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 d/b/a AT&T Ohio Pursuant to Section 252(b) of the Telecommunications Act of 1996	**)**	**Case No. 14-1964-TP-ARB**

BRIEF OF AT&T OHIO IN OPPOSITION TO APPLICATION FOR REHEARING

September 28, 2015

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AT&T Ohio,[1] by its attorneys, respectfully submits pursuant to Rule 4901-1-35(B) of the Ohio Administrative Code its brief in opposition to the application of Sprint Spectrum. L.P. for rehearing.

The Commission correctly decided the issues on which Sprint seeks rehearing. The Illinois Commerce Commission ("ICC") also resolved all these issues in favor of AT&T Illinois, but this brief does not dwell on the ICC's determinations, or those of other state commissions, because at this point, the Commission presumably is not looking to its sister commissions for guidance. Certainly, the Commission should not take guidance from contrary determinations by the Indiana Utility Regulatory Commission ("IURC"), which Sprint stresses so heavily. AT&T Indiana will appeal some, if not all, of the IURC determinations on which Sprint relies in its application for rehearing, and some of those determinations will inevitably be reversed, because they are inconsistent with holdings made by the United States Court of Appeals for the Seventh Circuit when it affirmed the ICC determinations that support AT&T Ohio's positions here. [2]

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[1] The Ohio Bell Telephone Company uses the name AT&T Ohio.

[2] *SprintCom, Inc. v. Commissioners of Illinois Comm. Comm'n*, 790 F.3d 751 (7th Cir. 2015). AT&T Ohio submitted this decision to the Commission as supplemental authority on June 24, 2015.

I. THE COMMISSION CORRECTLY REQUIRED SPRINT TO BEAR THE COSTS OF THE FACILITIES ON ITS NETWORK THAT INTERCONNECT WITH AT&T OHIO'S NETWORK. (ISSUES 5, 22 AND 11(b))

Having lost these issues on the law and reason, Sprint resorts to the time-worn argument that a loss for Sprint is a loss for competition and for consumers.[3] That simply is not so, and there is no evidence in the record to support it.

The Telecommunications Act of 1996 ("1996 Act") requires AT&T Ohio to provide Sprint with interconnection with AT&T Ohio's network, but it does not require AT&T Ohio to pay for the privilege of doing so, as Sprint proposed. The fundamental point, which Sprint tries but fails to avoid, is that the interconnection facilities at issue *are part of Sprint's own network*. By definition, they connect Sprint's network with AT&T Ohio's network at a point on AT&T Ohio's network – the point of interconnection ("POI"). AT&T Ohio's network is on one side of that POI, and AT&T Ohio is 100% responsible for the costs of that network. On the other side of the POI is Sprint's network, including the interconnection facilities, and Sprint is 100% responsible for the cost of *that* network. If Sprint were correct, which the Commission correctly determined it is not, AT&T Ohio would incur additional uncompensated costs every time a new entrant chose to interconnect by obtaining interconnection facilities from AT&T Ohio. That is not what section 251(c)(2) contemplates.

As the Commission correctly found, 47 C.F.R. §§ 51.501 and 51.503 are controlling,[4] and they require AT&T Ohio to provide interconnection to Sprint at TELRIC, not at TELRIC discounted by 50%. Under the FCC's binding regulations, an ILEC's rates for "interconnection and methods of obtaining interconnection" "***shall***" be established pursuant to the TELRIC methodology. 47 C.F.R. §§ 51.501 and 51.503. It is well established that "State commissions

[3] Sprint Spectrum L.P.'s Memorandum in Support of Application for Rehearing ("Sprint Mem.") at 1-2.
[4] Award at 55.

are required to follow directions issued by the [FCC]," including the FCC's TELRIC pricing rules. *MPower Commc'ns Corp v. Illinois Bell Tel. Co.*, 457 F.3d 625, 627 (7th Cir. 2006). Thus, as the Award recognizes, this Commission cannot lawfully create its own pricing methodology for section 251(c)(2) interconnection, as Sprint proposed.

