize that the Act grants Sprint the *right to select* a single POI per LATA subject only to technical feasibility. Consistent with FCC and state commission precedent, it is Sprint's position that a competing telecommunications carrier has the right to select one (1) POI per LATA when it chooses to directly interconnect with an incumbent LEC.

The only condition regarding the selection of the POI is that the selected point must be technically feasible.[21] The FCC has stated that interconnection at the same or similar point demonstrates that a particular point is technically feasible. CenturyTel contends the

---

[19] *In the Matter of Petitions for LATA Association Changes by Independent Telephone Companies*, 12 FCC Rcd 11769; 1997 FCC LEXIS 4260 (rel. August 6, 1997) (granting requests to modify LATA boundaries to switch three independent telephone company exchanges in Texas from one LATA to another); *see also In the Matter of Guadalupe Valley Telephone Cooperative Request for LATA Relief Between the Waelder Exchange and Corpus Christi LATA,* 13 FCC Rcd 4560; 1998 FCC LEXIS 1027, rel. March 2, 1998.

[20] *CenturyTel's Brief* at 14.

[21] *See, e.g.,*Sprint/1, Burt/20; 47 C.F.R. 51.305(a).

lack of facilities or capacity may render Sprint's requested interconnection technically infeasible. The burden is on the incumbent LEC to prove that a requested point of interconnection is not technically feasible.[22] First, CenturyTel has not provided any "evidence" that Sprint has requested interconnection where CenturyTel has no facilities.[23] Nor has CenturyTel provided any evidence that the requested arrangement would cause any degradation of specific facilities in Oregon.[24]

Second, the lack of facilities is not a basis for rejecting a particular means of interconnection. CenturyTel itself acknowledges on pages 23 of its *Opening Brief*, that within its own network traffic is not "static" and that it must address "an ever-evolving network and changing levels of traffic" for itself even as it continues to discriminate against Sprint by refusing to accommodate the network and traffic changes related to interconnection with Sprint. Finally, as to the claim that the lack of capacity is a basis to find that a particular interconnection is not feasible, the FCC has stated that cost of a

---

[22] 47 C.F.R. 51.305(e) ("An incumbent LEC that denies a request for interconnection at a particular point must prove to the state commission that interconnection at that point is not technically feasible.").

[23] *See, e.g., US West Communs., Inc. v. Jennings*, 304 F.3d 950, 960, 961 (9th Cir. Ariz. 2002) ("Because US West provided no evidence that interconnection at a single point per LATA is technically infeasible, we affirm the ACC's decision to permit AT&T's single point interconnection.").

[24] CenturyTel points to the Michigan arbitration decision to support its position on this issue. However, CenturyTel has not provided any facts to demonstrate that its network in Oregon requires the same result. Further, CenturyTel in footnote 30 of its Opening Brief states that Sprint's reliance on decisions of other state commission is misguided, yet here CenturyTel requests that the Oregon Commission rely on a decision of the Michigan Commission. CenturyTel's position to ignore the vast majority of other state commission decisions, yet rely on the one decision that it agrees with is disingenuous at best. Further, CenturyTel attempts to minimize the Michigan decision on those issues that were decided in favor of Sprint further undercuts its position to focus on the Michigan decision on certain issues and discount all other state commission decisions.

particular interconnection (i.e., installing facilities or additional capacity) is not an element to be considered when determining if a particular interconnection is technically feasible.[25]

The interconnection arrangement requested by Sprint is not a "superior" interconnection. CenturyTel's contention that its obligation for interconnection only encompasses its existing network is incorrect and mischaracterizes the effect of striking the "superior quality" rules. 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."[26] The petitioners themselves appear to acknowledge that the Act requires some modification of their facilities."[27]

CenturyTel makes general references to cites regarding the superior interconnection rules without looking specifically at the requirements that were found in those rules that are no longer effective. The rules addressed the ability to request interconnection that was *superior in quality* to that that the ILEC provided to itself or others. CenturyTel is not claiming that Sprint is requesting interconnection of a superior quality to that which it provides itself. Nothing in the cited FCC rules, orders or interpreting case law address what

---

[25] *See, e.g., In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, CC Docket No. 96-98, FCC 96-325, ¶ 199 (Aug. 8, 1996) ("*First Report and Order*"). *See also Tenn. Arbitration Award* at 36 ("The FCC has concluded that the term 'technically feasible' refers solely to technical or operational concerns, rather than economic, space, or site considerations."); and *Rebuttal Testimony of Burt* at 14, LL 6-7.

[26] *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, CC Docket No. 96-98, First Report and Order, 11 FCC Rcd 15499 at ¶ 198 (1996) ("*First Report and Order*").

[27] *Iowa Utils. Bd. v. FCC,* 120 F.3d 753, n. 33 (8th Cir. 1997)("IUB I").

CenturyTel now claims, that it is precluded from offering the requested interconnection because it is superior to the *network arrangement* CenturyTel provides for itself.

A review of the discussion from the First Report and Order makes this evident. The discussion of what is required is raised by MFS stating: "MFS claims that the incumbent LEC should provide to everyone the highest grade service it makes available to anyone, including neighboring non-competing LECs. MFS also claims that traffic exchange facilities between incumbent LECs and competitors should be designed to meet at least the same technical criteria and grade of service standards (*e.g.*, probability of blocking in peak hours and transmission standards) as used by the incumbent for the inter-office trunks used in its network."

In making its decision the FCC clearly was addressing *the quality of the services* provided, not the interconnection network arrangement: "We agree with MFS that this duty requires incumbent LECs to design interconnection facilities to meet the same technical criteria and service standards, such as probability of blocking in peak hours and transmission standards, that are used within their own networks."[28] All of the examples listed pertain to the quality of the ILECs network. "Moreover, to the extent a carrier requests ***interconnection of superior or lesser quality*** than an incumbent LEC currently provides, the incumbent LEC is obligated to provide the requested interconnection arrangement if technically feasible. Requiring incumbent LECs to provide upon request ***higher quality interconnection*** than they provide themselves, subsidiaries, or affiliates will

[28] *First Report and Order* at ¶ 224.

permit new entrants to compete with incumbent LECs by offering novel services that require ***superior interconnection quality***."[29]

The rules established by the FCC, as discussed above, that were vacated as a result of the Court's determination that the FCC could not require the ILEC to provide interconnection or unbundled network elements at a superior quality. In its decision affirming its vacation of the FCC rules the 8th Circuit Court of Appeals stated:

> We again conclude the ***superior quality rules*** violate the plain language of the Act. . . . Subsection 251(c)(2)(C) requires the ILECs to provide interconnection "that is at least equal in quality to that provided by the local exchange carrier to itself ...." Nothing in the statute requires the ILECs to provide ***superior quality interconnection*** to its competitors. The phrase "at least equal in quality" establishes a minimum level for the quality of interconnection; it does not require anything more. We maintain our view that the superior quality rules cannot stand in light of the plain language of the Act for all the reasons we previously expressed. We also note that it is self-evident that the Act prevents an ILEC from discriminating between itself and a requesting competitor ***with respect to the quality of the interconnection*** provided.[30]

CenturyTel's arguments that Sprint has requested a "superior" interconnection that is precluded by *IUB I* and *IUB II* are misplaced and based on an incorrect representation of the rules and orders addressing interconnection of a superior quality; and, thus, should be rejected.

