

STATE OF IOWA  
DEPARTMENT OF COMMERCE  
UTILITIES BOARD

IN RE ARBITRATION OF:

SPRINT COMMUNICATIONS COMPANY L.P.,

Petitioning Party,

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,

Responding Parties.

DOCKET NOS. ARB-05-2  
ARB-05-5  
ARB-05-6

**ARBITRATION ORDER**

(Issued March 24, 2006)

On March 31, 2005, Sprint Communications Company L.P. (Sprint) filed a petition with the Utilities Board (Board) requesting the Board arbitrate certain terms and conditions of a proposed Interconnection Agreement between Sprint and 27 rural incumbent local exchange carriers (RLECs). The petition was filed pursuant to 199 IAC 38.4(3) and 38.7(3) and 47 U.S.C. § 252(b). The petition was identified as Docket No. ARB-05-2.

On May 26, 2005, the Board entered an order dismissing Docket No. ARB-05-2. On June 23, 2005, Sprint filed an action in U.S. District Court, asking the Court to overturn the Board's order. On August 17, 2005, Sprint and the Board filed a joint motion with the Court seeking a limited remand to allow the Board to consider additional evidence on rehearing. The joint motion was granted on August 18, 2005.

On August 29, 2005, Sprint filed a petition with the Board requesting arbitration of certain terms and conditions of a proposed Interconnection Agreement between Sprint and North English Cooperative Telephone Company (North English) and Winnebago Cooperative Telephone Association (Winnebago). The petition was filed pursuant to the same provisions of law and has been identified as Docket No. ARB-05-5.

On November 28, 2005, the Board issued its *Order on Rehearing*, rescinding its May 26, 2005, order. After filing the Board's *Order on Rehearing* with the U.S. District Court, jurisdiction was returned to the Board on January 4, 2006.

On December 5, 2005, Sprint filed a petition with the Board requesting the arbitration of certain terms and conditions of a proposed Interconnection Agreement between Sprint and Citizens Mutual Telephone Cooperative, Mabel Cooperative Telephone Company, Titonka Telephone Company, Lynnville Telephone Company, and Sully Telephone Association. The petition was filed pursuant to the same provisions of law and has been identified as Docket No. ARB-05-6.

The petition for arbitration in Docket No. ARB-05-6 also requested that the Board consolidate the arbitration requests in Docket Nos. ARB-05-5 and ARB-05-6 with the arbitration requests in Docket No. ARB-05-2 and establish a single procedural schedule, noting that Docket No. ARB-05-2 is an "arbitration proceeding involving the same issues herein, but with different RLECs." The Board granted the request for consolidation and set a procedural schedule.

A hearing was held February 8, 2006. Initial briefs were filed February 21, 2006. Reply briefs were filed March 3, 2006.

The Board held a decision meeting on March 16, 2006, making decisions on each of the outstanding issues related to each of the three separate interconnection agreements.

Board member Stamp previously was an attorney with the law firm which is representing Sprint in this matter. However, during his time with the firm as it pertains to this matter, Board member Stamp did not do any work for Sprint, was not involved in counseling or advising Sprint, and was not privy to any confidential information involving Sprint. After reviewing the relevant professional codes, General Counsel has advised Board member Stamp that he may participate in the decision-making in this docket.

### **SPRINT – RLEC<sup>1</sup> INTERCONNECTION AGREEMENT**

**A. Is Sprint entitled to indirect interconnection utilizing the language as proposed by Sprint?**

Sprint argues that it is entitled to have the interconnection agreement authorize both direct and indirect interconnection in order to achieve the most economically efficient network arrangement.<sup>2</sup> Indirect interconnection would give Sprint the ability to interconnect at the Iowa Network Services (INS) tandem. Sprint

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<sup>1</sup> For purposes of the hearing and discussion in this order, the "RLEC Group" includes the following: 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, Huxley Communications, 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, West Liberty Telephone Company, d/b/a Liberty Communications, North English Cooperative Telephone Company, Winnebago Cooperative Telephone Association, Citizens Mutual Telephone Cooperative, Mabel Cooperative Telephone Company, Titonka Telephone Company, Lynnville Telephone Company, and Sully Telephone Company.

<sup>2</sup> Tr. 49.

contends that the real concern of the RLECs is how INS is to be compensated – whether Sprint pays for all transited traffic or just its own originated traffic,<sup>3</sup> which is the second issue raised by the RLECs.

The RLECs contend that the underlying problem is Sprint's refusal to agree to a point of interconnection (POI) on the local network, and argue it is clear under both federal and state law that there is to be a POI for the exchange of local traffic. Pursuant to 47 U.S.C. § 251(c) and 199 IAC 38.3, the POI is to be at any technically feasible point within the local network. The RLECs do not oppose indirect interconnection but insist that this agreement set forth the terms and conditions under which the parties would accomplish indirect interconnection. The RLECs contend that because Sprint has proposed generic indirect interconnection language even where the terms and conditions of indirect interconnection have not been established, there is no basis for including indirect interconnection language in the agreement.<sup>4</sup>

The RLECs argue that the terms and conditions of an agreement with INS must be known before indirect interconnection can be included in the agreement, citing a ruling by the Tennessee Regulatory Authority (TRA).<sup>5</sup> In that case, the TRA stated “[T]he interconnection agreement between the originating and terminating

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<sup>3</sup> Tr. 377.

<sup>4</sup> RLEC Initial Br. 6.

<sup>5</sup> *Petition for Arbitration of Cellco Partnership d/b/a Verizon Wireless*, Docket No. 03-00585, Order of Arbitration Award (Tennessee Regulatory Authority, January 12, 2006).

carriers should address all terms and conditions relating to the transit traffic including the method of transit and who pays the transiting provider.”<sup>6</sup>

Sprint responds to the RLEC argument regarding an appropriate POI by arguing that there is no POI on the local network of the ILEC in an indirect interconnection scenario because the parties have no physical interconnection between each other; rather, the parties interconnect via third party transit provider.

In examining this issue, the Board understands the RLECs believe that Sprint should agree to a POI on the local network citing the requirements of 47 U.S.C. § 251(c), 47 CFR 51.305(2), and 199 IAC 38.3. Sprint, however, has chosen to request interconnection through the requirements and provisions of 47 U.S.C. § 251(a) and (b), which explicitly allow indirect interconnection while saying nothing about the POI or interconnecting within the carrier’s network. The interconnection rule under 199 IAC 38.3 is not definitive. It states that a local utility “may choose the point(s) of interconnection between the two networks for the exchange of originating local telecommunications traffic at any technically feasible point within the terminating carriers network.” The use of the word “may” as opposed to “shall” provides requesting carriers with leeway in how they choose to interconnect.

The RLECs state they do not oppose indirect interconnection, but they complain that the language Sprint proposes for the agreement is unworkable. If the language Sprint proposes for section 19.5 of the agreement is unworkable, it is not clear why the RLECs have not proposed alternative language.

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<sup>6</sup> *Id.* at 26-27.

The Board approves the language proposed by Sprint for sections 19.5.1, 19.5.2, 19.5.3, and 19.5.6 as follows:

- 19.5.1 Until such time that traffic volumes warrant a direct interconnection, the Parties agree to exchange traffic indirectly through a third party providing local transit services.
- 19.5.2 Once the Indirect traffic arrangement between Sprint and ILEC's end office is no longer the economically preferred method of interconnection, Sprint will establish a direct interconnection with ILEC as set forth in this Agreement.
- 19.5.3 ILEC may not deliver its originated traffic to Sprint via an IXC if Sprint has NXX codes rated within the ILEC's local calling area, including mandatory EAS.
- 19.5.6 This Agreement shall be subject to re-negotiation on the request of either Party if a non Party LEC whose transit facilities are used in connection with the Local Traffic provided under this Agreement changes the applicable rates, terms, or conditions for those transit facilities.

**B. If indirect interconnection is permitted, is the RLEC responsible for any facility or transit charges related to delivering its originating traffic to Sprint outside of its exchange boundaries?**

Sprint maintains that each party is responsible for the traffic it originates to the other party and is therefore responsible for associated transit fees. It argues this is clearly established in 47 CFR 51.703(b) which states, “[a] LEC may not assess charges on any other telecommunications carrier for telecommunications traffic that originates on the LEC’s network.” Sprint argues that this language specifically precludes the assessment of charges to a terminating party for traffic it receives from the originating party.

Sprint also points out that its position was recently upheld by the Illinois Commerce Commission's arbitration decision involving Sprint and various RLECs in November 2005.<sup>7</sup> The Pennsylvania Commission<sup>8</sup>, the Tennessee Commission<sup>9</sup>, the Tenth Circuit Court of Appeals,<sup>10</sup> the D.C. Circuit Court of Appeals,<sup>11</sup> and the Georgia Commission<sup>12</sup> have issued similar rulings. Sprint suggests the Federal Communications Commission (FCC) has created a competitively neutral regime under which the interconnecting carrier is required to pay the cost associated with transporting calls to the ILEC, and the ILEC is required to pay the costs associated with transporting calls to the interconnecting carrier.

Sprint reiterates that the RLECs' position is based on the misguided argument that a POI exists in the case of an indirect interconnection. As previously noted, when the parties are indirectly interconnected through a third party tandem, no

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<sup>7</sup> *Sprint Communications L.P. d/b/a Sprint Communications Company L.P. Petition for Consolidated Arbitration with Certain Illinois Incumbent Local Exchange Carriers pursuant to Section 252 of the Telecommunications Act 1996*. Arbitration Decision, Docket 05-0402 (November 8, 2005).

<sup>8</sup> *Petition of Cellco Partnership d/b/a Partnership d/b/a Verizon Wireless for Arbitration Pursuant to Section 252 of the Telecommunications Act of 1996 to Establish an Interconnection Agreement With Alltel Pennsylvania, Inc.*, Opinion and Order, Docket A-310489F7004 (January 13, 2005), rehearing granted February 3, 2005.

<sup>9</sup> *In re: Petition for Arbitration of Cellco Partnership d/b/a Verizon Wireless, Petition for Arbitration of Bellsouth Mobility LLC; Bellsouth Personal Communications, LLC; Chattanooga MSA Limited Partnership; Collectively d/b/a Cingular Wireless, Petition for Arbitration of AT&T Wireless PCS, LLC d/b/a AT&T Wireless, Petition for Arbitration of T-Mobile USA, Inc., Petition for Arbitration of Sprint Spectrum L.P. d/b/a Sprint PCS*, Docket No. 03-00585, Order of Arbitration Award (January 12, 2006).

<sup>10</sup> *Atlas Telephone Company v. Corporation Commission of Oklahoma*, 400 F.3d 1256 (10<sup>th</sup> Cir. 2005).

<sup>11</sup> *Mountain Communications v. FCC*, 355 F.3d 644 (D.C. Cir. 2004).