Sprint repeatedly asserts that the Arbitration Award "impos[es] on competitors the costs associated with the delivery of the ILEC's traffic to the competitor's network,"[5] and that AT&T Ohio should have to bear the cost of the "work necessary to deliver [its] call to the competitor's network."[6] But Sprint's illegal facility cost-sharing proposal has nothing to do with the costs of delivering calls. *That* is the subject of intercarrier compensation (reciprocal compensation). Under Sprint's cost-sharing proposal, AT&T Ohio would share in the cost of building Sprint's network. It makes no mores sense to require AT&T Ohio to do that when Sprint chooses to build out its network by leasing facilities from AT&T Ohio than it would if Sprint exercised one of its other options by building the facilities itself or leasing them from a third party.[7]

Sprint states that the Award reflects "a dramatic change from years of industry practice in which facilities costs have been shared based on proportional usage."[8] That is not so. Competing carriers with section 251(c)(2) interconnections have always borne 100% of the cost of the interconnection facilities connecting their networks to ILEC networks. To be sure, AT&T Ohio voluntarily agreed to interconnections with wireless carriers – but only with wireless carriers – that were not section 251(c)(2) interconnections but that instead (in a dramatic departure from the requirements of section 251(c)(2)) had a POI on each carrier's network and a consequent sharing of facilities costs. But when Sprint abandoned that arrangement by insisting

[5] Sprint Mem. at 3.
[6] *Id.* at 2.
[7] *See* Initial Brief of AT&T Ohio ("AT&T Br.") at 68.
[8] Sprint Mem. at 3.

that AT&T Ohio provide it with interconnection facilities at TELRIC pursuant to section 251(c)(2), it was eminently reasonable for AT&T Ohio to insist on full compliance with section 251(c)(2), including that all POIs be on AT&T Ohio's network and that Sprint pay for 100% (not half) of the TELRIC-based price for interconnection facilities as required by the FCC's rules implementing section 251(c)(2).

Sprint complains that the Award "does not discuss the FCC decisions Sprint cited, other than a brief reference to the *TSR Wireless* case . . . ."[9] But Sprint cited no other FCC decision that supports its position that AT&T Ohio should share the cost of the facilities Sprint obtains to connect with AT&T Ohio's network.[10] And the Commission correctly found that *TSR Wireless* concerned facilities on the ILEC's side of the POI, and thus provides no support for Sprint's position concerning facilities on *its* side of the POI.[11] To the contrary, in *TSR Wireless*, the FCC stated that the "paging carrier would be responsible for paying charges for facilities ordered from the LEC to connect points on the paging carrier's side of the point of interconnection."[12] Thus, *TSR Wireless* confirms that Sprint is responsible for paying for the full cost of interconnection facilities, which by definition are on Sprint's side of the POI.

The Commission correctly resolved Issues 5, 22 and 11(b), and should not reconsider those issues.[13]

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[9] *Id*. at 4.

[10] See Initial Brief of Sprint Spectrum L.P. ("Sprint Br.") at 33-36 (Issue 5), 94 (Issue 22(a)); Reply Brief of Sprint Spectrum L.P. ("Sprint Reply") at 10-12 (Issue 5), 32 (Issue 22(a)). Other than *TSR Wireless*, the *only* FCC decision cited in those passages is the 1996 *First Report and Order*, which does not support Sprint's position. As it pertains here, the *First Report and Order* only held that ILECs could not impose usage-sensitive termination charges on CMRS providers; it said nothing about charges for interconnection facilities.

[11] Award at 55.

[12] *TSR Wireless*, n. 70.

[13] Even if Sprint were correct that AT&T Ohio should share in the cost of interconnection facilities Sprint obtains from AT&T Ohio, Sprint's proposal that the sharing be on a 50%/50% basis, which was the subject of Issue 22(b), was untenable. See AT&T Br. at 75-79; Reply Brief of AT&T Ohio ("AT&T Reply") at 35-37. Having correctly resolved Issue 22(a) in favor of AT&T Ohio, the Commission had – and still has – no occasion to address Issue 22(b).

II. THE COMMISSION RESOLVED ISSUE 6 CORRECTLY.

The Commission's resolution of Issue 6 was a paragon of reason. The Commission determined that Sprint has the right to remove any previously established POI, subject only to the condition, in light of the fact that both parties have relied for years on the existing POIs, that Sprint first negotiate with AT&T Ohio the parameters under which the POI will be decommissioned or, if the parties so agree, revised terms and conditions pursuant to which the POI would be retained.[14] There is no reason to believe that this reasonable condition will impede Sprint's decommissioning of whatever POIs it wishes to eliminate, because AT&T Ohio has no objection to Sprint decommissioning all the POIs it has established at AT&T Ohio's end offices, and merely wants an opportunity to evaluate and discuss the impact that decommissioning of two particular tandem POIs would have on the parties' interconnection arrangement.[15] Furthermore, in the unlikely event that the negotiations the Award contemplates are unsuccessful, the Award permits Sprint to petition the Commission to resolve the disagreement.[16]

Sprint could have used the time between the issuance of the Award and approval of the parties' new ICA to start decommissioning POIs. Instead, Sprint asserts that the Award on Issue 6 "*could* severely and unfairly hamper Sprint's engineering efforts" and "violate[s] the filed tariff doctrine."[17] Sprint offers no support or record cite for its speculation about possible harm to its engineering efforts, and there is in fact no basis for that speculation. In the unlikely event that problems do arise, the Award provides a remedy.

