

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>DOCKET NO. ARB-07-2</p>
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**ORDER GRANTING MOTIONS FOR CLARIFICATION AND
CLARIFYING ARBITRATION ORDER**

(Issued April 22, 2008)

I. BACKGROUND

On December 21, 2007, the Board issued an order ("Arbitration Order") in Docket No. ARB-07-2 regarding 17 disputed issues relating to a proposed interconnection agreement between Sprint Communications Company L.P. (Sprint) and Iowa Telecommunications Services, Inc., d/b/a Iowa Telecom (Iowa Telecom). Sprint's petition for arbitration was filed pursuant to section 252(b) of the Communications Act of 1934, as amended by the Telecommunications Act of 1996 ("the Act"). The arbitration proceeding was conducted by the Board pursuant to 47 U.S.C. § 252 and 199 IAC 38.7.

On January 10, 2008, Sprint filed a "Motion for Clarification" asking the Board to clarify certain aspects of the Board's decision on Issue Nos. 5 and 10.¹ On January 23, 2008, Sprint filed an amendment to its motion for clarification. In the amendment, Sprint explained that because its motion for clarification of certain issues was still pending and the parties had not yet agreed on language addressing other issues, the parties would not reach agreement on a conforming interconnection agreement in time to meet the 30-day deadline for filing the agreement, as established in the Arbitration Order. Sprint asked to amend its motion for clarification to allow the parties an additional 30 days after the Board rules on the motion for clarification for the parties to file a conforming interconnection agreement.

Because both parties have stated there is no longer any dispute over Issue No. 5,² the Board will not address that issue. Sprint's request for clarification of Issue No. 10 will be discussed later in this order.

On January 23, 2008, Iowa Telecom filed a motion for extension of time to respond to Sprint's motion for clarification. On January 28, 2008, the Board granted Iowa Telecom's request.

¹ The Arbitration Order identified Issue No. 5 as "If indirect interconnection is used, is the originating carrier responsible for paying transit charges?" and Issue No. 10 as " Should the agreement require Iowa Telecom to transit traffic for indirect interconnection between Sprint and other competing carriers?"

² In its February 1, 2008, "Response to Sprint's Motion for Clarification and Iowa Telecom Motion for Clarification," Iowa Telecom stated the parties have agreed on language for section 15.2, which is the disputed section in Issue No. 5. In its February 15, 2008, filing, Sprint stated the parties have resolved Issue No. 5.

On February 1, 2008, Iowa Telecom filed its "Response to Sprint's Motion for Clarification and Iowa Telecom Motion for Clarification."³ Attached to Iowa Telecom's motion was Exhibit A, which contains Iowa Telecom's proposed language for an interconnection agreement. In the response, Iowa Telecom objected to Sprint's requested clarification regarding Issue No. 10. In its motion for clarification, Iowa Telecom explained it received Sprint's proposed draft of an interconnection agreement on January 11, 2008, one day after Sprint filed its motion for clarification. Iowa Telecom stated it filed its motion for clarification because Sprint's proposed agreement misinterprets the Arbitration Order. Iowa Telecom asks for clarification of issues relating to when and how the costs of interconnection facilities should be shared, what traffic is subject to bill-and-keep, how Iowa Telecom can be required to accept transit traffic from Sprint, and issues relating to service charges for supplemental local number portability (LNP) orders. Iowa Telecom's motion for clarification adds Issue No. 8 ("Should the parties share the cost of an interconnection facility between their networks based on their respective percentages of originated traffic?") and Issue No. 13 ("What is the appropriate charge for the processing of LSR [local service request] orders for number portability?") to the list of issues for which clarification is sought.

³ Although Iowa Telecom concluded its motion for clarification with a request for "clarification and reconsideration on rehearing" of the Arbitration Order, which the Board later noted in its February 5, 2008, order, the primary purpose of the motion was to request clarification. As explained later in this order, the Board will treat Iowa Telecom's motion as a request for clarification, not an untimely request for reconsideration or rehearing.

On February 4, 2008, Sprint filed a "Motion for Leave to File Response" asking that it be allowed to respond to Iowa Telecom's filing.

On February 5, 2008, the Board issued an order granting Sprint's request. The Board also asked that if the parties wished to request additional briefing or if they had any proposals for how to proceed, they should file those requests or suggestions by February 19, 2008.

On February 15, 2008, Sprint filed a "Reply to Iowa Telecom's Response to Sprint Motion for Clarification and Response to Iowa Telecom Motion for Clarification." Attached to Sprint's reply was Exhibit A, which contains a matrix containing language still in dispute. Sprint asks the Board to approve Sprint's proposed language.