<sup>12</sup> *Order on Transit Traffic Involving Competitive Local Exchange Carriers and Independent Telephone Companies*, Docket No. 16772-U, March 24, 2005.

physical POI exists between the parties. Sprint argues that the Board's decision in *re: LTDS Corp. v. Iowa Telecommunications Services, Inc. d/b/a Iowa Telecom*, Docket No. ARB-05-3, cited by the RLECs is irrelevant to this situation because *LTDS* dealt with a direct interconnection scenario.<sup>13</sup>

The RLECs note that this issue addresses the financial consequences of indirect interconnection resolved in the previous issue. The issue here is whether each party is responsible for costs on the other side of the POI. The RLECs argue that in *LTDS*, the Board confirmed that each party is responsible for the costs on its side of the POI and is not responsible for costs beyond the POI.<sup>14</sup> The RLECs also argue Sprint is misconstruing 47 CFR 51.703(b), arguing that under the circumstances of this case, the RLECs are not seeking to assess any charge on Sprint. Rather, they only insist that Sprint be responsible for the costs on its side of the POI.

The RLECs assert the decision by the Illinois Commerce Commission cited by Sprint may be clear in result but does not identify a rationale for stating there are two POIs and maintain there is no support for the two-POI concept for the exchange of local traffic. The RLECs also suggest the Illinois order is inconsistent with the Illinois staff recommendation and is currently on appeal to federal court. Therefore they argue the Illinois Order is not a definitive interpretation supporting Sprint's proposition

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<sup>13</sup> Sprint Reply Br. 27.

<sup>14</sup> *In re: LTDS Corp. v. Iowa Telecommunications Services, Inc. d/b/a Iowa Telecom*, "Arbitration Order," Docket No. ARB-05-3, issued July 20, 2006, p. 12. (*LTDS*)

that the RLECs should be responsible for costs incurred outside the local calling area.<sup>15</sup>

The treatment of the POI is relevant to resolving the compensation aspects of this issue. As previously indicated, Sprint is interconnecting pursuant to § 251(a) and (b), which explicitly allows indirect interconnection and is silent about the POI. It is § 251(c) that refers only to direct interconnection “within the carrier’s network.” The FCC’s interconnection rules under section 51.305 further develop the concept of the POI. These rules, however, fall under “Subpart D - Additional Obligations of Incumbent Local Exchange Carriers” – a title shared with § 251(c) interconnection. Sprint has not requested § 251(c) interconnection.

The RLECs cite the Board's decision in *LTDS*, where the Board ruled that each party is responsible for all costs of traffic to and from the POI.<sup>16</sup> However, that case involved § 251(c) interconnection, which imposes additional obligations on incumbent local exchange carriers. Citing § 251(c)(2)(b), the Board ruled that *LTDS* has the right to designate the location of the POI for the exchange of local traffic at any technically feasible point within Iowa Telecom’s network. Because the Board's decision in *LTDS* related to § 251(c), that decision is not applicable to this case.

Sprint cites a number of cases involving third party transit providers and interconnection. In all of these cases, the originating carrier is responsible for the transiting costs to the terminating carrier. Most of the cases relate to the

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<sup>15</sup> RLEC Reply Br. 6.

<sup>16</sup> RLEC Initial Br. 7.

interconnection of wireless and wireline networks. The RLECs argue that these decisions were necessitated by the mismatch between the size of the local calling areas of the wireline and wireless carriers, while the local calling areas of the RLECs and Sprint are congruent in the circumstances before the Board in this docket.<sup>17</sup>

Of the interconnection cases Sprint cites, the decision by the Illinois Commerce Commission is the most similar to the case at hand.<sup>18</sup> That case involved Sprint and ten Illinois RLECs. Sprint sought arbitration to compel the RLECs to enter into interconnection agreements in order to support a private business arrangement between Sprint and Mediacom and its affiliate, MCC Telephony of Illinois, Inc. In the Illinois case, Sprint requested indirect interconnection pursuant to §§ 251(a) and (b) as opposed to interconnection pursuant to § 251(c). As in the Iowa case, the Illinois RLECs objected to Sprint's proposal that the originating carrier be responsible for paying third party transiting fees. In resolving the issue, the Illinois Commission stated:

When indirectly interconnecting through a third party switch each party should be financially responsible (that is financially responsible for its own installed facilities or for compensating another party for facilities it uses) for interconnection facilities on its side of the third party ILEC switch. Costs associated with tandem switching should be paid by the carrier sending the traffic. This, in effect, creates two POIs – one on either side of the third party ILEC tandem – demarcating the carriers' financial responsibilities for interconnection facilities. When the RLEC is delivering traffic

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<sup>17</sup> RLEC Initial Br. 8.

<sup>18</sup> *Sprint Communications L.P. d/b/a Sprint Communications Company L.P. Petition for Consolidated Arbitration with Certain Illinois Incumbent Local Exchange Carriers pursuant to Section 252 of the Telecommunications Act 1996*. Arbitration Decision, Docket 05-0402 (November 8, 2005).

to Sprint then the POI will be on the Sprint side of the third party ILEC tandem. When Sprint is delivering traffic to the RLEC then the POI will be on the RLEC side of the third party ILEC tandem. This is the most efficient and equitable means of allocating costs.<sup>19</sup>

The Board notes the location of the POI was central to the Illinois Commission's decision. The Commission apparently recognized that there is no true POI under indirect interconnection. A POI that would exist within an RLEC network would only exist under § 251(c) direct interconnection. The Illinois Commission ruled that where there is indirect interconnection pursuant to § 251(a) involving a third-party transiting carrier, there are "in effect" two POIs. With two POIs, each party must pay the cost of delivering traffic to the other party.

The Board agrees with the decisions of the various state commissions cited above and finds that it is most appropriate for each party to pay the cost of delivering traffic to the other party. The Board approves the language proposed by Sprint for sections 19.5.4 and 19.5.5 as follows:

- 19.5.4 Each Party acknowledges that it is the originating Party's responsibility to enter into transiting arrangements with a third party providing local transit services.
- 19.5.5 Each Party is responsible for the transport of originating calls from its network to the transiting Party. The originating Party is responsible for the payment of transit charges assessed by the third party providing local transit services.

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<sup>19</sup> *Id.* at p. 28.

**C. Can Sprint combine or commingle various types of traffic on individual trunks?**

Sprint argues the most efficient way to interconnect is to combine both wireline and wireless traffic over the same trunks and suggests there is no regulatory or legal reason why traffic cannot be combined. Intrastate and interstate traffic is routinely combined on single trunks and appropriate compensation is rendered despite the differences in rate treatment. Sprint cites decisions by the Indiana Commission,<sup>20</sup> the Michigan Commission,<sup>21</sup> and the FCC's *Verizon-Virginia*<sup>22</sup> order that all support commingling of traffic.

According to Sprint, the RLECs' only objection to commingling is the fear that they will be underpaid for traffic that is not properly identified and billed. Sprint reiterates that it is developing the capability to identify the jurisdiction and type of traffic that would be placed over a multi-use trunk.<sup>23</sup> Regarding the RLECs' point that

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<sup>20</sup> *In the Matter of Level 3 Communications, LLC's Petition for Arbitration Pursuant to Section 252(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 Indiana Bell Telephone Company d/b/a SBC Indiana*, 2004 Ind. PUC LEXIS 465 (Indiana Utility Regulatory Commission Cause No. 42663 INT-01, December 22, 2004).

<sup>21</sup> *In the matter of the Application of Sprint Communications Company, L.P. for arbitration to establish an interconnection agreement with Ameritech Michigan*, 1997 Mich. PSC LEXIS 8 (Michigan Public Service Commission Case No. U-11203, Order Approving Agreement with Modifications, January 15, 1997).

<sup>22</sup> *In the Matter of 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; In the Matter of Petition of Cox Virginia Telcom, 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 Arbitration; In the Matter of Petition of AT&T Communications of Virginia Inc., Pursuant to Section 252(e)(5) of the Communications Act for Preemption of the Jurisdiction of the Virginia Corporation Commission Regarding Interconnection Disputes with Verizon-Virginia, Inc.*, CC Docket Nos. 00-218, 00-249, and 00-251, Memorandum Opinion and Order, 17 FCC Rd. 27039 (Rel. July 17, 2002).

<sup>23</sup> Sprint Reply Br. 29.

the other provisions in the proposed agreement only contemplate the exchange of local traffic, Sprint agrees to change the conflicting provisions should the Board approve commingling of traffic.<sup>24</sup>

The RLECs state that the agreement in question is for the exchange of local traffic. There are other agreements already in place for the exchange of wireless and interexchange traffic. Further, the RLECs point out that uncontested sections 3.12 and 21.2 of Exhibit 6 expressly exclude wireless and interexchange traffic from being commingled with local traffic.<sup>25</sup> The RLECs argue that retaining the separation of traffic avoids all the problems of identification and measurement of various types of traffic.

The RLECs note that in other states where commingling is allowed, there is no centralized equal access provider such as INS. The RLECs do not currently have the capability to measure traffic. All recording functions are performed at INS and not at the RLEC switch. If the interconnection is to be performed through INS, the RLECs have indicated a willingness to discuss commingling traffic delivered through INS. However, the RLECs are opposed to Sprint having an open-ended right to commingle traffic because they don't have the ability to measure traffic.<sup>26</sup>

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<sup>24</sup> Tr. 201.

<sup>25</sup> RLEC Initial Br. 9.

<sup>26</sup> RLEC Reply Br. 9.

In the RLECs' Reply Brief they explain that only INS, not the RLECs, has the ability to measure traffic.<sup>27</sup> It would appear that commingling is feasible for the RLECs only under indirect interconnection and not under direct interconnection.

The Board has approved the inclusion of language related to indirect interconnection previously in this order, including section 19.5.1. This section states that indirect interconnection is meant to be a temporary measure until traffic volumes support direct interconnection. The concerns with the commingling of various types of traffic on individual trunks only arises once direct interconnection has been established. Because Sprint has indicated that it is technically possible to perform the measurement of traffic, but that it simply has not yet implemented those procedures,<sup>28</sup> the Board will approve provisions related to commingling various types of traffic on individual trunks. Sprint has acknowledged that there are conflicting provisions in the agreement (sections 3.12 and 21.2),<sup>29</sup> the Board directs the parties to cooperate regarding these sections and to incorporate the Board's decision regarding commingling of traffic. The Board approves the sections of the interconnection agreement related to the commingling of traffic as follows:

19.1.2 Sprint and ILEC may utilize existing and new trunks and facilities procured in any capacity for the mutual exchange of traffic pursuant to the following:

19.1.2.1 Each Party shall measure and accurately identify to the other Party the traffic delivered on combined trunks/facilities as Local Traffic (wireline or wireless) or non-local traffic (wireline

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<sup>27</sup> RLEC Reply Br. 9.

<sup>28</sup> Tr. 194.