CenturyTel's request to require direct end office trunks (DEOTs) under certain circumstances is contrary to the right of a competing carrier to establish only one (1) POI per LATA. The establishment of DEOTs is essentially the same as requiring more than

---

[29] *First Report and Order* at ¶ 225.

[30] *IUB v FCC*, 219 F.3d 744 (8th Cir. 2000) ("*IUB II*") (emphasis added)

one, by requiring additional POIs at the end offices.[31] Requiring DEOTs compels the competing LEC to establish a network that replicates the ILEC's network which is not required under the Act and may result in an inefficient network arrangement.[32] Sprint has the right to establish an additional interconnection point at an end office if it desires, but cannot be forced to establish such interconnection arrangements as CenturyTel has requested.

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.

---

[31] *In Re Arbitration of: Sprint Communications Company L.P., vs. Ace Communications Group, Clear Lake Independent Telephone Company, Farmers Mutual Cooperative Telephone Co. of Shelby, Farmers Telephone Company, Farmers Mutual Telephone Company, Grand River Mutual Telephone Corporation, Heart of Iowa Communications Cooperative, Heartland Telecommunications Company of Iowa d/b/a Hickorytech, Huxley Communications, Iowa Telecommunications Services, Inc., d/b/a Iowa Telecom f/k/a GTE Midwest, Kalona Cooperative Telephone, La Porte City Telephone Company, Lost Nation-Elwood Telephone Company, Minburn Telecommunications, Inc., Rockwell Cooperative Telephone Association, Sharon Telephone, Shell Rock Telephone Company d/b/a Bevcomm c/o Blue Earth Valley Telephone Company, South Central Communications, Inc., South Slope Cooperative Telephone Company, Swisher Telephone Company, Ventura Telephone Company, Inc., Villisca Farmers Telephone Company, Webster Calhoun Cooperative Telephone Association, Wellman Cooperative Telephone Association, and West Liberty Telephone Company d/b/a Liberty Communications; North English Cooperative Telephone Company and Winnebago Cooperative Telephone Association; Citizens Mutual Telephone Cooperative, Mabel Cooperative Telephone Company, Titonka Telephone Company, Lynnville Telephone company, and Sully Telephone Association*, Docket Nos. ARB-05-2, ARB-05-5, ARB 05-6, Arbitration Order (Mar. 24, 2006). (available at: http://www.lexis.com/research/xlink?app=00075&view=full&searchtype=get&search=2006+Iowa+PUC+LEXIS+123)

[32] The FCC recognized that without the single POI per LATA rule competing carriers may be forced to replicate the ILECs network. *See Developing a Unified Intercarrier Compensation Regime*, CC Docket No. 01-92, Further Notice of Proposed Rulemaking, ¶ 89 (rel. Mar. 3, 2005) ("*Further Notice of Proposed Rulemaking*") ("In response to the *Intercarrier Compensation NPRM,* most competitive LECs and CMRS providers urge the Commission to maintain the single POI per LATA rule. They argue that the current rule prevents incumbent LECs from imposing costly and burdensome interconnection requirements, thereby creating barriers to entry. According to these commenters, a rule requiring competitors to interconnect in every local calling area or pay for transport to the POI outside the local calling area would essentially require new entrants to replicate the existing incumbent LEC network, regardless of whether it is efficient to do so.") (emphasis added).

CenturyTel continues to ignore the well-established "Calling Party's Network Pays" principle, which clearly requires the originating carrier to be financially responsible for delivering that call to the terminating carrier.[33] Based upon FCC rules and orders, Sprint and CenturyTel are required to share the cost of the interconnection facility between their networks based on their respective percentages of originated traffic.[34] The interconnection facility is separate and distinct from the network costs recovered in reciprocal compensation.[35] Sprint is simply requesting interconnection terms and conditions consistent with FCC rules and orders.[36]

In sum, 47 CFR Section 51.709(b) states "the rate of a carrier providing transmission facilities dedicated to the transmission of traffic between two carriers' networks shall recover only the costs of the proportion of the trunk capacity used by an interconnecting carrier to send traffic that will terminate on the providing carrier's network."[37] In addition, 47 CFR Section 51.703(b) provides that "a LEC may not assess charges on any other telecom carrier for the telecom traffic that originated on the LEC's network."[38] In discussing the various rules applicable to interconnection, the FCC stated

---

[33] Sprint/1, Burt/25-26. *See Verizon Arbitration Order* at ¶ 67 ("all LECs are obligated to bear the cost of delivering traffic originating on their networks to interconnecting LECs' networks for termination").

[34] Sprint/1, Burt/25.

[35] Sprint/4, Burt/17-18, 27.

[36] CenturyTel acknowledges in footnote 44 that the Michigan arbitration decision adopted Sprint's position, but somehow attempts to soften that decision by claiming that the statement that the POI must be on the ILECs network somehow requires that all the facilities be within CenturyTel's network. CenturyTel's interpretation is incorrect. Sprint has never disputed that for direct interconnection the POI must be on the ILEC's network. The interconnection facility is the facility that connects the two parties' networks and Sprint's position as adopted by the Michigan Commission explained that the facility would be located from Sprint's POP in the LATA to the CenturyTel switch where Sprint is directly interconnected.

[37] 47 CFR Section 51.709(b).

[38] 47 CFR Section 51.703(b).

"One result of these rules . . . is that sometimes Verizon must pay petitioners for transporting Verizon-originated traffic from the place where petitioners interconnect with Verizon's network to the petitioners' networks."[39] Likewise, CenturyTel is responsible for paying Sprint for use of a two-way facility to deliver its traffic to Sprint's network. Sprint has agreed to designate its POP as its network point.