On February 19, 2008, Sprint filed a "Response to Board's Request for Additional Proposals." Attached to the response is an interconnection agreement which Sprint describes as conforming to the Board's decisions in the Arbitration Order. Sprint stated that Iowa Telecom included additional issues in its motion for clarification that were not addressed in Sprint's motion. Sprint objects to and moves to strike Iowa Telecom's motion for clarification to the extent that motion constitutes a request for rehearing or reconsideration. Sprint asserts Iowa Telecom's request is not timely and that the issues raised in Iowa Telecom's motion for clarification go beyond seeking clarification. Sprint also asks the Board to approve and order Iowa Telecom to sign the interconnection agreement attached to the response.

Alternatively, Sprint asks the Board to resolve the disputed language on the record before it and decline to allow additional hearings or briefs.

On February 19, 2008, Iowa Telecom filed a "Motion for Leave to File Response" to Sprint's response. Iowa Telecom stated it did not believe additional briefing was necessary concerning the issues for which clarification was requested.

On February 20, 2008, Iowa Telecom filed a "Reply to Sprint Response to Board's Request for Additional Proposals." Iowa Telecom asserted Sprint's response violates the Board's February 5 order by including an additional response to Iowa Telecom's motion for clarification. Iowa Telecom renewed its request for 14 days to respond to Sprint's response and asked that the 14 days be calculated from the date of Sprint's additional response.

On February 26, 2008, the Board issued an order granting Iowa Telecom's "Motion for Leave to File Response" filed on February 19, 2008, as modified on February 20, 2008.

On March 4, 2008, Iowa Telecom filed a "Reply to Sprint's Response to Iowa Telecom's Motion for Clarification." Iowa Telecom's response addresses Issue Nos. 8, 10, and 13 and Sprint's position that Iowa Telecom did not file its motion for clarification on a timely basis.

II. DISCUSSION

Before addressing the substantive issues the parties have submitted to the Board for clarification, the Board will discuss the procedural issue of whether Iowa Telecom's request for clarification is properly before the Board.

In its February 19, 2008, response, Sprint explains that it did not request reconsideration or rehearing on the two issues in its motion for clarification because it thought that conforming contract language could be developed to give full effect to the Arbitration Order. Sprint states that, to be cautious, it filed a motion for clarification within the 20-day time period in which a request for reconsideration or rehearing must be filed according to Board rule 7.27(1). Sprint argues that Iowa Telecom included issues in its motion for clarification that were not addressed in Sprint's motion; that to the extent Iowa Telecom's motion for clarification constitutes a request for rehearing or reconsideration, that request is not timely; and that the issues raised in Iowa Telecom's motion for clarification go beyond seeking clarification. Sprint asks the Board to reject Iowa Telecom's motion.

In its March 4, 2008, response, Iowa Telecom asserts that Sprint has misrepresented Iowa Telecom's motion for clarification. Iowa Telecom states that to the extent the Board agrees with Iowa Telecom that resolution of the issues raised in its motion for clarification conforms with the Arbitration Order, the Board can properly regard Iowa Telecom's request as one for clarification.

The Board will consider Iowa Telecom's motion for clarification. Because many of the issues presented in this arbitration proceeding are interrelated, the Board's clarification of the issues raised in Sprint's motion could affect the parties' understanding of other issues not directly raised in Sprint's motion. Further, rejection of Iowa Telecom's motion as an untimely application for rehearing or reconsideration would preclude the Board from considering parts of the Arbitration Order that could benefit from clarification. The Board will deny Sprint's request to strike Iowa Telecom's motion for clarification.

The Board will also deny Sprint's request that the Board order Iowa Telecom to sign the interconnection agreement attached to Sprint's February 15, 2008, filing. That agreement was prepared by Sprint in advance of the clarification that will be provided by the Board in this order. Instead, the Board will provide recommended language for the parties to consider and will require the parties to file a conforming interconnection agreement within 15 days of the date of this order, as required by 199 IAC 38.7(4)"a."

Issue No. 8: Should the parties share the cost of an interconnection facility between their networks based on their respective percentages of originated traffic?

