

STATE OF IOWA
DEPARTMENT OF COMMERCE
UTILITIES BOARD

<p>IN RE ARBITRATION OF:</p> <p>SPRINT COMMUNICATIONS COMPANY L.P.,</p> <p style="text-align:center">Petitioning Party,</p> <p style="text-align:center">vs.</p> <p>IOWA TELECOMMUNICATIONS SERVICES, INC., d/b/a IOWA TELECOM,</p> <p style="text-align:center">Responding Party.</p>	<p style="text-align:center">DOCKET NO. ARB-07-2</p>
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ARBITRATION ORDER

(Issued December 21, 2007)

I. PROCEDURAL HISTORY

On August 30, 2007, Sprint Communications Company L.P. (Sprint) filed with the Utilities Board (Board) a petition requesting that the Board arbitrate certain unresolved terms of a proposed interconnection agreement between Sprint and Iowa Telecommunications Services, Inc., d/b/a Iowa Telecom (Iowa Telecom). The petition was filed pursuant to section 252(b) of the Communications Act of 1934, as amended by the Telecommunications Act of 1996 (hereafter referred to as "the Act" or 47 U.S.C. § 252), and the provisions of Board rule 199 IAC 38.7(3). The petition was identified as Docket No. ARB-07-2.

In its petition, Sprint identified 15 unresolved issues to be submitted for arbitration and asked the Board to order the parties to incorporate Sprint's proposed language and positions into the resulting interconnection agreement.

On September 5, 2007, the Board issued an order docketing Sprint's petition for arbitration and setting a procedural schedule.

On September 6, 2007, Sprint filed a motion to reconsider the procedural schedule.

During a telephone conference held between the parties, Iowa Telecom identified one additional issue (relating to preservation of rights arising out of the parties' Iowa federal district court case) and one additional sub-issue (relating to additional terms necessary if the agreement applies to wireless traffic) to be submitted for arbitration. The parties also agreed during the conference to modify the procedural schedule.

On September 11, 2007, the Board issued an order memorializing the telephone conference, modifying the procedural schedule, and denying Sprint's motion to reconsider the procedural schedule.

On September 12, 2007, Iowa Telecom filed a response to Sprint's petition. In the response, Iowa Telecom confirmed that there were no issues to be submitted for arbitration other than the 15 issues identified in Sprint's petition and the additional issue and sub-issue identified by Iowa Telecom during the telephone conference.

On October 24, 2007, a hearing was held for the purpose of receiving pre-filed testimony and cross-examination of all testimony.

On October 29, 2007, Iowa Telecom filed a late-filed exhibit identified as Iowa Telecom Exhibit 105 identifying the rates Iowa Telecom charges for transport and termination of traffic and for number portability.

Also on October 29, 2007, Iowa Telecom filed the affidavit of Iowa Telecom witness David Porter reporting on his post-hearing conversation regarding directory issues with Iowa Telecom's vendor.

On October 30, 2007, Sprint filed a late-filed exhibit showing the location, by local access transport area (LATA), of the points in Iowa at which it interconnects with Iowa Telecom and three other carriers.

On November 5, 2007, Sprint and Iowa Telecom filed initial post-hearing briefs.

On November 6, 2007, Sprint filed a supplemental late-filed exhibit identified as Sprint Exhibit 4 providing additional information about the location of the points of interconnection.

On November 13, 2007, both parties filed reply briefs.

The Board held a decision meeting on December 14, 2007, making decisions on each of the 17 outstanding issues relating to the proposed interconnection agreement.

II. STANDARD FOR ARBITRATION AND REVIEW

Sprint filed its petition pursuant to the provisions of § 252(b) of the Act and the provisions of Board rule 199 IAC 38.7(3). As required by § 252(b)(4)(C), the arbitration is to be concluded not later than nine months after the date Iowa Telecom

received a request for negotiations. In this case, that means the Board's decision must be issued on or before December 24, 2007.

Section 252(b)(4) of the Act provides that the Board shall limit its consideration of any petition for arbitration filed under § 252 to the issues set forth in the petition and in any response. In resolving open issues by arbitration pursuant to § 252, the Board shall 1) ensure that any resolution meets the requirements of § 252 of the Act; 2) establish any rates for interconnection, services, or network elements according to § 252(d); and 3) provide a schedule for implementation of the terms and conditions by the parties to the agreement.

Further, § 252(e)(1) requires that any interconnection agreement adopted by negotiation or arbitration shall be submitted to the state commission for approval. Section 252(e)(2)(B) provides that a state commission may reject any portion of an interconnection agreement adopted by arbitration "if it finds that the agreement does not meet the requirements of section 251, including the regulations prescribed by the Commission pursuant to section 251, or the standards set forth in subsection (d) of this section." Section 252(e)(3) further provides that "nothing in this section shall prohibit a State commission from establishing or enforcing other requirements of State law in its review of an agreement, including requiring compliance with intrastate telecommunications service quality standards or requirements."

III. DISCUSSION

Sprint's proposed language for the interconnection agreement is attached to its petition as Exhibit C. Iowa Telecom's proposed language was attached to its reply brief as Attachment A.

In its petition, Sprint says that the parties have not resolved differences over contract language and policy issues that are critical to Sprint's business plans.

Generally, Iowa Telecom contends that Sprint's proposed agreement would minimize Sprint's obligations to bring an actual network to Iowa Telecom's service territory; force Iowa Telecom to accept unidentifiable diverse traffic on commingled interconnection trunks; and require Iowa Telecom to serve as an all-inclusive transit carrier for Sprint. Iowa Telecom says it does not intend to relitigate issues from In re: Sprint Communications Company L.P. and MCC Telephony of Iowa, Inc. v. Iowa Telecommunications Services, Inc., d/b/a Iowa Telecom, Docket No. FCU-06-49,¹ which it has appealed to federal district court, but seeks to establish a new agreement with terms based on applicable federal law that reflect the scope of an incumbent local exchange carrier's (ILEC's) obligations to its competitors.

This is not the first interconnection agreement the Board has arbitrated between these parties. At the hearing in this matter, neither party objected when the Board took official notice of the current agreement between Sprint and Iowa Telecom

¹ See In re: Sprint Communications Company L.P. and MCC Telephony of Iowa, Inc. v. Iowa Telecommunications Services, Inc., d/b/a Iowa Telecom, "Final Decision and Order and Order Allocating Costs," issued November 9, 2006, and "Order Denying Request for Rehearing," issued December 22, 2006.

that arose out of the Board's order in consolidated Docket Nos. ARB-05-2, ARB-05-5, and ARB-05-6 (hereinafter, "2006 Arbitration Order").²

The Board will address the issues as numbered and identified by the parties, but in the non-sequential order used for the decision meeting, which reflects certain relationships between some of the issues.

ISSUE 1: What should be the term of the agreement?

Sprint prefers that the term of the new agreement be two years, while Iowa Telecom's position is that the agreement should have a one-year term with annual one-year renewals. According to Sprint, a two-year term would extend the time between the current arbitration and the next arbitration. Sprint notes that during negotiations for the existing agreement, Sprint agreed to a one-year term and Iowa Telecom invoked the termination provisions immediately after the agreement became effective. Sprint argues that Iowa Telecom's preference for a one-year agreement demonstrates its intention to re-arbitrate the same issues as often as possible in search of a different outcome. (Tr. 15.)

Iowa Telecom points out that the initial agreement with Sprint and Sprint's interconnection agreements with the rural local exchange carriers (RLECs) (arbitrated in the consolidated dockets) had one-year terms. Iowa Telecom suggests that because some of the capabilities Sprint wants to include in this agreement have not been developed, tested, or finalized, the agreement should have a one-year term

² See In re: Arbitration of Sprint Communications Company L.P. vs. Ace Communications Group, et al., consolidated Docket Nos. ARB-05-2, ARB-05-5, ARB-05-6, "Arbitration Order," issued March 24, 2006.

to allow the parties the opportunity to adjust the agreement more frequently to reflect their experience with the developing operations.

