

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

CLARIFICATION ORDER

(Issued June 13, 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.¹

¹ 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

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. The Board issued its arbitration order on March 24, 2006.

On April 12, 2006, Sprint filed a motion for clarification regarding the reciprocal compensation decision in the March 24, 2006, arbitration order. Sprint requested clarification regarding the distance of the transport facility and the associated composite rate as it pertains to reciprocal compensation.

In its motion Sprint notes that the Board directed Sprint and the RLECs to work together to make changes to certain inputs needed for the calculation of reciprocal compensation. Sprint states that the parties have been unable to resolve a dispute related to transport mileage. It is Sprint's position that transport mileage should not include the distance of the interconnection facility between the INS tandem and the RLEC end office.

Sprint explains that it originally calculated a reciprocal compensation rate of \$0.013420 based on 14.34 miles of transport applicable to 24.36 percent of traffic (for an average transport of 3.49 miles). Sprint indicates that the only significant error in its methodology was the inclusion of companies that were not part of the proceeding. Based on information provided by the RLECs, Sprint has corrected the calculation to

properly reflect the RLECs involved in the proceeding. Sprint claims the corrections should insignificantly change the reciprocal compensation rate from \$0.013420 to \$0.01376 per minute.

On April 26, 2006, the RLECs filed a resistance to Sprint's motion for clarification. The RLECs state there is agreement that a single symmetrical rate, that includes both transport and termination, would apply uniformly among all parties to the arbitration. The RLECs indicate that the "transport" component of the reciprocal compensation rate is still in dispute and note that FCC rules define transport as follows:

Transport. For the purposes of this subpart, transport is the transmission and any necessary tandem switching of telecommunications traffic subject to section 251(b)(5) of the Act from the interconnection point between the two carriers to the terminating carrier's end office switch that directly serves the called party, or equivalent facility provided by a carrier other than the incumbent LEC.²

The RLECs argue that the appropriate rate was litigated, and the Board stated that Sprint's rate did not account for the distance between the RLEC exchange and the Iowa Network Services (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. The Board ordered the parties to recalculate the distance based on Sprint's methodology – but to add the situations that were initially excluded.

² 47 C.F.R. § 51.701(c).

To implement the Board's order, the RLECs recalculated the transport distance by including the actual miles between each RLEC exchange and the INS network. Sprint submitted a calculation which excludes this distance and a diagram to illustrate the interconnection facility in dispute. The RLECs allege Sprint's diagram is inaccurate because the RLECs say the transport distance in dispute is not the distance between the INS tandem and the RLEC end office. Rather, the RLECs argue, the disputed transport is the distance between the various INS points of presence and the RLEC end offices.

The RLECs point out that INS uses 16 points of presence to provide its centralized equal access services. Seven of the points of presence are used by the RLECs involved in this proceeding for the connection of traffic to INS. For traffic terminating to these RLECs, the expectation is that the traffic will be delivered by Sprint to INS and INS will be paid for use of its facilities and network. INS does not provide facilities to transport the traffic to the end office of the RLECs. It is the RLECs that provide the transport facilities from the INS point of presence to the RLEC switch. The RLECs argue that these facilities have always been considered and compensated as transport facilities and the cost of transport across those facilities must be recognized as a cost for reciprocal compensation purposes. The weighted average distance for the RLECs involved in this proceeding is 58.14 miles, according to the RLECs. Based on the 58.14-mile distance, the total composite reciprocal compensation rate equals \$0.024665 per minute.

On May 5, 2006, Sprint filed a reply to the RLECs' resistance. Sprint argues that if the distance from the RLEC exchange to INS is included in transport, then Sprint should be allowed to include the distance from its Kansas City switch to INS. Sprint says that this would result in asymmetrical reciprocal compensation rates, which were never intended in the proceeding.

The Board notes that although the actual rate is at issue, the default arrangement for reciprocal compensation between Sprint and the RLECs is bill and keep. According to the interconnection agreement, traffic must be out-of-balance by plus or minus 5 percent for a minimum of three months before either party will begin to apply the reciprocal compensation rate.³ However, depending upon the rate the Board approves, it could create an incentive for the parties to create beneficial traffic imbalances, so it seems likely that resolution of this issue will have a practical effect on the parties in the foreseeable future.

The March 24, 2006, order stated the following regarding this issue:

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.⁴ 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.⁵

³ See Section 21.1.3 of RLEC/Sprint Interconnection Agreement.