Background. In the arbitration proceeding, Sprint asked the Board to approve one of two proposals for sharing the costs of a two-way interconnection facility: (1) the parties would share costs based on their proportional use of the facility or (2) the parties would establish a meet-point on Iowa Telecom's service

territory boundary, with Iowa Telecom paying all of the costs on its side of the meet-point and Sprint paying all of the costs on its side of the meet-point. Citing 47 C.F.R. § 51.709(b),⁴ the Board approved the proportional use method, concluding that Federal Communications Commission (FCC) rules require that when directly-interconnected carriers share the use of a two-way interconnection facility, costs associated with that facility should be based on each carrier's respective percentage of originated traffic.

Iowa Telecom's position. Iowa Telecom asks the Board to provide a clear limitation on the extent of costs Iowa Telecom could be required to bear on Sprint's side of the physical point of interconnection (POI) for traffic Iowa Telecom sends to Sprint. According to Iowa Telecom, such clarification is necessary because Sprint interprets the Arbitration Order to mean that Iowa Telecom can be required to bear costs on Sprint's side of the physical POI dozens of miles outside of Iowa Telecom's service territory, to the POIs Sprint has with Qwest Corporation (Qwest) in Sioux City and Omaha.

Iowa Telecom argues that despite the Board's apparent conclusion that the current interconnection arrangements between the parties should remain intact,⁵ Sprint now attempts to push the financial POIs beyond Iowa Telecom's service

⁴ 47 C.F.R. § 51.709(b) provides that 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."

⁵ With respect to Issue No. 6 ("What direct interconnection terms should be included in the agreement?"), the Board allowed Sprint to continue the existing interconnection arrangement. (Arbitration Order, p. 37).

territory boundary. Iowa Telecom explains that the current interconnection arrangements between the parties include a meet-point billing arrangement at the boundary of each exchange in which Iowa Telecom has a tandem switch to which Sprint is interconnected.

Iowa Telecom says that if the Board did not intend to disturb the current interconnection arrangements, the Board should clarify that it meant to maintain both the current physical and financial POIs and that it adopted Sprint's proposed meet-point arrangement, with the meet-points remaining at each tandem switch for the physical POIs and at each tandem exchange boundary for the financial POIs. Alternatively, Iowa Telecom says that if the Board has a different interpretation of its Arbitration Order, it should clarify that Iowa Telecom's cost-sharing obligation for two-way facilities does not extend beyond Iowa Telecom's service territory boundary.

Sprint's arguments. Sprint explains that during negotiations to reach a conforming interconnection agreement, it offered to designate its points of presence (POPs) as the end points for the interconnection facility so that the "A location" for the facility would be the POI at Iowa Telecom's tandem switch and the "Z location" would be the Sprint POP connected by a facility to a particular tandem. Sprint argues that when the Board concluded in the Arbitration Order that the current interconnection arrangements should continue, it was addressing Sprint's ability to physically interconnect at the tandem locations. Sprint contends that in light of the Board's conclusion that costs of two-way interconnection facilities should be shared

based on proportional use, Iowa Telecom misconstrues the Board's decision regarding continuation of current interconnection arrangements to require the parties to maintain the current financial POIs. Sprint requests that the Board clarify that the parties are obligated to share the cost of the interconnection facility that extends from Iowa Telecom's tandem to Sprint's POP.

Board analysis and clarification. In the Arbitration Order, the Board approved the proportional use method of sharing costs of two-way interconnection facilities used by the parties. Iowa Telecom requests that the Board clarify its Arbitration Order either by saying that (1) the Board meant to require the parties to maintain both the physical and financial POIs and the Board adopted Sprint's meet-point arrangement for proportional cost-sharing, or (2) Iowa Telecom's obligation to share the cost of two-way facilities does not extend beyond Iowa Telecom's service territory boundary.

At the hearing, the Board questioned Sprint witness Farrar about the location of Sprint's network for purposes of interconnection. Mr. Farrar indicated that it "would be a Sprint POP ... , a place where Sprint has actual facilities in the LATA [local access and transport area]."⁶ With respect to the issue of sharing costs on a proportional use basis, Mr. Farrar stated that usually "the Sprint POP is further away from the exchange boundary than is the RLEC (rural local exchange carrier) tandem."⁷ Thus, the record in this case is clear that Sprint's proportional use

⁶ Tr. 322.

⁷ Tr. 326.

proposal was for Iowa Telecom to share costs of the *entire* two-way interconnection facility, not just costs up to the service territory boundary. The Board approved the proportional use proposal.

