BEFORE THE
PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Petition of Sprint Spectrum L.P. for Arbitration of Rates, Terms, and Conditions of Interconnection with The Ohio Bell Telephone Company, Inc. d/b/a AT&T Ohio Pursuant to Section 252(b) of the Telecommunications Act of 1996.	))))))	Case No. 14-1964-TP-ARB

SPRINT SPECTRUM L.P.'S APPLICATION FOR REHEARING

Pursuant to § 4903.10 of the Revised Code and Rule 4901-1-35 of the Ohio Administrative Code, Sprint Spectrum L.P. ("Sprint"), by its attorneys, submits its Application for Rehearing of the August 19, 2015, Arbitration Award in this proceeding. Sprint seeks rehearing of the Arbitration Award, which was unreasonable and unlawful with respect to the following groups of issues, each of which is fully addressed in the attached Memorandum in Support:

- The Arbitration Award's cost allocation and facilities sharing decisions hurt competition and are contrary to law (Issues 5, 22, and 11(b)).
- The Commission's decision on Issue 6 unreasonably and unlawfully limits Sprint's network management flexibility.
- The Commission erred by holding that Interconnection requires there to be an AT&T end user on the call (Issues 8, 9, 10(d), 15 and 23).
- The Commission misapplied federal law in deciding that Interconnection Facilities must carry "exclusively" Section 251(c)(2) calls (Issues 10(a), 13, and 16(a)).
- The Commission erred when it allowed AT&T to bill Sprint switched access charges on local calls made by AT&T's subscribers (Issue 19).
- The Commission erred when it allowed AT&T to bill switched access charges for non-toll calls (Issue 18).

Respectfully submitted,

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SPRINT SPECTRUM L.P.'S MEMORANDUM IN SUPPORT OF APPLICATION FOR REHEARING

Sprint Spectrum L.P. ("Sprint"), by its attorneys, respectfully submits its Memorandum in Support of its Application for Rehearing of the August 19, 2015 Arbitration Award (the "Arbitration Award") issued by the Public Utilities Commission of Ohio (the "Commission"). Sprint seeks rehearing on 14 issues (or sub issues), which are addressed in 6 separate topics.

I. THE ARBITRATION AWARD'S COST ALLOCATION AND FACILITIES SHARING DECISIONS HURT COMPETITION AND ARE CONTRARY TO LAW (ISSUES 5, 22, AND 11(b))

The Commission's decisions on the cost allocation and facilities sharing issues litigated in this case create an even greater competitive imbalance between AT&T, an incumbent local exchange carrier ("ILEC") with established market power, and competitive carriers like Sprint. Unfortunately, the Commission's decisions on these issues will not foster competition, but instead will hurt competition and are contrary to law. The Commission should grant Sprint's Application for Rehearing on Issues 5, 22 and 11(b), and enter an order resolving those issues in Sprint's favor.

The basic obligation imposed on each carrier is to interconnect directly or indirectly with other carriers. 47 U.S.C. § 251(a). This obligation means that, when a call is made, the carrier serving the caller must undertake to deliver the call to the carrier receiving the call. So, when an

ILEC customer calls a competitor's customer, the ILEC must do the work necessary to deliver the call to the competitor's network. The reverse is also true; when a competitor's customer calls an ILEC's customer, it is the competitor's responsibility to deliver the call to the ILEC network. This is reasonable and reciprocal.

The Commission's Arbitration Award changes this result. Under the Arbitration Award, Sprint must pay 100% of the cost to link the two networks. Sprint must pay for facilities used to carry its calls all the way to the AT&T switch, and must also pay for the facilities used to take AT&T calls to the Sprint switch. This is not reciprocal, and places AT&T in a favored position as compared to its non-ILEC competitors. Such a result is surely not what Congress intended. Instead, Congress passed the Act "to encourage competition by imposing the greatest interconnection duties on incumbent carriers like AT&T." *Ohio Bell Tel. Co. v. Public Util. Comm'n of Ohio*, 711 F. 3d 637, 642 (6th Cir. 2013).

The Commission appears to have accepted AT&T's argument that "Sprint has the responsibility for providing its own or leased Interconnection Facilities to the point of interconnection and that this responsibility can be met by either building the facilities itself, leasing or purchasing them from a third-party provider, or leasing them from AT&T Ohio." Arbitration Award at 52. But neither AT&T nor the Commission has explained how Sprint's choice to lease AT&T-provided Interconnection Facilities to deliver calls to AT&T eliminates AT&T's reciprocal obligation to deliver its calls to Sprint. AT&T, and the Arbitration Award, ignore that the Interconnection facilities that link the parties' networks are two-way facilities, and that the parties share the responsibility to get their respective calls to their destination.

This Arbitration Award will have an adverse impact on competition in Ohio. Unless the Commission corrects its error, a carrier that wishes to invoke the right to directly interconnect

with an ILEC will also have to take on the ILEC's costs of delivering all of the ILEC's calls from the ILEC's network to the competitor's network. Competitors are already at a disadvantage vis-à-vis AT&T, which operates with built-in advantages of a former monopoly carrier. But tipping that scale further in the direction of AT&T, by imposing on competitors the costs associated with the delivery of the ILEC's traffic to the competitor's network, spells trouble for Ohio consumers who expect that a level competitive playing field will provide them with the best choices, at the most competitive rates. *See* Ohio Rev. Code Ann. § 4927.02(A)(2), (A)(8), (A)(9) (Ohio adheres to a pro-competition approach: it is Ohio state policy to "[p]rovide incentives for competing providers of telecommunications services to provide advanced, high-quality telecommunications service to citizens throughout the state"; to "[c]onsider the regulatory treatment of competing ... services"; and to "[n]ot unduly favor or advantage any provider and not unduly disadvantage providers of competing and functionally equivalent services").

A. The Commission Should Grant Rehearing on Issues 5 and 22, and Enter an Order in Sprint's Favor

Collectively, Issues 5 and 22 relate to the way in which the costs of Interconnection Facilities will be shared. The Arbitration Award adopted contract language, proposed by AT&T, that makes Sprint 100% responsible for such costs. Arbitration Award at 13-14, 52-56. This is a dramatic change from years of industry practice in which facilities costs have been shared based on proportional usage. The Commission's decision appears to hold that there is no basis to separate the physical and financial demarcation points. Arbitration Award at 14. But the fact that Section 251(c)(2) requires the physical point of demarcation to be "within the [ILEC's] network" cannot take away the obligation in Section 251(a) to ensure that calls are delivered.

Said another way, Congress was not trying to penalize competitive carriers for establishing direct connections, but the Commission's Arbitration Award does just that.

The Commission cites to 47 C.F.R. §§ 51.501 and 51.503,[1] but those rules say nothing about the cost allocation issue within Issues 5 and 22. Those rules certainly do not suggest that an ILEC can eliminate its obligation to deliver calls to a competitor's network simply by forcing the competitor to establish a POI on the ILEC network. Any fear that AT&T would be undercompensated by paying its fair share (Arbitration Award at 55) is a red herring. For Interconnection Facilities that are 50% attributable to AT&T's traffic, all Sprint is asking is that AT&T absorb half of the cost. Sprint will pay 100% of the TELRIC rates for the half that it uses. This is not "below-cost pricing." Arbitration Award at 55. The prices are cost based, but shared proportionately.

The Arbitration Award does not discuss the FCC decisions Sprint cited, other than a brief reference to the *TSR Wireless* case that bars ILECs from charging a wireless carrier for facilities that carry ILEC traffic. *In the Matters of TSR Wireless, LLC v. US West Commc'ns, Inc.*, Memorandum Opinion & Order, 15 FCC Rcd. 11166 (2000) ("*TSR Wireless*"), *aff'd sub nom Qwest Corp. v. FCC*, 252 F.3d 462 (D.C. Cir. 2001). As the Michigan Commission held, *TSR Wireless*, the Supreme Court's *Talk America*[2] decision, and the FCC's *CAF Order*[3] all dictate that the cost of interconnection facilities must be shared. *Michigan Decision* at 42-43.[4]

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[1] Arbitration Award at 55.

[2] *Talk Am., Inc. v. Mich. Bell Tel. Co.*, ___ U.S. ___, 131 S. Ct. 2254, 2263 (2011).

[3] *Connect Am. Fund*, Report & Order & Further Notice of Proposed Rulemaking, 26 FCC Rcd. 17663 (2011), *aff'd, Direct Commc'ns Cedar Valley, LLC v. FCC*, 753 F.3d 1015 (10th Cir. 2014).

[4] *In the Matter of the Petition of Sprint Spectrum L.P. for Arbitration Pursuant to Section 252(b) of the Telecommunications Act of 1996 to establish interconnection agreements with Michigan Bell Telephone Company, d/b/a AT&T Michigan, Michigan Public Service Commission Case No. U-17349*, Order (Dec. 6, 2013) (Exhibit JRB-1, attached Sprint Exhibit 1, Direct Testimony of James R. Burt).

The Indiana Commission ("IURC") also recently decided these sharing issues in Sprint's favor as well.[5] On Issue 6, which correlates to Issue 5 in this case, the IURC agreed that the location of a POI has no bearing on the parties' financial responsibility. *Indiana Order* at 21. The IURC noted federal court precedent holding that the physical location of the interconnection point does not establish financial obligations. *Indiana Order* at 21 (*quoting T-Mobile USA, Inc. v. Armstrong*, 2009 U.S. Dist. LEXIS 44525 (E.D. Ky. May 20, 2009)). And on Issue 24 (which correlates to Issue 22 here), the IURC enforced well-established law that Interconnection Facilities are part of the ILEC network, held that FCC rules prohibit a LEC from charging Sprint for its own calls, and rejected AT&T's argument that AT&T would be undercompensated if it had to pay for the facilities needed to carry its calls. *Indiana Order* at 55-58.

Consistent with the *Michigan* and *Indiana* decisions, the Commission should follow federal law, grant Sprint's Application for Rehearing, and enter an order in favor of Sprint on Issues 5 and 22(b).

B. The Commission Should Grant Rehearing and Reverse on Issue 11(b)

The Commission should also grant rehearing and reverse on Issue 11(b), which is whether Sprint should be solely responsible for the facilities that carry equal access trunk groups. As Sprint argued in its Initial Brief, these Interconnection Facilities "must be shared" for the reasons argued on Issues 5 and 22. Sprint's Initial Brief at 73.[6] Thus, if the Commission decides that equal access trunks may be established on Interconnection Facilities (i.e., reconsiders and resolves the "end user" issue as argued *infra* § III), it should grant Sprint's Application and decide, on Issue 11(b), that Sprint is not "solely responsible" for the cost of such facilities.

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[5] *In the Matter of Sprint Spectrum LP's Petition for Arbitration*, Cause No. 44409 INT 01, Order of the Commission (Aug. 5, 2015) ("*Indiana Order*") (attached hereto as Exhibit A).

[6] The Commission's Arbitration Award at page 28 incorrectly states that "Sprint has not asserted that the cost of such facilities must be shared." This is a further reason to grant Sprint's Application.

II. THE COMMISSION'S DECISION ON ISSUE 6 UNREASONABLY AND UNLAWFULLY LIMITS SPRINT'S NETWORK MANAGEMENT FLEXIBILITY

When the Parties are directly interconnected, the Commission's resolution of Issue 6 properly recognizes that, under federal law, Sprint need not maintain more than a single POI per LATA. Arbitration Award at 17. The Commission also properly found that Sprint "may remove previously established additional points of interconnection as long as it maintains at least one point of interconnection per LATA." Arbitration Award at 17. These decisions are appropriate and lawful. The Commission erred, however, in deciding that any such decommissioning should be negotiated and subjected to dispute resolution before the Commission. Arbitration Award at 17. This decision may seem innocuous, but could severely and unfairly hamper Sprint's network engineering efforts.

As an initial matter, the required negotiation is inconsistent with the Commission's finding that any existing POIs "were established by tariff and, therefore, they can be disconnected consistent with the tariff." Arbitration Award at 17. There are no tariff terms that require Sprint to negotiate before disconnecting such facilities. As a common carrier, AT&T cannot force Sprint to maintain unneeded tariff facilities solely because AT&T might be harmed by their disconnection. By taking from Sprint the right to disconnect facilities in accordance with tariffs, the Commission has changed the tariffs only as to Sprint, in violation of the filed rate doctrine.

AT&T has provided no specific network-related reasons why it would oppose decommissioning of any tandem-level POI.[7] And, AT&T has already said it will work with

[7] Sprint Spectrum Exhibit 2, Felton Direct at 14-15, 17.

Sprint to take down the 34 unnecessary end office POIs.[8] If there were legitimate reasons for AT&T to challenge any specific proposed POI decommissioning, those would have been explained by Mr. Albright. Rather than create a mechanism to allow AT&T to stand in Sprint's way, contrary to tariffs, the Commission should decide that AT&T had its chance to raise specific concerns and failed to do so.

The Commission should grant Sprint's Application for Rehearing of Issue 6, and eliminate the requirement that Sprint negotiate with AT&T before disconnecting tariff-based facilities.[9]

III. THE COMMISSION ERRED BY HOLDING THAT INTERCONNECTION REQUIRES THERE TO BE AN AT&T END USER ON THE CALL (ISSUES 8, 9, 10(d), 15 AND 23)

The Commission should grant Sprint's Application for Rehearing of its decision that AT&T's obligation to provide interconnection under 47 U.S.C. § 251(c)(2) applies only when facilities are used to exchange calls involving an AT&T end user. This decision was made most explicitly on Issue 10(d), where the Commission held that equal access trunks cannot be interconnection facilities because they "connect Sprint's network with IXCs, not end user customers of AT&T Ohio." Arbitration Award at 26; *see also id.* at 35 (on Issue 15, noting that IXC traffic "does not involve an AT&T end user").

AT&T's arguments about "end user" and "mutual exchange" have diverted the Commission's attention from the statutory language. The statute requires AT&T to offer interconnection when Sprint is providing "telephone exchange service" or "exchange access." 47 U.S.C. § 251(c)(2)(A). Congress defined **"exchange access"** as "the offering of access to

[8] AT&T Ohio Exhibit 4.0, Rebuttal Testimony of Carl C. Albright ("Albright Rebuttal") at 2.

[9] The IURC resolved this issue in favor of Sprint. *See Indiana Order* at 22 (Sprint's proposed language is consistent with federal law).

telephone exchange services or facilities for the purpose of the origination or termination of telephone toll services." 47 U.S.C. § 153(20). Sprint provides exchange access to interexchange carriers, also known as "IXCs," so that IXCs can complete long-distance "telephone toll service" calls to Sprint's customers.[10] To compete with the incumbent provider, a competitor like Sprint must have the ability to provide exchange access to IXCs so that Sprint's customers can receive such long-distance calls just like the ILEC's customers can receive such calls. There is nothing in either the statutory definitions or FCC rules that requires an AT&T end user to be part of an IXC call for that call to qualify as Sprint's exchange access traffic.

Nowhere in the Arbitration Award does the Commission even discuss what it means for Sprint—or any other competitor—to be offering exchange access to IXCs to reach the competitor's customers. Instead, the order ignores this aspect of competition as if it does not exist. But it does exist. Sprint provides exchange access when an IXC causes a call to be delivered to Sprint through the AT&T's network. For such exchange access traffic, Section 251(c)(2) expressly authorizes this traffic to be delivered to Sprint over Interconnection Facilities.[11] If such IXC traffic to Sprint traffic is not "exchange access" traffic as that term is used in the Act, then competitors need guidance from the Commission as to what constitutes "exchange access" that ***can*** be exchanged over Section 251(c)(2) facilities. The Commission should grant rehearing on the "end user" issue and explicitly address how Sprint ***can*** use

[10] Sprint Spectrum Exhibit 2, Felton Direct at 48-49. In contrast to telephone exchange service, "telephone toll service" is the provision of service between different calling areas for which there "is made a separate charge not included in contracts with subscribers" for the telephone exchange service. 47 U.S.C. § 153(55).

[11] *See Indiana Order* at 31 ("the ICA should allow Equal Access Trunks, if any, to be established on Interconnection Facilities" so long as Sprint uses them for "the purpose of providing to others telephone exchange service, exchange access service, or both").

Interconnection Facilities to provide exchange access as contemplated by Section 251(c)(2) of the Act.

Not only does AT&T's "end user" argument eliminate Sprint's right to use interconnection facilities for "exchange access," it contradicts the Commission's settled decision in the *TelCove* case. Case No. 04-1822-TP-ARB, *In the Matter of TelCove Operations, Inc's Petition for Arbitration Pursuant to Section 252(b) of the Communications Act of 1934*, Arbitration Award at 33 (Jan. 25, 2006). There, the Commission rejected AT&T's "end user" argument and found that transit service is "interconnection." *Id.* at 31-32. The Commission held:

> We find that SBC, in provisioning the transit function at issue, is directly interconnected with TelCove's network for the transmission and routing of telephone exchange service and exchange access. We find that Section 251(c)(2)(A) of the 1996 Act obligates SBC to provide, for the facilities and equipment of TelCove, interconnection with SBC's network for the **transmission and routing** of telephone exchange service and exchange access. Section 251(c)(2)(A) does not state **transmission and termination** of telephone exchange service and exchange access, which means it ***does not limit the interconnection under Section 251(c)(2)(A) to*** **the mutual exchange of traffic** ***originated and terminated between the two carriers***. Under Section 251(c)(2)(A), SBC is required to interconnect with TelCove for transmission and routing of telephone exchange service and exchange access destined to TelCove's end-users ***as well as to a third party***. Accordingly, we find that under Sections 251/252 of the 1996 Act the terms and provisions governing transit service should be included in the parties' final ICA.

Id. at 33 (**emphasis in original**; ***emphasis added***). Because there is no way to distinguish the Commission's rejection of the "end user" argument in *TelCove* from its acceptance of that argument here, the Commission should grant rehearing, expressly recognize and follow its *TelCove* precedent and reverse its contrary "end user" decision in the Arbitration Award. *Cf. Mountain Commc'ns, Inc. v. FCC*, 355 F.3d 644, 648-49 (D.C. Cir. 2004) (finding agency action arbitrary and capricious when agency changed direction "without explanation, indeed without even acknowledging the change").

Rehearing and reversal will bring the Commission's decision into line not only with its existing *TelCove* precedent but also with federal court and other State commission decisions that have found AT&T's "end user" argument creates a limitation that Congress did not intend. *SNET v. Comcast*, 718 F.3d at 63; *The S. New England Tel. Co. v. Perlermino*, No 3:09-cv-1787 WWE, 2011 WL 1750224, at *6 (D. Conn. May 6, 2011). As logically explained by the Michigan Commission, the fact that interconnection can be used to connect parties' end users does not mean that such use is its only purpose. *Michigan Decision* at 22 ("exchange of traffic between end users is one purpose of interconnection, not the *only* purpose"). And the IURC recently rejected AT&T's argument, noting that "the plain text of 47 C.F.R. § 51.5 contains no end user restrictions, nor does it contain any restrictions on the types of traffic that can be exchanged between the Parties' networks." *Indiana Order* at 15. The IURC concluded that "it seems illogical and inappropriate for the definition of Interconnection under 47 C.F.R. § 51.5 to include a requirement that Interconnection can only be between Sprint's and AT&T Indiana's end users...." *Id.* The Commission should follow suit and grant Sprint's Application for Rehearing on this point.

Commission rehearing and rejection of AT&T's "end user" argument, also impacts resolution of Issues 8, 9, 10(d), 15 and 23. On Issue 8, Sprint's proposal properly captures that "mutual exchange of traffic" does not require there to be an AT&T end user, and that Sprint will use Interconnection for the mutual exchange of interconnection traffic when it provides exchange access service to IXCs on calls delivered through AT&T's switch. On Issues 9, 10(d), and 15, AT&T's contract language prohibits Sprint from using Interconnection Facilities for calls on which Sprint provides exchange access service to IXCs. Arbitration Award at 22, 26, 34-35. And on Issue 23, the Commission established so-called transition conditions under the mistaken

belief that Sprint does not provide exchange access when it terminates IXC calls. Arbitration Award at 57-58.

Because the Commission's decision on the "end user" issue is contrary to law, and denied Sprint important rights, the Commission should grant Sprint's Application for Rehearing, reverse itself on the "end user" issue, and resolve Issues 8, 9, 10(d), 15 and 23 in Sprint's favor.

IV. THE COMMISSION MISAPPLIED FEDERAL LAW IN DECIDING THAT INTERCONNECTION FACILITIES MUST CARRY "EXCLUSIVELY" SECTION 251(c)(2) CALLS (ISSUES 10(a), 13, AND 16(a))

The Commission should grant Sprint's Application for Rehearing as to the decision that Interconnection Facilities must carry "exclusively" Section 251(c)(2) calls. If the Commission does not agree that Sprint provides exchange access on IXC→AT&T→Sprint calls (as argued on § III *supra*), the "exclusivity" issue within Issues 10(a), 13 and 16(a) will have significant practical importance. That is because the FCC gave competitors the right to combine Section 251(c)(2) calls on Interconnection Facilities with other calls. Thus, as long as Sprint has some Section 251(c)(2) calls, it can also use TELRIC-priced facilities to also deliver other calls. The Commission, however, improperly decided that exclusivity was required. It should rehear and reverse that decision.

Sprint's position is well supported. The FCC authorized the use of Interconnection Facilities to carry additional traffic types in 1996 when it ruled that IXCs could obtain interconnection to provide interexchange service (which is neither telephone exchange nor exchange access) so long as some portion of the facility was used for Section 251(c)(2) Traffic:

> A telecommunications carrier seeking interconnection only for interexchange services is not within the scope of this statutory language because it is not seeking interconnection for the purpose of providing telephone exchange service.

First Report & Order, ¶ 191 (emphasis added). [12] This was incorporated into FCC Rule 51.305:

> A carrier that requests interconnection solely for the purpose of originating or terminating its interexchange traffic on an incumbent LEC's network and not for the purpose of providing to others telephone exchange service, exchange access service, or both, is not entitled to receive interconnection pursuant to section 251(c)(2) of the Act.

47 C.F.R. § 51.305(b) (emphasis added). *See also CAF Order*, ¶ 972 ("However, as long as an interconnecting carrier is using the section 251(c)(2) interconnection arrangement to exchange some telephone exchange service and/or exchange access traffic, section 251(c)(2) does not preclude that carrier from relying on that same functionality to exchange other traffic with the incumbent LEC, as well."). The Commission should grant Sprint's Application and reverse its decision on exclusivity because it cannot be squared with the FCC's *First Report & Order*, 47 C.F.R. § 51.305(b), and the *CAF Order*.

Both the Michigan Commission and the IURC rejected AT&T's exclusivity argument. In Michigan, Issue 11(a) was the same as Issue 10(a) in this case. The Michigan Commission accepted the Panel's reasoning that Sprint's proposal was supported by federal authorities, and "more in line with the pro-competitive intent of the FTA ...." *Michigan Decision* at 24; *Michigan Panel Decision*[13] at 33. The IURC evaluated the *First Report & Order* and the *CAF Order* and properly determined that "both orders require a competitor to exchange at least some telephone exchange service and/or exchange access service over a given interconnection facility before being allowed to exchange other types of traffic over that facility." *Indiana Order* at 28. Accordingly, the IURC adopted Sprint's proposal that Sprint use Interconnection Facilities for

[12] *In the Matter of Implementation of the Local Competition Provisions in the Telecomms. Act of 1996*, First Report & Order, 11 FCC Rcd. 15499 (1996).

[13] The *Michigan Panel Decision* is Ex. JRB-2, attached to Sprint Spectrum Exhibit 1, Direct Testimony of James R. Burt.

all switched calls so long as Sprint is carrying "'some' telephone exchange and/or exchange access traffic." *Indiana Order* at 28.

The Commission should grant rehearing and correct its legal ruling on the "exclusivity" issue, and should resolve Issues 10(a), 13 and 16(a) in Sprint's favor. On Issue 10(a), there should not be a requirement that Interconnection Facilities be used only for Section 251(c)(2) interconnection. On Issue 13, combined trunks can be established on Interconnection Facilities. And on Issue 16, because Interconnection Facilities can carry other traffic, a bar on delivering InterMTA calls over Interconnection Facilities is too strict. Regardless of whether InterMTA calls are "telephone exchange service" or "exchange access" calls, they can be included as "other" calls on Interconnection Facilities that carry some qualifying calls. Even the parties' undisputed language of Attachment 2, Section 2.1 contemplated that each Party may carry InterMTA traffic over Interconnection Facilities as long as other traffic is being exchanged over the facility.[14]

For these reasons, the Commission should grant rehearing and reverse its decision on the exclusivity issue, and accept Sprint's proposed resolution of Issues 10(a), 13 and 16(a).

V. THE COMMISSION ERRED WHEN IT ALLOWED AT&T TO BILL SPRINT SWITCHED ACCESS CHARGES ON LOCAL CALLS MADE BY AT&T'S SUBSCRIBERS (ISSUE 19)

The Commission should grant rehearing on Issue 19 because it allowed AT&T to charge originating switched access charges on calls that AT&T customers make to wireless telephone numbers within their own rate center, i.e, a locally dialed call. Arbitration Award at 46. On these calls, the AT&T customer has no relationship whatsoever with Sprint, as it otherwise

[14] "Interconnection shall be provided at a level of quality equal to that which AT&T OHIO provides to itself, to any Affiliates, or to any other Telecommunications Carrier. The Interconnection provided herein may not be used solely for the purpose of originating a Party's own InterMTA Traffic."

would with such customer's chosen IXC long-distance service provider. Sprint is not the IXC for the AT&T customer, and is not obtaining "access" to AT&T's network to provide a long distance service to any AT&T customer. These AT&T customer originated calls are not originating access calls under AT&T's access tariffs. Further, the FCC order relied on by the Commission relates to a different set of circumstances altogether.

As the Commission is aware, access charges are assessed when a carrier obtains access to another carrier's network, to provide a retail long distance service to the end user customer. Both carriers have a different retail relationship with the end user customer. One has a retail relationship to provide local service, and the other has a retail relationship to provide long distance service. To use a historical example, when a customer who received local phone service from Cincinnati Bell, and long distance service from MCI, made a long distance call, MCI compensated Cincinnati Bell for using the Cincinnati Bell network to provide that long distance service. MCI billed the customer as the originating caller, and so MCI paid Cincinnati Bell for the right to access the customer in order to provide the long distance service.