The Award on Issue 6 plainly does not violate the filed tariff doctrine. In the first place, it is far from clear that any tariff even pertains. It is true, as the Commission noted, that Sprint at

[14] Award at 17.
[15] AT&T Br. at 47.
[16] Award at 17.
[17] Sprint Mem. at 6 (emphasis added).

one point indicated "that the existing points of interconnection were not established by mutual agreement, as asserted by AT&T Ohio but, instead, were ordered under tariff."[18] In its initial post-hearing brief on Issue 6, however, Sprint said something very different:

> Sprint has been interconnected in Ohio with AT&T (and its predecessors) for many years. During this time, Sprint has interconnected under the terms of ***voluntary ICAs***. . . . Under these ***voluntary agreements***, Sprint has established, and now maintains, multiple POIs per LATA in Ohio. The fact that these POIs were established under the terms of ***voluntary ICAs*** is significant because now, for the first time, Sprint and AT&T are asking the Commission to determine what is required by the Act, not to simply approve terms voluntarily agreed to by the parties.[19]

That passage is significant not only because it calls seriously into question Sprint's suggestion elsewhere that the POIs were established pursuant to tariff, but also because in it, Sprint concedes that it, along with AT&T Ohio, asked the Commission to decide Issue 6 in accordance with the 1996 Act, not with regard to any tariff terms.

Furthermore, even assuming that some or all of the POIs that Sprint wants to decommission were established pursuant to tariff, that does not mean they are not now subject to the terms of the parties' ICA. Indeed, it would be strange, to say the least, if some of the parties' POIs were governed by the terms and conditions of the ICA while others (which could be identified, if at all, only by historical research) were governed by a tariff.

Finally, Sprint's throwaway reference to the filed tariff doctrine could hardly be less persuasive in any event, because there is no reason to believe – certainly, Sprint has offered none – that the Award on Issue 6 is in any way inconsistent with any tariff provision. It might be if, for example, Sprint had introduced evidence of a tariff provision that stated, "Sprint shall have the unfettered right to decommission any point of interconnection established pursuant to this

[18] Award at 15.
[19] Sprint Br. at 36-37 (emphasis added and footnotes omitted).

tariff and that right shall not be made subject to any obligation to discuss the matter with AT&T Ohio." There is, however, no evidence of any such tariff language.

III. THE COMMISSION CORRECTLY RULED THAT INTERCONNECTION IS FOR THE MUTUAL EXCHANGE OF TRAFFIC BETWEEN THE PARTIES' END USERS. (ISSUES 8, 9, 19(d), 15 AND 23)

The Commission correctly concluded that Sprint is not entitled to obtain TELRIC-priced Interconnection Facilities (*i.e.*, entrance facilities) to exchange traffic with interexchange carriers ("IXCs").

Sprint suggests that the Commission's decision somehow ignores "the statutory language."[20] That cannot be true. As the Supreme Court stated, "[n]o 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 § 251(c)(2)."[21] This conclusively refutes Sprint's assertion that § 251(c)(2) "expressly authorizes" IXC traffic "to be delivered to Sprint over Interconnection Facilities."[22]

Because the statute does not address the provision of entrance facilities, the Supreme Court deferred to the FCC's interpretation of its regulations to require the provision of TELRIC-priced entrance facilities only for purposes of interconnection, and not for backhauling.[23] While the Supreme Court noted disagreement "over the precise definition of backhauling," it confirmed that "[b]ackhauling does not involve the exchange of traffic between incumbent and competitive networks," and "[i]t thus differs from interconnection – 'the linking of two networks for the

[20] Sprint Mem. at 7.
[21] *Talk America, Inc. v. Michigan Bell Tel. Co.*, 131 S.Ct. 2554, 2260 (2011).
[22] Sprint Mem. at 8.
[23] 131 S.Ct. at 2263-64.

mutual exchange of traffic.'"[24] In other words, TELRIC-priced entrance facilities are available only for "the linking of the two carriers' networks for the *mutual* exchange of traffic."