It was Sprint's second proposal (the meet-point proposal) that identified the service territory boundary as the point up to which Iowa Telecom had to pay all its costs. Providing the clarification requested by Iowa Telecom would require the Board to disregard its conclusions about how the parties should share the costs of two-way interconnection facilities. The Board will not provide the clarification requested by Iowa Telecom. The Board approves Sprint's proposed language for section 17.1.1, found at page 4 of Sprint's Exhibit A attached to its February 15, 2008, filing.

To the extent there is a conflict between the provisions in the Arbitration Order regarding maintenance of existing interconnection arrangements for direct interconnection (Issue No. 6) and those regarding proportional cost-sharing for two-way interconnection facilities (Issue No. 8), the Board clarifies that its statements in the Arbitration Order about maintaining current interconnection arrangements were not meant to preclude Sprint from using its POPs located outside of Iowa Telecom's service territory as the end-points of two-way interconnection facilities for the interconnection arrangements the parties are now negotiating. The Board's specific conclusion that proportional use cost-sharing is required for two-way interconnection facilities controls over any more general statement in the Board's Arbitration Order regarding maintaining existing interconnection arrangements in other circumstances.

Issue No. 10: Should the agreement require Iowa Telecom to transit traffic for indirect interconnection between Sprint and other competing carriers?

Background. In the Arbitration Order, the Board agreed with Sprint that requiring Iowa Telecom to provide a transit function was consistent with the purposes of the Act. The Board approved Sprint's proposed language for section 16.1, which affirms transiting, but directed the parties to modify section 16.1 to include a reference to Iowa Telecom's Exhibit 105 to establish the transit service rates. Iowa Telecom filed Exhibit 105 on October 29, 2007, after the hearing, to identify rates Iowa Telecom charges for transport and termination of traffic. Language from Exhibit 105 is now included in Exhibit A attached to Iowa Telecom's February 1, 2008, filing. Apparently, Iowa Telecom believes that by directing the parties to include a reference to Exhibit 105 in the interconnection agreement, the Board thereby approved all of Iowa Telecom's terms and conditions regarding the transit function. The Board does not agree with Iowa Telecom's reading of the Arbitration Order on Issue No. 10 and will clarify the order as it applies to the following four transit issues.

1. What rate elements apply to transit service and should they be cost-based?

Sprint's position. In its motion for clarification, Sprint states that Exhibit 105 includes terms and conditions in addition to the rates, which could lead to ambiguity and inconsistencies. In the motion, Sprint proposed language providing that "[t]ransit service will be provided at the rates applicable for the network components used to provide the service." In a subsequent filing, Sprint stated that if Iowa Telecom

believes the reference is unclear as to what elements apply, Sprint would include language that states, "[t]ransit service will be provided at the rates in this Attachment, paragraph A, applicable for the network components, i.e. tandem switching, tandem transport, transport termination and local switching, for the functions actually used to provide the transit service."⁸ Thus, for example, if Sprint is connected to Iowa Telecom's tandem and a third-party LEC is connected to Iowa Telecom's end office, all the rate elements would apply and be billed to Sprint for its originated traffic transited by Iowa Telecom and terminated by the third-party LEC.

Iowa Telecom's position. Paragraph D of Iowa Telecom's proposed language (attached to Iowa Telecom's February 1, 2008, filing as Exhibit A) requires that when transit traffic is exchanged over a toll trunk group, both Sprint and the third-party carrier must connect directly to the same Iowa Telecom tandem switch, using dedicated access with transit tandem switching. Iowa Telecom's paragraph D also states that if the transit traffic is exchanged over local trunk groups, all the same requirements apply except that the transit local switching rate would apply instead of the tandem switching rate.

Board analysis and clarification. In the Arbitration Order, the Board agreed with Sprint that requiring Iowa Telecom to provide a transiting service to indirectly interconnect Sprint to third-party carriers that are also interconnected to Iowa Telecom is consistent with the purposes of the Act. With respect to the issue of what

⁸ See Sprint's February 15, 2008, "Reply to Iowa Telecom's Response to Sprint Motion for Clarification and Response to Iowa Telecom Motion for Clarification," p. 4.

rates apply to the transiting function, the Board directed the parties to include a reference to Iowa Telecom's rates and noted that Iowa Telecom should "provide a transit function, for a *reasonable price* ... consistent with the purposes of the Act" (emphasis added).⁹

The Board offers the following clarification of the Arbitration Order regarding which rates apply to the transiting function. The FCC has determined that rates for interconnection and unbundled network elements based on forward-looking costs are consistent with the intent of Act.¹⁰ In other words, rates for interconnection should be cost-based. Paragraph D of Exhibit 105 refers to Iowa Telecom's intrastate access rates. There is no indication in this record that those rates are cost-based. The only cost-based rates in this case are those in paragraph C of Iowa Telecom's Exhibit 105. The rates from paragraph C were derived from a Total Element Long Run Incremental Cost (TELRIC) study and were approved by the FCC.¹¹ Because the Board determined that transiting is a service related to interconnection, the rates for transiting services provided by Iowa Telecom for Sprint should be rates appropriate for interconnection services, which are cost-based rates. Thus, the rate elements that should apply to the transiting function should be Iowa Telecom's rates in paragraph C of Exhibit 105. The Board notes that the rates included in paragraph C

⁹ Arbitration Order, p. 12.