This concept falls apart when applied to the land-to-mobile InterMTA calls in this case. On such calls, the originating caller is being provided local exchange service by AT&T. But, the customer has no relationship whatsoever with Sprint, and is not receiving a long distance service of any kind from Sprint. Sprint has no billing relationship with the caller, and obtains no payment from the caller. Nor does Sprint need access to the AT&T's network to either make or complete the call. When the call is made to a number within AT&T's local exchange area, AT&T has a dialing parity obligation that requires it to deliver the call to Sprint. 47 U.S.C. § 251(b)(3). From there, the call never hits AT&T's network again. There is no reason for Sprint to obtain access—much less pay for access—of any kind from AT&T to complete that call.

AT&T's switched access tariff is instructive. As reflected on AT&T's public web site (http://www.att.com/gen/public-affairs?pid=13529), AT&T's intrastate access tariff adopts the switched access terms in its interstate tariff, Ameritech Operating Companies Tariff F.C.C. No. 2. Section 6.1 of F.C.C. Tariff No. 2 describes switched access service as follows:

> Switched Access Service
>
> 6.1 General
>
> Switched Access Service, which is available to customers for their use in furnishing their services to end users, provides a two-point electrical communications path between a customer's premises and an end user's premises. It provides for the use of common terminating, common switching and Switched Transport facilities, and common subscriber plant of the Telephone Company. Switched Access Service provides for the ability to originate calls from an end user's premises to a customer's premises, and to terminate calls from a customer's premises to an end user's premises in the LATA where it is provided. Specific references to material describing the elements of Switched Access Service are provided in Sections 6.1.1 and 6.1.3.

This describes originating access as providing the ability for an interexchange carrier to originate a call from an end user's premises. Not only is the "end user" in this definition not Sprint's customer, the end user is AT&T's customer, and has already paid AT&T for the right to make that local call. Thus, the Commission's order on Issue 19 is at odds with common sense, the tariff, and would overcompensate AT&T at Sprint's expense.

The Commission's decision relies on a description of a certain kind of "roaming" service that existed in the early days of wireless service. Arbitration Award at 46 (citing *First Report & Order*). But the calls at issue here are not those described by the FCC in 1996. The calls here do not "transit" ILEC facilities, they originate on ILEC facilities. Nor does Sprint provide interexchange service "through switching facilities provided by a telephone company." As noted, the call is carried across the MTA boundary only after it is handed off by AT&T, and

without any need to use AT&T's facilities to do so. As a result, the cited footnote from the FCC's 1996 does not provide the guidance that the Commission seeks in this case.

For these reasons, the Commission should grant Sprint's Application for Rehearing, reconsider and resolve Issue 19 in Sprint's favor.

VI. THE COMMISSION ERRED WHEN IT ALLOWED AT&T TO BILL SWITCHED ACCESS CHARGES FOR NON-TOLL CALLS (ISSUE 18)

Finally, the Commission should grant rehearing and reverse its decision to allow AT&T to collect access charges on mobile-to-land IntraMTA calls. Arbitration Award at 42-43. The Commission failed to apply federal law, which limits "Access Reciprocal Compensation" traffic to traffic exchanged between telecommunications service providers that is "interstate or intrastate exchange access, information access, or exchange services for such access, other than special access." 47 C.F.R. § 51.903(h). "Exchange access" means "the offering of access to telephone exchange services or facilities for the purpose of the origination or termination of telephone toll service." 47 U.S.C. § 153(20) (emphasis added). In turn, Congress defined the term "telephone toll services" as:

> telephone service between stations in different exchange areas for which there is made a separate charge not included in contracts with subscribers for exchange service.

47 U.S.C. § 153(55) (emphasis added). For a wireless carrier like Sprint, calls within a plan-defined home calling area are not subject to an "extra charge" and do not meet the definition of "telephone toll service." *See CAF Order*, ¶ 944 n.1902 ("The Act defines 'telephone toll service' as 'telephone service between stations in different exchange areas for which there is made a separate charge not included in contracts with subscribers for exchange service.' ... [F]or wireless providers, this means outside the customer's plan-defined home calling area."). It is

undisputed that only a *de minimis* number of calls sent by Sprint are subject to an extra charge. Arbitration Award at 7.[15]

The Commission's analysis of Sprint's authorities focused on the fact that the FCC's rules rely on the MTA in order to establish reciprocal compensation rights. Arbitration Award at 7-8. But the important question is whether the FCC relied on MTA boundaries when it established the right to impose "access reciprocal compensation" charges by tariff. The Commission cannot point to any rule that imposes access charges on interMTA traffic based merely on its endpoints because the FCC's new rules did no such thing; there is no reference to MTAs in any portion of 47 C.F.R. Part 51, Subpart J - Transitional Access Service Pricing (§§ 51.901-51.919), nor do any of the statutory terms refer to MTAs. To properly resolve Issue 18 in AT&T's favor, the Commission would have to find a statute or rule giving AT&T an affirmative right to charge access reciprocal compensation on non-toll calls. Because there is no such right, the Commission should grant Sprint's Application for Rehearing and reverse its ruling on Issue 18.

Sprint is not asking for an interpretation of what the law may have been under prior FCC rules; it is asking the Commission to apply the rules as they currently exist under current statutory language and FCC rules that use that very statutory language (i.e., the new Subpart J Rules promulgated by the CAF order). The Commission's decision is contrary to these rules.

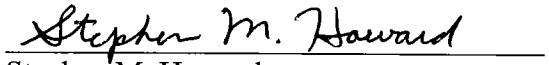
CONCLUSION

For the above reasons, Sprint respectfully requests that the Commission grant Sprint's Application for Rehearing.

[15] *See also* Sprint Spectrum Exhibit 2, Direct Testimony of Mark Felton ("Felton Direct") at 82-83.

Respectfully submitted,

SPRINT SPECTRUM L.P.



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CERTIFICATE OF SERVICE

The PUCO's E-filing system will electronically serve notice of the filing of this document on all parties of record. In addition, I certify that a copy of the foregoing document was served via electronic mail on September 18, 2015 on Douglas W. Trabaris and Mark R. Ortlieb, AT&T Ohio, 225 W. Randolph Street, Floor 25D, Chicago, IL 60606, dt1329@att.com and mo2753@att.com.

Stephen M. Howard

Stephen M. Howard

EXHIBIT A

ORIGINAL

STATE OF INDIANA

INDIANA UTILITY REGULATORY COMMISSION

IN THE MATTER OF SPRINT SPECTRUM LP.'S PETITION FOR ARBITRATION PURSUANT TO SECTION 252(B) OF THE COMMUNICATIONS ACT OF 1934, AS AMENDED BY THE TELECOMMUNICATIONS ACT OF 1996, AND THE APPLICABLE STATE LAWS FOR RATES, TERMS AND CONDITIONS OF INTERCONNECTION WITH INDIANA BELL TELEPHONE COMPANY, INC. D/B/A AT&T INDIANA.	)	**CAUSE NO. 44409 INT 01**
	)	**APPROVED:** AUG 0 5 2015

ORDER OF THE COMMISSION

Arbitrators:
David E. Ziegner, Commissioner
Gregory R. Ellis, Administrative Law Judge

TABLE OF CONTENTS

1. **Introduction.** On October 18, 2013, Sprint Spectrum L.P. ("Sprint") filed its Petition with the Indiana Utility Regulatory Commission ("Commission") for arbitration pursuant to 47 U.S.C. § 252(b)(1) of the federal Telecommunications Act of 1996 ("Act") to establish an Interconnection Agreement ("Agreement" or "ICA") with Indiana Bell Telephone Company, Inc. d/b/a AT&T Indiana ("AT&T Indiana") in this Cause. Sprint also named AT&T Corp., a non-incumbent local exchange carrier affiliate of AT&T, as a co-respondent. 47 U.S.C. §§ 252(b) and (c) direct state commissions to arbitrate unresolved issues related to the obligations imposed on local exchange carriers by 47 U.S.C. §§ 251(b) and (c). The Petition enumerated numerous issues as unresolved between Sprint and AT&T Indiana.

2. **Procedural History.** In accordance with 47 U.S.C. § 252(b)(3), AT&T Indiana timely filed its response to Sprint's petition for arbitration on November 12, 2013. On November 6, 2013, Sprint and AT&T Indiana filed their joint proposal for a procedural schedule. On November 12, 2013, AT&T Corp. filed its Motion to Strike AT&T Corp. as a party to the proceeding. Sprint filed its Opposition to AT&T Corp.'s Motion to Strike on November 19, 2013. AT&T Indiana filed its Statement in Response to Sprint's Opposition to AT&T Corp.'s Motion to Strike on November 25, 2013. AT&T Corp. filed a second Motion to Strike AT&T Corp. as a party to this proceeding on December 4, 2013. On January 17, 2014, the Presiding Officers issued a docket entry granting the Motion to Strike and ordering that AT&T Corp. be stricken from the case and the case caption.

On December 13, 2013, Sprint filed the direct testimony and exhibits of James R. Burt,

Mark G. Felton, and Randy G. Farrar. The same day, AT&T Indiana filed the direct testimony and exhibits of its witnesses, William E. Greenlaw, Patricia H. Pellerin, and Carl C. Albright. Sprint and AT&T Indiana (collectively the "Parties") also jointly filed an updated Decision Points List ("DPL") highlighting Sprint's position and AT&T Indiana's position on the open issues to be arbitrated by the Commission. On December 18, 2013, AT&T Indiana filed a Motion for Confidential Treatment of certain information contained in the testimony of its witnesses. On December 23, 2013, Sprint filed its Motion for Confidential Treatment of certain information contained in the testimony of AT&T Indiana's witnesses and in the testimony of its own witnesses. On January 13, 2014, the Presiding Officers issued docket entries granting Sprint's Motion for Confidential Treatment and AT&T Indiana's Motion for Protection of Confidential of certain information. AT&T Indiana filed the rebuttal testimony and exhibits of Mr. Greenlaw, Ms. Pellerin, Mr. Albright, and Dr. Penn L. Pfautz on January 17, 2014. Sprint filed the rebuttal testimony and exhibits of Mr. Farrar, Mr. Felton, and Mr. Burt on January 17, 2014.

On February 28, 2014, Sprint and AT&T Indiana filed a Joint Motion seeking new hearing dates and a suspension of the procedural schedule, indicating the Parties were engaged in settlement discussions. Based on a series of additional joint filings and status reports filed by the Parties on May 28, 2014, July 9, 2014, and August 11, 2014, the procedural schedule was adjusted to accommodate the Parties' settlement discussions. On August 13, 2014, the Presiding Officers issued a docket entry setting the dates for the filing of corrected testimony and establishing the evidentiary hearing date.

On September 25, 2014, the Parties jointly filed an updated DPL explaining their respective positions on the remaining open issues to be arbitrated by the Commission. AT&T Indiana and Sprint filed corrections to their respective direct and rebuttal testimony on September 30, 2014. On October 16, 2014, the Presiding Officers issued a docket entry directing the Parties to provide additional information. On October 21, 2014, the Parties filed an updated DPL highlighting their positions on the remaining open issues to be arbitrated by the Commission. On October 22, 2014, the Parties filed their individual responses to the docket entry questions issued on October 16, 2014. Sprint filed corrections to its direct and rebuttal testimony on October 28, 2014.

The Commission held an Arbitration Hearing in this Cause at 9:30 a.m. EST on October 28, 2014, in Room 224, PNC Center, 101 West Washington Street, Indianapolis, Indiana. The Indiana Office of Consumer Counselor ("OUCC"), Sprint, and AT&T Indiana appeared and were represented by counsel. At the hearing, Sprint offered its Petition, responses to the Commission's docket entry questions, and corrected testimony and exhibits into the record, all of which were admitted without objection. AT&T Indiana offered its corrected testimony and exhibits into the record, which were admitted without objection.

3. Notice and Commission Jurisdiction. Notice of the hearing in this Cause was given and published by the Commission as required by law. The Parties are both "public utilities" within the meaning of Indiana Code ch. 8-1-2 and "communications service providers" within the meaning of Indiana Code § 8-1-32.5-4. AT&T Indiana is an incumbent local exchange carrier ("ILEC") as set forth in 47 U.S.C. § 251(h). Sprint is a commercial mobile radio services ("CMRS") provider authorized by the Federal Communications Commission

("FCC") to provide wireless services in Indiana, is a "Telecommunications Carrier" as defined in 47 U.S.C. § 153(51), and is a "requesting telecommunications carrier" as that term is used in 47 U.S.C. § 251(c)(1) and within the meaning of 47 U.S.C. § 252(a). Pursuant to Ind. Code § 8-1-2.6-1.5(b)(2), this Commission has authority to arbitrate a dispute between providers under 47 U.S.C. § 252. Therefore, the Commission has jurisdiction over the Parties and the subject matter of this Cause.

4. **Petitioner's Organization and Business.** Sprint is a Delaware limited partnership with its principal place of business at 6200 Sprint Parkway, Overland Park, Kansas 66251. Sprint is a communications service provider providing wireless service throughout the State of Indiana.

5. **Respondent's Organization and Business**. AT&T Indiana is a corporation duly organized and existing under and by virtue of the laws of the State of Indiana, with principal offices located at 240 North Meridian Street, Indianapolis, Indiana 46204. AT&T Indiana is a communications service provider engaged in the provision of varied telecommunications services to its customers and the general public within its certificated territory in the State of Indiana. AT&T Indiana is a subsidiary of AT&T Inc., which has its corporate headquarters in Dallas, Texas.

6. **Identification of Unresolved Issues**. Pursuant to 47 U.S.C. § 252(b)(4)(A), the Commission "shall limit its consideration" to the issues set forth in Sprint's Petition and AT&T Indiana's Response. During the course of the proceeding, numerous issues and sub-issues originally in dispute were resolved, and the Parties' proposed contract language on other issues was modified. As noted above, the Parties jointly filed their final DPL, which identifies the remaining open issues, and each party's respective positions and proposed contract terms for those open issues on October 21, 2014.

7. **Statutory Standards**. Under 47 U.S.C. § 252(b)(4)(C), the Commission shall resolve each issue set forth in the petition and response by imposing appropriate conditions as required to implement 47 U.S.C. § 252(c) upon the parties to the agreement, and shall conclude the resolution of any unresolved issues not later than nine months after the date on which the ILEC received the request under this section. 47 U.S.C. § 252(b)(4)(B) further provides:

> The State commission may require the petitioning party and the responding party to provide such information as may be necessary for the State commission to reach a decision on the unresolved issues. If any party refuses or fails unreasonably to respond on a timely basis to any reasonable request from the State commission, then the State commission may proceed on the basis of the best information available to it from whatever source derived.

Neither party to this proceeding refused or unreasonably failed to respond to any request by the Commission for information.

In resolving by arbitration any open issues and imposing conditions upon the parties to the agreement, 47 U.S.C. § 252(c) provides:

[A] State commission shall:

(1) ensure that such resolution and conditions meet the requirements of Section 251, including the regulations prescribed by the [FCC] pursuant to Section 251;

(2) establish any rates for interconnection, services, or network elements according to subsection (d); and

(3) provide a schedule for implementation of the terms and conditions by the parties to the agreement.

In light of the above standards and information submitted as part of this arbitration, we summarize the Parties' positions on the open issues, as reflected in the October 21, 2014 DPL.

8. Arbitration Issues. Based upon the Parties representations in the Petition and updated DPL, we confine our discussion below to the remaining unresolved issues (Issues 2, 3, 4, 5(a), 5(b), 6, 7, 8(a), 8(b), 9, 10, 11(a), 11(b), 11(c), 11(d), 12(a), 12(b), 13(a), 13(b), 13(c), 14, 16, 17, 18, 19, 20, 22, 23, 24(a), 24(b), 24(c), and 25).

Issue 2: What is the appropriate definition of "IntraMTA Traffic"?

A. Positions of the Parties.

1. Sprint. Sprint indicated in the Petition that its position on Issue 2 is that AT&T Indiana's definitions ignore federal law to unreasonably impose limitations on traffic that will either result in the inaccurate characterization of traffic or the erroneous assessment of access charges. Sprint indicated that its language tracks the FCC Rule, 47 C.F.R. § 51.701(b)(2), regarding what constitutes an intra major trading area ("IntraMTA") call and there is no reason to include AT&T Indiana's proposed "End User" to "End User" qualification. Given AT&T Indiana's position that an AT&T Indiana retail customer making a 1+ dialed IntraMTA call is the Interexchange Carrier's ("IXC") "End User" rather than AT&T Indiana's End User, AT&T Indiana's proposed use of the term End User is also contrary to established federal law.

2. AT&T Indiana. AT&T Indiana's position on Issue 2 is that the Commission should adopt AT&T Indiana's proposed definition of "IntraMTA Traffic," which refers to traffic exchanged between the Parties' end users. AT&T Indiana indicates its proposed definition is consistent with the agreed purpose of the definition, which is to include all IntraMTA calls that are subject to reciprocal compensation requirements. AT&T Indiana explains that Sprint's proposed definition is unduly vague and could be interpreted to include traffic that is not subject to reciprocal compensation requirements.

B. Commission's Analysis and Decision. By way of background, we note that major trading area ("MTA") is a specialized mapping grid developed by Rand McNally for tracking economic development and commerce data.[1] The FCC previously adopted the use of

[1] *See* Rand McNally, Inc., *1992 Commercial Atlas & Marketing Guide,* 38-39 (1992).

MTA boundaries "as the most appropriate definition for local service area for CMRS traffic for purposes of reciprocal compensation under section 251(b)(5)..."[2] In other words, MTA boundaries serve as demarcation points between "local" non-access CMRS calls and non-local "access" calls. MTA calling areas are significantly larger than local exchange carrier ("LEC") calling areas. There are only 51 MTAs in the entire country, while there are thousands of LEC local calling areas. MTA boundaries can cross both local access and transport area ("LATA") and area code boundaries and even state boundaries. Indeed, and as the national MTA map shows, all four of the MTAs in Indiana cross state lines: MTA 3 (Chicago), MTA 18 (Cincinnati-Dayton), MTA 26 (Louisville-Lexington), and MTA 31 (Indianapolis).[3]

Sprint and AT&T Indiana have reached partial agreement in General Terms and Conditions ("GTC"), Section 2.66 on the definition of "IntraMTA Traffic". They both agree that "IntraMTA Traffic" "means traffic that, at the beginning of the call, originates and terminates within the same MTA." However, they both propose changes to GTC 2.66, in order to either expand or restrict the types of traffic that are included within the definition of "IntraMTA Traffic" and are, therefore, eligible for bill-and-keep pricing.[4] Specifically, Sprint asks the Commission to define "IntraMTA Traffic" as traffic exchanged between AT&T Indiana and Sprint that, at the beginning of the call, originates and terminates within the same MTA." AT&T Indiana views Sprint's proposed definition as too broad. AT&T Indiana proposes, instead, to further restrict the definition of IntraMTA Traffic to traffic exchanged between Sprint's end users and AT&T Indiana's end users, not merely between Sprint and AT&T Indiana or their networks: i.e., to "traffic that, at the beginning of the call, originates and terminates within the same MTA, and is originated by one Party on its network from its End User and delivered to the other Party for termination on its network to its End User."

The key sticking point is how to define traffic that originates and terminates within the same MTA, as measured at the beginning of the call, when that traffic is handed off to an IXC. Sprint argues that traffic it hands off to an IXC is AT&T Indiana's traffic, not the IXC's traffic. Sprint is concerned that, if the FCC's 2011 decision to require bill-and-keep for IntraMTA Traffic is ever reversed, Sprint should be allowed to bill AT&T Indiana for IntraMTA calls, even if they are delivered by an IXC. Furthermore, Sprint argues that, "if Sprint's position to use a fixed equal (50/50) apportionment of such costs is not adopted then AT&T's improper identification of such IntraMTA Traffic as an "IXC's" traffic instead of as AT&T's traffic will wrongfully assign a higher portion of Interconnection Facility costs to Sprint that should, in fact, be attributed to AT&T Indiana as part of AT&T Indiana's use of the facilities to deliver AT&T Indiana originated IntraMTA Traffic to Sprint."[5]

The Commission agrees with Sprint that the definition of an IntraMTA call is important because it is used in other sections of the ICA for compensation purposes.[6] Both Parties rely

[2] *In the Matter of Implementation of Local Competition & Interconnection Between Local Exchange Carriers and Commercial Mobile Radio Service Providers*, CC Docket No. 96-98 & CC Docket No. 95-185, *First Report and Order*, at para. 1036 (FCC 96-325: rel. Aug. 8, 1996 [hereinafter *Local Competition First Report and Order*]. *See, also*, 47 C.F.R. §§ 24.202 & 202(a).

[3] http://wireless.fcc.gov/services/index.htm?job=market_areas&id=narrowband_pcs.

[4] "Bill-and-keep arrangements are those in which carriers exchanging telecommunications traffic do not charge each other for specific transport and/or termination functions or services." 47 C.F.R. § 51.713.

[5] Sprint Direct Testimony (Felton) at 5, lines 86-91.

[6] Sprint Direct Testimony (Felton) at 4, lines 61-62.

upon the FCC's "IntraMTA rule" in 47 C.F.R. § 51.701(b)(2) to support their respective proposed changes to this agreed-upon partial definition of "IntraMTA Traffic" in GTC, Section 2.66. In 1996, the FCC explained that "traffic to or from a CMRS network that originates or terminates within the same MTA is subject to transport and termination rates under 47 U.S.C. § 251(b)(5) rather than to interstate and intrastate access charges."[7] The FCC further explained, in the same order, that it was relying on its authority under 47 U.S.C. § 251(g) to preserve the then-current interstate access charge regime, and accordingly sought to subject traffic exchanged between LECs and CMRS providers to the reciprocal compensation regime only insofar as was necessary to ensure that "CMRS providers continue not to pay interstate access charges for traffic that currently [i.e., in 1996] is not subject to such charges, and are assessed such charges for traffic that is currently subject to interstate access charges."[8]

The FCC recently "affirm[ed] that all traffic routed to or from a CMRS provider that, at the beginning of a call, originates and terminates within the same MTA, is subject to reciprocal compensation, without exception."[9] Under the FCC's intercarrier compensation rules adopted in 2011, both access and non-access traffic will eventually transition to a bill-and-keep framework that will replace existing intercarrier compensation obligations.[10] We specifically note, pursuant to 47 C.F.R. §§ 51.701(a) & 701(b)(2), that IntraMTA Traffic between a CMRS provider and an ILEC is classified as "non-access telecommunications traffic," which is subject to "non-access reciprocal compensation" between the carriers - in this case, bill-and-keep.[11] In the *USF/ICC Transformation Order*, the FCC mandated that the bill-and-keep rate take effect immediately, without any transition, for IntraMTA Traffic.[12]

In response to several disputes involving Halo Wireless, which claimed to be offering Common Carrier wireless service to enterprise customers and Enhanced Service Providers, the FCC clarified that: (1) "a call is considered to be originated by a CMRS provider for purposes of the intraMTA rule only if the calling party initiating the call has done so through a CMRS provider" and (2) "the "re-origination" of a call over a wireless link in the middle of the call path does not convert a wireline-originated call into a CMRS-originated call for the purposes of reciprocal compensation."[13] The FCC further clarified that "IntraMTA Traffic is subject to reciprocal compensation regardless of whether the two end carriers are directly connected or exchange traffic indirectly via a transit carrier."[14] Nevertheless, the FCC made very clear that the *USF/ICC Transformation Order* would, during the transition to bill-and-keep, "maintain...distinctions in the compensation available under the reciprocal compensation regime

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[7] *Local Competition First Report and Order*, at para. 1036.
[8] *Local Competition First Report and Order*, at para. 1043.
[9] *Connect America Fund et al.*, WC Docket No. 10-90 et al., *Report and Order and Further Notice of Proposed Rulemaking* (FCC 11-161, rel. Nov. 18, 2011), at para. 979 [hereinafter *USF/ICC Transformation Order*].
[10] *USF/ICC Transformation Order*, at paras. 736-737.
[11] 47 C.F.R. § 51.705(a). *See, also*, 47 U.S.C. § 252(d)(2)(B)(i). 47 C.F.R. §§ 51.701(e), & 51.713.
[12] *USF/ICC Transformation Order*, at paras. 806 & 988; 47 C.F.R. § 51.705(a). By way of contrast, other types of traffic will not be subject to the bill-and-keep compensation methodology until after a transition period established by the FCC. *See, e.g.*, 47 C.F.R. §§ 51.705(c)(4), 51.901(a) & 901(b), 51.907. *See, also*, *USF/ICC Transformation Order*, at para. 801 & Figure 9.
[13] However, price cap ILECs such as AT&T Indiana are subject to a six-year transition to bill-and-keep for terminating access charges, which apply to terminating InterMTA calls. *See, e.g.*, *USF/ICC Transformation Order*, at para. 801 & Figure 9.
[14] *USF/ICC Transformation Order*, at para. 1007.

and compensation owed under the access regime."[15]

As noted above, bill-and-keep pricing is a form of reciprocal compensation for transport and termination of traffic.[16] In the context of Part 51, Subpart H – Reciprocal Compensation for Transport and Termination of Telecommunications Traffic, the FCC defines "termination" as "...the switching of Non-Access Telecommunications Traffic at the terminating Carrier's end office switch, or equivalent facility, and delivery of such traffic to the called party's premises." We find Sprint's proposed modifications to the definition of "IntraMTA Traffic" in GTC 2.66 to be consistent with this principle, and we find in favor of Sprint, subject to the discussion and analysis herein. First, we find it appropriate for GTC 2.66 to include explicit "anti-Halo" restrictions[17] in this definition.

Next, we note that the FCC includes two additional scenarios within the scope of the "IntraMTA rule". The definition of "IntraMTA Traffic" specifically includes traffic that is routed to a point outside the MTA or outside AT&T Indiana's local calling area, and/or traffic that passes through a transiting carrier between Sprint and AT&T Indiana. Therefore, to the extent that inclusion of transiting traffic in the definition of "IntraMTA Traffic" in GTC 2.66 is consistent with the agreed-upon definition of Transit Traffic in GTC 2.121 and is not inconsistent with agreed-upon language in Attachment 02, Section 5, both of these scenarios should be included within the scope of the definition of IntraMTA Traffic in the ICA.[18]

Accordingly, we find in favor of Sprint on Issue 2 and order that GTC, Section 2.66 of the ICA (the definition of IntraMTA Traffic) incorporate the language proposed by Sprint but also incorporate the changes as noted by the Commission above in regards to anti-Halo restrictions and Transit Traffic.