⁴ Tr. 416.

⁵ Tr. 417.

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 recalculate the distance based on Sprint's methodology, adding in the situations that were excluded initially.

At this point, it appears that the parties have attempted to recalculate the distance based on Sprint's methodology, however, the proper transport distance and associated composite rate is still unresolved due to a disagreement over exactly what should be included.

The RLECs' initial composite rate of \$0.02373 was based on an estimated distance of 25 miles. This distance, however, assumed a direct form of interconnection within the exchange boundary.⁶ Ultimately, the Board approved the proposed use of an indirect form of interconnection, via INS, which would take place outside of the exchange boundary. The crux of the dispute is evident in the way Sprint and the RLECs diagram the indirect interconnection arrangement. Sprint provides three versions of essentially the same interconnection diagram showing no transport between the RLEC end office and the INS point of presence.⁷ The RLECs' diagram of the interconnection arrangement shows an additional transport leg linking the RLEC end office to the INS point of presence.⁸

The RLECs explain that INS has 16 points of presence within Iowa for connection to the INS centralized equal access network. The RLECs involved in this

⁶ Tr. 420.

⁷ See Exhibit 1 to Sprint's April 12, 2006, filing and Exhibit DGF-1 to Sprint's May 5, 2006, filing.

proceeding connect to seven of these points of presence. The RLECs state that the connection between the RLECs and the INS points of presence has always been considered transport.⁹ When this transport distance is calculated for the RLECs involved in this proceeding, the average distance is 58.14 miles, which increases the composite reciprocal compensation rate to \$0.024665.

The RLECs' diagram of the indirect interconnection arrangement is consistent with the Board's March 24, 2006, order. First, the Board noted Mr. Snoddy's comment that Sprint's 14.34-mile calculation did not include the distance to the INS network. Sprint's calculation and diagrams still do not include that distance. Second, the Board noted Mr. Snoddy's opinion that the RLECs' 25 mile estimate was conservative. The RLECs' actual calculation of 58.14 miles is consistent with that testimony and the Board's expectation.

The Board notes that because of the indirect interconnection arrangement, the reciprocal compensation rate is greater than it would be under a direct interconnection arrangement. The Board specifically approved language allowing a shift to direct interconnection once indirect interconnection is no longer the economically preferred form of interconnection. Therefore, at such time as Sprint chooses direct interconnection, recalculation based on then-existing circumstances or the reciprocal compensation rate should be open for renegotiation.

⁸ See Exhibit E to RLECs' April 26, 2006, filing.

⁹ RLECs' April 26, 2006, filing at p. 5.

The Board will also address the issue involving symmetrical and asymmetrical reciprocal compensation rates. Sprint contends that if the Board approves a \$0.024665 reciprocal compensation rate based on the RLECs' 58.14-mile transport distance, then Sprint should be able to use a rate based on its 176-mile transport distance – or \$0.044361.¹⁰

Federal rules address the use of symmetrical and asymmetrical reciprocal compensation rates (transport and termination). In general, the rules contemplate that these rates are to be symmetrical and based upon the rates of the ILEC. Thus, the ILEC would assess the CLEC its rate for transport and termination and the CLEC would use the same rate to assess the ILEC for transport and termination.¹¹ It is true that 47 C.F.R. § 51.711(b) allows state commissions to establish an asymmetrical rate that the CLEC could use to assess the ILEC. However, the rule requires a cost study using forward-looking economic costs. As part of the cost study, the CLEC would have to show that its forward-looking costs are (1) for a network efficiently configured and operated, (2) exceed the costs of the ILEC, and (3) are justified. The record before the Board does not meet these requirements. The asymmetrical rate Sprint proposes does not comply with these federal requirements and is rejected by the Board.

¹⁰ See Rand G. Farrar Affidavit at p. 4, attached as Exhibit 2 to Sprint's May 5, 2006, filing.

¹¹ See 47 C.F.R. § 51.711.

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 language adopted by the Board in its "Arbitration Order" dated March 24, 2006, and clarified in this order.
2. Within 15 days of the issuance of this order, the parties shall submit interconnection agreements consistent with the terms of this "Clarification Order."

UTILITIES BOARD

/s/ John R. Norris

/s/ Diane Munns

ATTEST:

/s/ Judi K. Cooper
Executive Secretary

/s/ Curtis W. Stamp

Dated at Des Moines, Iowa, this 13th day of June, 2006.