¹⁰ *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"), pp. 618-30.

¹¹ Tr. 383.

of Iowa Telecom's Exhibit 105 are now included in the proposed interconnection agreement Sprint attached to its February 19, 2008, filing in Attachment 1, paragraph A. Sprint addresses transit service in paragraph B of Attachment 1. The Board directs the parties to adopt Sprint's proposed language in Attachment 1.

2. Additional POIs for transit traffic.

Sprint's position. In its motion for clarification, Sprint argues that the language in paragraph D of Iowa Telecom's Exhibit 105 would require Sprint to establish additional POIs at Iowa Telecom's end offices to obtain transit service from Iowa Telecom where the third-party carrier is connected to an Iowa Telecom end office. Sprint explains that it currently has a physical interconnection to each Iowa Telecom tandem, it intends to maintain the existing interconnections to Iowa Telecom's tandems, and this intent does not change in the context of transit service. Sprint argues that requiring additional POIs as a condition of receiving transit service would be contrary to the Board's decision regarding Issue No. 6, which required the parties to maintain the existing interconnection arrangement and POIs. Sprint asks the Board to clarify that Iowa Telecom's proposed language should be deleted to the extent it requires Sprint to establish additional POIs.

Iowa Telecom's position. Iowa Telecom explains it would permit Sprint to interconnect at Iowa Telecom tandem switches to exchange traffic with third-party carriers that are interconnected at Iowa Telecom end offices that subtend the tandem switches, but objects to Sprint's proposed use of the \$0.006 per minute rate for

delivering and receiving transit traffic. Iowa Telecom explains that paragraph D of its proposed language requires that where the third-party carrier with which Sprint seeks to exchange traffic is interconnected at an Iowa Telecom end office, Sprint will have to establish a POI at the same end office to present and receive such traffic. Iowa Telecom states it established its local switching rate of \$0.006 per minute based on the requirement that Sprint would establish a POI at the Iowa Telecom end office for transit traffic. Iowa Telecom asserts that the Board adopted Iowa Telecom's terms and conditions for transiting traffic. Iowa Telecom explains that its proposed language for paragraph D clarifies that the transit rate Iowa Telecom charges to Sprint includes network functionalities required to exchange transit traffic at Iowa Telecom's tandem switches. Iowa Telecom states that it structured paragraph D of Exhibit 105 according to the common industry practice for carriers to establish a POI for transit traffic at the same Iowa Telecom switches where the third-party carrier has a POI. Iowa Telecom disagrees with Sprint's assertion that the Board's conclusion that the parties should maintain the current interconnection arrangements applies to POIs for transit traffic.

Board analysis and recommendation. The Board's general statement that the parties should maintain the existing interconnection arrangements did not apply to transit traffic. Thus, that statement did not preclude Iowa Telecom from requiring additional POIs at Iowa Telecom end offices, as Sprint suggests. However, the Board does not agree with Iowa Telecom's position that it can require Sprint to

establish additional POIs at Iowa Telecom end offices for transit traffic. Instead, the Board intended that the economics of each situation should drive this decision. The Board's conclusion that current interconnection arrangements should continue applies when Sprint interconnects with Iowa Telecom for exchanging traffic between them (and is now subject to the clarification offered in this order regarding two-way facilities). The statement about continuation of current arrangements does not apply when Sprint interconnects with Iowa Telecom to deliver traffic to a third-party carrier. In that case, Sprint may choose to establish an additional POI for transiting purposes, depending upon which network elements associated with the transit function Sprint wants to pay.

Based on the clarification provided above regarding which rate elements apply to transit service, Sprint is not required to establish any additional POIs for transiting. If Sprint chooses not to establish an additional POI at an Iowa Telecom end-office switch where the third-party carrier is interconnected, application of the four rate elements (tandem switching, tandem transport, transport termination, and local switching) should allow Sprint-originated traffic to be terminated to a third-party carrier interconnected at an Iowa Telecom end-office switch. The interstate cost-based rates from paragraph C of Iowa Telecom's Exhibit 105¹² will apply to the transiting function.