Issue 3: What are the appropriate definitions related to "InterMTA Traffic"?

A. Positions of the Parties.

1. Sprint. Sprint indicated in the Petition that its position on Issue 3 is that AT&T Indiana's definitions ignore federal law to unreasonably impose limitations on traffic that will either result in the inaccurate characterization of traffic or the erroneous assessment of access charges. In contrast, Sprint's definitions are consistent with federal law. Sprint explains that its definitions distinguish between Toll InterMTA Traffic and Non-Toll InterMTA Traffic. Each is subject to a different compensation regime as further addressed in Issues 20 and 21. Sprint indicates that AT&T Indiana's definition fails to recognize any distinction based upon whether there is a "toll" component to the exchanged traffic.

2. AT&T Indiana. AT&T Indiana's position is that its definitions of "InterMTA Traffic" and "Terminating InterMTA Traffic" are accurate and consistent with the FCC's intercarrier compensation rules. Sprint's proposal to include separate definitions for

[15] *USF/ICC Transformation Order*, at para. 1004. (Emphasis added.)
[16] 47 U.S.C. § 252(d)(2)(B)(i). 47 C.F.R. §§ 51.701(e), 51.705(a), & 51.713.
[17] *USF/ICC Transformation Order*, at para. 1006.
[18] *USF/ICC Transformation Order*, at para. 1007. *See, also*, para. 979.

"Toll" and "Non-Toll" InterMTA Traffic should be rejected, because the FCC's intercarrier compensation rules make no distinction between "toll" and "non-toll" InterMTA Traffic.

B. Commission Analysis and Decision. Sprint's witness Mr. Felton testified regarding Issue 3 and in conjunction with Issue 18 that with the exception of transiting traffic, all traffic between Sprint and AT&T Indiana is either IntraMTA or InterMTA Traffic.[19] We note that Sprint has an incentive to define the scope of the IntraMTA very broadly, so it can classify as many calls as possible as being subject to the bill-and-keep pricing methodology. Conversely, AT&T Indiana proposes a very detailed list of exclusions from the IntraMTA Traffic definition in order to preclude as many calls as possible from being subject to the bill-and-keep methodology.

As part of the analysis of Issue 3, we note that there are two related questions underlying the disputes: (1) whether Sprint should be allowed to route InterMTA Traffic directly to AT&T Indiana over Interconnection Trunks in lieu of using an IXC and (2) whether Sprint's InterMTA Traffic should be eligible for bill-and-keep pricing or whether it should be subject to access charges. Sprint seeks direct connection with AT&T Indiana using Interconnection Trunks; AT&T Indiana seeks to require Sprint to route InterMTA Traffic to AT&T Indiana via IXCs. Sprint believes InterMTA Traffic should be treated the same as IntraMTA Traffic, for compensation purposes - i.e., that it should be eligible for bill-and-keep pricing. AT&T Indiana believes all InterMTA Traffic should be subject to access charges.

AT&T Indiana's witness, Ms. Pellerin, indicated the designation of traffic as IntraMTA or InterMTA is not based on whether Sprint assesses its customers a toll charge.[20] Instead, it is based solely on the location of the calling and called parties at the beginning of the call. Since all mobile-to-land InterMTA Traffic is subject to the FCC's access rules, it is inappropriate for the ICA to distinguish between "toll" and "non-toll" InterMTA Traffic.[21]

AT&T Indiana provided testimony indicating there are two ways that Sprint could compensate AT&T Indiana when the Parties exchange LEC to CMRS traffic. Under the FCC's rules, either CMRS traffic is non-access traffic (IntraMTA) subject to bill and-keep under 47 C.F.R. Part 51, Subpart H rules, or it is access traffic (InterMTA) subject to switched access in accordance with the 47 C.F.R. Part 51, Subpart J rules. If traffic is not IntraMTA, it must necessarily be InterMTA. It is important to keep in mind that all telecommunications traffic is now subject to 47 U.S.C. § 251(b)(5), and Subparts H and J of 47 C.F.R. Part 51 are the only applicable FCC rules implementing 47 U.S.C. § 251(b)(5). Accordingly, we find that InterMTA Traffic is subject to switched access charges.

We note that Sprint's proposed language for GTC 2.65.2 definition for Toll InterMTA Traffic is identical to a portion of 47 C.F.R. § 701(a), which states that "compensation for telecommunications traffic exchanged between two telecommunications carriers that is interstate or intrastate exchange access, information access, or exchange services for such access, other than special access, is specified in [47 C.F.R., Part 51,] Subpart J." Sprint also indicates that the amount of Toll InterMTA Traffic is *de minimis*, because "all but a *de minimis* volume of Sprint's

[19] Sprint Direct Testimony (Felton) at 72, lines 1424-1425.
[20] AT&T Indiana Direct Testimony (Pellerin) at page 142-143.
[21] *See, e.g., Local Competition First Report and Order*, at paras. 1036 & 1044.

InterMTA Traffic originates and terminates under nationwide non-toll plans [i.e., plans in which there is no separate toll charge]." Therefore, according to Sprint, such traffic (i.e., the traffic Sprint classifies as Toll InterMTA Traffic) is not "exchange access" subject to any transitional access pricing charges;[22] and should be treated the same as other non-exchange access traffic, i.e. bill-and-keep.[23]

Contrary to Sprint's argument, we find InterMTA Traffic is subject to access charges. The FCC, through both its orders and rules, has clearly established that InterMTA Traffic is not currently subject to bill-and-keep arrangements, absent mutual agreement by the Parties. First, when read together, 47 C.F.R. § 20.11(b) and 47 C.F.R. § 51.701(b)(2) limit the applicability of bill-and-keep arrangements, as defined in 47 C.F.R. § 713, to IntraMTA Traffic. We further note that in 2011, the FCC adopted its *USF/ICC Transformation Order*, which reiterated the goal of convergence and established a transition path for some types of terminating switched access charges to move to bill-and-keep. In the *Local Competition First Report and Order*, the FCC "conclude[d] that 47 U.S.C. § 251(b)(5) reciprocal compensation obligations should apply only to traffic that originates and terminates within a local area."[24]

In light of the historical differences between transport and termination and access charge pricing methodologies, and the FCC's explicit statement that the intent of applying the transport and termination rules it adopted under 47 U.S.C. § 251(b)(5) to LECs and CMRS providers was "so that CMRS providers continue not to pay...access charges for traffic that currently is not subject to such charges and are assessed such charges for traffic that is currently subject to ...access charges,"[25] we find AT&T Indiana's position that InterMTA Traffic is subject to access charges, rather than bill-and-keep pricing, to be correct. The ICA should include a separate definition of Terminating InterMTA Traffic. It is also necessary for the ICA to separately define mobile-to-land Terminating InterMTA Traffic to properly reflect the different compensation treatment for originating and terminating switched access services.

The Commission also notes that the ICA reflects a distinction between originating and terminating InterMTA Traffic, in Attachment 02, Sections 6.5.1 and 6.5.2, respectively. The Commission has been asked to address compensation for originating and terminating InterMTA Traffic separately. Thus, while the Parties disagree strongly about the appropriate language to use within those two sections, AT&T Indiana's proposed language for GTC Section 2.115 is consistent with the ICA structure and the manner in which the Parties have grouped the topics addressed in Issues 19 and 20.

Accordingly, we find in favor of AT&T Indiana on Issue 3 and order that GTC Section 2.65 of the ICA incorporate the language proposed by AT&T Indiana and also incorporate the changes discussed above. In addition, both GTC Section 2.65.1 and Section 2.65.2 should be

[22] Transitional access pricing charges: Price cap ILECs such as AT&T Indiana are subject to a six-year transition to bill-and-keep for terminating access charges, which apply to terminating InterMTA calls. See, e.g., *USF/ICC Transformation Order*, at para. 801 & Figure 9. The transition to bill-and-keep has not begun for originating access charges. *See, e.g., USF/ICC Transformation Order*, at paras. 777, 778, & 1298. *See, generally*, para. 801 & Figure 9.

[23] Sprint Direct Testimony (Felton) at 82, lines 1610-1618.

[24] *Local Competition First Report and Order*, at paras. 1004, 1012 – 1015.

[25] *Local Competition First Report and Order*, para. 1043 & n. 2485. *See, also, USF/ICC Transformation Order*, at para. 990.

omitted. We also find that AT&T Indiana's proposed language for GTC Section 2.115 should be incorporated into the ICA.

Issue 4: What is the appropriate definition of "Switched Access Service"?

A. Positions of the Parties.

1. Sprint. Sprint's language for GTC 2.105 recognizes that Switched Access Service is that category of exchange access service provided to an IXC pursuant to an applicable AT&T Indiana access tariff. AT&T Indiana's definition eliminates the necessary reference to an IXC and uses the vague and undefined term "access." AT&T also seeks to impose its Switched Access Services tariff on Sprint-originated InterMTA Traffic not only for the purpose of compensation, but also to compel the routing of such traffic over "switched access" facilities instead of interconnection facilities.

2. AT&T Indiana. AT&T Indiana's definition of Switched Access Service refers to "access" to AT&T Indiana's network pursuant to the switched access tariff. AT&T Indiana's definition is consistent with the Parties' current ICA, and it complies with the FCC's *Connect America Fund* ("*CAF*") Order, which continues to apply tariffed access charges to InterMTA Traffic. Contrary to Sprint's proposed language, Switched Access Service is not limited to traffic delivered to an IXC.[26] In particular, terminating mobile-to-land InterMTA Traffic is routed and billed as Switched Access Service traffic. AT&T Indiana also indicates that Sprint's definition of Switched Access Service would be unworkable if the Commission adopts AT&T Indiana's position for Issue 17, 19, and/or 20.

B. Commission Analysis and Decision. Upon consideration of the evidence, the Commission finds in favor of AT&T Indiana on Issue 4 for compensation purposes, but not for routing of traffic. Sprint's witness, Mr. Burt, indicated in his direct testimony that Sprint is not an IXC. Furthermore, the Parties have agreed in GTC Section 2.63 that neither Sprint nor AT&T Indiana is an IXC for the purposes of this ICA. If Sprint is not an IXC, then it would be impossible for any InterMTA Traffic between Sprint and AT&T Indiana to be subject to access charges. Sprint has not provided sufficient legal support for such an extreme scenario. Indeed, we note that InterMTA Traffic is specifically excluded from the definition of Non-Access Telecommunications Traffic in the FCC's rules.[27] Therefore, it is important to adopt a definition of "Switched Access Services" for Issue 4 that does not place InterMTA Traffic in the category of traffic subject to bill-and-keep, along with IntraMTA Traffic.

The Commission further notes that AT&T Indiana's access tariffs define IXC differently than the Parties' ICA. AT&T Indiana witness Pellerin quotes the following definition from AT&T Indiana's federal access tariff,[28] which the state tariff mirrors:[29]

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[26] *USF/ICC Transformation Order*, at para. 1007, *aff'd, Direct Commc'ns Cedar Valley, LLC v. FCC*, 753 F.3d 1015 (10th Cir. 2014).

[27] 47 C.F.R. §§51.701(b), 701(b)(1), & 701(b)(2).

[28] AT&T Indiana Direct Testimony (Pellerin) at 132, 133, & n. 20.

[29] *See* Ameritech Operating Companies, Tariff FCC No. 2, Section 2.6, 7th Revised Page 65, Effective Nov. 25, 2004.

> Interexchange Carrier or Interexchange Common Carrier – any individual, partnership, association, joint-stock company, trust, governmental entity or corporation engaged for hire in interstate or foreign communication by wire or radio, between two or more exchanges.

In other words, for the purpose of providing switched access service, any carrier that provides service between exchanges is an interexchange carrier. Accordingly, AT&T Indiana's switched access tariffs apply to all carriers that use their networks to access AT&T Indiana's network for the purpose of originating or terminating an interexchange call, i.e., one that begins and ends in different exchanges, (or MTAs for CMRS carriers); the tariff is not limited to "IXCs" as defined in the Parties' ICA.[30]

The Commission's decision on how to define "Switched Access Services" in Issue 4 will have significant implications for several other issues. According to AT&T Indiana, "Issue 17 addresses the routing of Switched Access Service traffic and Issues 19-20 address the applicability of switched access charges to InterMTA Traffic. Sprint's definition would be unworkable if the Commission adopts AT&T Indiana's language for Issues 17, 19, and/or 20."[31] Consideration of the language for these other issues provides further support for us to adopt AT&T Indiana's definition of "Switched Access Services" in Issue 4. Therefore, we adopt AT&T Indiana's proposed definition of Switched Access Service in GTC, Section 2.105.

Issue 5(a): Should the definition of Interconnection be based on both part 51 and Part 20 of the FCC's rules?

A. Positions of the Parties.

1. Sprint. Sprint indicates that the definition of interconnection should be based on these FCC rules. It explains, as a wireless carrier, Sprint's language recognizes that its interconnection with AT&T Indiana is subject to the requirements of both 47 C.F.R. Part 20 and 47 C.F.R. Part 51. Therefore, it is appropriate to acknowledge in the definition of interconnection the applicability of both sources of Sprint's interconnection rights.

2. AT&T Indiana. AT&T Indiana indicates the definition of interconnection in the ICA should refer solely to the definition of interconnection in 47 C.F.R. § 51.5 because that is the definition the FCC adopted to implement 47 U.S.C. §§ 251 and 252. Sprint's proposal to refer to the broader definition of interconnection or interconnected in 47 C.F.R. § 20.3 should also be rejected.

B. Commission Analysis and Decision. 47 U.S.C. § 251(c)(2) establishes a duty for each ILEC to provide interconnection with the LEC's network. The Commission must decide if the definition of Interconnection should be based on both 47 C.F.R. Part 51 and 47 C.F.R. Part 20. The Parties agree that the definition of Interconnection should be based on 47 C.F.R. Part 51, although they disagree on the scope and interpretation of the definition of Interconnection in 47 C.F.R. § 51.5.

[30] AT&T Indiana Direct Testimony (Pellerin) at 133, lines 3-9.
[31] AT&T Indiana Direct Testimony (Pellerin) at 133-134.

The Commission notes the plain text of 47 C.F.R. § 51.5 contains no end user restrictions, nor does it contain any restrictions on the types of traffic that can be exchanged between the Parties' networks. The FCC's definition of Interconnection in 47 C.F.R. § 51.5 excludes transport and termination of traffic. For non-access traffic and reciprocal compensation, the FCC has defined transport to include delivery of traffic to the ILEC end office switch serving the end user and termination to include delivery of that traffic to the end user. Therefore, it seems illogical and inappropriate for the definition of Interconnection under 47 C.F.R. § 51.5 to include a requirement that Interconnection can only be between Sprint's and AT&T Indiana's end users when delivery of traffic to the AT&T Indiana end office switches serving those end users and, ultimately, delivery to the end users, themselves, is specifically excluded from 47 C.F.R. § 51.5.

We further note the scope of the compensation obligations under 47 C.F.R. § 20.11, which relies on the definitions of Interconnection and Interconnected in 47 C.F.R. § 20.3 and 47 C.F.R. § 51.5 are coextensive, according to the FCC's *USF/ICC Transformation Order* and related rules.[32] However, the FCC has established limitations on the relationship between Part 47 C.F.R 20 and 47 C.F.R Part 51. Specifically, 47 C.F.R. § 20.11, which relies upon 47 C.F.R. § 20.3 definitions of Interconnection and Interconnected, "does not apply to access traffic that, prior to [the *USF/ICC Transformation Order*] was subject to [47 U.S.C. § 251(g)]."[33]

Upon consideration of the evidence, the Commission does not find in favor of either Sprint or AT&T Indiana on Issue 5(a). We find that the agreed-upon definition of "Interconnection" in GTC, Section 2.60, which refers to only 47 C.F.R. § 51.5 (and not to 47 C.F.R. § 20.3) to define "Interconnection," is the most logical and concise definition for purposes of this arbitration. Accordingly, we reject both Parties' proposed changes to GTC, Section 2.60.

Issue 5(b): Should there be a distinction between "Interconnection", as defined, and "interconnection"?

A. Positions of the Parties.

1. Sprint. Concerning Issue 5(b), the Parties disagree over two related portions of the ICA: GTC 2.60 and Attachment 02, Section 1.1. For GTC 2.60, the Parties disagree over whether to distinguish between "Interconnection" (upper case "I") and "interconnection" (lower case "i"). For Attachment 02, Section 1.1, the Parties disagree over how and when to apply that distinction (if at all). Sprint indicates there should be no distinction in the ICA between "Interconnection," as defined, and "interconnection." Sprint explains that per the undisputed (i.e., agreed-upon) language of the first sentence in GTC 2.60, "Interconnection" as defined by 47 C.F.R. § 51.5 means:

> ...the linking of two networks for the mutual exchange of traffic. This term does not include the transport and termination of traffic.

[32] *USF/ICC Transformation Order*, at paras. 978 & 988.
[33] *USF/ICC Transformation Order*, at 990.

Sprint indicates that AT&T Indiana's proposed second sentence for GTC 2.60, which explains that one should interpret the word "interconnection" (spelled with a lower case "i") when it appears in the ICA as referring to the exchange of "Authorized Services traffic", is an unlawful limitation on the traffic that can be exchanged over Interconnection Facilities. "Connection of the parties' networks for the exchange of Authorized Services traffic is Interconnection as defined by 47 C.F.R. § 51.5....AT&T Indiana's second sentence serves only to interject ambiguity and confusion." (DPL, Issue 5(b) – "Sprint Position")

The Parties also disagree over the purpose of Attachment 02 to the proposed ICA, in relationship to Authorized Services traffic, which is defined in GTC 2.12 as "those services that each Party lawfully provides pursuant to Applicable Law" ("Applicable Law" is defined in GTC 2.9). In Attachment 02, Section 1.1, Sprint argues that Attachment 02 "sets forth rates, terms, and conditions under which the Parties shall provide Interconnection [spelled with an upper case "I"] with each other's networks for the transmission of Authorized Services traffic."

2. AT&T Indiana. AT&T Indiana proposes to add a second sentence to GTC 2.60 to distinguish between "Interconnection", as defined in 47 C.F.R. § 51.5 (and spelled with an upper case "I"), and "interconnection" (spelled with a lower case "i"), when those terms are used anywhere in the ICA. AT&T Indiana's proposed definition for "Interconnection" (including the agreed-upon portion of the first sentence, plus new language in the second sentence, which Sprint opposes) reads, as follows

> 2.60 "Interconnection" is as defined at 47 § C.F.R. 51.5. When the word "interconnection" (as opposed to "Interconnection") is used in this Agreement it shall mean the connection of the Parties' networks for the exchange of Authorized Services traffic."

AT&T Indiana explains that its proposed language accommodates terms and conditions in the ICA that address both 47 U.S.C. § 251(c)(2) Interconnection, as defined in 47 C.F.R. § 51.5, and other interconnection arrangements that do not fall within that definition (e.g., indirect interconnection with IXCs) by making clear that capital "I" Interconnection specifically means "Interconnection", as defined by Part 51.5, while lower case "i" interconnection refers to connections for the exchange of all "Authorized Services" traffic. The distinction is relevant because, according to AT&T, only those existing facilities used for "Interconnection" as defined in 47 U.S.C. § 251(c)(2) and 47 C.F.R. § 51.5 (i.e., "Interconnection Facilities") are subject to total element long run incremental cost ("TELRIC") based pricing. Ms. Pellerin indicted facilities connecting the networks that are used for sending other traffic that does not constitute the mutual exchange of traffic between end users of Sprint and AT&T Indiana (i.e., Backhaul traffic, including E911 and IXC traffic) are not eligible for TELRIC-based pricing.

Similarly, for Attachment 02, Section 1.1, AT&T argues that Attachment 02 "sets forth rates, terms, and conditions under which the Parties shall provide interconnection [spelled with a lower case "i"] with each other's networks for the transmission of Authorized Services traffic."

B. Commission Analysis and Decision. Regarding Issue 5(b), we are aware that AT&T Indiana proposes "to attribute different meanings" in the ICA to the lower-cased word "interconnection" and the upper-cased word "Interconnection," within the overall definition of

the term "Interconnection" in GTC, Section 2.60.[34] This distinction is reflected in the disagreement in Attachment 02, Section 1.1 over the purpose of Attachment 02 ("Interconnection Methods") in relation to "Authorized Services" traffic (GTC 2.12).[35] "Authorized Services," in turn, are defined in relation to "Applicable Law" (Attachment 02, Section 2.09). "For reference purposes, we include these three related and intertwined definitions:

> GTC 2.60: "Interconnection" is as defined at 47 C.F.R. § 51.5 and 47 C.F.R 20.3. When the word "interconnection" (as opposed to "Interconnection") is used in this Agreement it shall mean the connection of the Parties' networks for the exchange of Authorized Services traffic.[36]
>
> GTC 2.09: "Applicable Law" means all laws, statutes, common law, regulations, ordinances, codes, rules, orders, permits, and approvals, including those relating to the environment or health and safety, of any Governmental Authority that apply to the Parties or the subject matter of this Agreement."
>
> GTC 2.12: "Authorized Services" means those services that each Party lawfully provides pursuant to Applicable Law."

Ms. Pellerin ties all of these distinctions and exclusions together, in her testimony:

> AT&T Indiana's proposed language accommodates terms and conditions in the ICA that address both section 251(c)(2) Interconnection, as defined in 47 C.F.R § 51.5, and other interconnection arrangements that do not fall within that definition (e.g., indirect interconnection) by making clear that capital "I" Interconnection specifically means as defined by Part 51.5, while lower case "i" interconnection refers to connections for the exchange of all Authorized Services traffic. Thus, Interconnection traffic is a subset of interconnection traffic.[37]

In other words, from AT&T Indiana's perspective, "Interconnection" as defined in 47 C.F.R. 51.5 excludes indirect interconnection, Authorized Services traffic, and transport and termination of traffic; however, "interconnection" includes all three. As discussed below, however, AT&T Indiana mischaracterizes the impact of its proposed modification to GTC 2.60.

The U.S. Supreme Court found that the exclusion of transport and termination of traffic from the definition of the term Interconnection in 47 C.F.R. § 51.5 "cannot possibly mean that no transport can occur across an interconnection facility, as that would conflict with the statutory language. *See* 47 U.S.C. §251(c)(2)...The very reason for interconnection is the 'mutual exchange of traffic.' 47 C.F.R. § 51.5."[38] In addition, we take note of the Parties' agreement

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[34] Sprint Direct Testimony (Burt) at 76, lines 1658-1661.

[35] The distinction between "Interconnection" and "interconnection" also finds a parallel in the disputed definition for the term "Interconnection Facilities" (GTC 2.61).

[36] As is the case throughout the ICA, Sprint's proposed language changes are in bold and italics; AT&T Indiana's proposed changes are bold and underlined.

[37] AT&T Indiana Direct Testimony (Pellerin) at 16, lines 1-7.

[38] *Talk America, Inc., v. Michigan Bell Tel. Co., dba AT&T Michigan* (U.S. S. Ct., No. 10-313, Decided June 9, 2011), at 11 [hereinafter *Talk America*].

under Attachment 02, Section 4.3.4 that Sprint may exchange IntraMTA Traffic over Interconnection Trunks and the FCC's statement that IntraMTA Traffic is subject to reciprocal compensation, regardless of whether the Parties are directly or indirectly connected.[39] It follows from these two, that 47 U.S.C. § 251(c)(2) and 47 C.F.R. § 51.5 interconnection cannot totally exclude either indirect interconnection or transport and termination of traffic. Accordingly, we find that AT&T Indiana's distinction between "Interconnection" and "interconnection" is too rigid. Additional discussion regarding the terms "Authorized Services" traffic and "Applicable Law" appears below.

AT&T Indiana's position distinguishing between "Interconnection" and "interconnection" in the ICA, as well as its position for Issue 5(a) [opposition to defining "Interconnection" in terms of both Issue 47 C.F.R. § 20.3 and 47 C.F.R. § 51.5, primarily to exclude indirect interconnection from the definition of "Interconnection"] appears to be based on one phrase in the Supreme Court's summary in *Talk America.* In particular, one of the FCC's arguments: "...entrance facilities leased under 47 U.S.C. §251(c)(2) can be used only for interconnection"[40] and one single word within that phrase: "only."

As discussed more fully below for Issue 9 and Issue 10, the Commission finds Sprint's interpretation to be more reasonable than AT&T Indiana's interpretation of how the Supreme Court used the word "only." We point to the Court's statement in its *Talk America* decision that "entrance facilities leased under § 251(c)(2) can be used only for interconnection"[41] - i.e., Sprint's view that the Court was distinguishing between "interconnection" and "backhaul," but not between different types of "interconnection."[42]

The Commission agrees with AT&T Indiana's position that the term "Interconnection traffic is a subset of interconnection traffic."[43] However, the situation is much more complicated than AT&T Indiana indicates. On the surface, and based upon Ms. Pellerin's testimony, it may seem that AT&T Indiana has, with its proposal to modify the definition of "Interconnection" in GTC 2.60, described two mutually exclusive types of interconnection, regardless of whether it is spelled with an upper case "I" or a lower case "I." "Interconnection," which is as defined at 47 C.F.R. § 51.5 and "interconnection," which includes traffic that AT&T Indiana argues is excluded from the 47 C.F.R. § 51.5 definition of "Interconnection" – e.g., indirect interconnection, Authorized Services traffic, and transport and termination.

However, upon careful examination of Ms. Pellerin's testimony, it is clear this is not what AT&T Indiana has done. By her own words, Ms. Pellerin confirms that "Interconnection" is actually a subset of "interconnection." Consider that "lower case "i" interconnection refers to connections for the exchange of all Authorized Services traffic."[44] When one of the parties is lawfully providing a particular communications service "pursuant to Applicable Law," that party is providing an Authorized Service.