<sup>29</sup> Sprint Reply Br. 30.

or wireless). The charges for usage and underlying trunks/facilities shall be subject to appropriate compensation based on jurisdiction and the cost sharing provisions as provided in this Section 19 and Attachment 1. Neither Party shall assess access charges to the other Party for the termination of Local Traffic.

19.1.2.2 Should either Party not be able to measure and accurately identify such traffic, such Party shall provide factors necessary to appropriately jurisdictionalize the traffic.

19.1.2.3 Each Party may audit the development of the other Party's actual usage or the development of the jurisdictional usage factors, as set forth in the audit provisions, Section 5, of this Agreement.

**D. What are the appropriate rates for direct interconnection facilities: TELRIC rates or Special Access rates?**

Although there are no specific rates in the record, Sprint requests the Board rule that TELRIC is the appropriate pricing methodology for establishing rates for direct interconnection. Sprint also requests the Board establish an expedited timeline for negotiation and possible arbitration if the parties are unable to agree on a rate.<sup>30</sup>

As authority for its position, Sprint cites 47 U.S.C. § 252(d)(1) which states:

Determination by a State commission of the just and reasonable rate for the interconnection of facilities and equipment for the purposes of subsection c(2) of section 251 ... shall be based on the cost (determined without reference to a rate-of-return or other rate-based proceeding) of providing the interconnection ..., nondiscriminatory, and may include a reasonable profit.

Sprint complains that the RLECs first proposed in their Initial Brief to use their tariffed special access rates for interconnection facilities. Sprint is also concerned

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<sup>30</sup> Sprint Initial Br. 51.

that the RLECs attached to their initial brief an altered "Attachment I Pricing Schedule" containing a new "facility charge" that never appeared before. According to Sprint, the proposal to use tariffed special access rates was never raised on the parties' joint issues list or in the RLECs' filed testimony.

The RLECs argue there is no basis for Sprint's claim that the rates be based on TELRIC, because such forward-looking rates are reserved for interconnection pursuant to § 251(c)(2). Sprint has requested interconnection pursuant to § 251(a) and (b). Regarding the altered "Attachment I Pricing Schedule" attached to the RLECs' initial brief, the RLECs claim to have always represented to Sprint that these rates should be based on the RLEC special access tariffs. The RLECs agree that the rate in question was not included in the original "Attachment 1, Pricing Schedule" which was Exhibit 6. However, the RLECs claim RLEC witness Hendricks' testimony made clear that "[T]he RLECs' request that the Board require that facilities provided under the terms of the agreement be provided at the RLECs' tariffed special access rates."<sup>31</sup> The facilities necessary for these services are provided under those tariffs. Although Sprint may claim there is no specific rate in the record, the RLECs maintain that the rate is provided in the RLEC published special access tariffs.

Sprint's position is that interconnection is typically requested pursuant to § 251(c) and the 251(a) and (b) interconnection it has requested with the RLECs is not the norm. Although TELRIC explicitly applies to § 251(c), Sprint argues that it

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<sup>31</sup> Tr. 360-61.

logically follows that TELRIC also applies to § 251(a). The RLECs argue there is nothing in the statutes, regulations, or FCC orders that requires use of TELRIC for § 251(a) interconnection.<sup>32</sup>

The Board agrees that the statute is ambiguous. If this request for interconnection had been made pursuant to 47 U.S.C. § 251(c), TELRIC would have been required. However, Sprint chose not to request interconnection pursuant to § 251(c). Sprint provided no substantive argument to establish that TELRIC is required under §§ 251(a) and (b). Absent a persuasive argument that TELRIC should be used for interconnection pursuant to these provisions, the Board will approve the Special Access rates proposed by the RLECs.

Regarding the issue that the RLECs attached an altered "Attachment I Pricing Schedule" to the initial brief, it appears the changes serve to clarify where the rates for interconnection facilities are to be found should the Board decide not to order TELRIC-based rates. The RLECs are correct that, all along, they have advocated interconnection facilities being priced at special access rates.

**E. What are the appropriate reciprocal compensation rates for the following services if traffic becomes out of balance?**

For reciprocal compensation purposes, both parties agree to bill and keep unless traffic is out of balance by plus or minus 5 percent.<sup>33</sup> The disputed issue is the

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<sup>32</sup> Tr. 173.

<sup>33</sup> Exh. 6, section 21.1.3 and 21.1.4.

rate for out of balance traffic. The table below shows the four reciprocal compensation rates that are contained in the record.

Source	Rate Type	Actual Rate
Sprint Direct	FCC Proxy	\$0.002 - \$0.004 (\$0.003)
RLEC Reply	HAI Model - TELRIC	\$0.0523
Exh. 6 and RLEC Reply	NECA Tariff	\$0.023733
Sprint Rebuttal	NECA Tariff	\$0.013420

The first rate of \$0.003 per minute was proposed by Sprint, is based on the FCC proxy rates, and is mid-way between the \$0.002 and \$0.004 range established in 47 CFR 51.707. However, as the RLECs point out the 8<sup>th</sup> Circuit has voided the FCC proxy rates.<sup>34</sup> The Board will disregard the proxy rates.

The second rate evolved because Sprint stated in its direct testimony that FCC rules require that when bill and keep is not in place, the incumbent LEC rates must be based on the forward-looking or TELRIC costs.<sup>35</sup> In reply, the RLECs developed forward-looking costs for each of the individual companies using the HAI Model Version 5.0a.<sup>36</sup> The lowest rate calculated was \$0.0161 per minute for Clear Lake Independent Telephone Company, while the highest rate was \$0.1898 per minute for Farmers Mutual Cooperative Telephone Company.<sup>37</sup> When the individual rates were averaged, the result was \$0.0523 per minute.<sup>38</sup> This resulted in a rate that was higher than the \$0.023733 rate the RLECs had initially proposed for negotiation

<sup>34</sup> See, *Iowa Utilities Board v. FCC*, 219 F3rd 744, 756-757, 8<sup>th</sup> Cir. 2000; Tr. 168-69 and RLEC Initial Br. 11.

<sup>35</sup> Tr. 62.

<sup>36</sup> See Tr. 427-54.

<sup>37</sup> Exh. 203.

<sup>38</sup> Tr. 453.

purposes.<sup>39</sup> In reply testimony, the combined rate totaling \$0.023733 rate is proposed by the RLECs as an alternative to the \$0.0523 averaged TELRIC rate.<sup>40</sup> Therefore, the Board will also disregard the \$0.0523 TELRIC-based rate.

Although the \$0.023733 rate was proposed in the RLECs' reply testimony, the derivation of the rate was not explained. It is Sprint that first revealed the derivation of the RLECs' proposed rate of \$0.023733 per minute as the sum of four components from the National Exchange Carrier Association (NECA) Tariff.<sup>41</sup> The RLECs acknowledge that Sprint correctly derived the \$0.023733 rate.<sup>42</sup> Sprint does not take issue with using the NECA Tariff to derive a reciprocal compensation rate, but it proposes adjustments to the rate. After adjusting the four components in the RLEC's rate, Sprint derives a reciprocal compensation rate of \$0.013420 per minute.<sup>43</sup>

As noted above, both the Sprint rate and the RLEC rate are based on the NECA tariffed rates. Both rates are derived based on how four component parts, when totaled, equal the final rate. The Board has examined each of the four components individually.

Local Switching: The RLECs use the Band 8 local switching rate arguing that it is meant to apply to smaller companies. The RLECs suggest that the use of Band 8 is consistent with FCC precedent.<sup>44</sup> Sprint constructed a table to show that the

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<sup>39</sup> Tr. 410.

<sup>40</sup> Tr. 453.

<sup>41</sup> Tr. 225-26, and Table 1.

<sup>42</sup> RLEC Initial Br. 13.

<sup>43</sup> Tr. 229, Table 2.

<sup>44</sup> RLEC Initial Br. 14.

RLECs in the proceeding actually fall into all eight different switching bands.<sup>45</sup> Sprint also constructed a weighted average of all eight-rate bands based on access lines to develop a lower switching rate.<sup>46</sup> The RLECs appear to recognize the validity of Sprint's weighted average, but state that if this agreement is to be used as a template for the other small RLECs (not in this proceeding) then Band 8 is appropriate because most other RLECs are small and appear within Band 8.<sup>47</sup> The RLECs also point out that there are input errors present in Sprint's Exhibit 11 and that it is possible Exhibit 10 may also have input errors.

The Board finds that Sprint's methodology in Exhibit 10 better captures the actual rate bands and costs of the RLECs involved in this proceeding. The Board will adopt the methodology from Exhibit 10 that Sprint used to calculate the local switching rate. However, if there are any input errors in Exhibit 10, the Board directs the parties to work together to correct them.

Information Surcharge: The RLECs added a small charge (\$0.000192) to the local switching rate to recover the expenses of directory white pages.<sup>48</sup> The RLECs point to the interconnection agreement, which states, "[E]nd Users' primary listing information in the white pages telephone directories will be provided at no charge."<sup>49</sup>

The RLECs also suggest that if the rate component were eliminated from the

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<sup>45</sup> Exh. 10.

<sup>46</sup> Tr. 228.

<sup>47</sup> RLEC Initial Br. 14.

<sup>48</sup> Tr. 228.

<sup>49</sup> Exh. 6, section 25.5.

reciprocal compensation rate, there would need to be a charge in section 25.5 for white page listings.<sup>50</sup>

Sprint states that reciprocal compensation switching functions have nothing to do with directory listings, thus the charge is inappropriate.<sup>51</sup> Sprint also claims that the RLECs are double-recovering the white pages costs since there is another \$25 charge pertaining to white pages under the Service Order Charge on the "Attachment I Pricing Schedule."<sup>52</sup> The RLECs counter that the two charges are for different aspects of white pages costs.<sup>53</sup> The Board notes that one charge is for a database entry pertaining to white pages and the other charge is for publishing the directory itself.

Ideally, the rate for directory listings should have been identified in section 25.5 of the agreement and not hidden in reciprocal compensation. Still, a service is being provided the cost for which needs to be recovered even though the recovery mechanism may not be ideal. The Board will allow the \$0.000192 component to recover directory listings.

Tandem Switched Termination: This component of reciprocal compensation covers the cost of central office circuit equipment at each end of the transport facility.<sup>54</sup> The RLECs' rate component assumes that in every case there will be

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<sup>50</sup> RLEC Initial Br. 14.

<sup>51</sup> Tr. 238.

<sup>52</sup> Sprint Reply Br. 35.

<sup>53</sup> RLEC Reply Br. 14.

<sup>54</sup> Tr. 225.

transport from an RLEC host office to an RLEC remote office, even in cases where there is no host-remote relationship.<sup>55</sup> Sprint presented a detailed analysis to determine the actual number of cases where a host-remote relationship exists.<sup>56</sup> The result of Sprint's analysis suggests that only 24.36 percent of traffic will require host-remote transport.<sup>57</sup> The RLECs do not take specific issue with the methodology of Sprint's analysis, but they point out that Sprint's analysis includes companies that are not involved in this proceeding, and this may skew the results.<sup>58</sup>

The Board finds that Sprint's approach appears to more accurately capture the host-remote transport aspect of reciprocal compensation. The Board will adopt Sprint's methodology used to derive the results in column N. However, to the extent that there are input errors in Exhibit 11 which could skew the 24.36 percent result derived in column N, the Board orders the parties to work together to correct any input errors.