¹² The cost-based rates from paragraph C of Iowa Telecom's Exhibit 105 now appear in Attachment 1 to Sprint's proposed interconnection agreement filed on February 19, 2008.

If Sprint wants to avoid some of the rate elements that would apply when Sprint and a third-party carrier are interconnected at different Iowa Telecom switches, Sprint would have the option of establishing an additional POI at the same end office switch as the third-party carrier. In such a case, Sprint would only be assessed local switching charges by Iowa Telecom.

3. Should Sprint pay transit charges for traffic originated by a third party which is transited by Iowa Telecom and terminated by Sprint?

Iowa Telecom's position. Iowa Telecom states that Sprint will incur additional charges because Sprint wants inbound traffic from third-party carriers to be routed through Iowa Telecom's tandem switch instead of picking up such traffic directly from the originating carrier or at Iowa Telecom's local switch where the third party is interconnected. According to Iowa Telecom, its agreements with other carriers provide that Iowa Telecom will transit such third-party originating traffic only to other carriers who are interconnected at the same switch as the third party. Iowa Telecom states that its transit rates for end-office interconnection with such carriers do not include the additional transport and switching costs resulting from accepting traffic at an end-office switch for delivery from an Iowa Telecom tandem switch. Iowa Telecom asserts that if Sprint chooses to receive transit traffic from Iowa Telecom at an Iowa Telecom tandem switch, and Iowa Telecom receives the traffic at an end-office switch subtending the tandem switch, Iowa Telecom is entitled to assess additional charges to Sprint. Iowa Telecom argues that it is not its responsibility to

collect such charges from the originating carrier. Iowa Telecom cites the FCC's Texcom Reconsideration Order in support of its assertion that it is entitled to assess additional switching and transport costs for transiting via the tandem network and that Iowa Telecom can assess those costs to Sprint as the terminating carrier.¹³ Iowa Telecom states that if the Board grants Sprint's request for clarification regarding POIs for transit traffic, the Board should also clarify that Iowa Telecom may collect fees for transit service as described in its February 1, 2008, response.

Sprint's position. In response, Sprint asserts that the Board determined in a previous arbitration proceeding that the originating party is responsible for the transit charges;¹⁴ the parties had agreed to language stating that the originating party must compensate the transiting carrier for transiting its originated traffic;¹⁵ and the Arbitration Order expressly acknowledges the "Calling Party's Network Pays" principle. Sprint disputes Iowa Telecom's reliance on the Texcom decision for the proposition that the transit provider may charge the terminating carrier for transit service provided to the originating carrier. According to Sprint, the Texcom cases involved the recovery of the cost of a dedicated interconnection facility between the transiting provider and the terminating carrier. The decision allowed the terminating

¹³ Iowa Telecom's February 1, 2008, "Response to Sprint's Motion for Clarification and Iowa Telecom Motion for Clarification," p. 5, citing Texcom v. Bell Atlantic Corp., "Order on Reconsideration," 16 FCC Rcd 21493, ¶ 4 (2002).

¹⁴ See Sprint's "Reply to Iowa Telecom's Response to Sprint Motion for Clarification and Response to Iowa Telecom Motion for Clarification," February 15, 2008, p. 5, citing the Board's "Arbitration Order" issued March 24, 2006, in Docket Nos. ARB-05-2, ARB-05-5, and ARB-05-6.

¹⁵ See Sprint's "Reply to Iowa Telecom's Response to Sprint Motion for Clarification and Response to Iowa Telecom Motion for Clarification," February 15, 2008, p. 5, citing Iowa Telecom Reply Brief, Attachment A, p. 5, section 15.2.4.

carrier to recover costs from the originating carrier where the transit provider charges the terminating carrier for the portion of the interconnection facility carrying traffic originated by a third-party carrier.

Sprint argues that the parties' agreement should only address transit service provided to Sprint for Sprint-originated traffic. According to Sprint, the agreement cannot govern the arrangements that Iowa Telecom has with third-party carriers for transit of their originated traffic and the appropriate terms for transit service provided to those third parties by Iowa Telecom.