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[39] *USF/ICC Transformation Order*, at para. 1007.
[40] *Talk America* (S. Ct.), at 13.
[41] *Talk America* (S. Ct.), at 13.
[42] *See, e.g.*, Sprint Direct Testimony (Felton) at 35, lines 648-661 and at 36, lines 662-672.
[43] AT&T Indiana Direct Testimony (Pellerin) at 16, lines 6-7.
[44] AT&T Indiana Direct Testimony (Pellerin) at 16, lines 1-7.

Therefore, if the Commission adopts AT&T Indiana's proposed language for Issue 5, then traffic for which Sprint is entitled, as defined by AT&T, to purchase Interconnection Facilities at TELRIC[45] rates pursuant to 47 C.F.R. § 51.5 would constitute "Authorized Services" traffic and would be covered under ICA references to both "Interconnection" and "interconnection," given that 47 C.F.R. § 51.5 is an "Applicable Law." However, traffic for which Sprint is not entitled, as defined by AT&T Indiana, to purchase Interconnection Facilities at TELRIC rates pursuant to 47 C.F.R. § 51.5 would be covered only by references to "interconnection" (assuming that traffic is associated with an "Authorized Service" service being provided under some other "Applicable Law"). AT&T Indiana has, thus, created an unclear definition through its proposed language for GTC 2.60 and Attachment 02, Section 1.1.

Upon consideration of the evidence and as discussed above, the Commission finds that AT&T Indiana's proposal would, at best, be unreasonable and add ambiguity to the ICA if adopted. For all of the reasons identified and explained above, we find that the word "Interconnection," spelled with an upper-case "I," should be used for Attachment 02, Section 1.1, rather than the word "interconnection." Accordingly, the Commission adopts Sprint's proposed language for Attachment 02, Section 1.1.

Issue 6: What is the appropriate definition of the "Point of Interconnection"?

A. Positions of the Parties.

1. Sprint. Sprint's position is that its proposed modifications to GTC 2.89 are consistent with Commission and FCC precedent. Sprint's proposed language reflects that the Point of Interconnection ("POI") will be the point of physical demarcation, but will not be the point of financial demarcation. AT&T is obligated to share in the cost of Interconnection Facilities, which by definition are the facilities that connect the POI to the Sprint network.

2. AT&T Indiana. AT&T Indiana indicates that its definition accurately describes the POI as the "point on the AT&T Indiana network where the 'Parties' networks meet." AT&T Indiana further argues that each carrier is physically and financially responsible for the transport facilities on its side of the POI. Sprint acknowledges that the POI is a point on AT&T Indiana's network that serves as the physical demarcation point between the networks. Sprint should accept financial responsibility for its own facilities on its side of the POI. AT&T Indiana proposes the word "financially" should be included in the definition of POI. Sprint's opposition to that proposal is based on its position on Issue 24(a) that AT&T Indiana should be required to share in the cost of Interconnection Facilities located on Sprint's side of the POI.

B. Commission Analysis and Decision. Pursuant to 47 U.S.C. § 251(c)(2)(A), an ILEC has the duty to provide, for the facilities and equipment of any requesting telecommunications carrier, interconnection with the LEC's network for the transmission and

[45] "TELRIC" stands for Total Element Long Run Incremental Cost". It is a costing methodology the FCC developed early on in the implementation of Section 252(d)(1) of TA-96. In 47 C.F.R. 51.501(b), the FCC defines an "element" as including "network elements, interconnection, and methods of obtaining interconnection and access to unbundled elements." The costs determined using the TELRIC methodology are used as inputs to setting the final rates ILECs are permitted to charge competitors for elements, including (but not limited to) interconnection obtained pursuant to Section 251(c)(2). *See, e.g.*, 47 C.F.R. §§ 51.501(a) & 501(b), and §§ 51.503(b)(1) & (b)(2).

routing of telephone exchange service and exchange access. "Telephone exchange service" is defined in GTC 2.113 in reference to 47 U.S.C. 153(54), which states:

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

"Exchange access" is defined in GTC 2.49 in reference to 47 U.S.C. 153(20), which states:

> "The term "exchange access" means the offering of access to telephone exchange services or facilities for the purpose of the origination or termination of telephone toll services."

We note when the definition of a POI is considered in conjunction with the definition of Interconnection Facilities (Issue 9), it is clear that the Interconnection Facilities connect Sprint's network to the POI for the transmission and routing of telephone exchange service and/or exchange access service. However, that in no way signifies that ownership of the Interconnection Facilities has somehow changed hands (i.e., from AT&T Indiana to Sprint). We further note that Interconnection Facilities are one of two ways in which ILEC "entrance facilities" can be used. Entrance facilities can also be used for backhauling traffic, which is discussed in Issue 10.[46] Entrance facilities are part of the ILEC's network,[47] as both the U.S. Supreme Court and the FCC have stated.[48] Therefore, the Interconnection Facilities that Sprint obtains from AT&T Indiana are, "by definition," also part of AT&T Indiana's network, as we explain in the discussion of Issue 9.

If the Interconnection Facilities "connect Sprint's network to the POI," then the POI must be connected to the Interconnection Facilities, as Sprint's definition for POI states, and notwithstanding AT&T Indiana's opposition to Sprint's language. AT&T Indiana's more general description of the Point of Interconnection in Issue 6 as merely the point at which the Parties' networks are connected is not clearly defined.

Interconnection Facilities connect the Parties' two networks for the mutual exchange of

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[46] *Talk America*, at 4, 15 (U.S. S. Ct., No. 10-313, Decided June 9, 2011).

[47] AT&T witness Pellerin clarifies that, "In *Talk America*, the Supreme Court's use of the term "entrance facility" is synonymous with the ICA's term Interconnection Facility." AT&T Indiana Direct Testimony (Pellerin), at .55.

[48] In 2011, the U.S. Supreme Court stated in *Talk America* (p. 10), that it "disagree[d] with AT&T's argument that entrance facilities are not a part of incumbent LECs' networks." Then, in the same decision, the Court said, in reference to the FCC's decision, in paras. 136 & 137 of the Triennial Review Remand Order, to revise the definition of dedicated transport (a type of network element) to include entrance facilities: "Given that revised definition, it is perfectly sensible to conclude that entrance facilities are a part of incumbent LECs' networks." *Talk America*, at 11 (U.S. S. Ct., No. 10-313, Decided June 9, 2011). The FCC stated in its *amicus* brief in *Talk America* that it had previously defined an entrance facility as "dedicated transport, defined as an 'incumbent LEC transmission facility],' or a facility that by definition is part of the incumbent's network." (Emphasis added.) *Talk America*, Brief for the United States as *Amicus Curiae* Supporting Petitioners, at 8.

traffic. An Interconnection Facility has two physical ends to it, the one end at the Sprint network (away from the POI) and the other end at the AT&T Indiana network (closest to the POI). The POI merely represents a technically feasible point in AT&T Indiana's network where the Interconnection Facility connects to AT&T Indiana's network.[49] In other words (at least when Sprint obtains Interconnection Facilities from AT&T Indiana, rather than from another carrier or by self-provisioning), Sprint's network will connect with the AT&T Indiana network at the end of a particular Interconnection Facility that is farthest from the POI.

Regarding AT&T Indiana's use of the word "financially" in the definition of a POI to make the POI "the demarcation point between the interconnection facilities that each Party is physically and financially responsible to provide," AT&T Indiana summarizes its position in the DPL, as follows: "...Sprint acknowledges that the POI is a point on AT&T Indiana's network that serves as the physical demarcation point between the networks. Sprint should likewise accept financial responsibility for its own facilities on its side of the POI." Notwithstanding the statements by the Supreme Court and the FCC that the Interconnection Facilities are part of the ILEC's network, as well as agreed-upon language to the same effect, the Commission assumes AT&T Indiana is referring, at least in part, to Interconnection Facilities when it says that Sprint should be willing to accept financial responsibility "for its own facilities on its side of the POI." Regardless, the Commission finds the position taken by Sprint's witness Farrar that "The location of a POI has no bearing on the [P]arties' financial responsibility to share the cost of an Interconnection Facility that connects the [P]arties' networks" to be reasonable.[50]

We note that the Judge Reeves, of the Eastern District of Kentucky, Central Division, ruled against an assertion by certain rural local exchange carriers ("RLECs") that the interconnection point between the defendant RLECs and T-Mobile USA, Inc., or other Plaintiff wireless providers is "not merely a theoretical location; it is the specific demarcation point where there is a linking of the CMRS Provider and RLEC networks for the delivery of traffic pursuant to the terms and conditions of the Agreement."[51] That position is almost identical to AT&T Indiana's position in this case. *See, e.g.*, Pellerin Direct, at 75 and 77. Judge Reeves explained that:

> "This argument would encourage a definition of "interconnection point" that changes as the interconnection point itself changes locations. Such a definition would be nonsensical. The location of the interconnection point within an incumbent carrier's network does not automatically place more significance on that point as a point of billing or any other financial obligation. This distinction holds no significance within the statute, the regulation, or relevant judicial decisions."[52]

Based upon consideration of the evidence and the Parties' arguments, the Commission finds in favor of Sprint on Issue 6. We also find that the specific disputes about financial responsibility for the Interconnection Facilities are more properly addressed in Issue 24, which deals directly with questions regarding potential cost sharing for Interconnection Facilities, rather

[49] Sprint Direct Testimony (Farrar) at 11, lines 231-239. *See, also, Talk America*, at 9.
[50] Sprint Direct Testimony (Farrar) at 14.
[51] *T-Mobile USA, Inc. v. Armstrong*, 2009 U.S. Dist. LEXIS 44525 (E.D. Ky. May 20, 2009).
[52] *Id.*, at 10-11.

than in Issue 6. Accordingly, the Commission adopts Sprint's proposed definition for POI, in GTC, Section 2.89.

Issue 7: Must Sprint obtain AT&T's consent to Sprint's removal of a previously established POI?

A. Positions of the Parties.

1. Sprint. Sprint's position is that it does not need AT&T Indiana's consent. Sprint indicates that its network is constantly evolving, and it is entitled to establish and maintain its network in a manner that it considers to be most technically and economically efficient, which includes the ability to disconnect a previously established POI. As long as Sprint maintains the required POI in a LATA, it cannot be prohibited from removing previously established Interconnection Facilities and any associated POIs. Sprint notes that AT&T Indiana has provided no evidence of specific and significant impacts that would be caused by removal of any specific POIs.

2. AT&T Indiana. AT&T Indiana argues that Sprint needs to obtain AT&T Indiana's consent prior to removal of an established POI. AT&T Indiana explains that the Parties have established multiple POIs in a LATA by mutual agreement and AT&T Indiana has relied upon that agreement. If Sprint wants to eliminate a POI, it should work cooperatively with AT&T Indiana. If the carriers do not agree, they can resolve the issue informally or formally, with recourse to the Commission under the dispute resolution procedures of the ICA.

B. Commission Analysis and Decision. The Commission notes that there are ten LATAs whose boundaries are within Indiana. AT&T Indiana provides local exchange and exchange access service in seven of those LATAs through its network. Currently, the Parties are interconnected at multiple points in at least three of those LATAs.[53] 47 U.S.C. § 251(c)(2)(B) sets out that each ILEC has the duty to provide, for the facilities and equipment of any requesting telecommunications carrier, interconnection with the LEC's network at any technically feasible point within the carrier's network. As explained in para. 1316 of the *USF/ICC Transformation Order*, this provision means that CLECs have the option to interconnect at a single POI per LATA. Because Sprint has this option available to it, AT&T Indiana is precluded from requiring Sprint to obtain its consent to remove previously established POIs in the management and optimization of its network. We also note that the "mutual agreement" between the Parties that AT&T Indiana mentions was a voluntarily negotiated agreement. The purpose of this arbitration proceeding is to ultimately, replace the existing agreement with a newer agreement. Thus, the mere fact the Parties may have agreed to something in the past does not, in and of itself, preclude one of the Parties from proposing alternative language in the course of negotiations or in the instant arbitration proceeding.

Upon consideration of the evidence, we find Sprint's proposed language to be consistent with the FCC's findings in the *USF/ICC Transformation Order,* authorizing competitors to maintain as few as one POI per LATA. Accordingly, we adopt Sprint's language for the ICA Attachment 02, Section 2.2.1.4.

[53] AT&T Indiana's Direct Testimony (Albright) at 35-36.

Issue 8(a): Should Sprint be required to establish additional POIs when its traffic to an AT&T Indiana Tandem Serving Area exceeds one DS3?

A. Positions of the Parties.

1. Sprint. Sprint's position is that it should not be required to establish additional POIs when its traffic to an AT&T Indiana tandem serving area exceeds one digital signal, level 3 ("DS3").[54] Federal law does not require Sprint to install additional POIs based on predetermined traffic thresholds. It is for Sprint to determine when it is most economical to increase the number, or change the locations, of existing POIs. AT&T Indiana's imposition of a threshold to require "additional" POIs undermines Sprint's ability to design and implement a technical and economically efficient network of its own choosing. AT&T Indiana has provided no evidence of specific and significant impacts that would be caused if additional POIs were not mandated.

2. AT&T Indiana. AT&T Indiana argues that Sprint should be required to establish additional POIs when its traffic to an AT&T Indiana tandem serving area exceeds one DS3. It is reasonable for an interconnected carrier to add additional POIs as its volumes grow. This promotes network reliability and furthers the goal of the Act to promote facilities-based competition. Federal law allows the Commission to require more than one POI and the Commission should not relinquish this authority. Significantly, Sprint has already established multiple POIs in Indiana – so there is no practical reason for Sprint's objection. Finally, the one DS3 threshold has been adopted in other states and is reasonable.

B. Commission Analysis and Decision. As discussed for Issue 7, in the *USF/ICC Transformation Order* the FCC reiterated its single POI per LATA (or "one per LATA") policy, which it initially established in the order on SBC's Section 271 application for Texas.[55] We further note the Parties have agreed in Subsection 2.2.1.2 of Attachment 02 to the ICA that Sprint has the right to choose a single POI or multiple POIs. The single POI per LATA rule is important because it gives the requesting carrier control over where and when it chooses to interconnect with an ILEC. We find that while the one POI per LATA policy does not prohibit Sprint from designating more than one POI in a particular LATA, there is nothing in that policy that would require Sprint to maintain more than one POI on AT&T Indiana's network in a particular LATA.

Upon consideration of the evidence and arguments of the Parties, the Commission finds in favor of Sprint on Issue 8(a). Accordingly, we adopt Sprint's position and reject AT&T Indiana's proposed language for ICA Attachment 02 that would require Sprint to establish additional POIs when its traffic to an AT&T Indiana Tandem Serving Area exceeds one DS3. This will result in the deletion of these sections from the ICA in their entirety, as Sprint marked those sections "INTENTIONALLY LEFT BLANK."

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[54] One DS3 circuit or facility has a capacity of 44.736 Megabits/second. A DS3 also has the same capacity as 28 stand-alone DS1 facilities or 28 DS1 logical channels within the DS3. The capacity of a DS1 is 1.544 Mb/s.

[55] *USF/ICC Transformation Order*, at para. 1316 & n. 2378.

Issue 8(b): Should Sprint establish these additional Points of Interconnection within 90 days?

A. Positions of the Parties.

1. Sprint. As discussed in Issue 8(a), Sprint's position is that it should not be required to establish additional POIs when its traffic to an AT&T Indiana tandem serving area exceeds one DS3.

2. AT&T Indiana. AT&T Indiana's position is that Sprint should be required to establish additional POIs when its traffic to an AT&T Indiana tandem serving area exceeds one DS3, within 90 days. The 90-day interval for provisioning facilities is reasonable and consistent with industry practice.

B. Commission Analysis and Decision. The Commission rejected AT&T Indiana's position that would require Sprint to establish additional POIs when its traffic reaches a certain threshold in the findings above regarding Issue 8(a). Therefore, we find in favor of Sprint regarding Issue 8(b) as it is unnecessary to determine a timeframe since Sprint will not be required to establish these additional POIs.

Issue 9: What is the appropriate definition of "Interconnection Facilities"?

A. Positions of the Parties.

1. Sprint. Sprint's position is that under federal precedents and the FCC's implementing rules, Interconnection is the mutual exchange of traffic between the Sprint network and the AT&T Indiana network and is not limited to the exchange between the Parties of "end user to end user" traffic. Interconnection Facilities connect Sprint's switch (or point of presence) with the POI on AT&T Indiana's network. Interconnection Facilities are subject to TELRIC based pricing, regardless of the nature of the traffic exchanged between the Parties' networks over these facilities.

Sprint proposes, through its modifications to the last sentence for GTC 2.61, to track the actual words from 47 C.F.R. § 51.5, which also tracks the similar, agreed-upon language at the beginning of Section 2.61 of the ICA. Sprint argues that the need for this clarity is driven by AT&T Indiana's position that Interconnection in the context of 47 U.S.C. § 251(c)(2) means only the exchange of traffic between the Parties' respective end user customers. Sprint argues that this would be an illegal limitation as it is not contained anywhere within the Act or the FCC's Rules. Sprint notes that AT&T Indiana's position in this regard has been explicitly rejected by the federal courts that have considered such argument. Sprint concludes that the reason AT&T Indiana is asserting the end user limitation argument is to limit its obligation to provide TELRIC-pricing for Interconnection Facilities.

2. AT&T Indiana. AT&T Indiana's position is that the definition of "Interconnection Facilities" should include AT&T Indiana's proposed language making clear that such facilities are to be used exclusively for Interconnection as the FCC defined that term in the context of 47 U.S.C. § 251(c)(2), i.e., 47 C.F.R. § 51.5. AT&T Indiana indicates that its

position is supported by the Supreme Court's decision in *Talk America*. Sprint's proposed definition, with its reference to Sprint's proposed language for Attachment 02, Section 3.8.2, should be rejected because it is intended to allow Sprint to use Interconnection Facilities for both Interconnection and Backhaul traffic in direct contravention of *Talk America*.

B. Commission Analysis and Decision. The Commission is being asked to determine the appropriate definition of Interconnection Facilities in Issue 9. We find it appropriate to view Issue 9, in part, as a companion to Issues 5(a), 5(b), 6, 10, 11(a), 11(b), 11(c), and 11(d). In Issues 5(a) and (b), the Commission must adopt a definition of the term Interconnection. In Issue 6, the Commission must decide, in part, whether to define the term POI as a point on the AT&T Indiana's network where the Interconnection Facilities connect with the AT&T Indiana network. In Issue 10, the Commission must set a definition of the term Backhaul and determine whether Backhaul traffic can be delivered over Interconnection Facilities that are priced using the FCC's TELRIC-pricing methodology. Finally, in Issues 11(a), 11(b), 11(c), and 11(d), the Commission must rule on various questions about whether TELRIC priced Interconnection Facilities can be used for E911 and/or IXC trunks, as well as certain other E911 pricing issues.

There is one preliminary matter related to Interconnection Facilities we must address first, before deciding on a definition. At the outset, we highlight the Supreme Court's observation, in *Talk America*, that "No statute or regulation squarely addresses whether an incumbent LEC must provide access to entrance facilities at cost-based rates as part of its interconnection duty under 47 U.S.C. § 251(c)(2)." The emphasis in both 47 U.S.C. § 251(c)(2) and related FCC interconnection rules is on what the ILEC must do to enable a competitor to interconnect its facilities (i.e., the competitor's facilities) to a technically feasible point on (or in) the ILEC's network, rather than any specific requirements for the ILEC to permit interconnection with its (the ILEC's) entrance facilities. The Court then, after quoting the statutory language in 47 U.S.C. § 251(c)(2), reiterates that "Nothing in that language [i.e., nothing in Section 251(c)(2)] expressly addresses entrance facilities. Nor does any regulation do so. See Brief for United States as *Amicus Curiae* 22, n. 6"[56] Therefore, any attempt to prove that 47 U.S.C. § 251(d)(2) or 47 C.F.R. § 51.5 compels one and only one particular definition of "Interconnection Facilities" cannot be supported by federal law. Nevertheless, in *Talk America*, the Court, notwithstanding the absence of an explicit statutory or regulatory requirement for ILECs to allow interconnection with their existing entrance facilities, unambiguously held that AT&T Michigan (and, by extension, AT&T Indiana) must do just that.

Specifically regarding the definition of the term "Interconnection Facilities", we note that Sprint seeks to categorize the facilities to mean the entrance facilities used only for the purpose of linking the Parties' two networks for the mutual exchange of traffic and opposes AT&T Indiana's proposed language that would define the facilities to mean the entrance facilities used exclusively for Interconnection as defined at 47 C.F.R. § 51.5. In explaining its position for Issue 9, Sprint claims the central reason that AT&T Indiana is asserting the end user limitation argument is to limit its obligation to provide TELRIC-pricing for Interconnection Facilities (*See* Issue 11). The Parties disagree about what types of traffic Sprint is legally permitted to deliver over Interconnection Facilities. We find the fact that a certain type of traffic is exchanged over a

[56] *Talk America*, 564 U.S.___ (2011), slip op., *Opinion*, II.A., at 6 & 7; 131 S. Ct. 2254, 2260 (Section II.A.).

particular type of interconnection trunk or facility is not always dispositive of which legal or regulatory pricing requirements apply to that traffic. In other words, granting 47 U.S.C. § 251(c)(2) interconnection rights to Sprint for a particular type of traffic, while it may allow Sprint to obtain use of the Interconnection Facilities, themselves, at TELRIC-based prices, does not alter the obligations Sprint may also have to pay access charges for AT&T Indiana to transport and terminate that traffic over those facilities.

Based upon the arguments of the Parties and the evidence presented, the Commission adopts Sprint's proposed definition, subject to the following discussion and analysis. We find Sprint's proposal to use the phrase "only for the purpose of linking the Parties' two networks for the mutual exchange of traffic" to be consistent with 47 C.F.R. § 51.5. However, we reject Sprint's proposal to include a reference to Attachment 2, section 3.8.2, which is the subject of Issue 22, in the definition for "Interconnection Facilities."

Issue 10: What is the appropriate definition of "Backhaul"?

A. Positions of the Parties.

1. Sprint. Sprint's position is that "Backhaul" is distinguished from "Interconnection," and Interconnection is the mutual exchange of traffic between two parties' networks, i.e. switches. *See* FCC Rule 47 C.F.R § 51.5. Therefore, Backhaul is the use of a transmission facility for calls not involving AT&T Indiana switching on either end of such facility.

Sprint argues that AT&T Indiana's proposed definition lacks specificity about what constitutes the mutual exchange of traffic. AT&T takes the position that "Interconnection" is limited to IntraMTA Traffic exchanged between the Parties' respective end users (rather than all switched traffic exchanged between the Parties' networks). AT&T Indiana interprets its Backhaul definition to classify facilities that carry AT&T-switched non-end user traffic as Backhaul facilities subject to access pricing rather than Interconnection Facilities subject to TELRIC-pricing. Sprint concludes that AT&T Indiana's end user limitation argument is contrary to federal court and Commission precedent.

2. AT&T Indiana. AT&T Indiana's position is that its proposed definition of "Backhaul" correctly tracks the FCC's description of "backhauling," as discussed in the FCC's *amicus* brief to the Supreme Court in *Talk America*. Sprint's definition is unduly narrow and is based on its position that all calls to and from Sprint that happen to touch an AT&T Indiana switch along the way represent the "mutual exchange of traffic" within the meaning of 47 C.F.R. § 51.5, and as such are eligible for transmission over Interconnection Facilities purchased from AT&T Indiana at TELRIC-based prices, even when the calls are not exchanged with AT&T Indiana's end users. AT&T Indiana argues that Sprint's position is contrary to the FCC's own interpretation of its rules and court decisions (including *Talk America*), all of which demonstrate that (i) Interconnection, as defined in 47 C.F.R. § 51.5, is limited to the exchange of traffic between end users of the interconnected carriers; and (ii) backhaul constitutes a competitive local exchange carrier's ("CLEC") or CMRS provider's use of entrance facilities for any purpose other than Interconnection as defined in 47 C.F.R. § 51.5.

B. Commission Analysis and Decision. The definition of Backhaul is important because Interconnection Facilities are available at TELRIC-pricing rates, while Backhaul facilities are not. The Supreme Court noted in *Talk America* that, until the FCC eliminated unbundled access to entrance facilities, "a competitive LEC typically would elect to lease a cost-priced entrance facility under 47 U.S.C. § 251(c)(3) since entrance facilities leased under 47 U.S.C.§ 251(c)(3) could be used for any purpose—*i.e.*, both interconnection and backhauling—but entrance facilities leased under 47 U.S.C. § 251(c)(2) can be used only for interconnection."[57] 47 C.F.R. 51.319(d)(2)(i) states, in regard to entrance facilities, that an incumbent LEC is not obligated to provide a requesting carrier with unbundled access to dedicated transport that does not connect a pair of incumbent LEC wire centers.

We note that the references to unbundled access to entrance facilities and to 47 U.S.C. § 251(c)(3) are extremely critical in the context of this case. The statutory costing, pricing, and compensation language applicable to 47 U.S.C. § 251(c)(2) Interconnection and 47 U.S.C. § 251(c)(3) unbundled network access is the same: 47 U.S.C. § 252(d)(1). The FCC has implemented 47 U.S.C. § 252(d)(1) through developing and applying TELRIC methodology. ILECs are only required to provide competitors access to entrance facilities at TELRIC-based prices when those entrance facilities are used for 47 U.S.C. § 251(c)(2) purposes; they are not required to sell or lease entrance facilities as Section 251(c)(3) unbundled network elements ("UNEs"), at TELRIC-based prices, when those UNEs entrance facilities are used for backhauling of traffic. Consistent with Sprint's proposal we find that including a definition of Backhaul in the ICA is necessary because it allows for those facilities that are subject to TELRIC-pricing to be differentiated from those that are not.

Based upon the discussion above, we find that AT&T Indiana's proposed definition of Backhaul is too narrow. However, we find Sprint's proposal to effectively define Backhaul as all traffic that does not involve the exchange of traffic between the Parties' switches networks is too broad. Accordingly, we adopt the definition of Backhaul to mean the use of an entrance facility by Sprint for a purpose other than Interconnection as defined in 47 C.F.R. § 51.5.

Issue 11(a): Should the ICA limit the use of Interconnection Facilities available at TELRIC-based prices to those facilities used only for 47 U.S.C. § 251(c)(2) interconnection?