At least five other State Commissions have determined that the cost of the interconnection facility should be shared between the interconnected parties. The Iowa Utilities Board found that "the FCC rules require that when directly interconnected carriers share the use of a two-way interconnection facility, the costs associated with the facility should be based on the carriers' respective percentage of originated traffic."[40] The Indiana Utility Regulatory Commission reached the same conclusion finding that "Sprint's proposal is consistent with the FCC's rules and is equitable for both parties. The evidence reflects that if the parties use direct interconnection that carriers two-way trunks, the facility will be sized to accommodate both the RTC's traffic and Sprint's traffic. Where this occurs, we agree that allocating the cost of two-way facility based on the relative percentage of originated traffic will ensure each party will assume the cost associated with carrying its

---

[39] *Verizon Arbitration Order* at ¶ 68.

[40] *In re Arbitration of Sprint Communications Company LP v. Iowa Telecommunications Services Inc*, Docket No. ARB-07-2, Order Granting Motions for Clarification issued April 22, 2008. (available at: http://www.lexis.com/research/xlink?app=00075&view=full&searchtype=get&search=2008+Iowa+PUC+LEXIS+173)

traffic."[41] The Maryland Public Service Commission has found in an interconnection arbitration between landline carriers that

> "Each party is responsible for the cost of delivering its traffic through its network and into the interconnection facility that connects the two networks. The cost of the interconnection facility itself is shared consistent with the rules set forth by the FCC in P 1062 of the 1996 First Report and Order. In sum, those rules require that the carriers share the cost of the interconnection facility based upon each carrier's percentage of the traffic passing over the facility. . . . Each carrier is responsible for the cost of transporting its traffic through its network to the edge of its network. Both carriers then equitably share the cost of the interconnection facility which connects the two networks, based on each carrier's share of the traffic that passes over the interconnection facility."[42]

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

> "The Commission concurs . . . that, in general, each party is solely responsible for the facilities on its side of the POI. Nonetheless, the Commission agrees with Sprint that each party must be financially responsible for its own outgoing traffic. Where the interconnection is via a two-way trunk, the cost of that facility must necessarily be shared."[43]

The Michigan Commission:

---

[41] See *In The Matter Of Sprint Communications Company L.P.'S Petition For Arbitration Pursuant To Section 22(B) Of The Communications Act Of 1934, As Amended By The Telecommunications Act Of 1996, And The Applicable State Laws For Rates, Terms And Conditions Of Interconnection With Ligonier Telephone Company, Inc.*, Sate of Indiana, Indiana Utility Regulatory Commission, Cause No. 43052-INT-01 (consolidated with 43053-INT-01 and 43055-INT-01), Approved Sep. 6, 2006, p. 41-42. (available at: http://www.lexis.com/research/xlink?app=00075&view=full&searchtype=get&search=2006+Ind.+PUC+LEXIS+249

[42] *Arbitration of US LEC of Maryland Inc. vs. Verizon Maryland Inc.*, Md. P.S.C., 2005 Md. PSC LEXIS 6, Order No. 79813; Case No. 8922 (2005) (available at: http://www.lexis.com/research/xlink?app=00075&view=full&searchtype=get&search=2005+Md.+PSC+LEXIS+6. *See also, Petition of AT&T Communications of Maryland, Inc. for Arbitration*, 2004 Md. PSC LEXIS 13, Order No. 79250; Case No. 8882 (2004). (available at: http://www.lexis.com/research/xlink?app=00075&view=full&searchtype=get&search=2004+Md.+PSC+LEXIS+13

[43] *SBC Missouri's Petition for Compulsory Arbitration*, 2005 Mo. PSC LEXIS 963, Case No. TO-2005-0336 (2005). (available at: http://www.lexis.com/research/xlink?app=00075&view=full&searchtype=get&search=2005+Mo.+PSC+LEXIS+963

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

> The Local Competition Order requires a carrier to pay the cost of facilities used to deliver traffic originated by that carrier to the network of its co-carrier, who then terminates that traffic and bills the originating carrier for termination compensation. In essence, the originating carrier holds itself out as being capable of transmitting a telephone call to any end-user, and is responsible for paying the cost of delivering the call to the network of the co-carrier, who will then terminate the call. Under the [FCC's] regulations, the cost of the facilities used to deliver this traffic is the originating carrier's responsibility, because these facilities are part of the originating carrier's network. The originating carrier recovers the costs of these facilities through the rates it charges its own customers for making calls. This regime represents the "rules of the road" under which all carriers operate. Id., p 34."[44]

Sprint urges the Commission to follow the decision of other state commissions and require the Parties to an Interconnection Agreement share the cost of the facilities that run between their networks on a proportional basis based on the traffic each sends over those facilities. Keeping with its approach on other unresolved issues, unable to refute or distinguish established precedent, CenturyTel urges the Commission to simply ignore the same, without sound reason or credible rationale. This the Commission should not do. The Commission should adopt Sprint's position and the Interconnection Agreement language proposed by Sprint.

---

[44] *Application of Telnet Worldwide, Inc. for Arbitration with Verizon North, Inc.*, Mi. P.S.C. 2005 Mich. PSC LEXIS 39, MPSC Case No. U-13931 (2005). CenturyTel cites to the United States District Court proceeding, but fails to mention this decision is on appeal to the Sixth Circuit,[44] (available at: http://www.lexis.com/research/xlink?app=00075&view=full&searchtype=get&search=2005+Mich.+PSC+LEXIS+39)

Issue 6: What are the appropriate rates for direct interconnection facilities?

Related Agreement Provisions: Article IV Section 2.3.1.1, 3.2.5.4 and Article VII Section I.D. and I.E.

A forward-looking pricing methodology is appropriate to determine a just and reasonable rate for the interconnection facilities provided by CenturyTel to Sprint. Both Congress and the FCC recognized that interconnection is fundamental to competition and that the imposition of uneconomic interconnection costs would pose a barrier to competition.

Sprint maintains that a forward-looking pricing methodology is appropriate to determine a just and reasonable rate for the interconnection facilities provided by CenturyTel to Sprint. Both Congress and the FCC have recognized that interconnection is fundamental to competition and that the imposition of uneconomic interconnection costs would pose a barrier to competition. The FCC concluded that ILEC rates for interconnection must be based on efficient forward-looking costs to be consistent with the Act and to "prevent incumbent LECs from inefficiently raising costs in order to deter entry."[45]

By adopting TELRIC, the FCC specifically rejected ILEC arguments to develop or set rates on embedded costs or other rate-setting methodologies. In order to be consistent with the Act and to "prevent incumbent LECs from inefficiently raising costs in order to deter entry[,]" the FCC concluded that ILEC rates for interconnection must be based on

[45] *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, CC Docket No. 96-98, First Report and Order, 11 FCC Rcd 15499 at ¶743 (1996); and Section 251(c)(2).

efficient forward-looking costs.[46] Further, the FCC recognized in the Triennial Review Remand Order ("TRRO") that the obligation to provide cost-based interconnection facilities was not affected by the FCC's ruling limiting the availability of UNE transport facilities.[47]

The pricing standard described in 47 CFR Section 51.505, generally referred to as TELRIC, must apply to interconnection facilities. This was upheld by the FCC in the TRRO,[48] where the FCC stated at paragraph 140 of the TRRO that the finding "of non-impairment for entrance facilities does not alter the right of competitive LECs to obtain interconnection facilities pursuant to Section 251(c)(2) for the transmission and routing of telephone exchange service." In other words, entrance facilities used for interconnection are subject to TELRIC pricing standards. CenturyTel references only the *Michigan Bell* case to support its position, but fails to appropriately note an appeal of that decision is currently pending before the 6th Circuit.[49] Sprint's position is consistent with the findings of several courts.