Board analysis and clarification. Iowa Telecom's assertion that Sprint should be responsible for a third party's transiting costs is contrary to the "Calling Party's Network Pays" principle, which the Board adopted in the Arbitration Order and according to which an originating carrier is financially responsible for delivering its traffic to the terminating carrier. Based on that principle, Iowa Telecom cannot charge Sprint for traffic that originates on a third party's network. The Board will not grant Iowa Telecom's requested clarification that would allow it to assess transiting charges as described in its February 1, 2008, response.

The Board agrees with Sprint that the interconnection agreement between Sprint and Iowa Telecom that will result from this arbitration proceeding cannot govern interconnection arrangements that Iowa Telecom has with third-party carriers for transit of their originated traffic. To the extent third-party carriers want to use Iowa

Telecom's facilities to send traffic to Sprint, it will be up to Iowa Telecom to negotiate agreements with those carriers for transit service.

4. Should transit traffic and non-transit traffic be delivered over the same interconnection trunks?

Iowa Telecom's position. Iowa Telecom asserts that Sprint's refusal to deliver local transit traffic to Iowa Telecom on interconnection trunks separate from those used to deliver non-transit local traffic would deprive Iowa Telecom of the right to assess transit charges. Iowa Telecom argues that in Docket No. FCU-06-49, Sprint Communications Company L.P. and MCC Telephony of Iowa, Inc., v Iowa Telecommunications Services Inc., d/b/a Iowa Telecom, the Board acknowledged traffic identification issues relating to transit traffic and non-transit traffic delivered over the same trunks and expressed similar concerns about commingling of traffic in the Arbitration Order. Iowa Telecom states that Sprint currently delivers local transit traffic and non-transit local traffic on separate trunks. Iowa Telecom asserts the parties do not have the ability to distinguish which traffic is transit traffic and which is not when such traffic is presented on the same trunk. Iowa Telecom argues that it is unlikely that the Board would have allowed Iowa Telecom to preserve its rights to compensation for wireless and toll traffic while limiting its rights relating to other transit traffic. Iowa Telecom asks the Board to reiterate its decision that Sprint must deliver local transit traffic to Iowa Telecom on facilities distinct from those used to deliver non-transit local traffic. Iowa Telecom asks the Board to adopt the language Iowa Telecom proposed for Attachment 1, paragraph D (as described in Exhibit A

attached to Iowa Telecom's February 1 response and motion). That language provides, in relevant part, that transit traffic "will be delivered over toll or dedicated local trunk groups."

Sprint's position. Sprint asserts it is not attempting to deprive Iowa Telecom of compensation for transit traffic, but is simply seeking an efficient interconnection arrangement. Sprint claims it currently mixes transit and non-transit traffic over the same interconnection trunks with other carriers and those carriers are able to bill Sprint for transit service. Sprint argues that Iowa Telecom's proposed language did not include a requirement to use separate trunks for transit traffic. Sprint asks the Board to reject what Sprint characterizes as Iowa Telecom's untimely attempt to increase Sprint's costs.

Board analysis and clarification. This issue is related to the commingling of traffic issues that the Board addressed in the Arbitration Order under Issue Nos. 3 and 17. In the Arbitration Order, the Board suggested language for section 17.4 stating that neither party would exchange toll or wireless traffic on the local interconnection trunks until terms and conditions for the exchange of commingled traffic are reached. Instead, toll and wireless traffic would be exchanged on dedicated trunk groups. The Board recognized the benefits of commingling, but also recognized the importance of traffic separation by trunks to facilitate proper compensation until the process of identifying the different types of commingled traffic was further developed and agreed to by the parties.

The Board agrees with Iowa Telecom that the conclusion in the Arbitration Order that Sprint should not be allowed to unilaterally impose a traffic identification method on Iowa Telecom applies to transit traffic. Accordingly, the Board clarifies the Arbitration Order to state that Sprint should not be allowed to commingle transit traffic on local trunk groups until the parties agree on the terms and conditions for the exchange of commingled traffic. The Board directs Sprint to continue to deliver local transit traffic to Iowa Telecom on dedicated interconnection facilities distinct from those Sprint uses to deliver non-transit local traffic until such time as the parties agree on methods to identify and bill the traffic. Thus, the Board clarifies that the language and principles the Board proposed in the Arbitration Order for section 17.4 apply to the traffic Sprint sends to Iowa Telecom to transit to third parties. Therefore, the Board directs the parties to include language in their interconnection agreement which provides that until the parties agree on terms and conditions for the exchange of commingled transit traffic, it will be delivered over toll or dedicated local trunk groups.

Issue No. 13: What is the appropriate charge for the processing of LSR orders for number portability?