A. Positions of the Parties.

1. Sprint. Sprint's position is that the ICA should limit the use of Interconnection Facilities available at TELRIC-based prices to those facilities used only for 47 U.S.C. § 251(c)(2) interconnection, provided that 1) the Commission rejects AT&T Indiana's proposed end-user limitation and 2) the ICA recognizes Sprint's right to deliver "other AT&T switched traffic" along with its telephone exchange and exchange access service traffic. Sprint's phrase "and other AT&T-switched traffic" is proper because the FCC has authorized an interconnecting carrier to the use a 47 U.S.C. § 251(c)(2) Interconnection Facility for such other traffic in the *Local Competition First Report and Order*, 11 FCC Rcd at 15598-99, ¶¶ 190-91, 47 C.F.R § 51.305(b), and the *CAF Order* at ¶ 972.

[57] *Talk America* at 2264-2265.

2. **AT&T Indiana.** AT&T Indiana's position is that the ICA should limit the use of Interconnection Facilities available at TELRIC-based prices to those facilities used only for 47 U.S.C. § 251(c)(2) interconnection. In *Talk America*, the Supreme Court stated that "entrance facilities leased under §251(c)(2) can be used only for interconnection."[58] Sprint's proposed language for Attachment 02, Section 3.5.2 of the ICA, including its reference to its proposed language for Attachment 02, Section 3.8.2, should be rejected because it is intended to allow Sprint to use Interconnection Facilities for both Interconnection and Backhaul traffic in direct contravention of *Talk America*.

AT&T Indiana argues that Sprint's proposal to add language that would permit it to use Interconnection Facilities for the transmission of "other AT&T-switched traffic" is also improper because it is intended to enable Sprint to use Interconnection Facilities for purposes other than the mutual exchange of traffic between end users of Sprint and AT&T Indiana.

B. Commission Analysis and Decision. In regard to Issue 11(a), we note that Sprint proposes two specific changes to the agreed-upon language for Attachment 02, Section 3.5.2. First, Sprint proposes the requirement for AT&T Indiana to provide Sprint existing Interconnection Facilities when used only for Interconnection purposes within the meaning of 47 U.S.C. § 251(c)(2), subject to Attachment 02, Section 3.8.2. Section 3.8.2, together with Section 3.8.2.1, establishes Sprint's pro rata pricing methodology that is addressed in Issue 22.

Next, Sprint proposes to expand the list of traffic types that Sprint could transmit and route for Interconnection purposes within the meaning of 47 U.S.C. § 251(c)(2) to include other AT&T Indiana-switched traffic, in addition to the agreed-upon Telephone Exchange Service and/or Exchange Access Service. Sprint's proposed change to Attachment 02, Section 3.5.2 is potentially inconsistent with both the *Local Competition First Report and Order* and the *USF/ICC Transformation Order*, given that both orders require a competitor to exchange at least some telephone exchange service and/or exchange access service over a given interconnection facility before being allowed to exchange other types of traffic over that facility.[59] Furthermore, an ILEC competitor may not use 47 U.S.C. § 251(c)(2) interconnection trunks solely for "interconnection of interstate traffic only – for the purpose of providing interstate services only."[60] More broadly, Sprint has not explained why or how the exchange of traffic under 47 U.S.C. § 251(c)(2) is automatically synonymous with traffic that is switched by both Parties.

Upon consideration of the evidence and arguments regarding Issue 11(a), the Commission adopts Sprint's proposed language for Attachment 02, Section 3.5.2, with the exception of the reference to Attachment 02, Sections 3.8.2 and 3.8.2.1, and with the understanding that the reference to "other AT&T switched traffic" excludes E911 traffic and also excludes any scenarios in which Sprint is not carrying, transmitting, or exchanging with AT&T Indiana at least "some" telephone exchange and/or exchange access traffic on Interconnection Facilities Sprint purchases or leases from AT&T Indiana at TELRIC-based prices. In addition, we find that the language for Attachment 02, Section 3.5.3 should read, as

[58] 131 S. Ct. at 2264.
[59] *Local Competition First Report and Order*, at paras. 190 & 191; *USF/ICC Transformation Order*, at para. 972.
[60] *Local Competition First Report and Order*, at para. 191.

follows:

> Sprint may not purchase Interconnection Facilities pursuant to this Agreement for any other purpose, including, without limitation (i) as unbundled network elements under Section 251(c)(3) of the Act, (ii) for Backhaul, (iii) E911, or (iv) Equal Access Trunk Groups if and to the extent that Sprint seeks to purchase Interconnection Facilities for use as Equal Access Trunk Groups solely for the purpose of exchanging, routing, or delivering IXC traffic and/or solely for interconnection of interstate traffic only – for the purpose of providing interstate services only. Sprint may purchase Interconnection Facilities for use as Equal Access Trunk Groups, so long as it combines the IXC traffic on those Equal Access Trunk Groups with at least "some" telephone exchange service and/or exchange access traffic.

Issue 11(b): Should the ICA provide that Interconnection Facilities purchased at TELRIC-based prices may/may not be used for E911 Trunks?

A. Positions of the Parties.

1. Sprint. Sprint's position is that the ICA should allow E911 trunks to be established on Interconnection Facilities. E911 traffic is telephone exchange service traffic originated by a Sprint customer that AT&T Indiana switches via a selective router to AT&T Indiana's public safety answering point ("PSAP") customer. Therefore, the ICA should provide that E911 Trunks can ride on Interconnection Facilities purchased at TELRIC-based prices.

2. AT&T Indiana. AT&T Indiana explains the ICA should provide that Interconnection Facilities purchased at TELRIC-based prices may not be used for E911 Trunks because such trunks are used by Sprint for the sole purpose of making a service (E911) available to its own customers and are not used for the mutual exchange of traffic between end users of Sprint and AT&T Indiana. AT&T Indiana indicates that E911 Trunks ride facilities that connect Sprint to the Selective Router that services the PSAP. By agreed definition, however, Interconnection Facilities are facilities that connect Sprint's network with AT&T Indiana's network "to the POI" (GTC Section 2.61) and not to the Selective Router.

B. Commission Analysis and Decision. Sprint indicates in its evidence that E911 traffic is telephone exchange service traffic originated by a Sprint customer that AT&T Indiana switches via a selective router to AT&T Indiana's PSAP customer. Sprint also indicates that the ability to make a 911 call is clearly part and parcel of any carrier's telephone exchange service and therefore, there is no reason that Sprint should not be allowed to establish segregated E911 Trunks over Interconnection Facilities and pay the cost-based rates for such facilities. It is inconceivable that a carrier would provide a telephone exchange service that does not include the ability to reach emergency service. Furthermore, while E911 service may be "part and parcel" of telephone exchange service, it is not, all by itself, synonymous with telephone exchange service. We note that 47 U.S.C. § 153(54)(B) defines telephone exchange service as service provided through a system of switches, transmission equipment, or other facilities (or combination thereof) by which a subscriber can originate and terminate a telecommunications service. This definition requires a two-way flow of traffic. E911 traffic is one-way traffic going from the end

user customer or subscriber (in this case, the Sprint wireless subscriber) to the E911 PSAP. Sprint has not identified any E911 traffic that would be going in the other direction (i.e., AT&T Indiana E911 traffic that would terminate at the Sprint subscriber).

The Commission notes that in Attachment 05, Section 4.2.1, the Parties have agreed that E911 traffic will be routed to the Meet Point, rather than the POI. AT&T Indiana's witness Pellerin points out in her testimony that Interconnection Facilities connect at the POI, not the Meet Point at a Selective Router. Therefore, it is not possible for Sprint to satisfy its obligation to provide for E911 transport facilities that go to that Meet Point by using Interconnection Facilities. Ms. Pellerin's observation is important, given that the agreed-upon language in GTC, Section 2.6.1 for the definition of "Interconnection Facilities" (Issue 9) indicates Interconnection Facilities connect Sprint's network to the POI.

Based upon the evidence and arguments of the Parties, we find in favor of AT&T Indiana on Issue 11(b). Allowing Sprint to deliver E911 traffic over Interconnection Facilities would not represent the mutual exchange of traffic, as required by 47 C.F.R. § 51.5. We further find Sprint's proposal that would allow it to use Interconnection Facilities purchased at TELRIC prices for E911 Trunks to be improper. Accordingly, we reject Sprint's proposed contract language for Attachment 02, Section 3.10.2 and adopt AT&T Indiana's proposed language for Attachment 05, Section 3.3.2 and Section 4.2.1.

Issue 11(c): Should the ICA provide that E911 Trunks are subject to the non-recurring and monthly recurring charges, as identified on the Pricing Sheet?

A. Positions of the Parties.

1. Sprint. Sprint's position is that E911 Trunks should not be subject to the non-recurring and monthly recurring charges. E911 Trunks are a specific type of Interconnection Trunks and should be subject to the same treatment as other Interconnection Trunks. Sprint notes that AT&T Indiana has agreed that there is no charge for Interconnection Trunks.

2. AT&T Indiana. AT&T Indiana's position is that E911 Trunks should be subject to the non-recurring and monthly recurring charges. AT&T Indiana provides Sprint with access to E911 Trunks for the sole benefit of Sprint's customers. Sprint is therefore responsible for the E911 Trunk charges as set forth in the Pricing Sheets.

B. Commission Analysis and Decision. The Commission notes Sprint's position is that E911 Trunks are a type of Interconnection Trunk and should be subject to the same treatment as other Interconnection Trunks and AT&T Indiana has agreed that there is no charge for Interconnection Trunks. Therefore, Sprint did not propose any language for Section 4.3.1.2 regarding pricing of E911 Trunks. As noted above, AT&T Indiana does not believe that Interconnection Facilities purchased at TELRIC-based prices should be used for E911 Trunks. AT&T Indiana proposes to treat the E911 Trunks differently than Interconnection Trunks for pricing purposes. AT&T Indiana's proposed language for Attachment 02, Section 4.3.1.2 states that E911 Trunks are subject to the non-recurring and monthly recurring charges.

Consistent with our findings on Issue 11(b) and based upon the evidence and arguments of the Parties, we find in favor of AT&T Indiana on Issue 11(c). Sprint's proposal that would allow it to use Interconnection Facilities purchased at TELRIC prices for E911 Trunks would be improper. Accordingly, we adopt AT&T Indiana's proposed language for Attachment 02, Section 4.3.1.2.

Issue 11(d): Should the ICA provide that Interconnection Facilities purchased at TELRIC-based prices may/may not be used for Equal Access trunks?

A. Positions of the Parties.

1. Sprint. Sprint's position is that the ICA should allow Equal Access Trunks, if any, to be established on Interconnection Facilities. Equal access traffic is either telephone exchange or exchange access service traffic exchanged between Sprint and an AT&T Indiana IXC customer. As between the Sprint network and AT&T Indiana, the call is carried on a trunk to/from the AT&T Indiana switch that exchanges the call with the AT&T Indiana IXC customer. Therefore, to the extent an Equal Access Trunk is even used, the ICA should provide that such trunks can ride on Interconnection Facilities purchased at TELRIC-based prices.

2. AT&T Indiana. AT&T Indiana's position is the ICA should provide that TELRIC-priced Interconnection Facilities may not be used for Equal Access Trunks because such trunks are used by Sprint to transmit and route traffic between its end users and IXCs and are not used for the mutual exchange of traffic between customers of Sprint and AT&T Indiana. IXC traffic is properly treated as switched access traffic and should be transmitted over Switched Access facilities. AT&T Indiana argues that allowing Sprint to send and receive such traffic over Interconnection Facilities would improperly enable Sprint to avoid payment of a portion of applicable switched access charges.

B. Commission Analysis and Decision. Sprint argues that it should be allowed to use Interconnection Facilities for Equal Access Trunks, provided that the Interconnection Trunks are also carrying at least some telephone exchange and/or exchange access traffic, consistent with para. 191 of the FCC's *Local Competition First Report and Order*, and para. 972 of the *USF/ICC Transformation Order*.

We find in favor of Sprint on Issue 11(d) in that the ICA should allow Equal Access Trunks, if any, to be established on Interconnection Facilities, unless Sprint seeks to use Equal Access Trunks provided by AT&T Indiana solely for the purpose of originating or terminating its interexchange traffic on AT&T Indiana's network and not for the purpose of providing to others telephone exchange service, exchange access service, or both. That would be inconsistent with the language in para. 972 of the *USF/ICC Transformation Order* and would violate the provisions of 47 C.F.R. § 51.305(b). Consistent with the Commission's findings above regarding Issue 11(a), we find the ICA should include the updated language for Attachment 02, Section 3.5.3.

Issue 12(a): Should the ICA provide that Sprint is solely responsible, including financially, for the facilities that carry E911 Trunk Groups?

A. Positions of the Parties.

1. Sprint. Sprint's position is that it should not be solely responsible for the facilities that carry E911 Trunk Groups. Sprint indicates that Issue 11 above directly addresses the applicability of TELRIC-pricing for the Interconnection Facilities used to carry E911 Trunks. E911 Trunks carry traffic to AT&T Indiana's PSAP customers. The PSAP depends on the ability to receive local exchange service calls to perform its essential functions. The costs of Interconnection Facilities are to be equally shared between the Parties because both Parties' customers benefit from a 911 call. Based upon the principle of the *CAF Order* that a given call benefits both Parties, Sprint does not agree to be solely financially responsible for facilities that carry E911 Trunk Groups. Sprint did not propose any ICA changes for Issue 12(a).

2. AT&T Indiana. AT&T Indiana's position is that Sprint should be solely responsible for the facilities that carry E911 Trunk Groups. AT&T Indiana argues that E911 Trunk Groups are one-way trunk groups used by Sprint to carry E911 traffic from its end user customers to the PSAP. The facilities used to carry those one-way trunk groups solely benefit Sprint's own customers. AT&T Indiana contends that Sprint should be solely responsible, including financially, for the facilities that carry those trunk groups. AT&T Indiana's position for Issue 12(a) is reflected in proposed changes to Attachment 02, Section 3.4.

B. Commission Analysis and Decision. AT&T Indiana evidence indicates that it will provide Sprint with E911 Trunks for the sole benefit of Sprint and Sprint's end users calling 911. Consistent with the *Local Competition First Report and Order* at paras. 190 and 191, the *USF/ICC Transformation Order* at para. 972, and the Commission's findings above regarding Issue 11(a) and Issue 11(b), we find in favor of AT&T Indiana on Issue 12(a). Accordingly, Sprint should be solely responsible, including financially, for the facilities used to carry E911 Trunk Groups.

Issue 12(b): Should the ICA provide that Sprint is solely responsible, including financially, for the facilities that carry Equal Access Trunk Groups?

A. Positions of the Parties.

1. Sprint. Sprint's position is that it should not be solely responsible for the facilities that carry Equal Access Trunk Groups. Sprint indicates that Issue 11 above directly addresses the applicability of pricing for the Interconnection Facilities used to carry Equal Access Trunks, if any. IXCs are AT&T Indiana's customers. Sprint does not need separate Equal Access Trunks/facilities. AT&T Indiana's IXC customer traffic is exchange access traffic that can be carried over Interconnection Facilities. AT&T Indiana is attempting to force Sprint to create a separate network to receive IXC traffic when such traffic should simply be delivered by AT&T Indiana to Sprint over Interconnection Facilities. The costs of Interconnection Facilities are to be equally shared between the Parties. Sprint does not agree to be solely financially responsible for facilities that carry Equal Access Trunk Groups. AT&T Indiana is compensated by its IXC customer to deliver IXC traffic to Sprint. The compensation structure used by AT&T

Indiana for AT&T's use of the Interconnection Facilities to serve such IXC customer is between AT&T Indiana and its IXC customer. Sprint did not propose any ICA changes for Issue 12(b).

2. AT&T Indiana. AT&T Indiana's position is that Sprint should be solely responsible for the facilities that carry Equal Access Trunk Groups. AT&T Indiana explains that Equal Access Trunks Groups are used by Sprint to exchange traffic with IXCs. The facilities used to carry those trunks benefit only Sprint by enabling it to receive traffic from IXCs, while avoiding the cost of establishing direct connections with those IXCs. AT&T Indiana is not compensated by the IXC for the cost of the facilities between Sprint and AT&T Indiana that are used by Sprint to exchange traffic with IXCs. As with Issue 12(a), AT&T Indiana's position for Issue 12(b) is reflected in proposed changes to Attachment 02, Section 3.4.

B. Commission Analysis and Decision. Based upon the evidence and arguments of the Parties, the Commissions finds in favor of Sprint on Issue 12(b). Accordingly, the Parties should share responsibility (both technical and financial) for the provision of Equal Access Trunk Groups. This is consistent with our findings for Issues 11(a) and 11(d). The specific methodology for calculating how costs for Equal Access Trunk Groups are to be shared should be consistent with the resolution of Issue 24(b).

We adopt AT&T Indiana's proposed language for Attachment 02, Section 3.4, with certain modifications, to reflect the Commission's decisions for both Issue 12(a) and 12(b). The complete (modified) text for Attachment 02, Section 3.4, reads, as follows:

> Sprint is solely responsible, including financially, for the facilities that carry E911 Trunk Groups. The Parties will share responsibility, including financial responsibility, for the facilities that carry Equal Access Trunk Groups, consistent with the resolution of Issue 24. As an interim measure, costs for Equal Access Trunk Groups shall be shared on a 50/50 basis, unless and until the Parties negotiate, and/or the Commission approves, an alternative sharing methodology and percentage.

Issue 13(a): Should the ICA permit AT&T Indiana to obtain an independent audit of Sprint's use of Interconnection Facilities?

A. Positions of the Parties.

1. Sprint. Sprint's position is that AT&T Indiana's "Interconnection Facility Audit" language is neither appropriate nor necessary. AT&T Indiana can internally audit, and will know from the beginning and end points of any given facility, whether such facility is being used for Interconnection or not, i.e., whether it is being switched by AT&T Indiana or not.

2. AT&T Indiana. AT&T Indiana's position is that it should be allowed to request an independent audit of Interconnection Facilities to ensure that Sprint's use of those facilities complies with the requirements of the ICA, including the requirement that such facilities be used solely for Interconnection as defined in 47 C.F.R. § 51.5. AT&T Indiana indicates that it will not always be able to tell from its own records that Sprint is not compliant. It is necessary and reasonable to allow AT&T Indiana to request an independent audit.

B. Commission Analysis and Decision. AT&T Indiana argues that it should be entitled to request an independent audit of Sprint's use of Interconnection Facilities provided at TELRIC-based rates to ensure that those facilities are being used solely for 47 U.S.C. § 251(c)(2) Interconnection and not for any other purpose. Because TELRIC-priced Interconnection Facilities are less costly than special access rates, Sprint would not have an incentive to ensure the proper use of the Interconnection Facilities absent AT&T Indiana's audit provisions. Sprint argues that the proposed audit provisions are overly burdensome and unnecessary. The Commission finds that there will likely be uses of Interconnection Facilities that will be prohibited under the ICA and that audit provisions are a reasonable means of monitoring compliance with the ICA. Furthermore, as we discuss below for Issue 22, the Commission finds Sprint's position that it would not even be possible for it to carry Interconnection and Backhaul traffic over the same Interconnection Facilities to be unreasonable and unsupported.[61] Sprint appears to be seeking authority to do just that, notwithstanding Sprint witness Farrar's claims to the contrary.[62] The Supreme Court's prohibition of this practice in *Talk America* further refutes Sprint's claims that an audit of its usage of the Interconnection Facilities it obtains from AT&T Indiana is unnecessary.

Accordingly, we adopt AT&T Indiana's proposed language concerning an independent audit for Attachment 02, Section 3.5.5, Section 3.5.5.1, Section 3.5.5.2, Section 3.5.5.3, and Section 3.5.5.4, subject to the following modification to Section 3.5.5.1. AT&T Indiana's proposed language for Section 3.5.5.1 states, in part, that, "AT&T Indiana may audit Sprint's compliance with the use of Interconnection Facilities for interconnection purposes by obtaining and paying for an independent auditor to audit...." We note the use of a lower case "i" in the phrase "...for interconnection purposes." While we understand the need to differentiate between the use of Interconnection Facilities "for interconnection purposes" and the use of those facilities for backhaul purposes, we want to emphasize that approval of AT&T Indiana's proposed Section 3.5.5.1 language (including the reference to "interconnection" spelled with a lower case i) does not in any way negate our rejection, for Issue 5, of AT&T Indiana's bifurcated "Interconnection"/"interconnection" definition in GTC 2.60. We reject Sprint's proposed language, concerning independent audits, for Attachment 02, Section 3.5.5.7.

Issue 13(b): If audit provisions are included in the ICA and an audit demonstrates Sprint is not compliant, how should the ICA address Sprint's non-compliance?

A. Positions of the Parties.

1. Sprint. Sprint's indicates that its proposed language at Section 3.5.5.7 of the ICA recognizes that if AT&T Indiana notifies Sprint of an alleged non-compliance and Sprint disagrees, the matter will be resolved via the Dispute Resolution procedures under the Agreement.

[61] Sprint Direct Testimony (Felton) at 56, Lines 1101-1102.
[62] Sprint Direct Testimony (Farrar) at 31-47.

Sprint indicates that it believes AT&T Indiana's proposed language is unreasonably punitive because it would require that Sprint not only make AT&T Indiana whole for any misuse, but also require Sprint to convert facilities to access pricing even if a problem had been remedied.

2. AT&T Indiana. AT&T Indiana's proposed audit-related remedy language provides that if an independent auditor finds Sprint out of compliance in its use of Interconnection Facilities, Sprint would be obligated to (i) remedy the non-compliance; and (ii) make AT&T Indiana whole through a billing adjustment or by placing disputed amounts in escrow. Sprint should not be permitted to sustain non-compliance by failing to take the necessary remedial action. Nor should Sprint benefit financially from its non-compliance. If Sprint disagrees with the auditor's report, Sprint may file a complaint with the Commission.

B. Commission Analysis and Decision. AT&T Indiana objects to using the dispute resolution provisions of the GTC, as Sprint proposes in Attachment 02, Section 3.5.5.7. AT&T Indiana indicates the 60-day negotiating period required under the GTC language to resolve a dispute is too long. AT&T Indiana indicates that two weeks of intense negotiations should be long enough to know if the Parties can resolve their differences. If the negotiations prove to be unsuccessful, then Sprint can file a complaint with the Commission. AT&T Indiana argues that Sprint should not be permitted to prolong its non-compliance by simply claiming it disagrees with the auditor's report.

Considering the Commission's findings on Issue 5 and Issue 10 above, the scope of an audit should be significantly diminished from what AT&T Indiana originally envisioned because AT&T Indiana's proposed definition of "Interconnection" (Issue 5) was too narrow and its proposed definition of "Backhaul" was too broad (Issue 10). In addition, many of the restrictions that AT&T Indiana proposed to place on the types of traffic that may be exchanged or delivered over Interconnection Facilities are in conflict with this Order. Nevertheless, we disagree with Sprint's position that AT&T Indiana's "Interconnection Facility Audit" language is neither appropriate nor necessary, at all. Given that some type of audit is both necessary and appropriate, we find AT&T Indiana's proposed audit-related remedy language for Issue 13(b), including the time frame, to be reasonable. Accordingly, we adopt AT&T Indiana's proposed language concerning how the ICA should address non-compliance following an independent audit for Attachment 02, Section 3.5.5.5, Section 3.5.5.5.1, Section 3.5.5.5.2, Section 3.5.5.6, Section 3.5.5.7, and Section 3.5.5.8.

We must also address an assertion by AT&T Indiana witness Pellerin that the United States Supreme Court has declared TELRIC-based rates to be "near confiscatory." Ms. Pellerin links her assertion to AT&T Indiana's opposition to the use of the Dispute Resolution process (in the context of Issue 13) and to the prices that AT&T Indiana would be legally permitted to charge Sprint for Interconnection Facilities.

> The standard Dispute Resolutions provisions of the ICA require at least a 60-day period of informal dispute resolution discussions before a party can invoke formal dispute resolution and engage the assistance of the Commission (GT&C, section 12.6.1). This is too long a period for dispute resolution when an independent auditor has already concluded that Sprint has not complied with the ICA's terms

limiting Sprint's use of the Interconnection Facilities. It is important to keep in mind that these are facilities priced at TELRIC-based rates, which the Supreme Court has described as being near confiscatory. Sprint would thus have an incentive to "drag its feet" when it comes to resolving any dispute regarding its use of Interconnection Facilities. Sprint should not be permitted to prolong its non-compliance by simply claiming it disagrees with the auditor's report. AT&T Indiana should be entitled to the swiftest resolution possible, and a two-week period of direct discussions with Sprint should be sufficient for the parties to know whether they can reach agreement without a formal complaint to the Commission.[63]

The specific passage to which Ms. Pellerin was referring when she said the Supreme Court called TELRIC-based rates "near confiscatory" reads as follows:

> "While the Act is like its predecessors in tying the [rate-setting] methodology to the objectives of "just and reasonable" and nondiscriminatory rates, *47 U.S.C. § 252 (d)(1)*, it is radically unlike all previous statutes in providing that rates be set "without reference to a rate-of-return or other rate based proceeding," *§ 252(d)(1)(A)(i)*. The Act thus appears to be an explicit disavowal of the familiar public-utility model of rate regulation..., in favor of novel rate setting designed to give aspiring competitors every possible incentive to enter local retail telephone markets, short of confiscating the incumbents' property." *Verizon Communs., Inc. v. FCC*, 535 U.S. 467, 489 (2002).

In order for us to fully review Ms. Pellerin's assertion, it is necessary for us to consider a number of other quotations from the same Supreme Court decision, to put the Court's statement in the proper context.

It does not appear from our review of the Supreme Court's decision that the FCC's solution (stopping just "short of confiscating the incumbents' property") was as extreme as Ms. Pellerin's testimony suggests. A number of quotations from *Verizon* support our assessment of what the Supreme Court said about TELRIC: "Having considered the proffered alternatives and the reasons the FCC gave for rejecting them, ...we cannot say that the FCC acted unreasonably in picking TELRIC to promote the mandated competition." *Verizon* at 507.