The Board recognizes that some of the capabilities to be covered by this agreement, such as the commingling of traffic, are in their early stages, at best. However, the arbitrated agreement will include sufficient flexibility to allow the parties to adapt to new capabilities as they are developed and implemented. Any concerns about prematurity are not sufficient to justify a one-year term. The Board approves Sprint's proposed two-year term.

ISSUE 2: How should the terms "End User" and "Customer" be defined in the agreement?

Iowa Telecom proposes to define "customer" as "any telecommunications carrier to whom either Party provides wholesale services," and "end user" as follows:

End User means the retail residential or business customers of either Party or, when either Party is offering wholesale services to another carrier and has been authorized by that other carrier to act on its behalf, the retail residential or business subscribers of the other carrier. Another carrier that buys wholesale services from either Party is not an End User of that Party. The other carrier is a Customer.

(Iowa Telecom reply brief, Attachment A, p.1.)

Sprint's position is that there is no reason to distinguish between Sprint's wholesale customer and the end users of the service that is jointly provided by Sprint and MCC Telephony of Iowa, Inc. (MCC). Sprint suggests that Iowa Telecom may be trying to limit its liability to Sprint/MCC end users. Iowa Telecom argues that its proposed definitions clarify that the end user is the retail subscriber of either party or

the retail subscriber of another carrier to whom Sprint is providing wholesale services.

The Board agrees with Iowa Telecom that its proposed definitions of "customer" and "end user" clarify the agreement in light of the business arrangement between Sprint and MCC. The Board approves Iowa Telecom's proposed definitions and the parties should make any changes necessary throughout the agreement to conform to those definitions. That said, the Board's approval of Iowa Telecom's definitions should not be construed as a change in the Board's position with respect to the Sprint/MCC business arrangement.

ISSUE 9: What is the appropriate reciprocal compensation rate for the termination of telecommunications traffic?

On this issue, the parties agree (a) to use a "bill and keep" arrangement unless one carrier is terminating 60 percent or more of the interconnected traffic; (b) traffic will be measured semi-annually for balance; and (c) the reciprocal compensation rates to be applied when traffic is out of balance will be those specified in Iowa Telecom's Exhibit 105. Sprint proposed that the parties agree not to bill for reciprocal compensation unless the net amount to be billed is \$500 or greater, arguing this would ease the administrative burden on both parties. Iowa Telecom did not agree to the proposed threshold.

The Board finds no reason to require Iowa Telecom to accept Sprint's proposed billing threshold and forego potential payments it would otherwise be entitled to receive. The Board approves Iowa Telecom's language regarding Issue 9.

There was some discussion in Sprint's initial post-hearing brief relating to the application of 47 C.F.R. § 51.711(a)(3) to any future connection by Sprint at an end or host office. In response to what it described as Iowa Telecom's proposal that rates be symmetrical between the parties (Sprint initial brief, p. 33, citing pre-filed testimony of Iowa Telecom witness Porter at Tr. 384), Sprint states it intends to connect only at Iowa Telecom's tandem switch, but wants assurances that if it elects in the future to connect at an end office or host office, the rule would entitle Sprint to tandem switching while Iowa Telecom would be entitled to end office charges only. Iowa Telecom did not address this issue in its briefs, so it is not clear whether Iowa Telecom agrees with Sprint's interpretation of the Federal Communications Commission's (FCC's) rule. The Board finds the issue has not been sufficiently developed in this proceeding to establish that Sprint's proposed language should be adopted. Further, because Sprint states that it intends to connect only at Iowa Telecom's tandem switch, it is not necessary to rule on the issue at this time. The parties can negotiate an amendment if it becomes relevant or the issue can be fully addressed as part of their next interconnection agreement.

ISSUE 10: Should the agreement require Iowa Telecom to transit traffic for indirect interconnection between Sprint and other competing carriers?

Sprint cites 47 U.S.C. § 251(a), which provides in relevant part that "[e]ach telecommunications carrier has the duty to interconnect directly or indirectly with the facilities and equipment of other telecommunications carriers," in support of its assertion that every local exchange carrier (LEC) has the option of interconnecting

directly or indirectly for the exchange of traffic. Sprint states that indirect interconnection through a transit service provider can be the most efficient means of interconnection. (Tr. 113.) According to Sprint, in order for it to indirectly interconnect with other carriers serving Iowa Telecom's area and interconnected with Iowa Telecom, Iowa Telecom must provide transit service. Sprint states that the FCC recognizes that "the availability of transit service is increasingly critical to establishing indirect interconnection – a form of interconnection explicitly recognized and supported by the Act." (Sprint initial brief, p. 34, quoting *In the Matter of Developing a Unified Intercarrier Compensation Regime*, CC Docket No. 01-92, FCC 05-33, released March 3, 2005, ¶125 ("*Intercarrier Compensation Order*").)

Sprint contends it is technically feasible for Iowa Telecom to transit traffic through its tandem switch (where Sprint interconnects) to any other carrier connected to that switch or any office served by an end office or host connected to that tandem. Sprint notes that as a compromise in Docket No. FCU-06-49, it agreed to use other arrangements for sending traffic to wireless carriers, but now requests that the new agreement include transiting terms.

Sprint explains it does not intend to bill Iowa Telecom for traffic originated by a third party and transited by Iowa Telecom to Sprint for termination. Sprint agrees that Iowa Telecom should be compensated for providing the transit services through appropriate rates and rate elements for reciprocal compensation when traffic is out of balance. Sprint contends additional terms to address the compensation and transit

arrangement are not necessary and urges the Board to reject Iowa Telecom's proposed language.

Iowa Telecom explains that the issue is whether Iowa Telecom has a duty to provide a transiting service to Sprint. The issue concerns the transiting of (a) third-party wireless traffic over Iowa Telecom's tandem switches and (b) traffic to and from competitive local exchange carriers (CLECs) other than Sprint. Iowa Telecom asserts there is no federal obligation for an ILEC to provide a transit service between CLECs and wireless carriers or among CLECs.

Iowa Telecom argues that what is required under § 251(a)(1) is for carriers on either end of the call to connect with each other. According to Iowa Telecom, there is no legal requirement regarding a carrier in the middle, which would be the transiting carrier. Iowa Telecom explains that some states have legislative provisions requiring transit service, but Iowa does not. Further, Iowa Telecom notes that while some states have identified public policy reasons for requiring transit service, Iowa Telecom does not meet the typical standards underlying those policies, including having an ubiquitous network, providing the only tandem capability in an area, or having other LECs subtending its tandems. Iowa Telecom states it does not meet any of those standards and therefore should not be required to provide transit services.

Iowa Telecom claims that the FCC has recently opened an inquiry into the question of whether it should adopt a requirement that ILECs provide transit service. (*See Developing a Unified Intercarrier Compensation Regime*, Notice of Proposed Rulemaking, 20 FCC Rcd 4685, ¶ 128 (2005).) However, in the same order the FCC

acknowledges the concerns of many CLECs that the unavailability of transit services at reasonable rates, terms, and conditions could pose a barrier to entry that would violate the Act. (Id., ¶ 129.) This is especially likely to be the case in a service territory like Iowa Telecom's, which is generally rural in nature. As a result, in this docket, the Board agrees with Sprint that requiring Iowa Telecom to provide a transit function, for a reasonable price, at this time is consistent with the purposes of the Act. The Board approves Sprint's proposed Section 16.1, which affirms that Iowa Telecom will provide transiting; however, Section 16.1 should be modified to include a reference to Iowa Telecom's Exhibit 105, which includes rates for local transit traffic and toll transit traffic. By applying Iowa Telecom's rates to the transiting service, any possible harm to Iowa Telecom from being required to offer the service should be minimized. The Board also approves Sprint's proposed Sections 16.2 and 16.3, which go with this decision.