This necessarily excludes traffic Sprint seeks to exchange with IXCs, because there is no "mutual exchange" of such traffic between Sprint and AT&T Ohio. As the FCC explained in *Talk America*, "[i]nterconnection is 'the physical linking of two networks for the mutual exchange of traffic,'" and "[s]uch linking enables customers of a competitive LEC to call the incumbent's customers, and vice versa."[25] Many other decisions are in accord.[26] Most recently, in rejecting all the same arguments Sprint makes here, the Seventh Circuit noted that Sprint's position is "in tension with the FCC's interpretation of 'interconnection' as a mutual exchange of traffic between entrant and established carrier."[27]

Further, Sprint's suggestion (at 8) that it somehow cannot compete unless it can use TELRIC-priced entrance facilities to exchange traffic with IXCs is nonsense. In holding that competitive LECs are not entitled to obtain entrance facilities as unbundled network elements, the FCC determined that they are not impaired without such access.[28]

Finally, Sprint is wrong to suggest that the Commission's decision cannot be squared with its decision regarding "transiting" in the *TelCove* arbitration, and similar transiting decisions from the Connecticut district court and Second Circuit.[29] Those decisions are not on

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[24] *Id*. at 2259 n.2 (quoting 47 C.F.R. § 51.5).
[25] Brief for the United States as Amicus Curiae, *Talk America, Inc. v. Michigan Bell Tel. Co.*, Nos. 10-313 *et al.*, 2011 WL 380838, *2-*3 (Feb. 3, 2011).
[26] *See, e.g., Autotel v. Nevada Bell Tel. Co.*, 697 F.3d 846, 849 (9th Cir. 2012) (interconnection allows "'customers of one LEC to call the customers of another'"); *Pacific Bell Tel. Co. v. California Public Utilities Comm'n*, 621 F.3d 836, 844 (9th Cir. 2010) ("interconnection provides a way for a competitive LEC's customers to reach AT&T's customers and vice versa"); *Global NAPs, Inc. v. Massachusetts Dept. of Telecommunications and Energy*, 427 F.3d 34, 36 (1st Cir. 2005) ("Interconnection allows customers of CLECs to receive calls from, and place calls to, customers of ILECs.").
[27] *SprintCom, Inc. v. Commissioners of Illinois Comm. Comm'n*, 790 F.3d 751, 756 (7th Cir. 2015).
[28] *In re Access to Unbundled Network Elements*, 20 FCC Rcd. 2533, ¶¶ 137-138 (2005) ("*Triennial Review Remand Order*").
[29] Sprint Mem. at 9-10.

point, because they addressed transiting, not entrance facilities. As AT&T Ohio explained,[30] whatever the rule may be with respect to transiting, the reasoning of *TelCove* (and *SNET*) cannot be squared with the express limitations the FCC has placed on the use of TELRIC-priced entrance facilities.

IV. THE COMMISSION CORRECTLY FOUND THAT FEDERAL LAW LIMITS THE USE OF INTERCONNECTION FACILITIES TO SECTION 251(c)(2) CALLS. (ISSUES 10(a), 13 AND 16(a))

Sprint seeks rehearing of these issues on the purported ground that "the FCC gave competitors the right to combine Section 251(c)(2) calls on Interconnection Facilities with other calls."[31] But Sprint identifies *no* authority for that proposition, which is directly contrary to the U.S. Supreme Court's statement in *Talk America* that "entrance facilities leased under §251(c)(2) can be used *only* for interconnection," *i.e.*, "to link the incumbent provider's network with the competitor's network for the mutual exchange of traffic." [32]

Sprint points to an FCC statement from 1996 that a carrier "seeking interconnection only for interexchange services is not within the scope of" § 251(c)(2).[33] That statement says nothing about combining different types of traffic on TELRIC-priced entrance facilities. Similarly, Sprint points to 47 C.F.R. § 51.305(b), which states that "[a] carrier that requests interconnection solely for the purpose of originating or terminating its interexchange traffic" – *i.e.*, a carrier acting as an IXC – is not entitled to interconnection under § 251(c)(2). This too says nothing about whether a carrier that obtains entrance facilities under § 251(c)(2) can use those same facilities to deliver traffic to and from third-party IXCs. Indeed, in *Talk America*, the Supreme Court cited Rule 305(b) for the proposition that "interconnection arrangements may be used for

[30] AT&T Reply at 6-8.
[31] Sprint Mem. at 11.
[32] *Talk America* at 2257, 2264 (emphasis added).
[33] *Id*. at 12.

local telephone service but *not* for long-distance services."[34] Thus, as the Seventh Circuit recently stated, there is "no basis" for Sprint's interpretation of Rule 305(b), which Sprint argued meant "that as long as it's not using the interconnection *solely* for interexchange traffic it's entitled to TELRIC rates for all traffic."[35] *Id.* at 12.