In addition, the Court stated: "At the outset, it is well to understand that the incumbent carriers do not present the portent of a constitutional taking claim in the way that is usual in ratemaking cases. They do not argue that any particular, actual TELRIC rate is "so unjust as to be confiscatory," that is, as threatening an incumbent's "financial integrity." *Duquesne Light Co.,* 488 U.S., at 307, 312. Indeed, the incumbent carriers have not even presented us with an instance of TELRIC rates, which are to be set or approved by state commissions and reviewed in the first instance in the federal district courts, 47 U. S. C. §§ 252(e)(4) and (e)(6)."[64] The Court also held in *Verizon* that, "This want of any rate to be reviewed is significant, given that this Court has never considered a taking challenge on a rate setting methodology without being

[63] AT&T Direct Testimony (Pellerin) at 55, lines 1-13.
[64] *Verizon* at 523-524 (citing to *Duquesne Light Co. v. Barasch*, 488 U.S. 299 (U.S. 1989)).

presented with specific rate orders alleged to be confiscatory." *Verizon* at 524. "Undeniably, then, the general rule is that any question about the constitutionality of rate setting is raised by rates, not methods, ..." *Verizon* at 525.

The ILECs say this action is one of the rare ones placed outside the general rule by signs, too strong to ignore, that takings will occur if the TELRIC interpretation of 47 U.S.C. § 252(d)(1) is allowed. In response, the Court referred to the financial estimates Verizon and the other ILEC plaintiffs provided to support their confiscation claims as "...spurious because the numbers assumed by the incumbents are clearly wrong. ...What the best numbers may be we are in no position to say: the point is only that the numbers being thrown out by the incumbents are no evidence ... that TELRIC lease rates would be confiscatory, sight unseen." *Verizon* at 525-526. And, later, "... the incumbent carriers here are just like the electric utilities in *Duquesne* in failing to present any evidence that the decision to adopt TELRIC was arbitrary, opportunistic, or undertaken with a confiscatory purpose. What we do know is very much to the contrary." *Verizon* at 527-528.

We reiterate that Verizon and the other ILEC plaintiffs in the Supreme Court proceeding did not present any rates (TELRIC or otherwise) for the Court to review. Instead, they were merely arguing that the FCC's TELRIC methodology was, in and of itself, "near confiscatory."

Furthermore, as the FCC pointed out in *Talk America*, the Supreme Court has actually upheld the TELRIC methodology as lawful and consistent with federal statutes.[65] The Supreme Court reached these, and similar, conclusions about TELRIC in the same *Verizon* opinion on which AT&T relies to support its assertions that the Supreme Court had found that TELRIC-based rates are at "near confiscatory" levels.

Based on the analysis we have already performed, we find that any additional review of *Verizon* would almost certainly further undermine, rather than support, the clear implication of AT&T Indiana witness Ms. Pellerin's testimony that the Supreme Court has held that TELRIC-based rates are "near confiscatory." Thus, we need not delve deeper into that decision. Nevertheless, as discussed and indicated above, we adopt AT&T Indiana's proposed language concerning how the ICA should address non-compliance following an independent audit.

Issue 13(c): If audit provisions are included in the ICA, how should the costs of the independent auditor be allocated?

A. Positions of the Parties.

1. Sprint. As indicated in Issue 13(a) and Issue 13(b), Sprint's position is that AT&T Indiana's "Interconnection Facility Audit" language is neither appropriate nor necessary.

2. AT&T Indiana. AT&T Indiana's position is that Sprint should be required to reimburse AT&T Indiana for the independent auditor's costs when the auditor

[65] *Talk America*, Brief for the United States as Amicus Curiae supporting Petitioners, at 4 & n. 2 (referring to *Verizon Commc'ns Inc.*, 535 U.S. 467, 501-523, 122 S. Ct. 1646, 1667 – 1679).

determines that 10% or more of the facilities subject to the audit are out of compliance, *i.e.*, if Sprint is using 10% or more of the facilities for impermissible purposes. The 10% trigger is a reasonable measure of material non-compliance.

B. Commission Analysis and Decision. AT&T Indiana's proposed Attachment 02, Section 3.5.5.5.3 provides that if the number of circuits found by an audit to be non-compliant is equal to or greater than 10% of the number of circuits audited, then Sprint must reimburse AT&T Indiana 100% of the cost of the auditor. If the number of non-complaint circuits is less than 10%, then Sprint would be required to reimburse AT&T Indiana an amount of the auditor's costs that is in direct proportion to the number of circuits found to be non-compliant. Under AT&T Indiana's proposed Section 3.5.5.1, AT&T Indiana would be permitted to request an audit only once every 12 months. AT&T Indiana will bear more than 90% of the auditor's costs if Sprint is more than 90% compliant. We note that AT&T Indiana indicates the difference between tariffed special access rates and TELRIC-priced Interconnection Facilities may be sufficient to incent Sprint, or an adopting carrier, to use Interconnection Facilities in a non-compliant manner. AT&T Indiana would have little leverage to ensure Sprint's compliance other than the audit provisions, including requiring Sprint to pay all of the auditor's costs if Sprint is 10% or more out of compliance. The Commission finds it appropriate for AT&T Indiana to have recourse for non-compliance with the ICA. The ICA should include provisions for an independent audit of Sprint's use of AT&T Indiana's Interconnection Facilities. Accordingly, we find in favor of AT&T Indiana on Issue 13(c) and adopt AT&T Indiana's proposed language for Attachment 02, Section 3.5.5.5.3.

Issue 14: What are the appropriate terms that should be included in the ICA regarding Combined Trunk Groups?

A. Positions of the Parties.

1. Sprint. Sprint's position is that its proposed language in Sections 4.2.3 and 4.2.4 of the ICA recognizes that, under FCC rules and orders, all telephone exchange traffic, exchange access traffic, and other traffic between the Parties' switches can be carried on Interconnection Facilities priced at TELRIC. Based upon its "end user limitation argument," AT&T Indiana would require such Combined Trunk Groups to be carried on access priced facilities, even when such facilities carry some telephone exchange and exchange access traffic. Sprint explains that its language ensures that TELRIC-priced Interconnection Facilities purchased under the ICA can be used to carry traffic via Combined Trunk Groups.

2. AT&T Indiana. AT&T Indiana's position is that Combined Trunk Groups may carry both InterMTA Traffic (between Sprint and IXCs) and IntraMTA Traffic (between Sprint's and AT&T Indiana's end users).[66] TELRIC-priced Interconnection Facilities can be used only for Interconnection, so Sprint is not entitled to TELRIC-priced transport when it uses Combined Trunk Groups because those trunk groups carry IXC traffic. Such traffic is switched access traffic between Sprint and the IXC. It is not Interconnection traffic under 47 U.S.C. § 251(c)(2) because it is not going to, or coming from, an AT&T Indiana end user and therefore there is no "mutual exchange of traffic" within the meaning of 47 C.F.R. § 51.5.

[66] AT&T Indiana Direct Testimony (Pellerin) at 104.

Consequently, Sprint may not use Combined Trunk Groups when the underlying facilities were obtained at TELRIC-based rates pursuant to the ICA.

B. Commission Analysis and Decision. AT&T Indiana summarizes the disputes in Issue 14, as follows: "There are two disagreements in section 4.2.3. The first concerns the type of traffic carried that can be carried over Type 2A Combined Trunk Groups. The second is whether Sprint can use Type 2A Combined Trunk Groups when it purchases the underlying transport facilities at TELRIC-based rates (Sprint's position) or whether it must purchase those transport facilities at access rates (AT&T Indiana's position)."[67]

AT&T Indiana witness Pellerin acknowledges that, "Pursuant to Attachment 2, section 5.6, transit traffic may be routed over Combined Trunk Groups."[68] Thus, the dispute is over the extent to which Transit Traffic must be combined with other types of traffic in order for Sprint to route the Transit Traffic over the Combined Trunk Groups, not over whether those Combined Trunk Groups can be used for Transit Traffic, at all. AT&T Indiana's proposed Attachment 02, Section 4.2.3 would limit use of Type 2A Combined Trunk Groups to instances in which Sprint-originated traffic includes both IntraMTA Traffic (as well as transit traffic) and InterMTA Traffic within the same Combined Trunk Group.[69]

Sprint proposes language that would permit Sprint to use Combined Trunk Groups to carry any type (*i.e.*, InterMTA Traffic and/or IntraMTA Traffic) of Telephone Exchange Service traffic, Exchange Access traffic or Transit Traffic. The key word for Sprint appears to be "or." Sprint would not have to actually combine any particular types of traffic in order to use Combined Trunk Groups. Sprint's proposed modifications to Section 4.2.3 also adds an option that would permit Sprint to obtain the Type 2A Combined Trunk Group as an Interconnection Facility under the terms of the ICA. We note that AT&T Indiana's proposed language would limit Sprint's use of Combined Trunk Groups to those situations in which they were carrying both InterMTA Traffic and IntraMTA Traffic, with no apparent consideration given to whether the traffic in question was, or included, Telephone Exchange Service traffic or Exchange Access Service traffic.

Consistent with *USF/ICC Transformation Order* at para. 972; the *Local Competition First Report and Order* at paras. 190 & 191; and the Commission's findings for Issue 11(d), we find it appropriate for Sprint to be allowed to combine Telephone Exchange Service traffic, Exchange Access traffic, and Transit Traffic in any combination (*i.e.*, all three traffic types, or any two of the three) on Type 2A Combined Trunk Groups under the circumstances described in Attachment 02, Section 4.2.3, regardless of whether the Telephone Exchange Service traffic, Exchange Access traffic, and/or Transit Traffic is only IntraMTA Traffic, or only InterMTA Traffic, or includes both IntraMTA and InterMTA Traffic. That being said, we find that Sprint's right to use 47 U.S.C. § 251(c)(2) Interconnection Facilities for Equal Access Trunks is not without limits. Specifically, Sprint should be required to actually combine at least two types of traffic (i.e., Telephone Exchange Service traffic, Exchange Access Service traffic, and/or Transit Traffic) in order to use "Combined Trunk Groups" it obtains from AT&T Indiana, as discussed above. Finally, and consistent with our decisions for Issue 11, we find that E911 service does

[67] AT&T Indiana Direct Testimony (Pellerin) at 103.
[68] AT&T Indiana Direct Testimony (Pellerin) at 106 & n. 89.
[69] AT&T Indiana Direct Testimony (Pellerin) at 104.

not fall within the definition of "Telephone Exchange Service;" therefore, Sprint may not use Combined Trunk Groups to carry or exchange E911 traffic.[70]

Subject to these same requirements for Sprint to combine at least two of the three traffic types (Telephone Exchange Service traffic, Exchange Access Service traffic, and Transit Traffic), we further find Sprint should be allowed to purchase Combined Trunk Groups as 47 U.S.C. § 251(c)(2) Interconnection Trunks, at TELRIC-based prices. This finding assumes that carrying such transiting traffic is not inconsistent with agreed-upon language in Attachment 02, Section 5. Accordingly, the Commission does not completely adopt either Party's proposed language for Issue 14.

Issue 16: What provisions should be included in the ICA regarding the transmission and routing of traffic to or from an IXC?

A. Positions of the Parties.

1. Sprint. Sprint's position is that its proposed Section 4.8.9 language recognizes the Parties' undisputed language in Section 3.11.2.1.2 that Sprint will not route wireline-originated traffic to AT&T Indiana in the absence of an Amendment. It is not apparent to Sprint what other traffic AT&T Indiana may be attempting to address if it is not the traffic addressed by Section 3.11.2.1.2.

Sprint is entitled to exchange all Interconnection traffic, including any Exchange Access traffic, over Interconnection Facilities. It is not required to establish unnecessary facilities to exchange such traffic with either third parties (IXCs) or AT&T Indiana.

If Sprint elects to designate AT&T Indiana in the Local Exchange Routing Guide ("LERG") to serve as Sprint's access tandem for Sprint-originated traffic to an IXC, Sprint is willing to provision an Interconnection "Equal Access Trunk Group" over Interconnection Facilities. To the extent any such trunk groups are necessary, they are for AT&T Indiana's benefit, subject to being provisioned over Interconnection Facilities and the appropriate Interconnection costing and sharing provisions.

2. AT&T Indiana. AT&T Indiana's position is that traffic between Sprint and IXCs is switched access traffic that should continue to be routed over equal access facilities. The FCC's *CAF Order* preserves existing access arrangements for IXC traffic while directing carriers to reduce their terminating access charges over time.

B. Commission Analysis and Decision. We note that, to be consistent with the *Local Competition First Report and Order*, the *USF/ICC Transformation Order*, and the Commission's findings on Issues 11(a) and 11(d), to the extent that Sprint is using Interconnection Facilities for Equal Access Trunks, Sprint remains subject to the requirement that it must exchange "some" telephone exchange service and/or exchange access service traffic over those Interconnection Facilities in order to take advantage of the right, pursuant to Attachment 02, Sections 4.8.9 and 4.10.3, to route IXC traffic over that Interconnection Facility.

[70] AT&T Indiana Direct Testimony (Pellerin) at 105, lines 3-9.

Furthermore, Sprint's option to route certain traffic to or from an IXC over an Equal Access Trunk Group, is in no way meant to limit or eliminate Sprint's obligations to pay switched access charges on traffic involving an IXC, as well as on InterMTA Traffic.

Regarding Attachment 02, Section 4.8.9, AT&T Indiana argued that there is another reason to adopt its language. It addresses the traffic arbitrage scheme that arose in the "Halo" dispute as described in the *CAF Order* at paras. 1003-1008 and discussed in Issue 2 above. The Commission finds that Sprint's proposed language will be sufficient to prevent Sprint, or another wireless carrier that has adopted the Sprint-AT&T Indiana ICA, from exchanging "Halo" traffic with, or delivering "Halo-type" traffic to, AT&T Indiana.

Concerning Attachment 02, Section 4.10.3, we adopt Sprint's proposed language, except for the reference to "Sprint directed traffic." We note that the term "Sprint directed traffic" is not defined anywhere in the ICA. Sprint did not define that term until asked to do so in the October 16, 2014 docket entry. Sprint's October 22, 2014 response indicates that this term includes traffic that is either directed to Sprint or directed by Sprint to the AT&T Indiana network. We find this proposed definition to be so broad and ambiguous as to include almost any type of traffic exchanged between the Parties' networks. We also find that AT&T Indiana's last sentence in Section 4.10.3 is duplicative of its proposed language in Attachment 02, Section 3.4, and therefore, is unnecessary.

Upon consideration of the evidence, the Commission finds in favor of Sprint on Issue 16, with the caveats described herein. We adopt Sprint's proposed language for Attachment 02, Section 4.8.9 with amendments. Section 4.8.9 should be amended to explicitly state that 47 U.S.C. § 251(c)(2) interconnection trunks may not be used solely for "interconnection of interstate traffic only - for the purpose of providing interstate services only" and "may not be used solely for the transmission of interexchange service." We further adopt Sprint's proposed language for Attachment 02, Section 4.10.3 with the exception of the reference to "Sprint directed traffic" and as otherwise discussed above. The Parties are directed to include agreed upon language in the conforming ICA regarding compensation arrangements associated with the delivery of IXC traffic when such traffic is combined with telephone exchange service and/or exchange access service traffic, consistent with the *Local Competition First Report and Order* and the *USF/ICC Transformation Order.*[71]

Issue 17: Can a Party be prohibited from routing InterMTA Traffic over Interconnection Facilities?

A. Positions of the Parties.

1. Sprint. Sprint's position is that under federal law, neither party can be prohibited from routing InterMTA Traffic over Interconnection Facilities. It is indisputable that the Parties will be exchanging telephone exchange service traffic between their networks over Interconnection Facilities and, therefore, regardless of how InterMTA Traffic is characterized, it can also be exchanged between the Parties' networks over the Interconnection Facilities.

[71] *Local Competition First Report and Order*, at paras. 190 & 191; *USF/ICC Transformation Order*, at para. 972.

2. AT&T Indiana. AT&T Indiana's position is that Sprint should not be allowed to route its originating InterMTA Traffic to AT&T Indiana over Interconnection Facilities. Sprint explains its mobile-to-land InterMTA Traffic is switched access traffic that should be routed over equal access facilities. In the *CAF Order*, the FCC preserved the switched access regime for InterMTA Traffic, but directed carriers to reduce terminating switched access charges over time. Thus, Sprint should not be permitted to obtain TELRIC-based pricing for the facilities carrying InterMTA Traffic.

AT&T Indiana further indicates land-to-mobile traffic that appears to be IntraMTA at the start of the call, but that turns out to be InterMTA because the Sprint wireless customer roamed outside the MTA, should be routed over Interconnection Facilities. These are AT&T Indiana-originated calls that appear to be IntraMTA based on the calling and called parties' telephone numbers, but in fact they are InterMTA because the called parties have roamed out of the MTA associated with their telephone numbers. Since AT&T Indiana has no way of knowing that these calls are actually InterMTA calls, it has no choice but to route them to Sprint over the Interconnection Facilities as though they were normal IntraMTA calls.

B. Commission Analysis and Decision. In this issue, the Parties disagree over how they will "route InterMTA Traffic to one another that originates and terminates between them, (i.e., no IXC is involved). We should also note that AT&T Indiana divided their arguments in regard to this issue into two sub-issues: Issue 17(a) deals with mobile-to-land traffic (section 4.10.4) and Issue 17(b) deals with land-to-mobile traffic (section 4.10.5)."[72]

AT&T Indiana's proposed language for Attachment 02, Section 4.10.4 would impose restrictions and limitations on Sprint's ability to route Sprint's terminating mobile-to-land InterMTA Traffic over Interconnection Trunks. However, we note that Sprint's assertion that Sprint-originated traffic is not, under any circumstances, Switched Access Services traffic subject to AT&T Indiana's tariff is contrary to the Commission's findings for Issue 3 and Issue 4.

Regarding AT&T Indiana proposed language for Attachment 02, Section 4.10.5, the Commission finds the provision would unnecessarily place restrictions and limitations on AT&T Indiana's own originated "land-to-mobile" traffic. The specific result would be that AT&T Indiana would only deliver land-to-mobile InterMTA Traffic to Sprint over Interconnection Trunks if the traffic appeared to AT&T Indiana as IntraMTA Traffic at the beginning of the call.

Upon consideration of the evidence, the Commission finds in favor of Sprint on Issue 17. Accordingly, we adopt Sprint's proposed language for Attachment 02, Section 4.10.4 and reject AT&T Indiana's proposed language for Attachment 02, Sections 4.10.4 and 4.10.5.

Issue 18: Should the ICA identify traffic that is not subject to bill-and-keep? If so, what traffic should be excluded?

A. Positions of the Parties.

[72] AT&T Indiana Direct Testimony (Pellerin) at 116, lines 14-17.

1. **Sprint.** Sprint's position is that the ICA should not identify traffic that is not subject to bill-and-keep. Sprint explains that the Parties' language recognizes that IntraMTA Traffic exchanged between the Parties, both directly and indirectly, is subject to bill-and-keep.

Sprint indicates that AT&T Indiana's proposed bill-and-keep exception language is complex, confusing, inaccurate as to some listed traffic categories, and also includes traffic categories that are not even exchanged under the ICA.

2. **AT&T Indiana.** AT&T Indiana argues that in order to eliminate ambiguity and minimize potential disputes, the Commission should adopt AT&T Indiana's proposed language listing the types of traffic that are not subject to bill-and-keep under the ICA.

B. Commission Analysis and Decision. 47 C.F.R. § 51.701(b) defines "Non-Access Telecommunications Traffic" as telecommunications traffic exchanged between a LEC and a CMRS provider that, at the beginning of the call, originates and terminates within the same MTA. 47 C.F.R. § 51.705(a) requires that transport and termination for Non-Access Telecommunications Traffic exchanged between a LEC and a CMRS provider within the scope of 47 C.F.R. § 51.701(b)(2) shall be pursuant to a bill-and-keep arrangement. The Commission notes that both Sprint and AT&T Indiana have agreed that IntraMTA Traffic is subject to the bill-and-keep intercarrier compensation methodology with each carrier charging the other a rate of $0.00.[73]

We further note that AT&T Indiana's proposed language would establish various exclusions to the agreement that IntraMTA Traffic is subject to the bill-and-keep intercarrier compensation methodology. At least two of the traffic types in AT&T Indiana's proposed language are not defined in the GTC; "Non-CMRS traffic" and "IXC traffic." Adopting AT&T Indiana's list with undefined traffic types could result in unintentionally contradicting the analysis and findings regarding one or more types of traffic addressed elsewhere in this proceeding. Furthermore, we find that the proposed exclusion "Any other type of traffic found to be exempt from bill-and-keep by the FCC or the Commission" is speculative and unnecessary at this time. Accordingly, we find in favor of Sprint on Issue 18 and reject AT&T Indiana's proposed language for Attachment 02, Sections 6.3.1 and 6.3.2 through 6.3.2.1.6. Because we reject AT&T Indiana's proposed language, Section 6.3.2 (including all subsections) shall be left blank.

Issue 19: What terms should be included in the ICA governing compensation for terminating InterMTA Traffic?

A. Positions of the Parties.

1. **Sprint.** Sprint's position is that following the FCC's *CAF Order* and resulting amended transition compensation rules, the only traffic subject to terminating access charges is "interstate or intrastate exchange access [as] specified in subpart J of 47 C.F.R. § 51." "Exchange access" is a statutorily defined term of art that means access to telephone exchange access services for the purpose of originating or terminating "telephone toll services."

[73] Attachment 02, Section 6.3.1.

"Telephone toll services" is also a statutorily defined term of art that means service "for which there is made a separate charge not included in contracts with subscribers for exchange service." AT&T Indiana's proposed language presumes that all Sprint InterMTA Traffic exchanged under the ICA is telephone toll traffic. However, all but a de minimis volume of Sprint's InterMTA Traffic originates and terminates under nationwide non-toll plans. Such traffic is not "exchange access" subject to any transitional access pricing charges and should be treated the same as other non-exchange access traffic, in other words bill-and-keep.

Sprint argues that if the Commission determines compensation is due for terminating InterMTA Traffic - as a matter of non-discrimination - such compensation should be paid by each originating party for its originating InterMTA Traffic that is terminated by the other. For administrative ease, the volume of traffic on which compensation would be paid should, in the absence of a proper cell-site based traffic study, be at 1% of the originating party's total originating traffic volume and, with AT&T Indiana's terminating access rate used by each party, subject to the transition step-down rules. The administrative burden of AT&T Indiana's language is not warranted given the FCC's stated preference that all traffic should be exchanged on a bill-and-keep basis.

Sprint further explains InterMTA Traffic can be exchanged over Interconnection Facilities. AT&T Indiana has no right to dictate that any Sprint originated traffic must be delivered via AT&T Indiana's switched access Feature Group D facilities or that such traffic is subject to AT&T Indiana's "federal and/or state access service tariffs."

Sprint is willing to provide Jurisdiction Information Parameter ("JIP") data, provided it is not improperly used by AT&T Indiana to establish jurisdiction of a wireless call. It is recognized in the industry that JIP is not accurate for the purpose of establishing the location of mobile call end points for billing purposes. Sprint contends that there simply is no legitimate purpose for AT&T Indiana's unnecessarily complex and administratively burdensome language regarding JIP and traffic studies.

2. **AT&T Indiana.** AT&T Indiana's position is that the ICA should include its proposal, which provides for the continued application of terminating access charges to mobile-to-land InterMTA Traffic. AT&T Indiana indicates that the proposal is consistent with the Parties' current ICA, universally accepted industry practice, and the rules and orders of the FCC. Sprint's position is inconsistent with the FCC's orders and rules governing intercarrier compensation, including the *CAF Order*, which make no distinction between "toll" and "non-toll" InterMTA Traffic.

AT&T Indiana argues that Sprint's alternative language would arbitrarily adopt a 1% terminating InterMTA Traffic Factor without regard to the actual percentage of mobile-to-land InterMTA Traffic sent by Sprint over non-access facilities. AT&T Indiana further argues that Sprint's language is unsupported and inconsistent with the FCC's orders and rules.

B. Commission Analysis and Decision. In reviewing the proposed language for Terminating InterMTA compensation in Attachment 02, Section 6.5.1.1 and Section 6.5.1.2, the Commission points out that Sprint again proposes to bifurcate InterMTA Traffic, in this instance Terminating InterMTA Traffic, into "non-toll" and "toll" categories. However, Sprint

did not provide any credible legal authority or relevant support for this bifurcation proposal. Consistent with our findings in Issue 3 regarding GTC, Section 2.65.1 and 2.65.2 we also reject Sprint's proposed Issue 19 language for Attachment 02, Sections 6.5.1.1 and 6.5.1.2. We adopt AT&T Indiana's proposed language for the first sentence in Section 6.5.1.1, which states that all Sprint Terminating InterMTA Traffic is subject to access charges. However, we reject AT&T Indiana's proposed second sentence for Attachment 02, Section 6.5.1.1 because it is inconsistent with a number of our findings for other issues. Because AT&T Indiana's proposed language for Section 6.5.1.2 also conflicts with our findings for other issues, we likewise reject it. To be consistent with our findings in Issues 11(d), 14, and 17, we find that Sprint should be given the option of routing Sprint Terminating InterMTA Traffic over either tariffed Switched Access Services Trunks and facilities, or Interconnection Facilities. Again, by making this finding, we do not in any way intend to limit or eliminate Sprint's obligation to pay switched access charges on this Sprint Terminating InterMTA Traffic.

Concerning the proposed language for Attachment 02, Sections 6.5.1.3, 6.5.1.3.1, 6.5.1.3.2, and 6.5.1.4, we note that one of the main disputes in Issue 19 centers on how the Parties will decide to classify the wireless traffic that Sprint exchanges with AT&T Indiana as IntraMTA or InterMTA Traffic. If the Commission rejects Sprint's position that InterMTA Traffic should be subject to bill-and-keep, then Sprint requests, as an alternative, that the Commission adopt a 1% surrogate InterMTA Traffic Factor meaning that Terminating InterMTA Traffic would be considered to represent 1% of Terminating IntraMTA Traffic. AT&T Indiana opposes this 1% factor as an arbitrary way to determine the actual percentage of mobile-to-land InterMTA Traffic that Sprint would send over non-access facilities. The Parties also disagree on whether, and to what extent, the Commission should approve or require the use of the JIP to determine the percentage that is InterMTA Traffic. We find AT&T Indiana's position that terminating mobile-to-land InterMTA Traffic is subject to access charges to be reasonable. Therefore, it is important to include language in the ICA that provides a way to develop an InterMTA Factor as a way of estimating the amount of terminating InterMTA Traffic as a percentage of all terminating Sprint-to-AT&T Indiana traffic. Accordingly, we adopt AT&T Indiana's proposed language for Sections 6.5.1.3, 6.5.1.3.1, 6.5.1.3.2, and 6.5.1.4.