ISSUE 12: Should Iowa Telecom provide service to Sprint at parity with the services it provides to itself and its own end users?

The parties are in agreement on this issue. Sprint states it will accept Iowa Telecom's language for Section 14.13 to address the issue of parity. Also, Sprint explains it is willing to use the Trading Partner Profile form provided by Iowa Telecom (Iowa Telecom Exhibit 103) and agrees to the language proposed by Iowa Telecom as Section 21.6. (Sprint initial brief, p. 37; Tr. 157.) Therefore, the Board approves Iowa Telecom's proposed Sections 14.13 and 21.6 and the Trading Partner Profile.

ISSUE 13: What is the appropriate charge for the processing of LSR orders for number portability?

Iowa Telecom proposed a charge of \$39.23 for processing local service request (LSR) orders for number portability. This is the charge that Sprint would have to pay Iowa Telecom for each Iowa Telecom customer who changes to MCC's local service while retaining his or her telephone number. Iowa Telecom states its Exhibit 104 (which includes the proposed \$39.23 rate for initial service orders) shows the rates used in every other Iowa Telecom interconnection agreement. (Tr. 394; Iowa Telecom initial brief, p. 39.) Iowa Telecom explains that the \$39.23 rate was derived by applying an avoided cost discount value to its retail service order charge of approximately \$45, but acknowledges that the rate was not directly supported by a regular cost study. (Tr. 442-43.)

Sprint proposes a rate of zero or, alternatively, \$1.25 or \$5.50, based on the federal charges for electronic or manual changes of a customer's preferred interexchange carrier (PIC). (Tr. 215.) Sprint indicates it pays other regional Bell Operating Companies (RBOCs) approximately \$3.50 for service order charges. (Tr. 224.) Sprint argues that Iowa Telecom has an incentive to keep service order rates high as a barrier to entry, shown by its proposal to move from a charge of zero in the current agreement to its present proposal of \$39.23. (Sprint reply brief, p. 25.)

The Board concludes that Iowa Telecom's processing of these service orders on Sprint's behalf results in some costs to Iowa Telecom and therefore will not approve Sprint's proposed rate of zero. Further, the federal PIC change rates of \$1.25 or \$5.50 have not been shown to be comparable to the costs incurred by Iowa

Telecom for processing these orders. The record in this case shows that service orders and PIC changes involve different tasks and are handled differently. (Tr. 407-09.) Nor does the Board find adequate support in this record for Iowa Telecom's assertion that the retail service order function is comparable to the service order function at issue here or that the avoided cost discount factor adequately reflects any differences in these functions. Further, the Board is concerned that a charge of nearly \$40 per customer could be a barrier to entry.

In the absence of a cost study submitted in advance of the hearing, the Board concludes this record does not support either the \$39.23 rate proposed by Iowa Telecom or the \$1.25 and \$5.50 rates proposed by Sprint. Also, it does not appear that the parties' existing agreement specifies a charge for these service order requests. In the 2006 Arbitration Order, the Board approved the RLECs' \$25 service order charge. Sprint did not introduce any evidence in this proceeding to suggest that particular charge has operated as a barrier to entry in the RLEC markets. In this case, the Board finds \$25 is a reasonable alternative to either party's proposed rate and directs the parties to use that rate in the new agreement. The Board encourages the parties to prepare and submit appropriate cost studies in advance of any future hearing considering this issue if they are not satisfied with the \$25 charge.

ISSUE 14: What telephone directory terms and conditions should be included in the agreement?

This issue involves publication and distribution of telephone directories and has several elements: treatment of non-published numbers; the source of charges regarding directory issues; Sprint's proposed language requiring Iowa Telecom to

cooperate with Sprint in securing agreements with third parties; and the charge for additional or bulk directories after initial distribution. Two of the issues have been resolved. The parties agree there should be no charge for numbers not submitted for printing, which adequately addresses the non-published number issue. (Sprint reply brief, p. 26.) Second, it appears that the issue of the source of charges for directory issues is resolved, as Sprint no longer insists on referring to tariffed rates and appears to agree on the use of Iowa Telecom's retail rates, as explained in Iowa Telecom's proposed Section 22.4. The Board therefore approves Iowa Telecom's proposed Section 22.4.

The two remaining issues are Sprint's proposal that Iowa Telecom be required to cooperate with Sprint in its efforts to work with the third-party printer and the cost of directories. Issue 14 deals specifically with Sprint's relationship with the third party that prints Iowa Telecom's directories. Sprint proposes similar cooperation language for Issue 15 with respect to Sprint's relationship with other third parties. According to Sprint, the proposal to include language requiring Iowa Telecom's cooperation was based on difficulties Sprint experienced with having its end-user telephone numbers included in Iowa Telecom's directories and in securing an agreement with the directory printer. Based on information included in late-filed exhibits, it appears that the end-user listings have been published in Iowa Telecom's directories. Further, there is not sufficient evidence in the record to establish that Iowa Telecom was interfering with Sprint's efforts to secure an appropriate contract with the printer. On the basis of the record in this proceeding, the Board finds it is not necessary to adopt

Sprint's proposed cooperation language. All interconnection agreements are subject to a general obligation of good-faith dealing and cooperation. The agreement does not need to include language requiring cooperation on specific issues because, even without such language, either party is free to file a complaint with the Board alleging specific acts of interference or lack of good-faith dealing.

With respect to the cost issue, it appears Sprint has accepted Iowa Telecom witness Porter's offer at hearing that he would compromise by not requiring Sprint to pay for a portion of Iowa Telecom's cost to make its annual distribution of directories (Sprint initial brief, p. 43), but Sprint does not accept Iowa Telecom's proposed rate of \$10 per directory for each bulk order of directories after the initial distribution. Sprint proposes a rate of \$5 per directory, but has not shown that \$5 is sufficient to cover the costs associated with orders after the initial distribution. The Board agrees with Iowa Telecom that the \$10 charge is reasonable and approves Iowa Telecom's proposed Section 22.

ISSUE 15: What terms and conditions should be included in the agreement for 911 and MSAG?

Sprint proposes that the agreement include language requiring Iowa Telecom to cooperate with Sprint to enable Sprint to enter into agreements with certain third parties that Iowa Telecom uses for 911 and Master Street Address Guide (MSAG) databases. Specifically, Sprint proposes that Section 6.4 require Iowa Telecom to cooperate with Sprint's efforts to obtain necessary documentation to conduct an audit of third parties; that Section 23.2 require Iowa Telecom to provide contact information for its 911 database and cooperate with Sprint and the third party to ensure 911

records are included in the database; and that Section 23.3 provide that Iowa Telecom must ensure cooperation with respect to the MSAG and 911 database. Sprint contends the language is necessary to ensure the 911 system functions properly.

Iowa Telecom argues that the language is not necessary or appropriate given that the duties of Sprint and Iowa Telecom with respect to 911 and MSAG functions are distinct. Iowa Telecom explains it does not maintain its own 911 database or MSAG and that it is not involved in any of Sprint's duties regarding 911 and MSAG.

The Board finds no reason to dispute Iowa Telecom's characterization of its duties regarding the 911 and MSAG databases as completely separate from those of Sprint. The Board rejects Sprint's proposed language and approves Iowa Telecom's language on this issue. Again, as the Board observed in discussing Issue 14, it is not necessary that an interconnection agreement include specific language requiring cooperation between the parties on a particular issue in order to preserve a party's right to file a formal complaint with the Board alleging specific instances of interference with rights under the agreement.

ISSUE 16: How should this agreement preserve rights related to the interconnection agreement arising out of the pending Iowa federal district court cases?