Tandem Switched Facility: This component of reciprocal compensation covers the cost of interoffice cable and wire facilities, which are primarily fiber.<sup>59</sup> The RLECs calculate the rate component based on an average distance of 25 miles. Sprint continued the analysis in Exhibit 11 to derive an average distance of 14.34 miles in column P.

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<sup>55</sup> Tr. 411.

<sup>56</sup> Exh. 11, column N.

<sup>57</sup> Tr. 229.

<sup>58</sup> Tr. 240-42 and RLEC Initial Br. 15.

<sup>59</sup> Tr. 225.

At the hearing, RLEC witness Snoddy suggested Sprint's 14.34-mile calculation understates all the transport mileage that would actually exist. According to witness Snoddy, Sprint's calculation does not account for the distance between the RLEC exchange and the INS network, nor does it capture situations where an RLEC has a second exchange within the local calling area and there is not a host-remote.<sup>60</sup> Witness Snoddy acknowledged the 25-mile distance is an estimate, but based on his familiarity with the networks involved, he indicated his belief that it was a conservative number.<sup>61</sup>

The Board finds the methodology behind Exhibit 11, column P, in which Sprint calculates the 14.34-mile distance does not appear to have captured all the situations where transport will be necessary. However, the RLECs' 25-mile number is an estimate. The Board orders the parties to re-calculate the distance based on Sprint's methodology, adding in the situations that were excluded initially.

**F. Should the non-recurring charges for the following services be included in the interconnection agreement: Hot Cuts, Service Order Modification, and Directory Service.**

Sprint contends none of these three charges should be included in the interconnection agreement. Sprint argues that because it will not use the RLEC's loop, the "Coordinated Conversions," or "Hot Cut" charge, will not apply to Sprint's provision of service. Further, because the RLECs failed to provide any supporting documentation for the "Service Order Expedite" and "Service Order Charges," there

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<sup>60</sup> Tr. 416.

<sup>61</sup> Tr. 417.

is no basis to include them in the agreement.<sup>62</sup> Sprint also suggests that since the rates are reciprocal, neither party will be harmed if no rate is imposed since both parties will receive payment in form of like services.<sup>63</sup>

The RLECs contend that the nonrecurring charges were identified and supported by witness Snoddy,<sup>64</sup> while the nature and rates for the charges have been unchallenged by Sprint. The RLECs also contest Sprint's claim that hot cuts are irrelevant to the agreement and should be removed claiming the hot cut service in the agreement has nothing to do with loops but rather is for a real-time service cutover that allows a circuit to be changed from one phone company to the other.<sup>65</sup>

At the hearing, witness Snoddy stated that the RLECs did not perform time and motion studies for the three charges because the functions behind the charges do not exist today. Thus, the charges are based on a sampling of labor charges from the RLECs.<sup>66</sup> For its part, Sprint provided nothing specific to show that the RLEC charges are too high. In its Initial Brief, however, Sprint recommends the Board strike the charges because they are intended to be reciprocal suggesting that since Sprint may be called to perform the same work for the RLECs, it makes no difference if there is no charge at all. The Board notes this argument ignores the possibility that one party will likely perform the function more often than the other party.

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<sup>62</sup> Sprint Initial Br. 63.

<sup>63</sup> Sprint Initial Br. 64.

<sup>64</sup> Tr. 403-06.

<sup>65</sup> RLEC Reply Br. 16.

<sup>66</sup> Tr. 411.

It appears that Sprint can avoid two of the three charges. Sprint claims in its Initial Brief that it will not need hot cuts (Coordinated Conversions). The RLECs reply that Sprint misunderstands the service, and some customers may request hot cuts, making it appropriate to include a charge when it is requested. Sprint could also avoid the "Service Order Expedite" charge because this would apply only if Sprint requested a shorter time period to transfer a customer than is standard.<sup>67</sup> Therefore, if Sprint requested customer transfers within standard time intervals, the charge would not apply. These two charges should be included in the interconnection agreement to properly reflect each party's provision of the service.

The "Service Order Charge" appears to apply to Sprint in each case. This is the RLEC's \$25 charge to process a service order and to place a directory listing in its database. In most cases, competitive carriers do not publish directories, thus, the database entry would probably be performed in every case. Because Sprint did not specifically challenge the \$25 amount, or justify a lower amount, there is nothing else in the record for the Board to adopt.

The Board approves the nonrecurring charges for "Service Order Charge," "Service Order Expedite," and "Coordinated Conversions" on Attachment 1, Pricing Schedule (RLEC Proposal) of Exhibit 6.

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<sup>67</sup> Tr. 404-05.

## **SPRINT – HICKORYTECH INTERCONNECTION AGREEMENT**

### **A. How should the term "end user" be defined in the interconnection agreement?**

It appears that both Sprint and HickoryTech agree in concept as to who the "end users" will be. The dispute is in how to adequately define the term in the interconnection agreement.

It is Sprint's position that the definition of end user should reflect the two-fold purpose of the agreement. First, the definition should recognize the business relationship this Board endorsed in its "*Order on Rehearing*" whereby Sprint forms a business relationship with last mile providers such as MCC Telephony of Iowa, Inc. (MCC). Second, the definition of end user must take into account the subscribers served directly by either party to the agreement. According to Sprint, it is necessary for the Board to accept Sprint's definition of end users so that the business relationship with last mile providers authorized by the Board can be implemented.<sup>68</sup> Sprint requests the Board adopt Sprint's proposed language because it most accurately reflects the purpose of the agreement between Sprint and HickoryTech.

HickoryTech requested that the definition of "end user" be included on the issues list because the implications of the definition are not yet known. Sprint has suggested that HickoryTech has had adequate time to fully explore and describe any implications, however, HickoryTech points out that the reason for the "unknown" is

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<sup>68</sup> Sprint Initial Br. 5-6.

that Sprint has refused to fully disclose its contract with MCC or its complete business model.<sup>69</sup>

HickoryTech raises concern that Sprint's proposed definition may expand beyond the "ultimate users" in Bancroft, Iowa. Further, to the extent that MCC does something on its own, it should be clear that those end users are not part of this agreement.

HickoryTech believes Sprint's suggested definition of end user is unnecessarily broad and the definition should be limited to the business or residence subscriber in Bancroft, Iowa that is the ultimate user of telecommunications services provided by either of the parties.<sup>70</sup> HickoryTech also points out that Sprint's definition also includes a reference to "other ultimate user" that is confusing. What other users are there if not residential or business? The reference to "other ultimate user" should be struck.<sup>71</sup> HickoryTech offered compromise language in its reply brief.<sup>72</sup>

After reviewing the draft agreement further, HickoryTech indicated in its reply brief that the term "customer" should be replaced by "end user" in sections 23, 24, and 25 of the agreement rather than in every instance as it initially requested.<sup>73</sup>

The Board agrees with HickoryTech that the definition proposed by Sprint appears to be overly broad by the inclusion of the phrase, "when Sprint has a

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<sup>69</sup> HickoryTech Reply Br. p. 4.

<sup>70</sup> Tr. 319.

<sup>71</sup> Tr. 319-320.

<sup>72</sup> HickoryTech Reply Br. p. 5.

<sup>73</sup> HickoryTech Reply Br. p. 5.

business arrangement with a last mile provider for interconnection services, the ultimate user of voice services provided by the last mile provider." This could be interpreted to include any end user that is provided service by MCC (or any other last mile provider with which Sprint has a business arrangement) regardless of how or where that service is provided.

The newly offered language by HickoryTech for section 3.4 of the interconnection agreement is adequately precise to include the ultimate end users of MCC, while limiting the agreement to those who are being provided service through the Sprint/MCC business agreement. The Board approves the alternative language proposed by HickoryTech, as follows:

3.4 End User means the residence or business subscriber in Bancroft, Iowa that is the ultimate user of telecommunications services derived from the networks that are operated by the Parties.

It appears that in almost every instance the term "end user" is already being used in sections 23, 24, and 25. However, there are several sections (23.3, 24.1, 24.4, and 24.6) where the term "customer" still appears. For consistency, each of these instances shall be changed to utilize the term "end user."

**B. Is the appropriate Point of Interconnection (POI) between Sprint and HickoryTech at the Mankato, Minnesota, host office or at a location within the Bancroft, Iowa, exchange?**

Sprint seeks interconnection with HickoryTech on HickoryTech's network at the host office located in Mankato, Minnesota, for two primary reasons, both of which pertain to economic feasibility. First, Sprint already has facilities in Mankato, whereas

there are no MCC facilities that Sprint can utilize in Bancroft that are capable of interfacing with traditional telephony signaling.<sup>74</sup> Second, if Sprint were to establish a POI in Bancroft, the traffic would have to be hauled to the host office in Mankato for switching, and then hauled back to Bancroft before it could be terminated at HickoryTech's remote office in Bancroft.<sup>75</sup> Sprint argues that because the traffic would have to be hauled to Mankato and back to Bancroft, it would be in HickoryTech's economic best interest, as well as Sprint's, to establish a POI in Mankato.<sup>76</sup>

Sprint also notes that 199 IAC 38.3 provides that "a local utility that originates local telecommunications traffic and desires to terminate that traffic on the network of another local utility may choose the point(s) of interconnection between the two networks for the exchange of that originating local telecommunications traffic at any technically feasible point within the terminating carrier's network." Sprint argues that this rule makes it clear that Sprint, not HickoryTech, has the right to choose the location of the POI, so long as the point chosen is technically feasible and on HickoryTech's network.<sup>77</sup>

HickoryTech's argument against a Mankato POI is two-fold. First, HickoryTech argues that its 47 U.S.C. § 214 authority from the FCC is limited and would not allow traffic to be transported to the host office located in Mankato and returned to Iowa for

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<sup>74</sup> Tr. 112, 124.

<sup>75</sup> Tr. 112.

<sup>76</sup> *Id.*

<sup>77</sup> Sprint Initial Br. 7.

termination.<sup>78</sup> Second, HickoryTech argues that the Board has no jurisdiction to order a POI outside the state of Iowa.<sup>79</sup>

According to HickoryTech's testimony, when HickoryTech established its network, it requested and received authorization from the FCC for the interstate transport associated with its host-remote arrangement for the exchanges of Bancroft and Lakota.<sup>80</sup> The authority requested and granted was expressly for the host-remote arrangement and did not include exchange of any traffic at points outside of the state of Iowa. HickoryTech argues the § 214 authorization issued to Heartland Telecommunications Company of Iowa does not allow traffic to be transported to the host office located in Mankato, Minnesota, and returned to Iowa for termination. For this reason, HickoryTech believes it is not authorized to establish a POI outside the state of Iowa absent an amended § 214 authorization and argues it is unreasonable for Sprint to expect HickoryTech to comply with demands that could require HickoryTech to alter its federal authority or risk regulatory penalties.<sup>81</sup>

HickoryTech also argues that, contrary to Sprint's testimony in this case, it is not technically feasible to establish a POI in Bancroft.<sup>82</sup> HickoryTech requests the Board to direct the parties to establish a POI at any technically feasible point within the Bancroft exchange and require each party to provide facilities to that POI.