The U.S. District Court for the Eastern District of Missouri found that "[t]he FCC determined that when a CLEC uses entrance facilities to carry traffic to and from its own end users (situation (1) above [backhauling]), the CLEC is not entitled to obtain entrance

---

[46] *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, CC Docket No. 96-98, First Report and Order, 11 FCC Rcd 15499 at ¶743 (1996).

[47] *In the Matter of Unbundled Access to Network Elements*, WC Docket No. 04-313, Order on Remand, 20 FCC Rcd 2533 at ¶140 (2005) (Triennial Review Remand Order) ("We note in addition that our finding of non-impairment with respect to entrance facilities does not alter the right of competitive LECs to obtain interconnection facilities pursuant to section 251(c)(2) for the transmission and routing of telephone exchange service and exchange access service. Thus competitive LECs will have access to these facilities at cost-based rates to the extent they require them to interconnect with the incumbent LEC's network.").

[48] *Order on Remand, In re Unbundled Access to Network Elements*, WC Docket No. 04-313, CC Docket No. 01-338, released December 15, 2004, 20 F.C.C. Rcd. 2533 (2005).

[49] *Mich Bell Tel Co v Lark*, Case No. 2:06-cv-11982, 2007 US Dist LEXIS 71272 (E.D. Mich. Sept. 26, 2007), *on appeal to 6th Circuit*, Docket No. 07-2469.

facilities from ILECs as § 251(c)(3) UNE. The FCC reaffirmed its earlier determination, however, that if a CLEC needs entrance facilities to interconnect with an ILEC's network (situation (2) above [interconnection]), the CLEC has the right to obtain such facilities from the ILEC, at cost-based rates, under § 251(c)(2) of the Act."[50] The U.S. District Court for the Northern District of California specifically rejected the same argument CenturyTel makes here stating:

> The Court is not persuaded by AT&T's arguments, and finds that the CPUC did not violate the *TRRO* when it required AT&T to provide CLECs with its entrance facilities as needed for interconnection. AT&T's interpretation of the *TRRO* would render Paragraph 140 meaningless; if AT&T were correct, there was no need for the FCC to discuss CLECs' right to obtain interconnection facilities within the context of entrance facilities. The Court finds it significant that the FCC was careful to emphasize that "our finding of non-impairment with respect to entrance facilities does not alter the right of competitive LECs to obtain interconnection facilities pursuant to section 251(c)(2) for the transmission and routing of telephone exchange service and exchange access service." The Court agrees with the CPUC that this distinction is logical based on the two different uses to which entrance facilities are put: (1) when used by a CLEC as a transmission path to carry traffic to and from its end users on the CLEC's own network ("backhauling"); and (2) when used as a transmission path providing a link between ILEC and CLEC switches for the exchange of traffic between the two networks ("interconnection").[51]

In its order affirming the decision of the Illinois Commerce Commission and the United States District Court for the Northern District of Illinois, the 7th Circuit Court of Appeals stated:

> AT&T protests that this nullifies the FCC's order. What's the point of specifying that CLECs cannot demand access to entrance facilities as unbundled network elements, AT&T inquires, if state commissions can turn around and require the same access at the same price anyway? The answer, as the district court observed, is that CLECs do not enjoy the "same" access

[50] *Southwestern Bell Telephone, L.P. v. Missouri Public Service Comm'n* 461 F.Supp.2d 1055, 1072 (E.D. Mo. 2006) (citations omitted).

[51] *Pac. Bell Tel. Co. v. Cal. PUC*, 2008 U.S. Dist. LEXIS 12924 (N.D. CA 2008) (citations omitted).

> to entrance facilities under the state commission's decision as they did before the FCC's order. Until then CLECs could use entrance facilities for both interconnection and backhauling. Under the state's order, CLECs use entrance facilities exclusively for interconnection, just as the FCC said in P140. The state commission tells us that ILECs can detect and block any attempted use of an entrance facility for backhauling. (Every carrier, ILEC or CLEC, must be able to determine the traffic's destination in order to route it accurately.) [52]

CenturyTel cites to the above quoted Illinois case to support its position to charge tariff rates for interconnection facilities. CenturyTel fails to provide the complete picture when citing to the statement that "TELRIC is a cost-based rate, though not the only one." AT&T had filed a tariff for charges for the interconnection facility:

> What the FCC said in P140 is that ILECs must allow use of entrance facilities for interconnection at "cost-based rates". TELRIC is a cost-based rate, though not the only one. We asked at oral argument whether anything in the 1996 Act or the FCC's regulations prohibits a state commission from using TELRIC to tell ILECs what they may charge for interconnection. Counsel for AT&T allowed that the state commission could do this. Well, that is effectively what the state commission *has* done. Instead of suspending AT&T's tariff for interconnection services and ordering a rate reduction, the state commission has reached the same result by an "arbitration" under the 1996 Act. If there is any objection to this procedure, it must rest on state rather than federal law. Whether the state commission has followed the requirements that Illinois imposes for overriding a utility's published tariff is of no consequence in this federal suit. It is enough for us to conclude that federal law permits a state agency to use the TELRIC method to regulate the price for the interconnection services that an ILEC must furnish under § 251(c)(2).[53]

The Commission should adopt Sprint's position and the Interconnection Agreement language proposed by Sprint.

---

[52] *Ill. Bell Tel. Co. v. Box*, 2008 U.S. App. LEXIS 11077 (US CT of Appeals 7th Cir. 2008).

[53] *Id.* at *3.

Issue 7: Should the Interconnection Agreement contain provisions limiting indirect interconnection?

Related Agreement Provisions: Article IV Sections 3.3.1.1, 3.3.2.1, 3.3.2.2, 3.3.2.4, 3.3.2.5, and 3.3.2.6

CenturyTel proposes to permit Sprint "to utilize a third party tandem arrangement, entailing transit charges, to reach CenturyTel's ILEC network for a 'de minimis' level of traffic."[54] Not surprisingly, CenturyTel has not cited any persuasive authority for such a unilateral limitation of its Section 251 obligation.