A challenge to the Board's 2006 Arbitration Order is currently pending before the United States District Court for the Southern District of Iowa³ and the outcome of the case could affect the terms of this agreement. An issue in that appeal is whether

³ Iowa Telecommunications Services, Inc. v. Iowa Utilities Board, et. al, No. 4:06-cv-00291.

the Board properly determined that Sprint is operating as a telecommunications carrier for purposes of negotiation and arbitration of these interconnection agreements. Iowa Telecom maintains that Sprint is not a telecommunications carrier under § 3(44) of the Act with respect to its business arrangement with MCC and therefore does not have standing to negotiate or arbitrate an interconnection agreement.

Iowa Telecom has also challenged the Board's decision in Docket No. FCU-06-49, the proceeding in which the Board considered Sprint's formal complaint against Iowa Telecom relating to Iowa Telecom's alleged failure to implement the terms of the interconnection agreement arbitrated in Docket Nos. ARB-05-2, ARB-05-5, and ARB-05-6. That case is also in federal district court⁴ but has been stayed pending the outcome in the initial proceeding. Iowa Telecom proposes language for this interconnection agreement that is intended to preserve its rights if it should prevail in these judicial proceedings.

Sprint relies on Section 2.4 of its proposed interconnection agreement to address this preservation of rights issue. Section 2.4 states that if the court reverses, vacates, or otherwise modifies the Board's decision, the parties may invoke the change of law provision at Section 14.8. In response to Iowa Telecom's proposed language, Sprint notes that Iowa Telecom's language, which requires action within 30 days, does not allow for the possibility of further appeal or applying for a stay of the court's order. Sprint states it would agree to Iowa Telecom's proposed reservation of

⁴ Iowa Telecommunications Services, Inc. v. Iowa Utilities Board, et. al, No. 4:07-cv-00032.

rights paragraph as stated in its rebuttal testimony in addition to Sprint's proposed language in Section 2.4, but not in place of that language. Sprint asks the Board to reject the additional language proposed by Iowa Telecom.

Iowa Telecom's position is that Sections 2.4 and 14.8 do not sufficiently preserve its rights. In its initial brief, Iowa Telecom states that the language proposed by Sprint provides only that if the federal district court finds that Sprint does not have authority to enter into an agreement with Iowa Telecom, either party can invoke Section 14.8's change of law provision, which would require only that there be a renegotiation of the contract. Iowa Telecom contends renegotiation is not an appropriate remedy if the court determines Sprint is not entitled to invoke the negotiations provisions of the Act.

In response to Sprint witness Stahly's concern that the contract could be terminated, leaving no contract for interconnection of MCC and no agreement for provision of service to MCC customers (Tr. 232), Iowa Telecom states it would not seek an immediate cessation of the contract upon receiving a favorable court decision. Iowa Telecom explains it would agree to a period of time for MCC to arrange an appropriate interconnection agreement. Iowa Telecom proposes to amend Sprint's proposed Section 2.4, in relevant part, as follows:

The parties agree that this agreement is subject to any order of the Court reversing, vacating, or otherwise modifying the Board's decision which is the subject of those proceedings. If the Court rules that Sprint does not have the authority to enter into this Agreement, Sprint's Customer shall have thirty (30) days from the date of that order to opt into another agreement with Iowa Telecom or negotiate its own agreement with Iowa Telecom.

Iowa Telecom suggests this additional language appropriately preserves its rights if the court vacates the Board's decision and preserves MCC's right to not be immediately disconnected from interconnection with Iowa Telecom.

The Board's primary concern with respect to this issue is that if the court grants Iowa Telecom the relief it requests, the appropriate parties will need to arrange for a new agreement as soon as possible so that service to MCC's customers is not interrupted. The Board does not agree with Iowa Telecom that MCC should be limited to 30 days from the date of any court order in which to opt into another agreement with Iowa Telecom or negotiate its own agreement with Iowa Telecom, because there may be no appropriate agreement to opt into and 30 days may not be enough time for the parties to reach agreement.

The Board will approve some, but not all, of Iowa Telecom's proposed language. If MCC has to negotiate an agreement with Iowa Telecom, that process, including any resulting arbitration, could take up to nine months. The Board therefore directs the parties to include in the agreement a provision that requires interconnection that allows service to MCC customers to continue while the appropriate parties pursue their rights under the federal Act. The Board will revise the relevant part of Iowa Telecom's proposed language as follows:

If the Court rules that Sprint does not have the authority to enter into this Agreement, Sprint's Customer shall have thirty (30) days from the date of that order to opt into another agreement with Iowa Telecom or negotiate its own agreement with Iowa Telecom opt into another agreement with Iowa Telecom or initiate negotiations, including any associated arbitration, pursuant to the Act and this Agreement shall continue during that time, to the extent consistent with the order of the federal Court.

With this modification, Iowa Telecom's version of the language provides appropriate guidelines for the parties to sort out the effect of any court order. The Board concludes that because the modified version of Iowa Telecom's proposal is sufficient to guide the parties in responding to the outcome of the appeals, it is not necessary to include a reference in Section 2.4 to Section 14.8's change of law provision.

Finally, the Board observes that no matter what terms are included in this arbitration agreement, the federal district court judge deciding each case has the discretion to order a different outcome regarding continuation of service to MCC customers. The Board anticipates that the parties to the appeal will address the issue of how any appeal or stay of any federal court's ruling will affect continuation of service to MCC customers, with the goal of ensuring uninterrupted service to all customers. The Board concludes that Iowa Telecom's language (modified to strike the 30-day time limit and as shown above) and Iowa Telecom's assurances at hearing (Tr. 410-11) offer a reasonable resolution of the preservation of rights issue.

ISSUE 3: Should the agreement permit the parties to combine and exchange all types of traffic (wireless, wireline, information services, and access services) on the same interconnection trunks?

In this issue, Sprint contends the agreement should include terms to permit Sprint to use the interconnection arrangement for commingled traffic when Sprint is ready to send such traffic. Sprint says it has proposed essentially the same language approved by the Board in the 2006 Arbitration Order that would allow Sprint to use

the interconnection for multi-use and multi-jurisdictional traffic, when the capability to do so has been developed.

Sprint's position is that it is more efficient to combine traffic and it is seeking interconnection consistent with its converged networks. Sprint argues that commingling would allow the use of fewer interconnection trunks; enable Sprint to configure its network more efficiently; eliminate the need to provision separate parallel trunks; and minimize the number of switch ports.

Sprint explains it is developing the capability to identify and ensure proper billing for traffic. Specifically, Sprint testified it is currently conducting trials using Signaling System #7 (SS7) to identify traffic types and billing factors that could be used to identify traffic types in the interim with reasonable accuracy. (Tr. 140.)

Further, Sprint contends that because Iowa Telecom's switches use SS7, the SS7 records contain all information needed to identify traffic and properly bill a call. Sprint claims that Iowa Telecom could use industry standard SS7 records to bill Sprint directly for traffic terminated to it or to develop billing factors which Iowa Telecom could use to correctly bill all types of traffic. According to Sprint, either method would enable the accurate billing of traffic subject to reciprocal compensation and traffic subject to access charges. Sprint argues that under these circumstances, there is minimal exposure to Iowa Telecom or Sprint for lost compensation. In response to Iowa Telecom's concerns about phantom traffic (traffic for which the terminating carrier cannot identify the correct party to bill terminating charges or for which the proper jurisdiction cannot be determined), Sprint explains it is not

attempting to deprive Iowa Telecom of intercarrier compensation for intrastate or interstate traffic and says it will work with Iowa Telecom to identify the traffic and provide appropriate compensation.

Iowa Telecom's position is that this agreement is for the exchange of local wireline traffic only. Iowa Telecom contends that Sprint is not yet able to identify and measure mixed traffic of various types on commingled trunks and Sprint's plans for implementing network integration and properly identifying traffic are years from completion. According to Iowa Telecom, requiring Iowa Telecom to accept commingled traffic would unlawfully deprive it of intercarrier compensation for intrastate and interstate traffic that could not be identified.