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<sup>78</sup> HickoryTech Initial Br. 6.

<sup>79</sup> HickoryTech Reply Br. 8-9.

<sup>80</sup> Tr. 321.

<sup>81</sup> *Id.*

<sup>82</sup> Tr. 324.

In evaluating HickoryTech's argument concerning the technical feasibility, it should be noted that during the hearing, HickoryTech witness VanderSluis stated that MCC's fiber optic facilities should be considered suitable to serve the requisite interconnection function in Bancroft,<sup>83</sup> by simply hooking the ends of the pipes (HickoryTech's and MCC's) together to achieve interconnection.<sup>84</sup> Additionally, according to the testimony, the parties would have to negotiate where the POI could be established and if the parties could build or acquire facilities to the agreed upon POI.<sup>85</sup> Considering that these are all statements made by HickoryTech's witness, it clearly isn't an established fact that interconnection is technically feasible in Bancroft. It is, however, completely agreed upon that interconnection in Mankato is technically feasible.

Turning to the § 214 authority, it appears that the FCC has granted blanket § 214 authority for new lines of all carriers. The FCC stated:

Rather than using forbearance from section 214, as requested by ITTA, we modify our rules so as to grant blanket authority to all domestic carriers, including ITTA's members, thus providing substantially the same regulatory relief sought by ITTA but to a larger class of carriers. (Footnote omitted) Specifically, we grant "blanket" entry certification to all carriers seeking to construct, operate, or engage in transmission over domestic lines of communications, to the extent such authority is required under the statute. (Footnote omitted)<sup>86</sup>

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<sup>83</sup> Tr. 333-35

<sup>84</sup> Tr. 341.

<sup>85</sup> Tr. 324.

<sup>86</sup> *In the Matters of Implementation of Section 402(b)(2)(A) of the Telecommunications Act of 1996, Petition for Forbearance of the Independent Telephone & Telecommunications Alliance*, CC Docket No. 97-11, AAD File No. 98-43, 14 FCC Rcd 11364 at ¶ 2.

This FCC order, which was issued in 1999, subsequent to the § 214 authority referred to by HickoryTech, appears to relieve any requirement that HickoryTech request permission from the FCC to alter its authorization. It is also worthy to note that according to testimony at the hearing, HickoryTech responded to Board member Munns by indicating that it has no objection to establishing a POI in Mankato other than its concern about the § 214 authorization.<sup>87</sup>

The Board approves Sprint's request that the POI be established in Mankato, Minnesota and the language for section 19.1.1 that was proposed by Sprint, as follows:

19.1.1 Unless interconnecting with HickoryTech on an indirect basis subject to Section 21, the default point of interconnection for the exchange of traffic shall be a direct connection to the host office operated by Mankato Citizens Telephone Company. Alternate point(s) of interconnection shall only be established by mutual agreement of the Parties. Either Party may request negotiation of separate terms and conditions, including meet point billing arrangements. The Parties agree to negotiate in good faith to reach agreement to accommodate such a request and that the provisions of 19.1.1.3. take effect.

**C. If, as an alternative to interconnection at Mankato, Minnesota, Sprint interconnects indirectly with HickoryTech utilizing Qwest as a transit provider at Qwest's Mason City tandem, which party is responsible for transit fees?**

This issue is very similar to RLEC Issue B, above, in that one of the questions is who pays for transit fees. It is Sprint's position that each party is responsible for traffic it sends to the other party and is therefore responsible for any associated

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<sup>87</sup> Tr. 338.

transit fees for traffic it originates to the other party. Sprint says this is clearly established in FCC rules and various state and federal rulings on this matter.

Under the FCC's Calling Party Network Pays ("CPNP") regime, the originating party is responsible for payment of reciprocal compensation to the terminating network party and responsible for all costs associated with the delivery of its originated telecommunications traffic to the terminating party. 47 CFR 51.703(b) states:

A LEC may not assess charges on any other telecommunications carrier for telecommunications traffic that originates on the LEC's network.

According to Sprint, this rule makes it clear that the terminating party cannot be assessed charges for traffic it receives from the originating party. Sprint is willing to abide by this rule and pay transit charges assessed for traffic it originates to HickoryTech. HickoryTech should, in turn, be required to pay the transit charges assessed for traffic it originates.

HickoryTech believes that an underlying issue in this disputed item is the point of interconnection. HickoryTech argues that if Sprint seeks indirect interconnection through Qwest (the tandem provider), the HickoryTech network ends at the meetpoint with Qwest, which is at the Bancroft exchange boundary.<sup>88</sup>

According to HickoryTech, each party should be responsible for its own network on its side of the POI, including third-party transit charges.<sup>89</sup> HickoryTech

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<sup>88</sup> Tr. 325.

<sup>89</sup> Tr. 327.

further suggests that the Board should not consider that indirect interconnection is desirable or necessary in a situation involving two wireline carriers with overlapping facilities in the exchange.<sup>90</sup> However, should the Board choose to order indirect interconnection, HickoryTech argues the point of interconnection should be HickoryTech's existing meetpoint with the tandem provider and each party should be responsible for all costs including transit charges on its side of the POI.

In addition to its substantive arguments, Sprint argues as to the appropriateness of considering HickoryTech's POI issue because the issues list filed early in this proceeding indicated that the parties agreed that they could jointly refine the issues or identify additional issues for submission, but that no additional issues were to be submitted unilaterally. Because HickoryTech did not initially submit the POI as an issue, Sprint argues that it should be foreclosed from raising the issue. Although this may be technically true, the Board notes that the issue was first raised in the direct testimony and all parties have had an opportunity to fully respond. The Board will make a determination on this issue.

Rather than reiterate its previous analysis given in issue B of the Sprint – RLEC agreement above, the Board incorporates that analysis here. The Board will approve Sprint's proposed language for section 21.1.5 as shown below, based on the same rationale.

21.1.5 Each Party is responsible for the transport of originating calls from its network to the Transiting Entity. The originating Party is responsible for the

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<sup>90</sup> *Id.*

payment of transit charges assessed by the Transiting Entity.

### **SPRINT – IOWA TELECOM INTERCONNECTION AGREEMENT**

**A. Should the agreement specifically refer to Sprint's non-CLEC status in the "Whereas" clause?**

Iowa Telecom proposed to include specific language stating that Sprint is not a CLEC. Sprint objects to the inclusion of this language.

Sprint's position is that its status as a CLEC is not relevant to Sprint's right to obtain services under the interconnection agreement.<sup>91</sup> Further, Sprint suggests that it would be inappropriate to state unequivocally that Sprint is not a CLEC because the Board has not yet canceled Sprint's CLEC certificate.<sup>92</sup> According to Sprint, nothing in the Board's *Order on Rehearing* suggests that Sprint's ability to operate under any aspect of the business model is contingent upon Sprint's CLEC status.

Iowa Telecom argues that an indication of Sprint's non-CLEC status is necessary in order to establish rights to UNE's, resale, notice of network changes, and collocation in ILEC buildings.

Sprint argues this is simply an attempt by Iowa Telecom to insert irrelevant arguments into the record. Sprint has not requested any proposed language purporting to cover any of the elements listed by Iowa Telecom and the agreement

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<sup>91</sup> Sprint Initial Br. 16-17.

<sup>92</sup> Sprint Initial Br. 16.

will not contain any such provisions. Therefore, the elements cited by Iowa Telecom as being only available to a CLEC won't be available to Sprint under the current agreement, regardless of any statement as to Sprint's CLEC status. According to Sprint, it is simply irrelevant to the interconnection agreement being negotiated here.

Sprint also objects to language proposed by Iowa Telecom that would preclude Sprint from using this interconnection agreement for any future retail local service offerings Sprint may develop in the future. Sprint argues that by suggesting Sprint be forced to negotiate another interconnection agreement to cover future retail local service offerings, Iowa Telecom is simply attempting to make it as difficult, time-consuming, and expensive as possible for additional competition to enter its market.

Iowa Telecom split its initial brief into two sections: Eligibility Issues (Issues A, B, D, and E) and "Implementation Issues" (Issues C, F, H, and Misc. Issues). Rather than repeat the overall arguments of Iowa Telecom under each issue, they will be summarized once and then referred to in each subsequent issue, as appropriate.

Iowa Telecom argues that Sprint does not meet the legal requirements for requesting certain interconnection rights and that, contrary to Sprint's statements, the Board has not yet made a determination on this issue. Iowa Telecom suggests that the Board's *Order on Rehearing* addressed only the threshold issue of whether Sprint was a "telecommunications carrier." According to Iowa Telecom, the Board did not address arguments concerning additional statutory definitions that Sprint did not meet. Iowa Telecom maintains that the rights that Sprint seeks to assert on its own

behalf require certain qualifications, only one of which is status as a "telecommunications carrier."

Iowa Telecom suggests that within the group that is defined by 47 U.S.C. § 3(44) as "telecommunications carriers" are subsets of various classifications of carriers, with each of these subsets comprising a smaller group. These subsets include commercial mobile radio service (CMRS) providers, local exchange carriers (LECs), interexchange carriers (IXCs), and a residual subset that includes a category of telecommunications carriers that are intraexchange telecommunications carriers but are neither mobile wireless nor local exchange carriers. Iowa Telecom's arguments are based on the presumption that an entity's rights and obligations under § 251 differ depending in which of these four subsets of "telecommunications carriers" the entity is included.

In examining Iowa Telecom's request that Sprint be specifically identified as a non-CLEC, the Board finds it interesting to note the following passage from Iowa Telecom's Reply Brief:

Iowa Telecom has explained how the time and expense of this proceeding could have been avoided if MCC rather than Sprint had been the party seeking a binding contractual arrangement with Iowa Telecom for many of the critical rights that Sprint seeks to assert – rights that are reserved for local exchange carriers.<sup>93</sup>

It appears that Iowa Telecom's many arguments concerning Sprint's CLEC status and its eligibility for certain specific provisions may be for the purpose of preserving

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<sup>93</sup> Iowa Telecom Reply Br. 6.

those arguments for future appeal, rather than for the purpose of getting any further determination from the Board that goes beyond what was made in its *Order on Rehearing*.

Iowa Telecom has not specifically addressed Sprint's argument that it has not requested any of the provisions that Iowa Telecom has indicated would require a specific designation as to Sprint's status. Instead, Iowa Telecom has argued that in order "to ensure proper interpretation of Interconnection Agreement language that may latter [sic] prove to be ambiguous, the first "Whereas" clause should state explicitly that the rights afforded by Iowa Telecom to Sprint are not a result of Sprint having any purported status as a local exchange carrier."<sup>94</sup> The Board does not find this to be a relevant argument.