Section 251(a) of the Act requires each telecommunications carrier to interconnect directly or indirectly with the facilities and equipment of other telecommunications carriers. As stated by the 8th Circuit "the statutory provision that imposes the duty to interconnect networks expressly permits direct or indirect connections."[55] CenturyTel cannot dictate that Sprint interconnect with it directly, including the requirement to directly interconnect at a volume threshold or when transit charges reach a certain amount. As more fully discussed above under Issue No. 4 and in *Sprint's Opening Brief*, the 10th Circuit has found that "the affirmative duty established in § 251(c) runs solely to the ILEC, and is only triggered on request for direct connection. *The physical interconnection contemplated by § 251(c) in no way undermines telecommunications carriers' obligation under § 251(a) to interconnect "directly or indirectly."*[56] The 8th Circuit agreed with the determination of the 10th Circuit stating:

> In Atlas, incumbents who wanted to force direct connections argued that the general duty to interconnect directly or indirectly was superceded by a specific provision, § 251(c)(2)(B), that imposes upon an incumbent carrier a duty to permit a requesting

---

[54] *Id.* at 33-34.

[55] *WWC License, L.L.C. v. Pub. Serv. Comm'n*, 459 F.3d 880 (8th Cir. 2006)

[56] *Atlas Tel. Co. v. Okla. Corp. Comm'n*, 400 F.3d 1256, 1268 (10th Cir. 2005) (emphasis added).

> carrier to interconnect directly with the incumbent's local exchange network "at any technically feasible point within the carrier's network." The Tenth Circuit examined the structure of the Act to reject this argument. It noted that the subsection (c) duty applied only to incumbent carriers and only if a competitor requested a direct connection. Id. Since the section (c) duty did not apply to competitors, the Tenth Circuit was unwilling to impose on competitors a duty to connect directly rather than indirectly. Further, that court noted that Congress created specific exceptions for the subsection (c) duties as set forth in 47 U.S.C. § 251(f), such that it would be "inconceivable" that the drafters would have imposed a direct connection requirement on competitors while at the same providing an exemption to the accommodation duty of the incumbents because such a duty would function "as a significant barrier to the advent of competition."

CenturyTel's characterization and limited citation to the *Atlas Decision* is a distorted presentation of that decision and completely ignores the FCC's ultimate holding recognizing the obligations imposed by 251(a) allows for indirect or direct interconnection.

> "In sum, we conclude that section 251(a) does not require AT&T to purchase Total's terminating access services and refrain from blocking calls to Audiobridge. Section 251(a) only requires AT&T to provide direct or indirect physical links between itself and Complainants."

In addition, as stated above, the controversy in the *Atlas* case involved the interconnection for, and payment of access for, interexchange toll traffic. In the *Atlas* case AT&T was acting in the capacity of an interexchange carrier and the Complainants were an ILEC and a CLEC affiliate of that ILEC. The ILEC created the CLEC in an attempt to inflate AT&T's cost for termination of access traffic by causing the traffic to be routed through the CLEC but that was ultimately terminated to the ILEC. The case was not addressing the obligations of an ILEC for interconnection for the exchange of local traffic.

CenturyTel cites to certain passages as somehow requiring that the right to a 251(a) indirect interconnection be ignored when a carrier is requesting interconnection with an incumbent LEC. In the Atlas Decision the FCC's discussion comparing 251(a) and 251(c) was limited to addressing the definition of "interconnection" as used in both sections. The

issue being addressed was the complainants' argument "that a carrier's duty to "interconnect" under section 251(a) encompasses a duty to transport and terminate all traffic bound for any other carrier with which it is physically linked." The complainants were attempting to define the term interconnection as used in 251(a) differently than the FCC had defined that term for purposes of 251(c), that is that interconnection is separate and distinct from transport and termination, e.g. reciprocal compensation. Atlas had argued that the term interconnection as used in 251(a) included the obligation to interconnect and the obligation to pay compensation, however, the FCC had already found that the term "interconnection" in 251(c) did not include compensation for the traffic carried over the interconnection arrangement. That is the point the FCC was addressing when it stated "[a]ccordingly it would not be logical to confer a broader meaning to this term as it appears in the less-burdensome section 251(a)." The broader meaning advocated by Total and rejected by the FCC was that interconnection in 251(a) encompassed the requirement to pay compensation exchanged over the 251(a) interconnection arrangement. As quoted above the FCC's holding was that AT&T (the IXC) could choose to interconnect directly or indirectly under 251(a).

The hierarchy of escalating obligations created by the Act and discussed by the FCC was addressing the obligations that could be imposed on various types of carriers. 251(a) interconnection obligations apply to all carriers, i.e. a 251(a) request may be imposed on any carrier. However, a request for interconnection under 251(c), although it may be issued by any carrier, the obligation is only imposed on an ILEC.

CenturyTel contends that under *Z-Tel* that Section 251(a) is not subject to negotiation under the Act.[57] However, CenturyTel fails to note that the *Z-Tel* decision was vacated.[58]

Other state commissions have recognized the right of the CLEC to choose indirect interconnection without the imposition of thresholds on that right.[59] Moreover, these recent decisions were rendered subsequent to the *Atlas Decision* relied upon so heavily by CenturyTel. No where in the quotes cited by CenturyTel, or in the *Atlas Decision*, is the issue of a competing carrier's right to choose indirect rather than direct interconnection addressed. That decision addresses many facets of the obligations under Sections 251(a) and 251(c), but not the issue in dispute in this arbitration. Furthermore, the 8th Circuit in *WWC License, L.L.C. v. Pub. Serv. Comm'n*, and the 10th Circuit in *Atlas Tel. Co. v. Okla. Corp. Comm'n* have specifically rejected CenturyTel's contention that 251(c) overrides, or in any way limits, Sprint's ability to choose indirect interconnection under 251(a).

CenturyTel's argument that CenturyTel must be permitted to exert control over its network for proper billing is contrary to findings by the FCC.[60] As discussed more fully in

---

[57] *In the Matter of Core Communications, Inc., and Z-Tel Communications, Inc., v. SBC Communications Inc*, 18 FCC Rcd 7568; 2003 FCC LEXIS 2031, rel. April 27, 2003. CenturyTel *Opening Brief* at 40.

[58] *SBC v. FCC*, 407 F.3d 1223; 2005 U.S. App. LEXIS 8404(2005). *In the Matter of Core Communications, Inc., and Z-Tel Communications, Inc., v. SBC Communications Inc*, 20 FCC Rcd 15784, 2005 FCC LEXIS 5485, rel. October 5, 2005 (On remand the FCC acknowledged that its order was vacated and did not make new findings in the case ("We grant the Motion. The *Liability Order* has been vacated, and Complainants have reached a mutually-acceptable resolution of their dispute with Defendants."))