Iowa Telecom notes that the current interconnection agreement with Sprint does not require Iowa Telecom to accept or deliver commingled traffic and explains that the issue of commingled traffic arose in the previous arbitration with respect to the RLECs. Iowa Telecom refers to the Board's statement in the 2006 Arbitration Order that:

[B]ecause Sprint has indicated that it is technically possible to perform the measurement of traffic, but that it simply has not yet implemented those procedures, the Board will approve provisions related to commingling various types of traffic on individual trunks.⁵

Iowa Telecom explains that more than 18 months have passed since Sprint made those representations in the previous arbitration and that Sprint is still not able to identify and measure commingled traffic of various types on common trunks.

⁵ 2006 Arbitration Order, p. 15.

According to Iowa Telecom, Sprint justifies including language for commingled traffic at this time on the basis that it can provide billing factors. Iowa Telecom argues that it is clear that billing factors are proposed only because Sprint cannot ascertain what the actual traffic is.

The Board's consideration of Issue 3 must encompass Issue 17 since both issues relate to Section 17.4 of the interconnection agreement as proposed by Sprint. Issue 3 addresses whether Sprint should be allowed to send commingled traffic to Iowa Telecom, while Issue 17 addresses the process Sprint and Iowa Telecom would employ to come to agreement on measuring and billing the commingled traffic. Sprint proposes language for Section 17.4 which explains that Sprint will not use the interconnection arrangement to exchange wireless traffic or traffic subject to access charges, but will work with Iowa Telecom to develop processes for such exchange when Sprint is ready to use the agreement for that purpose.

As proposed by Sprint, Section 17.4 indicates that Sprint is not yet ready to send commingled traffic but asks the Board to preserve its rights to do so when it is ready. Sprint testified that sending commingled traffic relates to the converging of networks, a nationwide initiative at Sprint. Sprint also said that it needs to maintain its right to converge its traffic so that it can justify the time and expense to reconfigure its network. (Tr. 139.) At the hearing, Sprint witness Stahly indicated that Sprint is investing hundreds of millions to converge its networks. (Tr. 227.) It appears that even though Sprint is not yet ready to begin measuring and sending commingled

traffic to other carriers, it wants assurances from state commissions about the viability of its investment in network convergence.

From Iowa Telecom's perspective, Sprint's proposals for measuring and billing the commingled traffic are not yet viable. Sprint acknowledges that efforts are underway to identify and measure commingled traffic and Sprint is conducting trials to use SS7 to identify traffic types. The record indicates that the trials involving SS7 for identifying traffic are a longer-term solution to billing commingled traffic. (Tr. 140.) In the interim, Sprint is proposing the use of billing factors to identify combined traffic with reasonable accuracy. (Tr. 141.) According to Sprint, billing factors are often estimated and negotiated between parties that are exchanging mixed traffic. (Tr. 142.) Iowa Telecom witness Porter stated that billing factors are a fairly unreliable way of estimating the volumes of traffic and expressed concern that Sprint's commingling proposal puts Iowa Telecom at risk of doing "something uniquely with one carrier that doesn't reflect an industry standard use of an SS7 record." (Tr. 423, 426.)

Issue 17 specifically relates to the rest of proposed Section 17.4 and addresses the process that Sprint and Iowa Telecom would use to identify and bill the commingled traffic. It calls for cooperation and provides that if agreement cannot be reached, the parties would proceed to dispute resolution. Witness Porter opined that this means the dispute would come back to the Board for arbitration. (Tr. 430.)

The record in this proceeding indicates there is still uncertainty about Sprint's commingling proposal. If Sprint and Iowa Telecom were not able to come to terms

on measuring commingled traffic, further litigation could ensue to try to determine reasonable billing factors. The Board recognizes that Sprint is still in the process of converging its networks and that work remains to be done on a long-term solution to identifying the traffic. However, this record shows that Sprint is actively pursuing the ability to properly identify the commingled traffic and that billing factors could be used as an interim measure if the parties could agree on them.

The Board finds that commingling promotes network efficiency and therefore ultimately benefits customers. The Board does not agree with Iowa Telecom that commingling should be delayed until industry standards are developed. Instead, the parties should be encouraged to move toward greater network efficiencies as soon as possible. Further, the Board approved commingling in the 2006 Arbitration Order even though Sprint had not yet implemented commingling and the Board does not find a reason in this record to depart from that approach for these parties.

That said, because the parties have not agreed on terms relating to billing factors for commingled traffic, commingling of traffic between Sprint and Iowa Telecom will not happen immediately. Iowa Telecom has a legitimate interest in managing the potential impact commingling could have on its network and billing practices and the agreement must give Iowa Telecom and Sprint equal standing in determining how commingling will work. The Board will approve language that allows commingling, but directs the parties to revise their proposed language to better accommodate the interests of both parties. The Board suggests something like the

following revised Section 17.4, which includes language from both Sprint and Iowa Telecom's latest proposals on this issue:

17.4. When Sprint has systems and programs in place to adequately identify and measure the separate types of traffic exchanged over a commingled trunk, Iowa Telecom will work with Sprint to modify the terms of this agreement to establish terms and conditions for the exchange of commingled traffic. Such terms shall address, but not be limited to, the identification and measurement of traffic that goes over each trunk, the use of billing factors, auditing provisions, the types and jurisdiction of traffic to be commingled, and the amount or volume of traffic. If the Parties are unable to agree upon such terms, the Parties may invoke the Dispute Resolution Procedures under Section 13. Until terms and conditions for the exchange of commingled traffic are reached, either through negotiation or the Dispute Resolution Procedures, neither Party will exchange toll or wireless traffic on the local interconnection trunks and toll and wireless traffic will continue to be exchanged on dedicated trunks groups.

The Board will also approve Sprint's language for the rest of Issue 3 found in Exhibit C of Sprint's August 30, 2007, petition.

ISSUE 17: Should the agreement contain language relating to wireless traffic?

For the reasons set forth in the Board's discussion of Issue 3, the Board finds that the resolution of Issue 3 also resolves Issue 17.

ISSUE 11: Should Sprint be able to use the agreement for exchange access?

In support of its request to use this agreement for exchange access (that is, to connect interexchange calls to interexchange carriers), Sprint cites 47 C.F.R. § 51.305(a), which provides that an ILEC "shall provide . . . interconnection with the incumbent LEC's network for the transmission and routing of telephone exchange

traffic, exchange access traffic, or both." Sprint asserts that the only limitation is that a carrier may not request interconnection solely for the purpose of exchange access.

Sprint asks that it be able to use the agreement for exchange access now, not at some point in the future, as with the commingling anticipated pursuant to Issue 3. Sprint seeks to use the interconnection arrangement to transport end users' calls to and from interexchange carriers.

Sprint explains that it offered to use jointly provisioned access from Iowa Telecom's tariff as a compromise under the current interconnection agreement. Going forward, however, Sprint prefers to have the parties' respective rights and obligations spelled out in the new agreement. Sprint clarified at hearing that it was proposing to abandon its previous commitment to segregate transited and to-be-transited exchange access traffic with Iowa Telecom onto separate trunks. (Tr. 199-203.)

Iowa Telecom suggests that this issue is the same as the issue in Docket No. FCU-06-49 concerning whether Iowa Telecom must serve as a tandem connection to non-Sprint interexchange carriers (IXCs). Iowa Telecom observes that the exchange access traffic that Sprint expects Iowa Telecom to deliver to Sprint is incoming IXC traffic bound for Sprint from IXCs with which Sprint does not directly connect. With regard to this Sprint-bound traffic, Sprint would need to list Iowa Telecom's tandem as Sprint's toll tandem in the Local Exchange Routing Guide.