The Board approves the language proposed by Sprint for the "Whereas" clause as follows:

WHEREAS, Iowa Telecom is an incumbent local exchange carrier ("ILEC") and Sprint is a telecommunications carrier, and both Parties are authorized by the Utilities Board of the State of Iowa ("Board") to provide telecommunications services in the State of Iowa; and

**B. Is Sprint entitled to obtain local number portability, including customer service transfer coordination, with respect to the ultimate end users served by the last mile provider?**

Sprint argues that Iowa Telecom's contention that a separate agreement is necessary between Iowa Telecom and MCC is nothing more than a transparent

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<sup>94</sup> Iowa Telecom Reply Br. 10.

attempt to further delay MCC's entry into Iowa Telecom's market. If MCC were to enter into an agreement with Iowa Telecom for local number portability (LNP), it would require Iowa Telecom to deal with Sprint because Sprint would actually be performing the functions, making this nothing more than an argument of form over substance.

Sprint also notes that there is nothing in the record to suggest that Iowa Telecom would be harmed or prejudiced in any way by including local number portability provisions in the Sprint interconnection agreement. If the Board adopts Sprint's language, Sprint will be contractually obligated to port numbers to Iowa Telecom and Iowa Telecom will have absolutely no risk of harm.

Iowa Telecom argues that not all telecommunications carriers are eligible for LNP and because Sprint is not an Iowa certificated "local exchange carrier," it is not eligible.

A local exchange carrier's obligation to provide number portability is limited only to certificated local exchange carriers. The FCC's rule provides as follows: "Any wireline carrier that is certified (or has applied for certification) to provide local exchange service in a state, or any licensed CMRS provider, must be permitted to make a request for deployment of number portability in that state."<sup>95</sup> Iowa Telecom uses this rule to support its argument that Sprint is not entitled to LNP. However, 47 CFR 52.23(c) states:

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<sup>95</sup> 47 CFR 52.23(b)(2)(i).

Beginning January 1, 1999, all LECs must make a long-term database method for number portability available within six months after a specific request by another telecommunications carrier in areas in which that telecommunications carrier is operating or planning to operate.

The clear reading of § 52.23(c) seems to indicate that the requirement is that the provider be a "telecommunications carrier," which the Board has already determined Sprint to be.

The Board orders that sections 23 and 24 proposed by Sprint be included in the interconnection agreement.

**C. Is Sprint entitled to symmetrical rates as part of a reciprocal compensation arrangement if traffic becomes out of balance?**

The parties have agreed to reciprocal compensation on a bill-and-keep basis until traffic is out of balance. Therefore, this issue applies only if a situation occurs where traffic is out of balance.

Sprint suggests that the federal rules clearly specify that reciprocal compensation is to be symmetrical, citing 47 CFR 51.711(a). According to Sprint, it is because of Iowa Telecom's belief that Sprint is a transit carrier that Iowa Telecom has argued that symmetrical rates are not appropriate.

Sprint also notes in its initial brief that Iowa Telecom's request for additional language to be included in the reciprocal compensation section of the agreement addressing the sharing of interconnection facility costs is closely related to one of the miscellaneous "clean-up" issues that Iowa Telecom has added. Sprint suggests that the parties agreed to meet point of interconnection at the exchange boundary, with

each party being responsible for the facilities on its own side of the POI. That being the case, Sprint argues that it is unnecessary to include language addressing transport and interconnection facility costs.

Iowa Telecom disputes whether Sprint is entitled to receive any amount of reciprocal compensation under § 251(b)(5) of the Act other than bill-and-keep treatment due to the fact that Sprint is not “terminating” MCC-bound traffic. Iowa Telecom asserts MCC is providing the terminating switching function while Sprint is merely acting as a transit carrier. As a transit carrier, neither FCC nor Board precedent require Iowa Telecom to pay an intermediate carrier reciprocal compensation under § 251(b)(5). Iowa Telecom does admit that if the Board agrees Sprint is a transit carrier, Iowa Telecom may have to pay Sprint to provide transit services to reach MCC if Iowa Telecom does not establish direct trunk links to MCC.

The disagreement is whether Sprint would be entitled to compensation for transport, tandem switching (when provided) and local switching or just for transport and tandem switching, when traffic is out of balance. Iowa Telecom does not believe that Sprint should be compensated for tandem switching if it does not provide tandem switching and should not receive any compensation for local switching which is provided by MCC. Iowa Telecom does not argue that the amount Sprint receives should be reduced because of MCC’s loop costs as Sprint’s testimony indicates. Rather, Iowa Telecom believes Sprint should not be compensated because Sprint has made none of the requisite showings required by 47 CFR 51.711 necessary for a

carrier not actually operating a tandem switch to be compensated on the same basis as an ILEC that is operating a tandem switch.

Iowa Telecom suggests, if the Board does not grant Iowa Telecom's request to limit the scope of this agreement to matters dealing with Sprint's relationship to MCC, the parties be directed to create two subsections in section 21. The first would deal with Sprint as a retail CLEC, while the second would deal with Sprint as a transit provider. That is the essential difference between the contract provisions proposed by the parties. Iowa Telecom suggests the language proposed as subsections 21.1, 21.2, 21.3 and 21.4 by Sprint should be in the subsection labeled "In exchanges where Sprint provides retail local services" and subsections 21.1, 21.2 and 21.3 as proposed by Iowa Telecom should be in the subsection labeled "In exchanges where Sprint does not provide retail local services."

In addition, Iowa Telecom is concerned because Sprint did not include language Iowa Telecom proposed that would base compensation for transport on the airline distance between the originating and terminating rate centers. This language is particularly important since Sprint apparently has decided to base its operation in Kansas. Iowa Telecom should not be required to pay for transport to and from Kansas and the numerous ILEC exchanges MCC may enter.

First, the Board has been requested by Iowa Telecom to clarify that Sprint is not eligible for compensation as a tandem switch provider. However, as was discovered in cross-examination at the hearing, MCC's facilities do not have any local

switching capabilities;<sup>96</sup> rather, Sprint's switch will perform all the local switching functions for MCC's customers. It appears that Iowa Telecom's basis for its request is incorrect. Therefore, the Board determines that Sprint, as the entity performing the local switching functions for MCC customers, is eligible for compensation as the tandem switch provider.

The Board's rules provide a method for handling reciprocal compensation if traffic becomes out of balance. At the hearing, when witnesses were specifically asked about the issue, none could provide an overwhelming rationale that the Board should not leave this issue to be resolved based on its own rules. This issue differs from RLEC Issue E, above, where the Board was asked to determine a specific rate for out-of-balance traffic. Neither Sprint, nor Iowa Telecom proposed a specific rate. Instead, this issue is simply one of whether it was appropriate for Sprint to receive compensation.

The Board approves Sprint's proposed language for subsections 21.2.1, 21.2.2, 21.2.3 and 21.2.4 of the interconnection agreement, as follows:

- 21.2.1. Where Sprint establishes a POI at an Iowa Telecom Tandem Switch, for Local Traffic originated by an end user of Sprint, Sprint shall pay to Iowa Telecom a charge for tandem switching, transport to the end office and end-office termination. For Iowa Telecom originated Local Traffic terminating to Sprint, compensation paid by Iowa Telecom to Sprint for transport and termination shall be symmetrical.
- 21.2.2. Where Sprint establishes a POI at an Iowa Telecom end office, Sprint shall pay Iowa Telecom a rate for end-office

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<sup>96</sup> Tr. 179-180.

termination for Sprint-originated calls. For Iowa Telecom originated Local Traffic terminating to Sprint, compensation paid by Iowa Telecom to Sprint shall be symmetrical (at the same rates the ILEC charges Sprint).

21.2.3. Where Sprint establishes a POI at the exchange boundary between ILEC and the tandem provider, Sprint shall pay ILEC common transport and end office termination for Sprint-originated calls. For ILEC-originated traffic terminating to Sprint, compensation paid by ILEC to Sprint shall be symmetrical (at the same rates the ILEC charges Sprint).

21.2.4. Where Sprint establishes indirect interconnection with Iowa Telecom via a third-party transit provider for the exchange of Local Traffic, Sprint shall pay ILEC common transport and end office termination charges for Sprint-originated calls. For ILEC-originated traffic terminating to Sprint, compensation paid by ILEC to Sprint shall be symmetrical. In addition to these charges, both Parties agree to pay all transit charges associated with its originated traffic, subject to Section 19 of this Agreement.

**D. Is Sprint a "transit service provider" for purposes of the agreement between Sprint and Iowa Telecom?**

Sprint argues that Iowa Telecom's position is based on its argument that because MCC, rather than Sprint, is the "retail" provider serving the end user subscribers, Sprint is a transit provider. Sprint suggests that this conclusion is wrong because MCC has no local switching capabilities. Rather, Sprint owns the switch that originates and terminates local traffic. Further, Sprint argues that it meets the definition of "local exchange carrier" as set forth in 47 U.S.C. § 153(26), because it is providing telephone exchange service and exchange access service.

Sprint provides a list of functions that will be performed by Sprint, noting that MCC does not have facilities with the capability of performing any of the functions.

This includes:

- The switching and routing functionality necessary to connect caller A to caller B based on the telephone digits dialed is within Sprint's switch. A telephone call from an MCC customer to another MCC customer located right next door must be routed through Sprint's switch.
- The custom calling features such as caller ID, three way calling, and speed dial are derived from Sprint's switch.
- Routing of 911 calls to the appropriate PSAP through trunks connecting Sprint's switch to the selective routers is done by Sprint's switch.
- The determination of whether a call is local or long distance is made by the translation tables in Sprint's switch. These calls are placed on the appropriate trunks by Sprint's switch.
- Calls destined for the public switched telephone network (PSTN) use the translation tables in Sprint's switch and are placed on the appropriate trunks by Sprint's switch.
- Telephone calls destined for MCC customers from the PSTN based on the telephone numbers assigned to MCC customers by Sprint are routed to Sprint's switch based on the local routing number (LRN) assigned to Sprint's switch.
- A telephone call from one MCC customer to another MCC customer is switched through Sprint's switch.
- The blocks of telephone numbers used for MCC customers are associated with Sprint's switch in the local exchange routing guide (LERG).
- Call detail records that are sent as part of the call records are generated by Sprint's switch.

- The records that are generated for the billing of originating and terminating access to interexchange carriers are generated by Sprint's switch.<sup>97</sup>

Sprint points out that 47 U.S.C. § 153(26) defines "local exchange carrier" as any person that is engaged in the provision of telephone exchange service or exchange access. Sprint argues that based on the delineation of services being provided it is providing telephone exchange service and exchange access service. Therefore, Sprint argues that it meets the definition of local exchange carrier within the meaning of the federal statute.