Sprint's reliance on paragraph 972 of the *CAF Order*[36] fares no better. There, the FCC stated that as long as a carrier is "using a 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." Whether § 251(c)(2) "precludes" such use is, however, not the question here. Rather, the question is whether AT&T is *required* to permit such use.[37] Moreover, the FCC referred only to the exchange of other traffic "with the incumbent LEC," while here Sprint seeks to exchange traffic with IXCs, using TELRIC-priced facilities obtained from AT&T Ohio.

In short, none of the authorities cited by Sprint supports Sprint's contention that AT&T Ohio is required to allow Sprint to combine non-§ 251(c)(2) traffic with § 251(c)(2) traffic on TELRIC-priced entrance facilities. And in any event, whatever the rule may be with respect to interconnection in general, with respect to entrance facilities the FCC has made clear that such facilities must be made available at TELRIC-based rates only when used solely for the purpose of § 251(c)(2) interconnection. In *Talk America*, the Supreme Court noted the FCC's explanation that until the *Triennial Review Remand Order*, "a competitive LEC typically would elect to lease a cost-priced entrance facility under § 251(c)(3) [*i.e.*, as an unbundled network

[34] 131 S.Ct. at 2265 n.6 (emphasis added).
[35] *SprintCom, Inc. v. Commissioners of the Illinois Comm. Comm'n*, 790 F.3d 751, 757 (7th Cir. 2015).
[36] Sprint Mem. at 12.
[37] *Compare Illinois Bell Tel. Co. v. WorldCom Tech, Inc.*, 179 F.3d 566, 573 (7th Cir. 1999) ("That the Act does not *require* reciprocal compensation for calls to ISPs is not to say that it *prohibits* it.").

element] since entrance facilities leased under § 251(c)(3) could be used for any purpose – *i.e.*, both interconnection and backhauling – but entrance facilities leased under § 251(c)(2) can be used *only* for interconnection."[38] The Court concluded that "[w]e see no reason to doubt this explanation."[39]

V. THE COMMISSION RESOLVED ISSUE 18 CORRECTLY.[40]

The Commission correctly rejected Sprint's attempt to avoid access charges on long distance (interMTA) calls on the theory that Sprint does not charge its end users a separate "toll." Sprint provides no basis for revisiting this decision.

Sprint suggests that the FCC did not rely on MTA boundaries when establishing its current access charge rules, because there is no reference in its access charge rules (Subpart J) to MTAs.[41] Sprint is ignoring the remainder of the FCC's intercarrier compensation rules, which must be viewed and interpreted as a whole. In the *CAF Order*, the FCC divided the universe of telecommunications traffic into two basic categories, "Non-Access Telecommunications Traffic" (Subpart H) and "Access" traffic (Subpart J). With respect to CMRS traffic, the rules specify that "Non-Access Telecommunications Traffic means . . . Telecommunications traffic exchanged between a LEC and a CMRS provider that, at the beginning of the call, originates and terminates within the same Major Trading Area," and provide that such "Non-Access Telecommunications Traffic exchanged between a local exchange carrier and a CMRS provider . . . shall be pursuant

[38] *Id.* at 2264 (emphasis added).
[39] *Id.*
[40] Many of the considerations that support AT&T Ohio's position, and the Commission's decision, on Issue 18 apply equally to Issue 19, which we address below in Section VI. Accordingly, AT&T Ohio began the discussion of Issue 19 in its initial post-hearing brief by stating, "For largely the same reasons discussed above with respect to Issue 18, the Commission should adopt AT&T Ohio's proposed language for Issue 19." AT&T Br. at 113. Also consistent with the relationship between the two issues, Sprint addressed Issue 18 immediately before Issue 19 in both of its post-hearing briefs. Sprint Br. at 83-86; Sprint Reply at 28-31. In its reconsideration memorandum, however, Sprint switches the sequence, evidently in the hope of gaining traction on Issue 19 by dissociating it from Issue 18. The Commission should not be influenced by this machination, and AT&T Ohio here discusses Issue 18 before Issue 19.
[41] Sprint Mem. at 17.

to a bill-and-keep arrangement." 47 C.F.R. §§ 51.701(b)(2), 51.705(a). Thus, only *intra*MTA CMRS traffic is included within the scope of Non-Access Telecommunications Traffic. As a result, *inter*MTA traffic can only be classified as "Access" traffic.