Iowa Telecom argued in Docket No. FCU-06-49 that it had no obligation to jointly provision exchange access service and that Sprint could not force a shared

use of the Iowa Telecom toll tandems. Iowa Telecom explains it is currently providing this arrangement to implement the Board's order in Docket No. FCU-06-49 because the Board interpreted the previous agreement to allow joint provisioning of access service. Iowa Telecom explains that the Board justified its ruling, at least in part, based on Sprint's commitments to trunk toll traffic separately from local traffic and to directly connect with wireless carriers, making Sprint's proposal for joint provisioning "reasonable." Iowa Telecom notes that Sprint has now proposed to abandon its previous commitment to segregate transited and to-be-transited exchange access traffic with Iowa Telecom onto separate trunks. (Tr. 199-203.)

Based on 47 C.F.R. § 51.305(a), the Board concludes that Sprint should be able to use the interconnection arrangement for transmission of exchange access traffic. The Board recognizes that its decision to require joint provisioning of access service in the complaint proceeding arising out of the previous arbitration was based in part on Sprint's assurances that it would use separate trunks and direct connect with the wireless carriers. However, even though Sprint is no longer committing to use separate trunks and direct connections, the Board will not disallow joint provisioning of exchange access, because the FCC's rule indicates that the exchange of access traffic is a permissible use of an interconnection arrangement. Furthermore, interconnection restrictions that prevent the use of the most efficient routing are potential barriers to entry and should be avoided, unless there are good reasons for them. No such reasons have been shown in this case (assuming the parties are able to negotiate appropriate billing factors).

Even though Sprint wants to commingle exchange access traffic immediately, the parties have not yet agreed to billing factors that will be used to identify, measure, and bill for such exchange access traffic and they have not provided the Board with sufficient information to arbitrate appropriate billing factors. The Board finds that the language it has suggested for Section 17.4 should also apply to exchange access traffic, and those procedures must be followed to identify the processes the parties will use in this context.

ISSUE 4: Should the agreement contain provisions for indirect interconnection?

There no longer appears to be any dispute as to whether Sprint has a right to use indirect interconnection. Both Iowa Telecom and Sprint agree that the originating party may elect to deliver its traffic to the other party on either a direct or indirect basis. Both parties also appear to agree that the terminating carrier cannot interfere with this election between direct and indirect connection.

The interconnection agreement need not address the relationship between either party and a third-party transit provider. Finally, Iowa Telecom and Sprint now also agree that either party's choice of direct or indirect interconnection has no bearing on whether the other party chooses direct or indirect interconnection.

The remaining issue in this area relates to Iowa Telecom's proposal regarding the establishment of a point of interconnection (POI) for indirect interconnection. Iowa Telecom's proposal was incorporated into the final sentence of Section 15.2.1 included in witness Porter's rebuttal testimony. (Tr. 362.) The proposed language was potentially unclear and Sprint interpreted it as an attempt by Iowa Telecom to

require Sprint to pay Iowa Telecom's third-party transiting fees. Iowa Telecom has since struck the proposed sentence. In its reply brief, Iowa Telecom explained that the POI proposal pertained to the third-party transiting carrier and the interconnection agreement need not address the particular POI location. Therefore, this last issue under this heading is no longer in dispute.

The Board still needs to decide whose proposed language to adopt. Sprint's proposed language on indirect interconnection has remained unchanged since it was filed with the Petition. Iowa Telecom's proposed language for indirect interconnection has continued to evolve throughout the proceeding. The only part of Iowa Telecom's proposal that Sprint has not had the chance to rebut is a new proposed Section 15.2.6, included in Attachment A to Iowa Telecom's reply brief, which provides that Iowa Telecom may establish an indirect interconnection with Sprint at any POI Sprint has established with another carrier in Iowa. Iowa Telecom states that Section 15.2.6 was "agreed to by Sprint at hearing," but Iowa Telecom does not provide a citation to the transcript where this agreement occurred.

The Board notes that Iowa Telecom's central issue with Sprint's indirect interconnection proposal was that Sprint might require Iowa Telecom to use indirect interconnection. Iowa Telecom testified that it "intends to use direct interconnection." (Tr. 361.) Therefore, it is not clear why Iowa Telecom has proposed Section 15.2.6. The Board will approve Iowa Telecom's proposed indirect interconnection language except for Section 15.2.6.

ISSUE 5: If indirect interconnection is used, is the originating carrier responsible for paying transit charges?

The parties appear to be in general agreement on this issue. Iowa Telecom agreed to strike certain proposals that were troublesome to Sprint. Sprint was concerned the proposals could require Sprint to pay transiting costs for Iowa Telecom's originated traffic if Iowa Telecom were to choose indirect interconnection. Sprint's position throughout the proceeding has been that Issue 5 needs to be resolved in a manner consistent with 47 C.F.R. § 51.703(b), which addresses the "Calling Party's Network Pays" principle.

Now that Iowa Telecom has agreed to strike the language that may arguably have been contrary to the "Calling Party's Network Pays" principle, it makes little substantive difference whose language the Board approves. Because Issue 5 is an extension of Issue 4 (for which the Board approved Iowa Telecom's language), the Board will approve Iowa Telecom's revised proposed language for consistency.

ISSUE 6: What direct interconnection terms should be included in the agreement?

Sprint explains that it agrees with Iowa Telecom that each party is responsible for direct interconnection costs incurred on its side of the POI, but disagrees with Iowa Telecom regarding the location and number of POIs. Sprint cites § 51.305(a)(2) of the FCC's rules, which requires an incumbent LEC to provide interconnection "at any technically feasible point within the incumbent LEC's network." Sprint explains that while the FCC has stated that interconnecting carriers have an option to

interconnect by establishing one POI per LATA,⁶ Sprint agrees to establish a POI at each Iowa Telecom tandem as established under the current agreement. Sprint argues that the current interconnection arrangement, including the location of the POIs, has been shown to be technically feasible and should be continued. Sprint argues its proposal is consistent with FCC rules and the Board's past decisions. (Sprint initial brief, pp. 18-19.) Sprint urges the Board to reject Iowa Telecom's proposal to establish additional POIs.

Iowa Telecom argues that Sprint currently has no legitimate POIs in Iowa Telecom's territory. (Tr. 369.) Iowa Telecom argues that Sprint's current POIs are not within its network. According to Iowa Telecom, the current POIs are located at an artificial break in Iowa Telecom's transmission facilities (Iowa Telecom initial brief, p. 14), and this arrangement has unlawfully shifted interconnection costs to Iowa Telecom. (Tr. 364.)

Iowa Telecom notes the current POI locations are the result of the Board's decision in Docket No. FCU-06-49. Iowa Telecom states it seeks a new interconnection agreement allowing Iowa Telecom to connect with Sprint only at POI locations where there is a statutory or regulatory obligation to do so. (Iowa Telecom initial brief, p. 13.)

In its pre-filed testimony, Iowa Telecom provided four diagrams of interconnection arrangements. (Tr. 268-70.) Diagrams #1 and #2 show direct

⁶ Citing *In the Matter of Developing a Unified Intercarrier Compensation Regime*, CC Docket No. 01-92, Further Notice of Proposed Rulemaking, ¶ 87, rel. March 3, 2005.

interconnection arrangements, including the location of the POI. Iowa Telecom states that either of these interconnection arrangements is consistent with FCC rules.

Iowa Telecom states that Diagram #3 shows how Iowa Telecom and Sprint are currently interconnected. Interconnection appears to occur at a point labeled "quasi meet-point" located on Iowa Telecom's exchange boundary. The diagram does not indicate the location of a POI. Diagram #3 represents the interconnection arrangement that resulted from Docket No. FCU-06-49, according to Iowa Telecom. Diagram #4 is similar to Diagram #3 except that the "quasi meet-point" has been moved away from the exchange boundary to a location on Iowa Telecom's service territory boundary. Iowa Telecom states that Sprint is now proposing to move the location of the "quasi meet-point" as shown in Diagram #4. Iowa Telecom contends that the arrangements shown in Diagrams #3 and #4 do not comply with FCC rules. (Tr. 370.)