Iowa Telecom argues that Sprint does not meet either prong of the definition of "local exchange carrier" as defined by 47 U.S.C. § 153(26) because Sprint does not propose to be a provider of "telephone exchange service" or "exchange access" service.

According to Iowa Telecom, a carrier does not provide "telephone exchange service" if it does not also provide the last-mile connection to end users, regardless of whether such connection is provided on a wholesale or retail basis.

Iowa Telecom indicates its willingness to adopt Sprint's language for section 22.1 with one clarification. The phrase "other Party's" should be replaced by "terminating carrier."

Iowa Telecom appears to have based its argument that Sprint is merely a transit provider on the erroneous conclusion that MCC has local switching capabilities. Given that MCC's facilities have no local switching capabilities, which

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<sup>97</sup> Tr. 79-81.

was the testimony given during the hearing by Sprint's witness,<sup>98</sup> and that Sprint will be providing each of the local switching functions for MCC,<sup>99</sup> it follows that Sprint is not acting as a transit provider, but rather as a "local exchange carrier" as defined by 47 U.S.C. § 153(26).

In addition, 47 U.S.C. § 153(47) defines "telephone exchange service" as follows:

The term "telephone exchange service" means (A) service within a telephone exchange, or within a connected system of telephone exchanges within the same exchange area operated to furnish to subscribers intercommunicating service of the character ordinarily furnished by a single exchange, and which is covered by the exchange service charge, or (B) **comparable service provided through a system of switches, transmission equipment, or other facilities (or combination thereof) by which a subscriber can originate and terminate a telecommunications service.** (Emphasis added).

The testimony makes it clear that without the services Sprint proposes to provide to MCC, MCC's subscribers could not place or receive any telephone calls that would require access to or from the public switched telephone network (PSTN). The services Sprint proposes to provide appear to fall within the definition of "telephone exchange service" as Sprint has argued.

Iowa Telecom's argument that a carrier cannot provide telephone exchange service if it does not also provide the last-mile connection to end users appears to be without support based on the definition. The statute provides for "comparable

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<sup>98</sup> Tr. 179.

<sup>99</sup> Tr. 79-81.

service" that is being provided by a combination of switches, transmission equipment, or other facilities. This seems to be exactly what is being proposed by Sprint.

The Board determines that Sprint is providing "local exchange access" as a "local exchange carrier" as defined in 47 U.S.C. §§ 153(26) and (47).

In addition, the Board determines that the fourth "Whereas" clause requested by Iowa Telecom should not be adopted and that Iowa Telecom's proposed revisions to sections 20.3 and 22.1 of the interconnection agreement will be rejected.

**E. Is Sprint entitled to obtain listings in Iowa Telecom's directories with respect to the ultimate end users served by the last mile provider?**

This issue involves Iowa Telecom's attempt to prevent Sprint from placing end user information in Iowa Telecom's telephone directories when Sprint is providing voice services with a last mile provider, which, according to Sprint, is another attempt by Iowa Telecom to rewrite this Board's *Order on Rehearing*. Sprint reiterates that Sprint's switches will perform all the local switching functions and Sprint will perform all the number administration and porting functions. Sprint suggests that it makes no sense for any party other than Sprint to provide Iowa Telecom with the information necessary for directory listings.

Sprint notes that during cross-examination Iowa Telecom admitted it had no objection to including MCC's subscribers in Iowa Telecom's directory. Iowa Telecom's objection is to including them for Sprint. Further, Sprint notes that there is nothing in the record to suggest Iowa Telecom will be harmed by the inclusion of these end users at the request of Sprint.

Sprint requests the Board reject Iowa Telecom's proposed language and omit any language from the agreement that would prevent Sprint from placing end user information in Iowa Telecom's telephone directories when Sprint is providing voice services with a last mile provider.

Iowa Telecom indicates that if the last mile provider, MCC, wants its customers listed in Iowa Telecom directories, Iowa Telecom will negotiate an agreement with the last mile provider.

Iowa Telecom rejects the arguments of Sprint's testimony that Iowa Telecom is required by § 251(b)(3) of the 1996 Act to provide listings in its directories to other carriers. The FCC has interpreted that section to mean Iowa Telecom, and all LECs, must provide lists of their customers' numbers for other parties to use in creating directories (47 CFR 51.217(c)(3)(ii)). The only federal requirement regarding listings in ILEC directories is in § 271(c)(2)(B)(viii) where Regional Bell Operating Companies are required to provide a white page listing. Section 271 does not apply to Iowa Telecom. Iowa Telecom argues that at most, it should be required to provide listings only to Sprint's end user customers.

This appears to be another case of Iowa Telecom arguing form over substance. Iowa Telecom has no problem with including the end user customers of MCC in its directory listings, only to including them at the request of Sprint. Iowa Telecom was not able to provide any theory whereby it might possibly be harmed by this provision.

The Board directs Iowa Telecom to include the end user customers of MCC in its directory listings in the manner requested by Sprint and rejects Iowa Telecom's requested provisions to section 25 of the interconnection agreement.

**F. How should the term "N-1 carrier" be defined in the agreement?**

This issue is directly related to the issue of whether or not Sprint is a transit provider. If Sprint is not a transit provider, Sprint's proposed definition clarifies that the entity responsible for the query and the associated charges is the originating carrier, whether that be Sprint or Iowa Telecom.

The definition of an N-1 carrier determines certain obligations and costs borne by Sprint or Iowa Telecom. Sprint proposes the industry definition for N-1 carrier. Sprint suggests that Iowa Telecom proposes a non-standard definition where, under Iowa Telecom's interpretation, Sprint would always be the N-1 carrier and therefore, Sprint would be responsible for LNP query charges regardless of whether Sprint or Iowa Telecom is the originating carrier.

According to Sprint's testimony, the N-1 carrier requirements are codified in 47 CFR 52.26 (a) and were included in the Local Number Portability Administration Working Group (LNPA WG) Report as identified in this CFR section. In simple terms, the N-1 carrier on a local/extended area service (EAS) call is the originating carrier. The LNPA WG's Report to the North American Numbering Council on January 19, 2006, provides more N-1 detail as follows:

Local Calls: The originating carrier is the N-1 carrier and is responsible for performing the query in its network or entering into an agreement with another entity to perform the queries on its behalf.

On intraLATA calls to EAS codes, the originating carrier is the N-1 carrier and is responsible for the query on all calls to portable EAS codes.

Sprint requests the Board adopt its proposed language for the definition of N-1 carrier to ensure that both parties to the agreement bear their costs appropriately.

Iowa Telecom argues that Sprint is the N-1 carrier and, therefore, that Sprint has the duty to make LNP queries or "dips." Iowa Telecom does not believe that the LNPA WG findings cited by Sprint apply to the circumstances before the Board because in the situation related to Sprint and Iowa Telecom there will always be three carriers involved. Iowa Telecom believes the appropriate LNPA WG rule is the one that says the N-1 carrier is the next to the last carrier in the call chain. Iowa Telecom cites the following passage from an FCC order:

The industry has proposed, and the Commission has endorsed, an "N minus one" (N-1) querying protocol. Under this protocol, the N-1 carrier will be responsible for the query, "where 'N' is the entity terminating the call to the end user, or a network provider contracted by the entity to provide tandem access." Thus the N-1 carrier (i.e. the last carrier before the terminating carrier) for a local call will usually be the calling customer's local service provider; the N-1 carrier for an interexchange call will usually be the calling customer's interexchange carrier (IXC). An N-1 carrier may perform its own querying, or it may arrange for other carriers or third parties to provide querying services on its behalf.<sup>100</sup>

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<sup>100</sup> See the FCC's "Third Report and Order," FCC 98-92, ¶ 15 (1998)

Iowa Telecom suggests that normally only two carriers are involved in handling local traffic. Here the Board should focus on the FCC's explicit inclusion of the modifier, "usually." Iowa Telecom contends that the circumstances here are not "usual" and the LNPA WG rule should not be applied in this "unusual" circumstance.

According to Iowa Telecom, on every call that routes between MCC and Iowa Telecom via Sprint, Sprint will be the N-1 carrier in each direction. In every case, Sprint will be responsible for the LNP dip. The LNPA WG rule quoted by Sprint does not address the relevant circumstances that exist in the relationship Sprint proposes.

Iowa Telecom asserts that Sprint cannot claim for the purposes of this issue to be a contractor to MCC and therefore not the N-1 carrier and for the purpose of all other issues to be an independent carrier. It must be one or the other. The Board has concluded Sprint is an independent carrier. This means Sprint must be the N-1 carrier and Sprint must make any necessary LNP dips.

Iowa Telecom acknowledges its error in the language originally proposed. The language should have identified the N-1 carrier as the carrier immediately before the carrier that terminates the call.

This issue is closely related to Issue D (transit provider) in that it is based on Iowa Telecom's erroneous assumption that MCC has switching facilities. This conclusion is very clearly established by the following passage from Iowa Telecom's initial brief:

The record demonstrates that Sprint's responsibility for LNP dips could be avoided if MCC engaged Sprint to provide tandem access services. Then the relationship between MCC and Sprint would seem to satisfy the second prong of the FCC's definition of "the entity terminating calls to the end user. T. at 276. In effect, if MCC were to contract with Sprint for Sprint to provide tandem access, this FCC provision would treat the carrier activities that Sprint will provide for MCC as though they were part of MCC's network. Id. Of course, such a result requires MCC to have the direct relationship with Iowa Telecom or at least appoint Sprint as an agent.<sup>101</sup>

First, Sprint is the entity that is providing tandem access services. This seems to clarify that Sprint's language is the most appropriate way for the Board to handle this issue.

It should also be noted that by the addition of the last sentence quoted above, Iowa Telecom is again tying this argument to its continued contention that Sprint is not the appropriate party to the interconnection agreement. The Board will simply decide the issue based on the factual evidence that Sprint is the entity providing the tandem access services, which is exactly what Iowa Telecom suggests is necessary for this issue to be avoided. The Board approves the language proposed by Sprint, as follows:

- 22.3 Given the interconnection arrangement agreed to by the parties the N-1 carrier is the originating carrier (i.e., either Iowa Telecom or Sprint).

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<sup>101</sup> Iowa Telecom Initial Br. 20-21.

**G. Should Sprint be obligated to establish additional Points of Interconnection (POIs) at Iowa Telecom end offices when traffic volume to a particular end office reaches a pre-determined threshold?**

Iowa Telecom has requested that Sprint be obligated to establish additional POIs at Iowa Telecom end offices when the traffic volume to a particular end office exceeds 512 hundred-call seconds (CCS) bouncing busy hour over a 30-day period.

Sprint argues that Iowa Telecom's request is inconsistent with the FCC's determination that a requesting carrier is only required to establish one POI per LATA. Additionally, Sprint argues that even if the Board were to require direct end office trunks under certain conditions, Iowa Telecom has failed to support the adoption of a threshold of 512 hundred-call seconds bouncing busy hour over a 30-day period.