Because the Commission has found above that all Terminating InterMTA Traffic is subject to switched access charges, we reject Sprint's proposed rates for Terminating InterMTA Traffic. We adopt AT&T Indiana's proposal to leave Line 312 on the Wireless Pricing Sheets blank. In addition, we reject Sprint's proposed traffic percentages for Terminating InterMTA Traffic and adopt AT&T Indiana's proposal to leave Line 313 on the Wireless Pricing Sheets blank.

Issue 20: What terms should be included in the ICA governing compensation for originating InterMTA Traffic?

A. Positions of the Parties.

1. Sprint. Sprint's position is that absent the voluntary agreement of a terminating party, there is no basis for an originating party to impose originating-usage charges upon the terminating party for traffic exchanged over Interconnection Facilities.

Sprint explains that AT&T Indiana's originating InterMTA landline-to-mobile traffic will be non-toll, locally dialed traffic, and therefore, AT&T Indiana is not entitled to assess any originating switched access charges. Instead, it is telephone exchange service for which AT&T Indiana will be compensated by its own end user, who has paid for the right to deliver such calls to locally dialed numbers without incurring a separate toll charge.

Sprint argues in the alternative that if the Commission determines that compensation is due for originating InterMTA Traffic - as a matter of non-discrimination - such compensation should be paid by each terminating party for the InterMTA Traffic that is originated by the other party. Further, for administrative ease, the volume of traffic on which compensation would be paid should, in the absence of a proper cell-site based traffic study, be at 1% of the originating party's total originating IntraMTA Traffic volume and, with AT&T Indiana's originating access rate used by each party.

2. AT&T Indiana. AT&T Indiana argues that the ICA should include AT&T Indiana's proposed language, which provides for the continued application of originating access charges to land-to-mobile InterMTA Traffic routed by AT&T Indiana to Sprint over Interconnection Trunks. AT&T Indiana argues that its language is consistent with the Parties' current ICA and the orders and rules of the FCC and maintains the status quo with respect to originating access, as the FCC intended in the *CAF Order*. In support of its position that originating switched access charges are not applicable to land-to-mobile traffic, Sprint relies on the same purported "toll" versus "non-toll" distinction that it makes with respect to terminating switched access. Sprint's argument should be rejected for the same reasons discussed under Issue 19.

AT&T Indiana argues that Sprint's alternative language, which would arbitrarily adopt a 1% terminating InterMTA Traffic Factor without regard to the 4% factor currently used by the Parties, is unsupported and inconsistent with the FCC's orders and rules.

B. Commission Analysis and Decision. Sprint indicates that originating charges are never appropriate unless the originating end user is charged a separate toll charge. AT&T Indiana's position is that InterMTA Traffic is by definition subject to access, and that it is entitled to assess originating access charges to Sprint on AT&T Indiana-originated InterMTA Traffic even when AT&T Indiana's end user is making a non-toll call.

Sprint's position seems to rely on the same arguments it used in developing its proposed bifurcated classification of InterMTA Traffic into "Non-Toll" and "Toll" InterMTA Traffic in Issue 19. Sprint appears to base that distinction largely on its interpretation of 47 U.S.C. § 153(55), the statutory definition of "telephone toll service".[74] From a practical standpoint, because most of Sprint's customers subscribe to a nationwide calling plan, there is no separate toll charge on most calls for those customers. Thus, if we were to accept Sprint's bifurcated definition of InterMTA Traffic, it would be tantamount to agreeing with Sprint that InterMTA Traffic should be treated the same as IntraMTA Traffic; in other words that InterMTA Traffic should also be subject to bill-and-keep pricing. We disagree. Rather, we agree with AT&T Indiana that the FCC has clearly stated that it is the location of the calling and called parties, as

[74] Sprint Direct Testimony (Felton) at 79, lines 1558-1561 and at 80, lines 1562-1564.

determined at the beginning of a wireless call, that determines whether the call should be classified as an IntraMTA or InterMTA call.

Consistent with para. 1043 of the *Local Competition Order*, we find that when an AT&T Indiana end user places a locally-dialed call to a Sprint customer (making it look like an IntraMTA call), but the call is terminated to that Sprint customer in another MTA (making it actually an InterMTA call), AT&T Indiana is entitled to originating access charges from Sprint at AT&T Indiana's tariffed rates – just as AT&T Indiana is entitled to originating access charges on any other long distance call it originates. Even though the Parties have agreed in GTC 2.63 that neither Sprint nor AT&T Indiana is an IXC for the purposes of this ICA, we find that Sprint is acting as an IXC or an interexchange carrier (as the term "Interexchange Carrier" is used in AT&T Indiana's interstate and intrastate access tariffs and as discussed, above, for Issue 4) when it terminates a land-to-mobile InterMTA call, under the scenario proposed in Issue 20.

Based upon the evidence and considering the arguments of the Parties, we find that InterMTA Traffic is subject to access charges, rather than bill-and-keep pricing. This is consistent with the *USF/ICC Transformation Order* and our findings on Issues 3 and 4.

We further find that AT&T Indiana's proposed pricing figure of 4% for InterMTA Traffic between the Parties is reasonable. AT&T Indiana indicated this rate is based on an amount the Parties previously agreed to in Cause No. 40572-INB-223ND. While Sprint proposed the amount be 1%, it did not demonstrate why this amount is more appropriate that the 4% the Parties had agreed upon in the prior case.

Additionally, we find Sprint's proposed application of the bill-and-keep methodology to (land-to-mobile) Originating InterMTA Traffic is both inappropriate and unsupported by federal statutes, rules, or FCC orders, as InterMTA Traffic is subject to access charges. To be more specific, originating access charges were capped in the *USF/ICC Transformation Order* at the rates in effect on Dec. 29, 2011. We note, however, that the FCC has not established any transition period or transitional rates for those rates.[75]

Based upon the evidence and discussion above, we find in favor of AT&T Indiana on Issue 20. Accordingly, we adopt AT&T Indiana's proposed language and reject Sprint's proposed language for Attachment 02, Sections 6.5.2, 6.5.2.1, and 6.5.2.2. We also reject Sprint's proposed language for Attachment 02, Section 6.2. Consistent with our decisions for Issue 20, the Commission adopts AT&T Indiana's "Rate Element Descriptions" and Monthly Recurring Charges for both Line 314 and Line 315 on the Pricing Sheets.

Issue 22: Should the Interconnection Facilities prices for high capacity facilities be applied on a pro rata basis as described in Sprint's proposed Attachment 02, Section 3.8.2.1?

A. Positions of the Parties.

[75] *See, e.g., USF/ICC Transformation Order*, at paras. 777, 778, & 1298. See, generally, para. 801 & Figure 9.

1. **Sprint.** Sprint's position is that the Interconnection Facilities prices for high capacity facilities should be applied on a prorated basis as described in Sprint's proposed language. Sprint explains that it is common industry practice for carriers to purchase a high-capacity facility (e.g. DS3 or higher) and provide individual Digital Signal 1s ("DS1") on such facility, with each DS1 used on a segregated basis for a specific purpose (e.g. Interconnection DS1s vs. Backhaul DS1s). Sprint argues that it should obtain TELRIC-pricing treatment for the portion of high capacity facilities used for Interconnection, and should pay access rates for the portion of high capacity facilities used for Backhaul.

Sprint argues that if there is no prorating mechanism used to allocate the TELRIC vs. access cost of high-capacity facilities based on actual use, Sprint will never realize a TELRIC-pricing benefit for a high-capacity facility. Without a prorating mechanism to implement TELRIC-pricing, a carrier is forced into a no-win situation: either give up TELRIC-pricing on high capacity facilities, or give up the use of high-capacity facilities. Sprint contends that its language is a fair implementation of TELRIC/access pricing, based on actual use of high-capacity facilities that carry Interconnection DS1s and Backhaul DS1s.

2. **AT&T Indiana.** AT&T Indiana's position is that the Commission should reject Sprint's proposal that it be allowed to use the same DS3 (or higher capacity) facility to carry both Backhaul traffic and Interconnection traffic, with the price of that facility prorated between TELRIC-based prices and tariffed special access pricing. AT&T Indiana argues that Sprint's proposal is directly contrary to the principle recognized in *Talk America* that TELRIC-priced Interconnection Facilities must be used exclusively for Interconnection and may not be used for non-Interconnection purposes like Backhauling. Sprint's proposal would result in Sprint paying an effective monthly recurring charge for Interconnection Facilities equal to only a fraction of the applicable TELRIC-based rate. Furthermore, Sprint's proposal does not apportion spare capacity and would require AT&T Indiana to develop new billing systems for the sole benefit of one carrier in one state.

B. **Commission Analysis and Decision.** In Attachment 02, Sections 3.8.2 and 3.8.2.1, Sprint proposes language to apply TELRIC-based prices for DS3 or higher capacity facilities on a prorated statewide basis when those facilities are used for multiple purposes. Sprint indicates that this pricing proposal is to allow it to use some DS1s within a DS3 for Backhaul, and some DS1s within a DS3 for interconnection. Sprint argues that just because a given DS1 Interconnection Facility is on a DS3 rather than being a stand-alone DS1, that should not negate the application of TELRIC-pricing to that portion of the DS3s used for the purpose of Interconnection.[76] Sprint argues it should be allowed to use a high-capacity facility for both dedicated Interconnection purposes and Backhaul purposes, and pay TELRIC rates for the portion used for Interconnection, and special access rates for the portion used for Backhaul.[77]

AT&T Indiana's position is that the DS1s within a DS3 are merely logical channels within the larger DS3 Facility, not actual physical facilities, themselves. AT&T Indiana explains that a DS1 Facility is a stand-alone physical facility between two points with a capacity of 24

[76] Sprint Direct Testimony (Farrar) at 34, lines 708-711.
[77] Sprint Direct Testimony (Farrar) at 34, lines 714-717.

DS0 channels, while a DS3 Facility is a stand-alone physical facility between two points with a capacity of 28 DS1 channels.

Notwithstanding Sprint's claims that equate a logical DS1 channel within a DS3 Interconnection Facility with a stand-alone DS1 Facility,[78] the Commission finds that AT&T Indiana witness Pellerin's assertion that "the DS1 channels on a DS3 Facility are not considered 'facilities' any more than the DS0 channels on a DS1 Facility are considered 'facilities'"[79] is consistent with the standard industry use of the term "facilities," as the Commission understands such usage. Similarly, the Commission agrees with Ms. Pellerin that, "the fact that Sprint would segregate the DS1 channels on a DS3 entrance facility between those used for Interconnection and those used for Backhaul does not in any way alter the conclusion that Sprint's proposal to use the same DS3 Interconnection Facility for both Interconnection and Backhaul violates the principle that entrance facilities leased under 251(c)(2) can be used only for interconnection."[80]

The Commission finds AT&T Indiana's arguments that a DS1 within a DS3 Interconnection Facility is: (1) a (DS1) logical channel, rather than a physical facility and (2) is, therefore, not equivalent to a stand-alone DS1 Interconnection Facility, to be far more persuasive than Sprint's contrary arguments. Accordingly, the Commission finds no merit in Sprint's position that it is impossible to carry both Interconnection traffic and Backhaul traffic on the same (DS3) Facility.

AT&T Indiana relies on the *Talk America* decision to support its position that while Sprint is entitled to obtain a TELRIC-priced DS3 capacity Interconnection Facility to carry Interconnection traffic, it is not entitled to use that same facility to also carry Backhaul traffic. We note that in the *Talk America* decision the Supreme Court found that entrance facilities leased pursuant to 47 U.S.C. § 251(c)(2) can be used only for interconnection. Because we have found that Sprint's definition of a DS1 Interconnection Facility is unsupported and because it does not distinguish logical DS1 channels within a DS3 from stand-alone DS1 Facilities, we must also find that Sprint's proposed *pro rata* cost sharing proposal for Issue 22 would be contrary to the Supreme Court's decision in *Talk America* because it would permit Sprint to use DS3 Interconnection Facilities it obtains from AT&T Indiana for Backhaul purposes. Therefore, Sprint's language for Issue 22 cannot be approved. We note that notwithstanding our finding that Sprint's *pro rata* pricing proposal in Issue 22 should be rejected, we reiterate our finding in the context of Issue 5(b) that Sprint's interpretation of how the Court used the word "only" is more reasonable than AT&T Indiana's corresponding interpretation. We point to the Court's statement in its *Talk America* decision that "entrance facilities leased under § 251(c)(2) can be used only for interconnection"[81] - i.e., Sprint's view that the Court was distinguishing between "interconnection" and "backhaul," but not between different types of "interconnection."[82]

In regard to pricing, we note that under Sprint's proposal, if Sprint ordered a DS1 interconnection facility, it would not be billed at the Commission-approved TELRIC-based DS1 rate. Instead, Sprint would be billed at the prorated DS3 TELRIC price for that particular DS1,

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[78] Sprint Direct Testimony (Farrar) at 36, Lines 757-761.
[79] AT&T Indiana Direct Testimony (Pellerin) at 64.
[80] Quoting *Talk America*, at 13.
[81] *Talk America* (S. Ct.), at 13.
[82] *See, e.g.*, Sprint Direct Testimony (Felton) at 35, lines 648-661 and at 36, lines 662-672.

which would be lower than the stand-alone DS1 rate. We find that Sprint's proposed language for Attachment 02, Sections 3.8.2 and 3.8.2.1 would produce below-cost and "below-TELRIC-based" rates in Indiana if adopted, which is contrary to 47 U.S.C. § 252(d)(1) and 47 C.F.R. §§ 51.505(a), (b), and (c), respectively.[83] Furthermore, we find AT&T witness Ms. Pellerin's concerns that the way in which Sprint proposes to account for spare capacity "would require AT&T Indiana to provide spare DS1 channel capacity at below TELRIC-based rates...with no assurance that those channels would be used only for Interconnection and never for access services" to be reasonable concerns.[84]

To summarize, we find in favor of AT&T Indiana on Issue 22 based upon the discussion above. Accordingly, we reject Sprint's language for Attachment 02, Sections 3.8.2 and 3.8.2.1, those sections should be excluded from the conforming agreement, consistent with AT&T Indiana's marking of those sections as "Intentionally Left Blank".

Issue 23: Should Sprint be entitled to new TELRIC-based rates for Interconnection Facilities that are different than the rates set forth in the Pricing Sheet without amending the ICA?

A. Positions of the Parties.

1. Sprint. Sprint's position is that it is entitled to new TELRIC-based rates for Interconnection Facilities that are different than the rates set forth in the Pricing Sheet without amending the ICA. Sprint indicates that any Commission-approved revisions to TELRIC prices contained in the Pricing Sheets should be immediately provided to Sprint without the need for a further amendment to the Agreement.

2. AT&T Indiana. AT&T Indiana's position is that Sprint should not be automatically entitled to rates different than those included in the ICA without amending its ICA. AT&T Indiana argues that if the Commission were to establish different TELRIC-based prices for Interconnection Facilities in a generic cost proceeding, either party could request an ICA amendment to include those rates in accordance with the Intervening Law provisions of the ICA.

B. Commission Analysis and Decision. In Sprint's proposed language for Attachment 02, Section 3.8.3, Sprint proposes that if, in the future, the Commission should re-calculate TELRIC rates, those re-calculated rates should be automatically available to Sprint without amendment to the ICA or AT&T Indiana's pricing sheets. AT&T Indiana objects to Sprint's proposed Attachment 02, Section 3.8.3.

According to AT&T Indiana, neither Sprint nor AT&T Indiana should be automatically entitled to different rates without amending the ICA. AT&T Indiana argues that it is necessary for the rates, terms, and conditions applicable to the ICA be included within the ICA, and AT&T Indiana cannot be obligated to provide service pursuant to extra-ICA rates that conflict with the rates in the ICA itself.

[83] 47 C.F.R. §§ 51.505(a), (b), & (c) are applicable in the absence of alternative, mutually agreed-upon rates.
[84] AT&T Indiana Direct Testimony (Pellerin) at 69, lines 10-13.

In looking at Issue 23, we note that Sprint is essentially asking for pre-approval of future, hypothetical rates. We find that such an automatic approval process would be contrary to federal law, for several reasons. It would contravene the role of the Commission in reviewing and approving the rates and charges associated with an ICA under 47 U.S.C. §§ 252(e)(1) & (e)(2). It would leave the Commission unable to reject these hypothetical rates as being inconsistent with the public interest, public convenience and necessity, or discriminatory against a telecommunications carrier not a party to the agreement, were that to become necessary, because Sprint's proposed language would place Sprint's implementation of these hypothetical new rates outside of the 47 U.S.C. §§ 251/252 interconnection agreement review and approval process.[85] It would also eliminate the opportunity for other carriers to exercise their rights under 47 U.S.C. § 252(i) to opt into the Sprint/AT&T Indiana ICA containing the new TELRIC-based rates, if the rates were changed outside of the 47 U.S.C. §§ 251/252 process.

For all of these reasons, the Commission rejects Sprint's proposal and finds in favor of AT&T Indiana for Issue 23. Accordingly, we adopt AT&T Indiana's proposed language for Attachment 02, Section 3.8.3.

Issue 24(a): Should AT&T Indiana be required to share the cost of Interconnection Facilities located on Sprint's side of the POI?

A. Positions of the Parties.

1. Sprint. Sprint's position is that AT&T Indiana should be required to share the cost of Interconnection Facilities located on Sprint's side of the POI. Sprint argues that pursuant to federal law and Commission precedent, the costs of Interconnection Facilities are to be shared between the Parties. AT&T Indiana's proposed language provides for only limited sharing with respect to already installed facilities, and no sharing at all with respect to TELRIC-based facilities.

2. AT&T Indiana. AT&T Indiana's position is that Sprint's proposal that AT&T Indiana be required to bear half the cost of the Interconnection Facilities it is required to provide to Sprint pursuant to 47 U.S.C. § 251(c)(2) is contrary to the Supreme Court's ruling in *Talk America* that "AT&T must lease its existing entrance facilities for interconnection at cost-based rates" - not at one-half of a cost-based rate. AT&T Indiana explains that the Interconnection Facilities at issue here are located entirely on Sprint's side of the POI and, therefore, are part of Sprint's network. The FCC rules relied on by Sprint (i.e., 47 C.F.R. §§51.703(b) & 51.709(b)) do not support its position because those rules govern the calculation of charges for transport and termination under 47 U.S.C. § 251(b)(5). The rules are no longer applicable given the *CAF Order*'s adoption of "bill-and-keep" for LEC-to-CMRS non-access traffic, and do not apply to an ILEC's recovery of the costs of the Interconnection Facilities that it is required to provide to competing carriers pursuant to 47 U.S.C. § 251(c)(2).

AT&T Indiana's position is that it should not be required to share the cost of Interconnection Facilities located on Sprint's side of the POI because Sprint has responsibility

[85] 47 U.S.C. §§ 252(a)(1), 252(b), 252(e)(1) & (e)(2)

for providing those Interconnection Facilities, under the agreed-upon language of Attachment 02, Section 3.3:

> Section 3.3 reads, as follows: "Each party shall be responsible for providing its owned or leased Interconnection Facilities to route calls to the POI, a responsibility Sprint can meet by either (i) constructing its own facilities; (ii) purchasing or leasing facilities from a third party; or (iii) obtaining Interconnection Facilities from AT&T Indiana, if they are available."

AT&T Indiana defines "responsibility for providing those Interconnection Facilities" to mean that Sprint is both physically and financially responsible for providing the facilities.[86] AT&T Indiana argues that Sprint's 50/50 cost sharing proposal is inconsistent with the Supreme Court's *Talk America* decision.[87] According to Ms. Pellerin, "[i]n Talk America, the Supreme Court held that an ILEC must provide requesting carriers, such as Sprint, access to the ILEC's existing Interconnection Facilities at TELRIC-based rates so long as such facilities are used solely for Interconnection....With its 'sharing' proposal, however, Sprint seeks to pay no more than one-half of the TELRIC-based rate."[88]

B. Commission Analysis and Decision. Issue 24 addresses issues related to cost sharing for "Interconnection Facilities" and for processing Sprint's Interconnection-related service orders. The definition of "Interconnection Facilities," on which there is only partial agreement, is addressed in Issue 9, above. The DPL frames Issue 24(a) as whether AT&T Indiana must share in the cost of Interconnection Facilities on Sprint's side of the POI. Sprint contends that AT&T Indiana should, while AT&T Indiana argues it should not. The DPL divides Issue 24 into three sub-issues: Issue 24(a): Should AT&T Indiana be required to share the cost of Interconnection Facilities located on Sprint's side of the POI; Issue 24(b): If AT&T Indiana is required to share in the cost of Interconnection Facilities located on Sprint's side of the POI, should that sharing be on a 50/50 basis; and Issue 24(c): Should the ICA obligate Sprint to pay the full price for AT&T Indiana to process Sprint's Interconnection related service orders. Notwithstanding this structure for the three sub-issues, Sprint and AT&T Indiana both spend considerable amount of testimony on Issue 24(a) arguing for or against Sprint's 50/50 sharing proposal, which is identified as the topic for Issue 24(b). We will follow the DPL as identified for Issue 24 to the extent we can.

Sprint points to the Commission's Arbitration Order in Cause No. 43052 INT 01, involving Sprint's wireline affiliate, Sprint Communications Company, L.P. and a group of rural local exchange carriers ("RLECs") as precedent for ruling in favor of Sprint on Issue 24(a). In the Order in Cause No. 43052 INT 01, the Commission found the evidence in that case reflects that if the parties use direct interconnection that carries two-way trunks, the facility will be sized to accommodate both the RLEC's traffic and Sprint's traffic. The Commission further found that where this occurs, allocating the cost of the two-way facility based on the relative percentage

[86] AT&T Indiana Direct Testimony (Pellerin) at 77, lines 6-9 and at 78, lines 15-17. *See, also*, AT&T Indiana Direct Testimony (Pellerin) at 17, lines 21-23.
[87] AT&T Indiana Direct Testimony (Pellerin) at 76, lines 1-21 and at 77, lines 1 and 2.
[88] AT&T Indiana Direct Testimony (Pellerin) at 76 (lines 4 – 7, 11 & 12).

of originated traffic will ensure each party will assume the cost associated with carrying its traffic.

AT&T Indiana indicates that it should not be required to share the cost of Interconnection Facilities located on Sprint's side of the POI because Sprint has the responsibility for providing those Interconnection Facilities, under the agreed-upon language of Attachment 02, Section 3.3. AT&T indicates that it defines the responsibility for providing those Interconnection Facilities to mean that Sprint is both physically and financially responsible for providing the facilities. AT&T Indiana's witness Pellerin concludes that:

> "If, as Sprint asserts, the cost of any such facility must be shared by the ILEC, one would have expected the Supreme Court, or the FCC's *amicus* brief upon which the Supreme Court relied, to say so. They did not. Instead, the Supreme Court agreed with the FCC that "AT&T must lease its existing entrance facilities for interconnection at cost-based rates" - not at one-half of a cost based rate. Sprint's ability to obtain existing Interconnection Facilities at below-market TELRIC-based rates - rates the Supreme Court has described as near confiscatory - is, by itself, a form of "sharing." There is no basis for the Commission to double down on that sharing requirement by allowing Sprint to pay only half of the TELRIC-based price. [89]

In this proceeding, Ms. Pellerin did not explain how TELRIC-based rates are "below-market," nor did she explain how Interconnection Facilities constitute, or are included in, a "market", at all. Furthermore, and as we discussed in the context of Issue 13(b), AT&T Indiana has significantly mischaracterized the Supreme Court's view on TELRIC, as set forth in *Verizon.* Because the Supreme Court found the TELRIC methodology to be lawful and consistent with federal statutes, and because Verizon and the other ILEC plaintiffs in that case did not allege, and the Supreme Court did not hold, that any specific TELRIC-based rates were confiscatory, that case cannot be used to support a contention that TELRIC-based rates are, somehow "a form of sharing." Accordingly, AT&T Indiana's "doubling down" concern is moot.

We now turn, specifically, to Sprint's 50/50 cost sharing proposal. AT&T Indiana argues that Sprint's proposal is inconsistent with the *Talk America* decision. As Sprint pointed out, that whether facilities that are used for the purpose of Interconnection are subject to TELRIC-pricing, which is the issue that is addressed by the *Talk America* decision, and whether the charges billed for Interconnection Facilities are subject to cost-sharing, are two separate and distinct questions. Consistent with our actions on Issue 6, Sprint's 50/50 cost sharing proposal would simply require AT&T Indiana to apply a 50% discount to the TELRIC-based prices for the Interconnection Facilities; it would not actually change the TELRIC-based prices, themselves.[90] Further, the FCC's silence, in *Talk America*, on whether the cost of existing Interconnection Facilities that a competitor (e.g., Sprint) obtains from an ILEC (e.g., AT&T Indiana) must be shared between the competitor and the ILEC is not, by itself, dispositive of the question of whether cost sharing is required for Interconnection Facilities.

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[89] AT&T Indiana Direct Testimony (Pellerin), at 76, lines 15 – 21 and at 77, lines 1 and 2.

[90] Contrast this with Sprint's prorated pricing proposal in Issue 22, which would, in fact, reduce the actual non-discounted price that AT&T Indiana could charge Sprint for Interconnection Facilities.

AT&T Indiana also argues that the POI is the demarcation point between the Parties' two networks. AT&T Indiana alleges that the Interconnection Facilities that Sprint provides in accordance with Attachment 02, Section 3.3, and which according to AT&T Indiana are all located on Sprint's side of the POI, are part of Sprint's network. AT&T Indiana concludes that Sprint should have the full responsibility for the cost of those facilities, just as AT&T Indiana has full responsibility for the cost of the facilities included in its network, all of which are located on AT&T Indiana's side of the POI. AT&T Indiana relies, in large part, on its interpretation of statutory language in 47 U.S.C. § 251(c)(2)(B) to support these assertions. However, we disagree with AT&T Indiana that the Interconnection Facilities are a part of Sprint's network, as well as with the idea that the location of the POI is somehow determinative of financial responsibility.