[59] *See Arbitration Decision*, Illinois Commerce Commission Docket No. 05-0402, p. 28 (Nov. 8, 2005); and *Arbitration Order*, available at: http://www.icc.illinois.gov/downloads/public/edocket/156652.pdf; Iowa Utilities Board Docket Nos. ARB-05-2, ARB-05-5, ARB-05-6, pp. 55-58 (Mar. 24, 2006) (recognizing that imposing additional POIs at the host or end offices would be contrary to the right to establish only one POI per LATA), available at: http://www.lexis.com/research/xlink?app=00075&view=full&searchtype=get&search=2006+Iowa+PUC+LEXIS+123.

[60] CenturyTel's *Opening Brief* at 42.

Issue 16 below, the FCC stated 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."[61] CenturyTel cannot require Sprint to interconnect in a manner contrary to rules to avoid its own obligations to measure traffic.

Due to the variety of factors that influence the determination of whether to employ direct or indirect interconnection, CenturyTel's proposed unilateral "de minimis" level is arbitrary and contrary to applicable law. There are no conditions or limitations imposed on a competing carrier's ability to indirectly interconnect. Thus, the Interconnection Agreement should include language that provides for indirect interconnection without limitation. Sprint's position and the Interconnection Agreement language proposed by Sprint should be adopted.

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

Sprint should not be required to reimburse CenturyTel if CenturyTel pays a third-party carrier for traffic that is originated by Sprint because CenturyTel should not pay such a third-party carrier. 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

[61] *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.

the terminating carrier has no right to demand compensation from the transit provider for another carrier's originating traffic. In fact, CenturyTel recognizes that it is not obligated to pay terminating charges for traffic it transits. Simply put, CenturyTel is not obligated to and should not pay a third-party carrier for traffic that is originated by Sprint.

As is often the case within the industry, the traffic exchanged between Sprint and such third-party carriers is generally subject to a bill and keep arrangement, which is an acceptable compensation arrangement. In fact, Sprint and these other carriers do not generally enter into agreements. Therefore, CenturyTel's proposal potentially could result in Sprint paying termination charges for traffic that is otherwise subject to a bill and keep arrangement, i.e., Sprint neither pays nor receives compensation for such traffic. As recited in the *Verizon Arbitration Order*, "AT&T's witness did not testify that AT&T seeks to evade its responsibility to establish reciprocal compensation arrangements with other carriers. Rather, AT&T states that its testimony reflects the common practice among indirectly interconnected carriers of agreeing to exchange traffic on a bill and keep basis."[62] Similar to Sprint's position in this case, the FCC in that case concluded "WorldCom's proposal would also require Verizon to serve as a billing intermediary between WorldCom and third-party carriers with which it exchanges traffic transiting Verizon's network. We cannot find any clear precedent or Commission rule requiring Verizon to perform such a function. Although WorldCom states that Verizon has provided such a function in the past, this alone cannot create a continuing duty for Verizon to serve as a billing intermediary for

[62] *In the Matter of the Petition of WorldCom, Inc. Pursuant to Section 252(e)(5) of the Communications Act for Preemption of the Jurisdiction of the Virginia State Corporation Commission Regarding Interconnection Disputes with Verizon Virginia Inc., and for Expedited Arbitration, et. al.*, FCC, CC Docket No. 00-218, et. al., Released July 17, 2002, ¶ 109 ("*Verizon Arbitration Order*").

the petitioners' transit traffic."[63] CenturyTel has no duty to pay compensation on Sprint originated traffic, and Sprint should not be obligated to indemnify CenturyTel if CenturyTel compensates a third party.

As recognized by the FCC in the T-Mobile Declaratory Ruling "precedent suggests that the Commission intended for compensation arrangements to be negotiated agreements and we find that negotiated agreements between carriers are more consistent with the pro-competitive process and policies reflected in the 1996 Act." Bill and keep is an acceptable compensation arrangement absent proof that traffic is not roughly balanced.[64] Compensation for the transport and termination of traffic is required to be reciprocal and symmetrical.[65] By obligating Sprint to indemnify CenturyTel for whatever charges a third-party may seek to collect from CenturyTel for Sprint originated traffic when the third-party does not have an agreement with Sprint, that third-party will be allowed to circumvent the process and policies of the 1996 Act. Furthermore, there is no protection to Sprint that the assessed compensation is in compliance with 251(b)(5) of the Act. In sum, Sprint should not be required to reimburse or indemnify CenturyTel for something CenturyTel is not obligated to do and under terms that are inconsistent with the policies of the Act. The Interconnection Agreement language proposed by Sprint should be adopted.

---

[63] *Verizon Arbitration Order* at ¶ 119.

[64] 47 C.F.R. 51.713.

[65] *See* 47 U.S.C. 251(b)(5); *see also* 47 C.F.R. 51.711.

Issue 9: Whether the interconnection trunks can be used for multi-jurisdictional purposes.

Related Agreement Provisions: Article IV Sections 3.2.5.6, 3.3.1.4, 3.3.2.1, 3.3.2.8, 3.3.2.8.1, 3.3.2.8.3, 4.5.1.3, 4.5.2.2, and Article VII I.D.

This previously disputed item was resolved by the Parties through successful negotiations.

Issue 10: What terms for virtual NXX should be included in the Interconnection Agreement?

Related Agreement Provisions: Article IV Section 4.2.2.3, 4.2.2.4, and 4.2.2.5

As stated in Sprint's Opening Brief, Sprint has acknowledged that the Commission has issued an order with regard to the treatment of virtual NXX traffic in ARB 665, Order No. 07-098. That order determined that virtual NXX ISP traffic is not local traffic, originating access charges should apply and there should be no terminating compensation at this time subject to true-up if and when the FCC determines a termination rate. While Sprint may not agree with the outcome of that order, Sprint is willing to abide by it. Sprint thinks a distinction should be made between what is termed virtual NXX traffic for dial-up ISP traffic and FX-like or virtual number traffic both of which are commonly used today and are effectively the same thing as virtual NXX. Sprint does not currently provide service to ISPs and has no plans to do so in the future. An interconnection agreement is no place to simply state the outcome of a previous Commission order just for the sake of doing so. Sprint's position should be adopted and CenturyTel's language should be rejected.

Issue 11: What are the appropriate terms for reciprocal compensation under the bill and keep arrangement agreed to by the Parties?

Related Agreement Provisions: Article IV Sections 4.4.3.1, Article VII Sections I.A and I.B

This previously disputed item was resolved by the Parties through successful negotiations.