Sprint suggests that for direct interconnection, the federal rules and the FCC require interconnection at only one technically feasible point within the ILEC's network.<sup>102</sup> According to Sprint, it should be permitted to determine when direct end office trunks (DEOTs) are justified based on the economics of route-specific distance and usage characteristics. Because the distance between the tandem and end office varies and because transport costs are mileage sensitive, a fixed usage threshold, as proposed by Iowa Telecom, would require Sprint to establish DEOTs without regard to the specific cost variations due to distance-sensitive transport costs. Sprint asserts

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<sup>102</sup> See 47 CFR 51.305(a)(2); See also, *In the Matter of Developing a Unified Intercarrier Compensation Regime*, CC Docket No. 01-92, Notice of Proposed Rulemaking, at ¶ 72 (FCC-01-132).

it should not be forced into uneconomic trunk arrangements, but instead be permitted to make efficient, economic trunk decisions on a route-by-route basis.

Sprint notes that the FCC rejected the establishment of a DEOT threshold in an interconnection arbitration order,<sup>103</sup> even though the issue was presented because of current tandem exhaust situations (which are not applicable in this proceeding).

According to Iowa Telecom, the parties have agreed that Sprint will establish a POI at each of Iowa Telecom's tandems and will establish additional POIs at any host end office when the aggregate traffic flow between Sprint and the Iowa Telecom tandem or end-office (including all of its remotes) exceeds some threshold level. The parties disagree on the threshold volume of traffic. Iowa Telecom asserts it attempted to explain to Sprint's negotiators that the industry standard threshold is 512 CCS – the busy hour call volume that requires a 24-circuit trunk group at P.01 blocking probability. A fully-loaded DS-1 transmission channel accommodates 24 circuits. This is the trigger Sprint ILEC uses. It is the requirement Qwest uses in its transit agreement. In addition, according to Iowa Telecom, it is the language Iowa Telecom has used in each of its wireline and wireless negotiated interconnection agreements. If there is any reason to change the trigger volume of traffic, the value should be lower than 512 CCS because the economic crossover between multiple

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<sup>103</sup> *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*, CC Docket Nos. 00-218, 00-249, and 00-251, Memorandum Opinion and Order, 17 FCC Rcd 27039, paragraph 88 (2002).

DS-0 circuits and one DS-1 circuit is usually somewhere between six and ten DS-0 circuits.

Iowa Telecom notes that Sprint wants to use less specific language to determine when to establish DEOTs based on unspecified "economies" to Sprint. Iowa Telecom disagrees.

Sprint does not agree with Iowa Telecom's recitation of what was agreed to by the parties. Sprint states, in its initial brief, that the parties have agreed that although Sprint is only required to establish one POI per LATA, it has agreed to interconnect at each of Iowa Telecom's tandems. Sprint suggests that Iowa Telecom is now trying to take it one step further and require that Sprint be further obligated to establish additional POIs at Iowa Telecom end offices when the traffic volume to a particular end office exceeds 512 hundred call seconds bouncing busy hour over a 30 day period. To this, Iowa Telecom responded by indicating that, "[A]t no time did Sprint make its acceptance of Interconnection Agreement language requiring more than one POI per LATA contingent on the outcome of any other issue."<sup>104</sup>

The FCC requires one POI per LATA, which Iowa Telecom acknowledges by its statement that the "number of POIs that Sprint is required to establish is not an issue of dispute in this arbitration."<sup>105</sup> Sprint voluntarily negotiated with Iowa Telecom to establish a meet point interconnection at the exchange boundary for each exchange where Iowa Telecom has a tandem switch located, clearly in excess of its

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<sup>104</sup> Iowa Telecom Reply Br. 19.

<sup>105</sup> *Id.*

one required POI per LATA. Iowa Telecom cannot use Sprint's voluntary agreement to have more than one POI per LATA to bootstrap an additional requirement.

Iowa Telecom argues that it is simply trying to prevent inevitable disputes in the future by establishing threshold parameters now. Although this may sound reasonable on the surface, it isn't clear how those disputes would arise in the future if Sprint is only required to provide one POI per LATA. Sprint has agreed to provide more POIs than required. Assuming that there is no change in the FCC requirement, Iowa Telecom will have no greater right in the future than it does now to require Sprint to provide additional POIs. The Board rejects Iowa Telecom's argument and its proposed language for the interconnection agreement. The Board approves Sprint's proposed language, as follows:

18.7 Sprint will establish a POI at an Iowa Telecom end office when it is economically efficient to implement a direct trunk group. A new POI will be established at the exchange boundary associated with that end office or, at Sprint's request and based on negotiation of applicable terms and conditions for the interconnection facility, at the end office.

**H. Should the parties be required to include the jurisdictional indicator code (JIP) in CCIS signaling parameters as soon as the capability is available?**

Sprint opposes this proposed section, which would require the parties to add the new Jurisdictional Identification Parameter (JIP) code in its Common Channel Interoffice Signaling (CCIS) signaling parameters. Sprint denies that its witness testified that Sprint is developing the capability to populate the JIP field in a SS7 record. Sprint states that what Sprint witness Burt actually stated was that Sprint is

"developing the capability to identify the jurisdiction and type (wireline or wireless) of traffic that would be placed over a multi-use trunk."<sup>106</sup> Sprint indicates that the term "jurisdiction" as used by witness Burt means the ability to distinguish between local, interstate toll, and intrastate toll traffic, which is not the same as the ability to populate the JIP field in an SS7 record.

Sprint also argues that because this issue was not raised during negotiations, the parties did not discuss the technical aspects of how Sprint would populate the JIP and how Iowa Telecom would use the information. Sprint suggests that Iowa Telecom's proposed language is too vague because the JIP industry guidelines provide considerable latitude on the manner in which the JIP is populated.

According to Sprint, Iowa Telecom's primary concern is the prevention of phantom traffic. Sprint has made the assertion that all traffic being delivered to Iowa Telecom over the interconnection trunks in question will be Sprint traffic. Sprint suggests that the interconnection agreement provides that each party will transmit calling party number (CPN) information as required by FCC rules, which can be used by Iowa Telecom to determine the jurisdiction of traffic.

Iowa Telecom, in its reply brief, asserts that this is not a new proposal as Sprint has suggested. According to Iowa Telecom, its proposed section 19.6 was in the proposed interconnection agreement that Sprint filed, but was incorrectly included as section 6.6 on page 13 of Exhibit 1.

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<sup>106</sup> Tr. 106.

A review of the interconnection agreement, initially filed and marked as Exhibit 1 at the hearing demonstrates that language was included that was intended to provide the ability to track and monitor exchanged traffic. However, the language that is shown as undisputed in Exhibit 1 does not include any obligation for Sprint or Iowa Telecom to include the new JIP code in the list of CCIS fields that Sprint and Iowa Telecom exchange.

Iowa Telecom makes the following statement in its reply brief:

Apparently, neither Sprint's witness nor counsel knew that this language was specifically discussed when a Sprint technical expert joined negotiations in the days leading to the filing of the joint issues list. That expert agreed that the JIP should and would be included but did not endorse (or object to) the three-word modification that Iowa Telecom proposes.<sup>107</sup>

Even though this may be a true statement, the Board rejects the three-word modification proposed by Iowa Telecom because the statement made in Iowa Telecom's reply brief is unsupported by any evidence before the Board. The only evidence that exists in the record is that Sprint has not developed the capability to provide the JIP code. Further, if Iowa Telecom wanted to provide the evidence that the Sprint technical expert had agreed to this provision it could have done so before its reply brief. According to the statement, the discussion took place in the days prior to filing of the joint issues list, prior to all the testimony filings and the hearing.

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<sup>107</sup> Iowa Telecom Reply Br. 22-23.

**ORDERING CLAUSES**

**IT IS THEREFORE ORDERED:**

1. The interconnection agreement between Sprint Communications Company L.P. and the companies previously identified as the RLECs shall incorporate the language adopted by the Board in this Arbitration Order.
2. The interconnection agreement between Sprint Communications Company L.P. and Iowa Telecommunications Services, Inc., d/b/a Iowa Telecom, shall incorporate the language adopted by the Board in this Arbitration Order.
3. The interconnection agreement between Sprint Communications Company L.P. and Heartland Telecommunications Company of Iowa, d/b/a HickoryTech, shall incorporate the language adopted by the Board in this Arbitration Order.
4. Within 30 days of the issuance of this order, the parties shall submit interconnection agreements consistent with the terms of this Arbitration Order.

**UTILITIES BOARD**

/s/ John R. Norris

/s/ Diane Munns

### **PARTIAL DISSENT**

I am pleased that we have issued this Arbitration Order and resolved a number of issues between Sprint and the numerous parties in these dockets. The interconnection agreements that are to be consummated within 30 days of this Order will make competition in the voice telecommunications market closer to a reality for a number of consumers in smaller exchanges who were previously unable to realize the benefits of true choice in the marketplace. I commend the parties, generally, for the progress made in negotiating large portions of the interconnection agreements, and bringing only truly contested issue to the Board for arbitration.

However, I must respectfully dissent from the decision on Part D of the Sprint-RLEC portion of the Order, relating to the appropriate rates for interconnection facilities. I disagree with my colleagues that special access rates are the appropriate rates for interconnection facilities when the parties negotiate for interconnection under 47 USC §§ 251 (a) or (b), as is the case here. While §§ 251 (a) and (b) are silent as to the appropriate pricing methodology for interconnection facilities, §252(d)(1) and 47 CFR §51.505 make clear that TELRIC is the appropriate methodology for interconnection rates under §251(c). The FCC has also established that TELRIC is the appropriate method for calculating rates for interconnection under 47 CFR §51.505 and an alternative for setting reciprocal compensation rates under 47 CFR §51.705. While my colleagues did not find Sprint's arguments that the application of TELRIC pricing in §251(c) naturally flows to interconnection under §251(a) and (b) persuasive, I do. A more thorough and

detailed analysis of this issue by Sprint may be more persuasive to my colleagues. It is clear from the Act and the FCC regulations that TELRIC is an appropriate method for determining interconnection and reciprocal compensation rates. It does not logically follow that the FCC would find TELRIC to be appropriate for some rates and not others based solely on the subsection of §251 under which a carrier chooses to request interconnection. Unfortunately, there is limited case law interpreting the correct pricing methodology for interconnection facilities under §§ 251(a) and (b), but using TELRIC instead of Special Access rates would lead to a more consistent policy for pricing interconnection. As competition continues to develop and more carriers pursue the model adopted by Sprint in this proceeding, the FCC may provide guidance as to the appropriate methodology used for setting interconnection rates under §§ 251(a) and (b).

/s/ Curtis W. Stamp

ATTEST:

/s/ Margaret Munson  
Executive Secretary, Deputy

Dated at Des Moines, Iowa, this 24<sup>th</sup> day of March, 2006.