Background. In the arbitration proceeding, Iowa Telecom proposed a charge of \$39.23 for processing local service request (LSR) orders for number portability. Sprint proposed a rate of zero or, alternatively, \$1.25 or \$5.50, based on the federal charges for changes of a customer's preferred interexchange carrier (PIC). The Board did not approve Sprint's proposed rates, concluding that Iowa Telecom incurs

costs in processing service orders on Sprint's behalf and the federal charges had not been shown to be comparable to the costs Iowa Telecom incurs for LSR orders. Out of concern that the charge of nearly \$40 proposed by Iowa Telecom was not cost-justified and might be a barrier to entry, and because the Board had approved a charge of \$25 in Docket Nos. ARB-05-2, ARB-05-5, and ARB-05-6, the Board concluded that \$25 was a reasonable alternative and directed the parties to use that rate.

Iowa Telecom's position. Iowa Telecom requests that the Board clarify that the approved order processing charges apply to both initial orders and supplemental orders. Iowa Telecom states that the Board correctly recognized that Iowa Telecom incurs costs to process Sprint's porting requests. Iowa Telecom contends its proposed service order charges should apply both to initial orders and to any requests by Sprint to supplement existing orders. According to Iowa Telecom, the Board approved the language, including rates, that Iowa Telecom proposed (with the exception of the amount of the initial service order charge). Iowa Telecom asserts that Sprint's advocacy in this proceeding on this issue never addressed Iowa Telecom's proposed rates for supplemental service order charges. According to Iowa Telecom, Sprint decided not to dispute this matter and should not now be permitted to eliminate the distinction between initial and subsequent service orders.

Sprint's position. Sprint requests that the Board clarify that the \$25 service order charge applies only to the initial service order and that no additional charges,

such as supplemental service order charges or manual service order charges, apply. Sprint asserts that Iowa Telecom is attempting to apply service order charges in a way that could be considered a barrier to entry. According to Sprint, Iowa Telecom's proposal to charge \$25 for supplemental orders would result in Sprint paying \$50 to \$75 per order, well above the \$40 charge which the Board found could be a barrier to entry. Sprint also points out that the arbitrated agreement in Docket Nos. ARB-05-2, ARB-05-5, and ARB-05-6 does not contain charges for supplemental service orders. The local exchange carriers in those agreements charge Sprint the \$25 service order charge for the initial service order with no additional charge for supplemental orders.

Board analysis and clarification. The Board finds that the record in this proceeding does not define what is involved in a supplemental service order, does not reflect the frequency of supplemental orders, and does not demonstrate the costs incurred by Iowa Telecom to respond to supplemental service order requests. Thus, there is not adequate support in the record for supplemental service order charges. Moreover, the Board approved a single charge of \$25 for initial service order requests, not multiple applications of that charge. Approving Iowa Telecom's proposed \$25 supplemental service order charge could result in Sprint paying \$50 or more, depending on how many supplemental LSRs are necessary, quickly exceeding the \$40 charge that concerned the Board in the arbitration proceeding. For these reasons, the Board will not grant Iowa Telecom's requested clarification that would allow Iowa Telecom to charge \$25 for an initial LSR and \$25 for subsequent

supplemental orders. The Board grants Sprint's request for clarification on this issue and reiterates that the \$25 rate approved in the Arbitration Order applies only to the initial service order and not to any supplemental service orders. The Board directs the parties to adopt language to reflect that clarification.

The Board notes that in the Arbitration Order it encouraged the parties to prepare and submit appropriate cost studies in advance of any future proceeding considering this issue if they were not satisfied with the \$25 charge. That same advice still applies. Iowa Telecom has the option of revisiting the issue of a supplemental service order by filing cost studies demonstrating the actual cost of processing supplemental orders.

III. ORDERING CLAUSES

IT IS THEREFORE ORDERED:

1. The "Motion for Clarification" filed in this docket on January 10, 2008, by Sprint Communications Company L.P. is granted.
2. The motion for clarification filed in this docket on February 1, 2008, by Iowa Telecommunications Services, Inc., d/b/a Iowa Telecom, is granted.
3. The Arbitration Order issued in this docket by the Board on December 21, 2007, is clarified as discussed in the body of this order.
4. 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 the Arbitration Order or

language reflecting the decisions the Board arbitrated in that order, as clarified in this order.

5. Within 15 days of the issuance of this order, the parties shall submit to the Board an interconnection agreement consistent with the terms of the Arbitration Order, as clarified by this 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 22nd day of April, 2008.