Issue 12: Should terms be included that provide for the opportunity of refunds and the ability to pursue dispute resolution if appropriate remedies are not agreed to when performance is not adequate?

Related Agreement Provisions: Article VI Section 5.0.

This previously disputed item was resolved by the Parties through successful negotiations.

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

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

Section 251(a)(1) of the Act requires all telecommunications carriers to interconnect with other carriers either directly or indirectly. Each LEC has the choice to interconnect directly or indirectly with any other LEC.[66] Indirect interconnection is obtainable only if transiting is available.[67] Generally, only the incumbent LEC has ubiquitous interconnections throughout a specific geographic area to enable widespread indirect interconnection.[68] If the incumbent LEC is not obligated to provide transit service, Section 251(a)(1) of the Act has little meaning. Further, if the incumbent LEC is free to charge whatever rate it wants, such as a self-defined "market rate" or another rate that is

[66] Sprint/6, Farrar/9.

[67] Sprint/6, Farrar/9, *See also* Sprint/1, Burt/49.

[68] Sprint/6, Farrar/9.

not based on the forward-looking economic cost of providing that service, other carriers are at a distinct competitive disadvantage when compared to the incumbent LEC, which is able to provide transit services to itself at economic costs.[69]

The FCC has noted the critical importance of transit service. [70] Although the Common Carrier Bureau acknowledged that the FCC has not specifically ruled whether an ILEC has an obligation to provide transit service, the FCC has not stated that there is no obligation. However, in the absence of an FCC determination this Commission may determine, as many other state commissions have, that CenturyTel is obligated to provide transit service at TELRIC. As Sprint stated in its Opening Brief at least seventeen (17) state commissions have explicitly concluded that ILECs such as CenturyTel must provide transiting services and at least eight of these states have concluded that transiting must be priced at TSLRIC or TELRIC.[71] Sprint submits that the same conclusion applies in this case; CenturyTel should be required to provide transit service 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

Rates for Section 251-related services should be priced consistent with the pricing methodology set forth in 47 USC Section 252(d).[72] The rates must be just and reasonable

[69] Sprint/6, Farrar/9-10.

[70] *In the Matter of Developing a Unified Intercarrier Compensation Regime*; CC Docket No. 01-92; Further Notice of Proposed Rulemaking; 20 FCC Rcd. 4685, P 125; Released March 3, 2005.

[71] Texas, California, Kentucky, Missouri, North Carolina, Ohio, Connecticut, and Nebraska.

[72] Sprint/1, Burt/52.

and based on the cost (determined without reference to a rate-of-return or other rate-based proceeding), nondiscriminatory, and may include a reasonable profit.[73]

CenturyTel has proposed rates for non-recurring charges for CLEC account establishment, customer record search, initial service order, subsequent service order and complex orders. Sprint will not reiterate the history of the negotiations in this Reply Brief. However, as a result of that history Sprint was left with many unanswered questions concerning the "cost study" and was unable to perform a more comprehensive analysis.[74]

The "Labor Rate" and "Time" input values are critical to the rate and cost development for ever service order rate element CenturyTel proposed.[75] CenturyTel failed to provide any support or documentation for either input value.[76] CenturyTel provided historical investment values and current transaction counts.[77] CenturyTel did not use forward looking data.[78] CenturyTel suggests that the questions Sprint raised are not sufficient to reject the proposed rates. However, this statement fails to acknowledge that CenturyTel has the burden to demonstrate that its proposed rates are in accordance with the Act and FCC rules and it has failed to do so.[79]

The FCC rules require that a factual record, including, but not limited to a cost study be made part of the record in a proceeding where rates are disputed and that "any

---

[73] *Id.*

[74] Sprint/6, Farrar/19.

[75] Sprint/6, Farrar15.

[76] *Id.*

[77] Sprint/6, Farrar/17-18.

[78] *Id.*

[79] *In the Matter of Implementation of the Local Competition Provisions of the Telecomms. Act of 1996*, CC Docket No. 96-98, 11 FCCR 15499, FCC 96-325, First Report and Order, ¶ 680 (1996). *See also, Atlas Tel. Co. v. Corp. Comm'n of Okla.*, 309 F. Supp.2d 1299, 1311 (W.D. Okla. 2004) (recognizing the burden of proof is on the ILEC), *aff'd*, 400 F.3d 1256 (10th Cir. 2005).

state proceeding conducted pursuant to this section shall provide notice and an opportunity for comment to affected parties and shall result in the creation of a written factual record that is sufficient for purposes of review."[80] The FCC also specifically mandated that, "[t]he record of any state proceeding in which a State Commission considers a Cost Study for purposes of establishing rates under this section shall include any such Cost Study."[81]

The Commission must follow federal and state law in determining whether CenturyTel's proposed rates comport with TELRIC methodology. Taking into account this standard, CenturyTel has not met its burden for the non-recurring charges that it submitted. The rates proposed by CenturyTel should be set at $0 until CenturyTel submits appropriate forward-looking cost studies that are evaluated by Sprint and approved by the Commission. The $0 rate may be set subject to true-up to the appropriate non-recurring charges after the rates are set according to federal and state requirements.

Issue 15: If CenturyTel sells, assigns or otherwise transfers its territory or certain exchanges, should CenturyTel be permitted to terminate the agreement in those areas?

Related Agreement Provisions: Article III Section 2.7

CenturyTel should not be permitted to terminate the agreement with respect to any exchanges that are sold or otherwise transferred to a successor company. Sprint's proposed language would require that CenturyTel assign the agreement for those exchanges where Sprint is providing services. Sprint's language would protect the continuation of service to existing end user customers. If the agreement is terminated, as CenturyTel's language suggests without a replacement agreement, there is no assurance that a new agreement

[80] 47 CFR Section 51.505(e)(2).

[81] *Id.*

would be put in place by the purchasing entity or at similar terms that allows for the continuation of service.

Sprint's prefiled testimony as summarized in its Opening Brief explains the risks of allowing CenturyTel to simply terminate the agreement if it sells or otherwise transfers a specific operating area or portion thereof. Sprint asserts that it could be left without an Interconnection Agreement or would be placed at a severe disadvantage in attempting to put into place an Interconnection Agreement quickly as it would already be offering service.[82] Further, end-users could be threatened if Sprint is unable to agree to terms with the successor carrier.

Contrary to CenturyTel's fallback position that Sprint would be protected in that it could request an interim arrangement, the applicable provision does not refer to an interim arrangement for a CLEC *without an interconnection agreement*, but rather *without an interconnection arrangement.* 47 C.F.R. 51.715 (a)(1) states that "[t]his requirement shall not apply when the requesting carrier has an existing interconnection arrangement that provides for the transport and termination of telecommunications traffic." Unless CenturyTel intends to disconnect the then existing interconnection arrangement, the ability to request an interim arrangement under 47 C.F.R. 51.715 would not be available to Sprint.