Iowa Telecom argues that the interconnection agreement resulting from this proceeding needs to conform to applicable federal law and rules. According to Iowa Telecom, the record in this proceeding demonstrates that Iowa Telecom is under no statutory or regulatory obligation to interconnect with Sprint at the current POIs. None of the current POIs are within Iowa Telecom's network as defined by the FCC. (Tr. 372.) Iowa Telecom has offered to provide Sprint a transition period of six months from the date of an arbitration order in this proceeding to complete its transition to appropriate POIs in order to avoid interruptions to MCC's customers' service. (Tr. 373.) These new POIs must be located at an Iowa Telecom switch or

wire center within the same LATA as the called customer. Sprint may use dedicated transport where facilities and capacity exist on Iowa Telecom-owned facilities between Iowa Telecom central offices.

Iowa Telecom notes that Sprint has multiple interconnection points throughout Iowa at which Iowa Telecom could establish interconnection. (Tr. 290.) Iowa Telecom urges the Board to permit Iowa Telecom to deliver its originated local traffic to Sprint at any point of presence (POP) or POI shown in Sprint's Exhibit 4, which shows the points at which Sprint interconnects to other carriers in Iowa.

The Board begins its analysis of this issue by noting that the FCC addressed the definition of "technically feasible" as well as "technically feasible points of interconnection" in its Local Competition Order.⁷ The FCC had initially sought comment on a "dynamic" definition of "technically feasible" to provide flexibility as network technology evolves.⁸ In particular, there are two paragraphs from the Local Competition Order that speak to the resolution of Issue 6. First, in paragraph 198, the FCC addresses when interconnection is technically feasible and infeasible.

We conclude that the term "technically feasible" refers solely to technical or operational concerns, rather than economic, space, or site considerations. We further conclude that the obligations imposed by sections 251(c)(2) and 251(c)(3) include modifications to incumbent LEC facilities to the extent necessary to accommodate interconnection or access to network elements. Specific, significant, and demonstrable network reliability concerns associated with providing

⁷ *In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, CC Docket No. 96-98, Interconnection between Local Exchange Carriers and Commercial Mobile Radio Service Providers, CC Docket No. 95-185, released August 8, 1996 ("Local Competition Order").

⁸ *Id.* at ¶192.

interconnection or access at a particular point, however, will be regarded as relevant evidence that interconnection or access at that point is technically infeasible. We also conclude that preexisting interconnection or access at a particular point evidences the technical feasibility of interconnection or access at substantially similar points. Finally, we conclude that incumbent LECs must prove to the appropriate state commission that a particular interconnection or access point is not technically feasible.

It is apparent that the FCC would presume Sprint's pre-existing interconnection arrangements continue to be technically feasible unless Iowa Telecom can make a showing that they are not technically feasible. The burden of proof would be on Iowa Telecom to show that a particular interconnection arrangement would create network reliability concerns. In this proceeding, Iowa Telecom has made no such showing.

Second, in paragraph 202 of the Local Competition Order, the FCC analyzes Congress's intended meaning of "technically feasible":

Thus, it is reasonable to interpret Congress's use of the term "feasible" in sections 251(c)(2) and 251(c)(3) as encompassing more than what is merely "practical" or similar to what is ordinarily done. That is, use of the term "feasible" implies that interconnecting or providing access to a LEC network element may be feasible at a particular point even if such interconnection or access requires a novel use of, or some modification to, incumbent LEC equipment. This interpretation is consistent with the fact that incumbent LEC networks were not designed to accommodate third-party interconnection or use of network elements at all or even most points within the network. If incumbent LECs were not required, at least to some extent, to adapt their facilities to interconnection or use by other carriers, the purposes of sections 251(c)(2) and 251(c)(3) would often be frustrated. For example, Congress intended to obligate the incumbent to accommodate the new entrant's network architecture by requiring the incumbent to provide interconnection "for the

facilities and equipment" of the new entrant. Consistent with that intent, the incumbent must accept the novel use of, and modification to, its network facilities to accommodate the interconnector or to provide access to unbundled elements.

The Board concludes that Congress intended ILECs to accommodate novel interconnection strategies. To preclude innovation (in the absence of network reliability concerns) would frustrate the intent of § 251(c)(2).

The Board's resolution of this issue hinges on the Board's weighing of the "technically feasible" and "within the carrier's network" aspects of the statute. The Board finds nothing in the FCC's discussion to suggest that Iowa Telecom's proposal to abandon the current interconnection arrangement and start over would be appropriate or required. Therefore, ruling in favor of Iowa Telecom by giving more weight to "within the carrier's network" than to "technically feasible" would be contrary to the intent of § 251(c)(2)(B).

For this reason, the Board will allow Sprint to continue the existing interconnection arrangement, including the current location of the POIs. The Board directs the parties to develop language that would continue the existing direct connection arrangements without change.

Finally, Iowa Telecom proposed in its brief that it should be allowed to direct connect and send its traffic to any point in Sprint Exhibit 4. (Iowa Telecom initial brief, pp. 24-27.) This proposal was not contained in Iowa Telecom's pre-filed testimony and therefore was not fully litigated. Sprint indicates that the proposal would not satisfy Iowa Telecom's obligation to deliver its traffic to Sprint's network. (Sprint reply brief, pp. 12-13.) Sprint contends the proposal would require Sprint to

pay to deliver traffic originated by Iowa Telecom. Based on the limited record available on this issue, the Board agrees with Sprint's assessment of Iowa Telecom's proposal and directs the parties to develop language requiring Iowa Telecom to deliver its originated traffic to the POIs Sprint has already established.

ISSUE 7: What are the appropriate rates for direct interconnection facilities?

This issue involves determining the rates Iowa Telecom will charge for facilities it provides to Sprint in a direct interconnection arrangement. This issue will arise if Sprint leases a one-way direct trunk, or a portion of a trunk, from Iowa Telecom and also when Sprint and Iowa Telecom agree to share the costs of a two-way direct interconnection facility and Sprint leases that facility or a portion of that facility from Iowa Telecom. (Tr. 273.) Sprint suggests that even though this issue may arise only in limited circumstances, the Board should determine the appropriate rate. (Sprint initial brief, pp. 13-14.)

Sprint's position is that the rates must reflect Iowa Telecom's forward-looking economic costs, that is TELRIC (total element long-run incremental cost) rates. (Sprint reply brief, p. 14.) According to Sprint, the FCC has concluded that ILEC rates for interconnection must be based on efficient forward-looking costs in order to prevent ILECs from "inefficiently raising costs in order to deter entry." (Sprint petition, p. 18, quoting from *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, CC Docket No. 96-98, First Report and Order, 11 FCC Rcd 15499 at ¶ 743 (1996).)

Further, Sprint states that the FCC's rules are clear that TELRIC pricing standards apply to interconnection. Sprint cites 47 C.F.R. § 51.505, which defines the TELRIC pricing standards, and § 51.501, which provides:

(a) The rules in this subpart apply to the pricing of network elements, interconnection, and methods of obtaining access to unbundled elements, including physical collocation and virtual collocation; (b) As used in this subpart, the term "element" includes network elements, interconnection, and methods of obtaining access to unbundled elements, including physical collocation and virtual collocation.

Sprint notes that Iowa Telecom relies on the Triennial Review Remand Order (TRRO)⁹ for support of its position that because entrance facilities are no longer considered to be unbundled network elements (UNEs), interconnection facilities used by Sprint pursuant to this agreement are not available at TELRIC rates. Sprint disagrees with Iowa Telecom's position regarding the TRRO, arguing that the TRRO only modified obligations regarding UNEs, which Sprint is not seeking from Iowa Telecom. Further, Sprint states that in the TRRO, the FCC was clear that interconnection facilities are to remain available to CLECs at TELRIC rates:

We note in addition that our finding of non-impairment with respect to entrance facilities does not alter the right of competitive LECs to obtain interconnection facilities pursuant to section 251(c)(2) for the transmission and routing of telephone exchange service and exchange access service. Thus competitive LECs will have access to these facilities at cost-based rates to the extent they require them to interconnect with the incumbent LEC's network.¹⁰

⁹ *In the Matter of Unbundled Access to Network Elements*, WC Docket No. 04-313, Order on Remand, 20 FCC Rcd 2533 (2005) ("TRRO").