In any event, AT&T Indiana mischaracterizes the location of the POI. As we explained in our analysis and discussion of Issue 6, Interconnection Facilities connect the Parties' two networks for the mutual exchange of traffic. An Interconnection Facility has two physical ends to it, the one end at the Sprint network (away from the POI) and the other end at the AT&T Indiana network (closest to the POI). The POI merely represents a technically feasible point in AT&T Indiana's network where the Interconnection Facility connects to AT&T Indiana's network.[91] In other words (at least when Sprint obtains Interconnection Facilities from AT&T Indiana, rather than from another carrier or by self-provisioning), Sprint's network will connect with the AT&T Indiana network at the end of a particular Interconnection Facility that is farthest from the POI. The POI, in turn, is located at the end of the Interconnection Facilities that is farthest from Sprint's network; it is not the equivalent of a meet point, which is a location where two parties' networks meet. Even if they were equivalent, Sprint and AT&T Indiana have agreed that Sprint cannot request a Fiber Meet Point without amending the ICA.[92]

AT&T Indiana is asserting many of the same points it previously argued in Issue 6 regarding the definition of "Point of Interconnection" in GTC, Section 2.89. As discussed above, we adopted Sprint's proposed changes to the agreed-upon definition of POI for Issue 6 and rejected AT&T Indiana's changes that would make the POI a financial demarcation point and would make Sprint financially responsible for all costs associated with the Interconnection Facilities. We further note, as discussed in *Talk America*, that the FCC and Supreme Court have both rejected AT&T Indiana's position that Interconnection Facilities[93] are a part of the competitor's network, not the ILEC's network.

We reiterate the decision of Judge Reeves, as discussed in Issue 6 above, who ruled against an assertion by certain RLECs that the interconnection point between the defendant RLECs and T-Mobile USA, Inc., or other Plaintiff wireless providers is "not merely a theoretical location; it is the specific demarcation point where there is a linking of the CMRS Provider and RLEC networks for the delivery of traffic pursuant to the terms and conditions of the Agreement." That position is almost identical to AT&T Indiana's position in this case. *See, e.g.*, Pellerin Direct, at 75 - 78.

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[91] Sprint Direct Testimony (Farrar) at 11, lines 231-239. *See, also, Talk America*, at 9.

[92] Attachment 02, Section 3.6.

[93] *Talk America*, Section II.C., at 10 & 11. Note that the Supreme Court's use of the term "entrance facilities" should be viewed as synonymous with the Parties' use of the term "Interconnection Facilities."

AT&T Indiana concedes, and the FCC concluded in the TRRO,[94] that entrance facilities are part of the ILEC's network.[95] "[B]ut only at a point in time prior to being leased by another carrier.... In other words, once a facility is leased by another carrier, it is no longer part of the ILEC's network. Once the lease is over, the facility is returned to the ILEC's network for its own use or future lease by another carrier."[96] However, AT&T Indiana did not provide specific citations to the TRRO to support this assertion. The examples Ms. Pellerin provides of various unbundled network elements that somehow become part of another carrier's network, after being leased by that carrier, are irrelevant. In *Talk America*, both the Supreme Court and the FCC drew a sharp distinction between entrance facilities purchased (at TELRIC-based prices) for interconnection purposes and entrance facilities purchased as UNEs for Backhaul purposes. An ILEC is generally required under 47 U.S.C. § 251(c)(2) to provide entrance facilities (at TELRIC-based prices) under the first scenario – also referred to as "Interconnection Facilities"; it cannot be required to provide entrance facilities as 47 U.S.C. § 251(c)(2) UNEs under the second scenario. AT&T Indiana's examples are also unpersuasive because, when a competitor leases a UNE from an ILEC, it is effectively integrating that UNE into its own network. That is very different from merely obtaining a connection to an entrance facility or an Interconnection Facility.

The Parties provided testimony debating the scope and applicability of 47 C.F.R. §§ 51.703(b)[97] and 51.709(b)[98] to Issue 24, as well as various FCC orders and Federal court case opinions interpreting those rules.[99] 47 C.F.R. § 51.703(b) prohibits a LEC from "[assessing] charges on any telecommunications carrier for Non-Access telecommunications Traffic that originates on the LEC network," while 47 C.F.R. § 51.709(b) mandates that "the rate of a carrier providing transmission facilities dedicated to the transmission of non-access traffic between two carriers' networks shall recover only the costs of the proportion of that trunk capacity used by an interconnecting carrier to send non-access traffic that will terminate on the providing carrier's network...."

As a reminder, pursuant to 47 U.S.C. §§ 252(a)(1) and 252(e)(2)(A), voluntarily negotiated agreements (or agreed-upon language within an arbitrated ICA) need not comply with, or be consistent with, 47 U.S.C. §§ 251(b) or 251(c), or with 47 U.S.C. § 252(d). Furthermore, we note that 47 C.F.R. § 51.709(b) was adopted as part of the FCC's efforts to implement 47 U.S.C. §§ 251(b)(5) and 252(d)(2). Thus, Ms. Pellerin's statement that the Parties agreed-upon language in Attachment 02, Section 6.3.1 "necessarily precludes the Commission

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[94] "TRRO" refers to the FCC's *Triennial Review Remand Order*, WC Docket No. 04-313 & CC Docket No. 01-338 (FCC 04-290), which was release on February 4, 2005.

[95] AT&T Indiana Direct Testimony (Pellerin) at 79, lines 6 and 7.

[96] AT&T Indiana Direct Testimony (Pellerin) at 79, line 9 and 21 and at 80, lines 1 and 2.

[97] Sprint Direct Testimony (Farrar) at 12-13; Sprint Rebuttal Testimony (Farrar) at 8 and 10. AT&T Indiana Rebuttal Testimony (Pellerin) at 49-52.

[98] AT&T Indiana Direct Testimony (Pellerin) at 80-83. Sprint Direct Testimony (Farrar) at 8-10 and 12-13. AT&T Indiana Rebuttal Testimony (Pellerin) at 49-52, lines 9-21 and at 80, lines 1 and 2.

[99] See, e.g., In the Matters of TSR Wireless, LLC, et al., v. U.S. West Communications, Inc., et al., Enforcement Bureau, File, Nos. E-98-13, E-98-15, E-98-16, E-98-17. E-98-18, Memorandum Opinion and Order (FCC 00-194, rel. June 21, 2000). See, e.g., T-Mobile USA, Inc., et al., v. David Armstrong, et al., [KY PSC chairman and two other commissioners], Civil Action No. 3: 08-36-DCR, U.S. District Court, E.D. Ky. (Memorandum Opinion and Order, May 20, 2009).

from relying on Rule 51.709(b)..." is inconsistent with the procedural framework laid out by Congress.

Nevertheless, Ms. Pellerin is correct in observing that 47 C.F.R. §§ 51.703(b) and 51.709(b) are in Part 51, Subpart H, which, by its own terms, deals with non-access reciprocal compensation for non-access traffic. Pursuant to the transition schedule to bill-and-keep for LEC-CMRS traffic, there is only one type of LEC-CMRS non-access traffic today: IntraMTA Traffic (Issue 2). Thus, those two rules will have no bearing on determining compensation (including determining cost for transport facilities) for traffic other than IntraMTA Traffic that is exchanged or delivered over Interconnection Facilities.

The only question remaining, therefore, is whether either, or both, of these rules could be used to support a requirement for cost sharing for Interconnection Facilities when Sprint is using those facilities to exchange at least some IntraMTA Traffic with AT&T Indiana (either exclusively or when combined with other types of traffic). We are not fully persuaded by the legal arguments of either Party regarding the applicability of 47 C.F.R. §§ 51.703(b) and 51.709(b).[100] Therefore, we must now consider some of the specific ICA sections the parties debated in Issue 24.

As an initial observation, the Commission finds that the agreed-upon language in Attachment 02, Section 2.1.1 ("Unless otherwise specified in this Attachment..."), signifies at least the possibility of an exception to the otherwise agreed-upon language, in that same section, that "each Party is financially responsible for the provisioning of facilities on its side of the POI(s)." If we were to approve cost sharing language for inclusion in Attachment 02, such as Sprint's proposed language for Attachment 02, Sections 3.3 and Sprint Section 3.9.1, that approval would create such an exception.

Next, we note that Sprint proposes to modify the agreed-upon language in Section 3.3, as follows (Sprint's proposed changes are in bold and italics):

> 3.3 ***Subject to Section 3.9.1,*** *e*ach Party shall be responsible for providing its own or leased Interconnection Facilities to route calls to the POI. Each Party may construct its own Interconnection Facilities, or it may purchase or lease the Interconnection Facilities from a Third Party, or Sprint may purchase or lease the Interconnection Facilities from AT&T Indiana, if available, pursuant to Section 3.5 below.

Sprint proposes the following language for Attachment 02, Sprint Section 3.9.1, as an entirely new section within Attachment 02 (again, Sprint's proposed changes are in bold and italics):

> 3.9.1 ***As of the Effective Date the recurring and non-recurring costs of Interconnection Facilities shall be equally shared by the Parties. AT&T INDIANA shall not charge Sprint for any costs associated with the origination or delivery of any Third Party traffic delivered by AT&T INDIANA to Sprint.***

[100] This is true for Issue 24(b), as well.

Based upon the evidence and the discussion above, the Commission finds in favor of Sprint on Issue 24(a). Given that the Interconnection Facilities are part of AT&T Indiana's network (rather than Sprint's network) and notwithstanding the agreed-upon language in Attachment 02, Sections 3.3 and 6.3.1, the triggering of Attachment 02, Section 2.1.1, necessitates a finding that AT&T Indiana should share in the recurring and non-recurring costs of those facilities, regardless of whether the Interconnection Facilities are used for exchanging or delivering IntraMTA Traffic, non-IntraMTA traffic, or both.

Issue 24(b): If AT&T Indiana is required to share in the cost of Interconnection Facilities located on Sprint's side of the POI, should that sharing be on a 50/50 basis?

A. Positions of the Parties.

1. Sprint. Sprint's position is that its 50/50 proposal is easy to implement and consistent with the FCC's acknowledgement in its *CAF Order* that any given call is of equal benefit to both Parties and their customers. The language AT&T Indiana has proposed does not recognize the equal benefit rationale of the *CAF Order.* AT&T Indiana would also allocate to Sprint, AT&T Indiana's use of the Interconnection Facility to deliver third-party originated traffic to Sprint. Such third-party originated traffic is from either AT&T Indiana's transit customers or its switched access IXC customers, and such customers compensate AT&T Indiana to deliver such traffic to Sprint. The cost of AT&T Indiana's use of the Interconnection Facilities to serve its transit customers or its IXC customers is between AT&T Indiana and its customers. AT&T Indiana should not be permitted to shift its costs to Sprint.

Sprint argues that in order to implement Sprint's 50/50 proposal, consistent with 47 C.F.R. § 51.709(b), AT&T Indiana should discount the Interconnection-related charges by 50% when it bills Sprint for Interconnection Facilities. AT&T Indiana should not bill an undiscounted charge and then require Sprint to separately seek a credit or render a "counter-bill" to obtain the benefit of the discounted amount.

2. AT&T Indiana. AT&T Indiana's position is that there is no need for the Commission to address Issue 24(b). In the event that the Commission needs to decide Issue 24(b), it should reject Sprint's proposed 50% factor because it is unsupported by usage data and is based on a misreading of the *CAF Order*, which supports a decision that there be no sharing factor. Furthermore, Sprint's proposal assumes that AT&T Indiana should bear the costs of Interconnection Facilities to the extent that they are used to transport third-party-originated transit and IXC traffic to Sprint, a result which is unfair and confiscatory in that (i) only Sprint benefits from the use of Interconnection Facilities for that purpose and (ii) AT&T Indiana is not compensated by the third-party originating carriers for any portion of the cost of those facilities. AT&T Indiana explains that Sprint's position that AT&T Indiana should bear the costs of the facilities used to transport third-party originated transit and IXC traffic Sprint is directly contrary to the FCC's rulings on this issue. If the Commission determines for Issue 24(a) that AT&T Indiana must share the cost of the Interconnection Facilities, the Commission should adopt a 24% Interconnection Facilities Sharing factor, based on AT&T Indiana's share of the IntraMTA Traffic that is exchanged directly with Sprint. Alternatively, if the Commission also decides for Issue 11(d) that Sprint should be allowed to use Interconnection Facilities for IXC traffic, the

Commission should adopt a 21% Interconnection Facilities Sharing Factor. These factors are both supported by usage data and the proper assignment to Sprint of responsibility for transit and IXC traffic.

B. Commission Analysis and Decision. Another way to frame Issue 24(b) is to ask whether cost sharing should be calculated on a "relative use" basis. Each of the Parties claims that their respective cost sharing plans do take relative use into account. However, Sprint and AT&T Indiana measure "relative use" in different ways.

Sprint's position is that 50/50 represents the Parties' relative use of the Interconnection Facilities on any given call. Sprint notes that the FCC determined in the *CAF Order* that, regardless of directionality, each party benefits from, and should share the costs of, any particular call. Sprint concludes that on this basis alone, each party should bear an equal share of the costs of the facilities that carry a call between the Parties' networks.

AT&T Indiana proposes to measures the relative use of the Interconnection Facilities in a much more traditional way, such as relative traffic volumes and directionality. AT&T Indiana has developed two proposed cost sharing factors, depending on how the Commission decides Issue 11(d). If Sprint is not allowed to use Interconnection Facilities for IXC traffic, the Interconnection Facilities Sharing Factor will be 24% for AT&T Indiana's share, which is less than the Parties' existing 27% Shared Facility Factor as set forth in the current ICA. If the IXC traffic is included in the calculation, AT&T Indiana's share will be 21%.

We reject AT&T Indiana's positions regarding the calculation of the cost sharing percentages for Issue 24(b). AT&T Indiana's proposed cost sharing percentages appear to be too low because the numerator in its percentages appears to be based upon AT&T Indiana's proposed definition of "Interconnection" in GTC, Section 2.60 in Issue 5(b) and proposed language for Attachment 02, Section 1.1, both of which we have rejected. Furthermore, AT&T Indiana's proposed cost sharing percentages may not reflect FCC rulings regarding the definition of IntraMTA Traffic.[101] This list of methodological concerns is illustrative and should not be considered as exhaustive. We previously found that the first sentence of Sprint's proposed new section (Attachment 02, Section 3.9.1) should be adopted. However, we note that the Commission adopts Sprint's 50/50 cost sharing proposal in Issue 24(b), at least in part, because AT&T Indiana did not present adequate support for its alternative sharing percentages.

Issue 24(c): Should the ICA obligate Sprint to pay the full price for AT&T Indiana to process Sprint's Interconnection related service orders?

A. Positions of the Parties.

1. Sprint. Sprint's position is that its proposed Pricing Schedule 1.4.2 language recognizes that all costs associated with Interconnection Facilities are subject to AT&T Indiana's sharing obligation, including the service order costs associated with Interconnection Facilities.

[101] *See, e.g., USF/ICC Transformation Order*, at para. 1007.

2. AT&T Indiana. AT&T Indiana's position is that the Commission should reject Sprint's proposal to require AT&T Indiana to "share" in the non-recurring costs incurred as a result of Sprint's orders for Interconnection Facilities. AT&T Indiana argues that since Sprint is the "cost causer" it should be fully responsible for such costs and should pay the full amount of all applicable non-recurring charges.

B. Commission Analysis and Decision. Based upon the evidence and arguments of the Parties, we find in favor of AT&T Indiana on Issue 24(c). Sprint should be fully responsible for the non-recurring costs incurred as a result of Sprint's orders for Interconnection Facilities. These are costs incurred by AT&T Indiana to perform work in response to Sprint's orders. Accordingly we reject Sprint's proposed language and adopt AT&T Indiana's alternative proposed language for Attachment 02, Section 1.4.2.

Issue 25: What are the appropriate transition rates, terms, and conditions?

A. Positions of the Parties.

1. Sprint. Sprint's position is that its proposed transition language allows Sprint to decide which of the existing Interconnection Facilities, on a facility by facility basis, it intends to transition to TELRIC-pricing. Sprint may elect not to transition a particular facility. In any event, all Interconnection Facilities, whether transitioned or not, are subject to the new 50/50 cost-sharing arrangement.

Sprint argues that, in contrast, the intent of AT&T Indiana's proposed language is to require Sprint to transition all existing Interconnection Facilities to TELRIC-pricing, rather than Sprint being able to choose which existing Interconnection Facilities to transition to TELRIC-pricing. Sprint contends that AT&T Indiana should not be allowed to impose an "all or nothing" approach with respect to the implementation of TELRIC-pricing.

Sprint's position is that the sharing of facility costs applies to both 1) the existing non-TELRIC priced Interconnection Facilities, whether they are transitioned to TELRIC-pricing or not, and 2) any new Interconnection Facilities that may be purchased, whether such new facilities are purchased under this Agreement or from a tariff.

Sprint further explains that with AT&T Indiana's proposed language, any continued use of the existing shared facility factors perpetuates AT&T Indiana's view that third-party originated traffic by AT&T Indiana carrier-customers somehow represents Sprint's use of an Interconnection Facility.

2. AT&T Indiana. AT&T Indiana's position is that under its existing interconnection arrangement, Sprint uses the same transport facilities, obtained from AT&T Indiana's access tariff, to carry all of its traffic, including both Interconnection traffic (*i.e.*, traffic exchanged between Sprint's and AT&T Indiana's end users) and non-Interconnection traffic (e.g., E911 traffic, traffic between Sprint and IXCs, and Backhaul traffic). However, the Interconnection Facilities that Sprint seeks to obtain at TELRIC-based prices pursuant to 47 U.S.C. § 251(c)(2) may be used only for Interconnection traffic. Thus, before it is entitled to obtain TELRIC-based pricing, Sprint must obtain Interconnection Facilities under the terms of

the ICA that are separate from the transport facilities used for Backhaul and other non-Interconnection purposes. AT&T Indiana's proposed transition language is necessary to provide for an orderly transition to a 47 U.S.C. § 251(c)(2) Interconnection arrangement and to maintain the status quo during the period between the ICA's Effective Date and the time when the transition is complete.

B. Commission Analysis and Decision. AT&T Indiana argues that the Parties currently operate under a "CMRS agreement" that is not consistent with 47 U.S.C. § 251(c)(2). AT&T Indiana witness Pellerin describes how costs are currently shared in her testimony. She indicates that Sprint and AT&T Indiana share the cost of the facilities used to connect the Parties' switches and apportion the costs based on a shared facility factor ("SFF"). AT&T Indiana bills Sprint the tariffed access price for the facilities, discounted by the amount of the SFF. The SFF in Sprint's current ICA for AT&T Indiana's share is 27%. The current SFF was established based on the premise that of all the traffic that flows over the shared facility, excluding backhaul traffic that AT&T Indiana does not switch, approximately 27% is originated by AT&T Indiana. Therefore, AT&T Indiana bears 27% of the cost of the facility. The Parties have not revised the SFF to reflect changes in traffic patterns since the ICA went into effect in 2003.

The Commission notes that the current form of cost sharing, including the SFF, is very different from the 50/50 cost sharing proposal Sprint has made in this proceeding. For one thing, the SFF is applied to "tariffed access prices for the facilities," not to 47 U.S.C. § 251(c)(2) Interconnection Facilities. Also, the 27% SFF is included in a voluntarily negotiated agreement, not an arbitrated agreement. AT&T Indiana indicates that their recent data show the SFF should be 21%, but AT&T Indiana is not proposing to revise the SFF for the successor ICA.

AT&T Indiana further argues that there are meaningful differences between the existing agreement and a 47 U.S.C. § 251(c)(2) agreement. AT&T Indiana indicates that Sprint currently uses the same tariffed special access facilities for both Interconnection and non-Interconnection (i.e., Backhaul) traffic. We note, and as discussed earlier, both the FCC and the Supreme Court have said that ILECs are required to offer entrance facilities to competitors at cost-based rates for interconnection purposes but are not required to offer entrance facilities at TELRIC-based prices to competitors for Backhaul purposes.[102] In order for Sprint to receive the TELRIC-based prices it demands for Interconnection Facilities, the Parties must transition from the existing CMRS model to a model that is more consistent with 47 U.S.C. § 251(c)(2).

AT&T Indiana argues that the current agreement is not a 47 U.S.C. § 251(c)(2) agreement. Sprint indicates that the Parties are currently mutually exchanging traffic between their networks via Interconnection Facilities that were originally purchased out of AT&T Indiana's special access tariffs and are subject to a cost-sharing mechanism. Sprint concludes that although these facilities are not currently being charged based on TELRIC-pricing, it is entitled to receive TELRIC-pricing for these Interconnection Facilities, consistent with *Talk America*. Sprint further argues that there is nothing under federal law that requires a requesting carrier such as Sprint to choose on an all-or-nothing basis between using Interconnection

[102] *Talk America*, Brief for the United States as *Amicus Curiae* supporting Petitioners, at 14-18; S. Ct., at 6-16.

Facilities that are purchased via a tariff at special access prices or using Interconnection Facilities that are purchased via the Interconnection Agreement at TELRIC prices.

We find that the evidence presented does not demonstrate that the Interconnection Facilities Sprint seeks to obtain at TELRIC-based prices are physically different than the existing tariffed special access entrance facilities. The Commission further finds that it is appropriate for Sprint to decide which of the existing Interconnection Facilities, on a facility by facility basis, it intends to transition to TELRIC-pricing. Sprint will appropriately compensate AT&T Indiana for the work it performs in transitioning facilities.

Regarding the Parties' respective proposed changes to ICA language, the Commission finds Sprint's position and contract language for Issue 25 to be reasonable and rejects AT&T Indiana's proposed ICA language changes. Our adoption of Sprint's proposed language is subject to the following two caveats. First, this statement of general support for Sprint's position should not be construed as altering or modifying in any way our previous findings regarding: (1) definitions of disputed terms; or (2) the types of traffic Sprint is, or is not, permitted to carry or exchange with AT&T Indiana over Interconnection Facilities it obtains from AT&T Indiana at TELRIC-based prices. Second, Sprint's proposed contract language for Attachment 02, Sections 1.2.1.2.1 and 3.8.1 conflicts with its proposed language for Section 3.8.4. The Commission resolves this conflict by rejecting Sprint's proposed language for Attachment 02, Section 3.8.4, in its entirety.

In light of our overall rejection of AT&T Indiana's proposed language for Issue 25 and our rejection of Sprint's proposed language for Attachment 02, Section 3.8.4, in its entirety, we reject the proposals of both Parties for the two columns populated for Line 311 in the Wireless Pricing Sheet ("Rate Element Description" and "Monthly Recurring Charge"). Therefore, we find that these two columns should be populated in a manner that is consistent with our analysis and other findings for Issue 25. The Parties are instructed to comply with this finding as they prepare the conforming ICA to file with this Commission for final approval.

9. Confidentiality Findings. AT&T Indiana filed a Motion for Protection of Confidential and Proprietary Information of certain information contained in the direct testimony of AT&T Indiana's witness Ms. Pellerin and Sprint's witness Mr. Burt on December 18, 2013. The request was supported by the affidavit of Vincent Rosenthal showing documents to be submitted to the Commission were trade secret information within the scope of Ind. Code §§ 5-14-3-4 and Ind. Code § 24-2-3-2. The Presiding Officers issued a docket entry on January 13, 2014, finding such information to be preliminarily confidential, after which such information was submitted under seal.

On December 23, 2013, Sprint filed a Motion for Confidential Treatment of certain information contained in the direct testimony of AT&T Indiana's witnesses Mr. Albright and Ms. Pellerin, and in the direct testimony of Sprint's witnesses Mr. Burt and Mr. Felton. Sprint's request was supported by the affidavit of Mr. Burt showing portions of the testimony contain trade secret information within the scope of Ind. Code §§ 5-14-3-4 and Ind. Code § 24-2-3-2. The Presiding Officers issued a docket entry on January 13, 2015, finding such information to be preliminarily confidential. Such information was submitted to the Commission under seal.

We note that there was no disagreement among the Parties as to the confidential and proprietary nature of the information submitted under seal in this proceeding. After reviewing the information that was submitted under seal, we find all such information qualifies as confidential trade secret information pursuant to Ind. Code § 5-14-3-4 and Ind. Code § 24-2-3-2. This information has independent economic value from not being generally known or readily ascertainable by proper means. The Parties take reasonable steps to maintain the secrecy of the information and disclosure of such information would cause them harm. Therefore, we affirm the preliminary rulings and find this information should be exempted from the public access requirements contained in Ind. Code ch. 5-14-3 and Ind. Code § 8-1-2-29, and held confidential and protected from public disclosure by this Commission.

IT IS THEREFORE ORDERED BY THE INDIANA UTILITY REGULATORY COMMISSION that:

1. The disputed issues between the Parties are resolved in accordance with the findings and conclusions set forth herein.

2. Pursuant to 47 U.S.C. § 252(e)(1) and in accordance with the Amended Interim Procedural Order in Cause No. 39983 (Aug. 21, 1996), the Parties shall jointly submit for the Commission's approval a single ICA (also referred to as a "conforming agreement"), reflecting our resolution of the disputed issues as described in this Order, as well as the agreed upon provisions that emerged as a result of the negotiations prior to the arbitration hearing. Such ICA, as set forth herein, shall be executed by both Parties and submitted to the Commission by the Parties within 30 calendar days following the issuance of this Order.

3. The material submitted to the Commission under seal is declared to contain trade secret information as defined in Ind. Code § 24-2-3-2 and therefore is exempted from the public access requirements contained in Ind. Code ch. 5-14-3 and Ind. Code § 8-1-2-29.

4. This Order shall be effective on and after the date of its approval.

STEPHAN, MAYS-MEDLEY, AND ZIEGNER CONCUR; HUSTON AND WEBER ABSENT:

APPROVED: AUG 0 5 2015

I hereby certify that the above is a true and correct copy of the Order as approved.

Brenda A Howe

Brenda A. Howe
Secretary to the Commission

Summary: App for Rehearing Sprint Spectrum L.P.'s Application for Rehearing. electronically filed by Mr. Stephen M Howard on behalf of Sprint Spectrum L.P.