There is no guarantee that the service affecting issues raised by Sprint that could occur if CenturyTel is permitted to terminate that agreement, won't occur due to delays caused by the statutory negotiation and arbitration deadlines with a new carrier. Sprint's proposal remedies those delays by requiring the new carrier to be assigned this agreement.

[82] Sprint/1, Burt/57.

Sprint's proposed language for Article III, Section 2.7 requiring CenturyTel to assign the agreement to a purchasing carrier should be adopted to ensure there are no disruptions in end user service.

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 Agreement Provisions: Article IV, Sections 3.3.1.4, 4.5.2.2

CenturyTel's language requires Sprint to provide percentage local usage ("PLU") factors to CenturyTel for the exchange of traffic delivered over an indirect interconnection where a third party provides transit service. CenturyTel claims that as a result of the arrangement it has with the third party it is unable to measure and bill Sprint-originated traffic. As a result of CenturyTel listed Article IV, Sections 3.3.1.4 and 4.5.2.2 as the disputed language for Issue 16. In addition, there is a related provision on the price sheet, Article VII.D that is part of this issue.

CenturyTel should be able to bill using SS7 records or otherwise do what is under its control to ensure it can identify and bill traffic terminated to it through a third party before shifting that burden to another carrier.[83] The agreement already obligates Sprint to provide all SS7 signaling information, other billing information where available and will conform to industry standard billing formats.[84] Sprint already provides CPN in its signaling.[85] This is adequate information for CenturyTel to bill for any terminating traffic it receives over an indirect interconnection. When Sprint delivers adequate information for

[83] Sprint/4, Burt/62.

[84] Interconnection Agreement, Article IV, Section 3.4.4.

[85] Sprint/4, Burt/61.

billing purposes, it is administratively burdensome and costly for Sprint to develop PLU factors to send to CenturyTel.

CenturyTel attempts to justify its shift of the burden for records for billing to Sprint by contesting or attempting to limit CenturyTel's duty to interconnect indirectly under Section 251(a) of the Telecom Act. As discussed above, CenturyTel is required to interconnect with Sprint both directly and indirectly under Section 251(a) of the Act. CenturyTel's limitations on indirect interconnections are simply not found in the Act or in the FCC's rules.[86] Furthermore, CenturyTel has agreed that it will interconnect indirectly under various limitations. The issue here is whether Sprint should be required to deliver PLU factors for billing purposes for CenturyTel to bill Sprint for traffic delivered over an indirect interconnection.

The FCC stated 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."[87] It is hard to believe that 12 years after passage of the Act CenturyTel has not encountered this issue before and implemented a method to bill indirect traffic, particularly when CenturyTel has acknowledged its pervasive use of indirect interconnection for local traffic.[88] Therefore, Sprint should not be responsible for providing a PLU. CenturyTel

---

[86] *See* Sprint/4, Burt/56.

[87] *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.

[88] *In Re: In the Matter of Developing a Unified Intercarrier Compensation Regime,* CenturyTel's Comments dated August 21, 2001, at 26 ("Local inter-carrier traffic on CenturyTel's networks primarily travels on shared transport trunks because this traffic seldom reaches levels that make it efficient to establish trunking

should be required to do what is under its control to ensure it can identify and bill traffic terminated to it through a third party before shifting that burden to another carrier. Consequently, for the reasons stated above, CenturyTel should not be permitted to refuse to indirectly interconnect based on billing concerns, nor should it be permitted to require Sprint to provide a PLU. Sprint requests that CenturyTel's proposed language requiring Sprint to calculate and submit a PLU be deleted.

III. CONCLUSION

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

a) issue an Order requiring CenturyTel to comply with all terms and conditions advocated by Sprint as set forth herein, and directing the Parties to submit an interconnection agreement reflecting the Commission's resolution of the unresolved issues and contract language described above and in Exhibit C to Sprint's Petition;

b) retain jurisdiction of this arbitration until the Parties have submitted a conforming agreement for approval pursuant to Section 252(e) of the Act; and

c) 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.

---

facilities dedicated to the exclusive use of one carrier"), available at: http://fjallfoss.fcc.gov/prod/ecfs/retrieve.cgi?native_or_pdf=pdf&id_document=6512763442.

Respectfully submitted this 24th day of July, 2008.

Respectfully submitted,

Judith A. Endejan - OSB #072534
Graham & Dunn PC
2801 Alaskan Way ~ Suite 300
Seattle WA 98121-1128
Tel: 206-624-8300
Fax: 206-340-9599
Email: jendejan@grahamdunn.com

Janette W. Luehring
6450 Sprint Parkway
Mailstop: KSOPHN0212-3B653
Overland Park, Kansas 66251
Tel: 913-315-8525
Fax: 913-523-9631
Email: janette.w.luehring@sprint.com

Kristin L. Jacobson
Sprint Nextel
San Francisco, CA 94105
Tel: 707-816-7583
Email: kristin.l.jacobson@sprint.com

Attorneys for Sprint Communications Company L.P.

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 24th day of July 2008 sent the attached Reply Brief of Sprint Communications Company L.P. by electronic mail and Federal Express to the following:

Filing Center
Public Utility Commission of Oregon
550 Capital Street NE #215
Salem OR 97408-2148
puc.filingcenter@state.or.us

I further certify that I have this day sent the attached Reply Brief 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:

Richard A. Finnigan
Law Office of Richard A. Finnigan
2112 Black Lake Boulevard SW
Olympia, WA 98512
rickfinn@localaccess.com
Tel: 360.956.7001
Fax: 360.753.6862

Thomas J. Moorman - *Pro Hac Vice*
Woods & Aitken LLP
2154 Wisconsin Avenue NW, Suite 200
Washington, D.C. 20007
tmoorman@woodsaitken.com
Tel: 202.944.9502

Janette Luehring - *Pro Hac Vice*
Senior Counsel
Sprint Nextel
6450 Sprint Parkway
Mailstop: KSOPHN0304-3b653
Overland Park, KS 66251
janette.w.luehring@sprint.com
Tel: 913.315.8525

Kristin L. Jacobson
Sprint Nextel
201 Mission Street, Suite 1400
San Francisco, CA 94105
kristin.l.jacobson@sprint.com
Tel: 707.816.7583

Dated at Seattle, Washington this 24th day of July, 2008

GRAHAM & DUNN PC

By _____
Judith A. Endejan - OSBA #072534
email: jendejan@grahamdunn.com
Attorneys for Sprint Communications Company L.P.