¹⁰ Sprint's reply brief, p. 14, quoting the TRRO at ¶140.

Sprint states that courts have given meaning to this language by requiring ILECs to provide access to interconnection facilities at TELRIC rates. Sprint gives particular emphasis to the federal district court's decision in Southwestern Bell Tel., L.P. v. Mo. PSC, 461 F.Supp.2d 1055 (D.Mo. 2006), which upheld an arbitration order "to the extent it determined that CLECs are entitled to entrance facilities as needed for interconnection pursuant to § 251(c)(2), and that TELRIC is the appropriate rate for these facilities."

In its discussion of Issue 7, Iowa Telecom focuses on the rate to be charged for a dedicated transmission facility (assuming there is no sharing of cost). Iowa Telecom suggests that Sprint has other options besides connecting at an Iowa Telecom tandem switch, including establishing a POI at host local switches. Iowa Telecom indicates that TELRIC rates would apply if Sprint leases transport capacity between Iowa Telecom central offices that are connected by Iowa Telecom facilities and are located in the same LATA, but all other interoffice transport, including entrance facilities, would be priced at Iowa Telecom's retail rates and terms for special access circuits.

Iowa Telecom asserts that entrance facilities are not UNEs and thus are not subject to TELRIC pricing. Iowa Telecom's position is that the TRRO does not continue CLEC access to entrance facilities at TELRIC-based rates. Instead, according to Iowa Telecom, entrance facilities should be offered competitively. (Iowa Telecom initial brief, p. 29, citing Michigan Bell Tel. Co. v. Lark, 2007 WL 2868633 (E.D. Mich. Sept. 26, 2007).) Iowa Telecom contends that the language in the TRRO

relied on by Sprint does not support Sprint's position that Iowa Telecom must provide entrance facilities at TELRIC rates. According to Iowa Telecom, the important question is whether the rights of a CLEC before the TRRO included access to entrance facilities.

The Board agrees with Sprint's assertion that Congress and the FCC recognize the importance of cost-based interconnection. (Petition, p. 18; Sprint initial brief, pp. 23-24.) The Board also agrees with Sprint in its conclusion that the FCC's TELRIC pricing standards apply to interconnection. The Board is not persuaded by Iowa Telecom's argument that the interconnection facilities Sprint requests are not available at TELRIC rates. The Board believes that Congress and the FCC intended to apply TELRIC pricing methodology to interconnection facilities. The Board directs Iowa Telecom to provide direct interconnection facilities to Sprint at TELRIC-based rates.

ISSUE 8: Should the parties share the cost of an interconnection facility between their networks based on their respective percentages of originated traffic?

Sprint proposes that Iowa Telecom and Sprint share the cost of a two-way interconnection facility based on their proportionate usage of the facility or by establishing a financial point of interface on the Iowa Telecom exchange boundary. Sprint states that the obligation to share the costs of a two-way facility is well settled and should be recognized in this agreement by adoption of Sprint's language. Sprint points to 47 C.F.R. § 51.709(b), which states:

The rate of a carrier providing transmission facilities dedicated to the transmission of traffic between two carriers'

networks shall recover only the costs of the proportion of that trunk capacity used by an interconnecting carrier to send traffic that will terminate on the providing carrier's network. Such proportions may be measured during peak periods.

In addition, Sprint states that 47 C.F.R. § 51.703(b) prohibits a LEC from assessing "charges on any other telecommunications carrier for telecommunications traffic that originates on the LEC's network." Sprint also cites a number of state decisions which, according to Sprint, agree with the principle that parties to an interconnection agreement must share the cost of a two-way facility based on the proportional use of that facility to deliver originating traffic.

Sprint argues that to designate a financial point of interconnection on Iowa Telecom's service territory boundary does not modify the reciprocal compensation requirements between the parties. The proposed arrangement simply means that rather than paying for the proportional use of the two-way facilities, each party will be responsible for all the costs of that facility on that party's side of the dividing point.

Sprint requests that the Board adopt Sprint's language addressing shared facilities and providing for an alternative that designates a point on Iowa Telecom's service territory boundary for dividing the financial obligation for those shared facilities.

Iowa Telecom addresses Issue 8 in its discussion of Issues 6, 7, and 9. Iowa Telecom argues that federal law defines the POI as the points at which Iowa Telecom is obligated to interconnect with Sprint and which are the appropriate points of physical linking of the two networks. Iowa Telecom states that Sprint's proposal for a

shared cost by establishing a financial POI on the exchange boundary is not required by law and would cause Iowa Telecom to absorb costs that should be paid by Sprint.

Iowa Telecom argues that Sprint's request for interconnection should be evaluated under § 251(c)(2) of the Act and 47 C.F.R. § 51.305. Iowa Telecom states that the most significant provisions of these rules require that the POI established by the CLEC must be within the ILEC's network at a pre-existing physical demarcation within the ILEC's network. Iowa Telecom argues that this would not include artificial breaks in physical facilities, such as mid-span in a transmission circuit. Iowa Telecom states that the CLEC's choices for its POI must be within the network of the ILEC at an ILEC wire center or switch location.

Iowa Telecom also urges the Board to adopt language to allow it to use one-way trunking for Iowa Telecom traffic to Sprint at any Sprint POP or POI of Iowa Telecom's choosing within the same Iowa LATA. Iowa Telecom asks the Board to accept its language for Sections 15.1.7 and 17.1.5.

The Board finds that the FCC rules require that when directly interconnected carriers share the use of a two-way interconnection facility, the costs associated with the facility should be based on the carriers' respective percentage of originated traffic. 47 C.F.R. § 51.709(b). Accordingly, Sprint has proposed that the costs of any two-way facility be shared between the parties based on proportional use of the facility to deliver originating traffic. In the alternative, Sprint proposed that instead of basing costs on proportional use, Sprint would agree to be responsible for costs of the facility up to Iowa Telecom's service territory boundary and Iowa Telecom would

be responsible for the costs of the facility from the service territory boundary to its network. It is this alternative proposal that seems to be causing concern to Iowa Telecom. The Board will not require Iowa Telecom to accept the alternative proposal, as it is not based on any FCC rules.

Iowa Telecom, however, is required to follow FCC rules. Therefore, the Board will require that the costs associated with any two-way facilities used by the parties be shared between the parties based on proportional use of the facilities to deliver originating traffic. This proposal is in accordance with FCC rules and will avoid a situation where either party would bear the costs of facilities used to deliver the other party's originating traffic. This solution will not force Iowa Telecom or Sprint to agree to the use of a two-way facility. Iowa Telecom and Sprint will each have the option to use a one-way facility to deliver originating traffic to the other party's network. This provision only sets forth the terms that will apply should the parties agree to the use of a direct interconnection using two-way facilities.

IV. ORDERING CLAUSES

IT IS THEREFORE ORDERED:

1. The interconnection agreement between Sprint Communications Company L.P. and Iowa Telecommunications Services, Inc., d/b/a Iowa Telecom, shall incorporate language approved by the Board in this Arbitration Order or language reflecting the decisions the Board has arbitrated in this order.

2. Within 30 days of the issuance of this order, the parties shall submit to the Board an interconnection agreement consistent with the terms of this Arbitration Order, pursuant to 47 U.S.C. § 252(e) and 199 IAC 38.7(4).

UTILITIES BOARD

/s/ John R. Norris

/s/ Krista K. Tanner

ATTEST:

/s/ Judi K. Cooper
Executive Secretary

/s/ Darrell Hanson

Dated at Des Moines, Iowa, this 21st day of December, 2007.