This is entirely consistent with the FCC's prior intraMTA rule, which the FCC preserved in the *CAF Order*.[42] That rule "provides that traffic between a LEC and a CMRS provider that originates and terminates within the same Major Trading Area (MTA) is subject to reciprocal compensation obligations rather than interstate or intrastate access charges."[43]

Further, contrary to Sprint's suggestion, the FCC's Subpart J rules themselves fully support the application of access charges to Sprint's interMTA traffic. "Access" traffic is defined to include "exchange access" traffic, and in the context of the FCC's access charge rules this means interexchange (or interMTA) traffic. The phrase "exchange access, information access, or exchange services for such access" in FCC Rule 51.901(b) (the *CAF Order* rule that Sprint relies upon) comes from 47 U.S.C. § 251(g), added to the 1934 Act as part of the Telecommunications Act of 1996. As both Congress and the FCC have recognized, section 251(g) is intended to preserve the exchange access obligations under the 1982 AT&T Consent Decree.[44] The AT&T Consent Decree in turn defined "exchange access" as "the provision of exchange services for the purpose of originating or terminating interexchange telecommunications," and defined "interexchange telecommunications" as "telecommunications between a point or points located in one exchange telecommunications area and a point or points located in one or more other exchange areas or a point outside an exchange area."[45] In short, the

[42] *CAF Order*, ¶ 987.
[43] *Id.*
[44] *United States v. AT&T*, 552 F. Supp. 131 (D.D.C. 1982). *See* H.R. Conf. Rep. No. 458, 104th Cong., 2nd Sess., at 122-23 (Jan. 31, 1996), *available at* 1996 WL 46795; *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, 16 FCC Rcd. 9151, 2001 WL 455869, ¶ 36 n.64 (2001) ("*ISP Remand Order*").
[45] 552 F. Supp. at 228, 229.

"exchange access" obligations imposed by the 1982 AT&T Consent Decree – and hence incorporated into the Act via section 251(g) – apply to all "interexchange" telecommunications, irrespective of the imposition of separate toll charges upon particular interexchange calls.[46]

Applying this to CMRS traffic, the FCC drew a bright line between intraMTA and interMTA traffic. In particular, it held that "traffic to or from a CMRS network that originates and terminates within the same MTA is subject to transport and termination rates under section 251(b)(5), rather than interstate and intrastate access charges."[47] Since 1996, the FCC has consistently hewed to this line.[48] In short, as the Second Circuit has explained, "what really mattered in determining whether an access charge was appropriate was whether a call traversed local exchanges, not how a carrier chose to bill its customers," and whether a carrier "imposes no separate toll charges" is "beside the point."[49]

VI. THE COMMISSION RESOLVED ISSUE 19 CORRECTLY.[50]

Sprint gets off to a misleading start with its heading, which reads, "The Commission erred when it allowed AT&T to bill Sprint switched access charges on local calls made by AT&T's subscribers."[51] As the Award correctly reflects, *these are not local calls*. They are dialed as if they were, but as the FCC has made clear, and as the Commission understands, that makes no difference, because Sprint delivers the calls to its customers roaming outside the MTA

[46] *See also ISP Remand Order*, ¶ 37 n.65 (noting that "[t]he phrasing in section 251(g) . . . parallels the [AT&T Consent Decree]," and the AT&T Consent Decree defines "exchange access" as "'the provision of exchange services for the purpose of originating or terminating interexchange telecommunications'").
[47] *First Report and Order*, ¶ 1036.
[48] *See, e.g., ISP Remand Order*, ¶ 47 ("reciprocal compensation, rather than interstate or intrastate access charges, applies to LEC-CMRS traffic that originates and terminates within the same Major Trading Area"); *Developing a Unified Intercarrier Compensation Regime*, 16 FCC Rcd. 9610, 2001 WL 455872, ¶¶ 6-7 (2001) ("access charge rules . . . govern the payments that [IXCs] and CMRS carriers make to LECs to originate and terminate long-distance calls," and CMRS carriers "pay access charges to LECs for CMRS-to-LEC traffic that is not considered local"); *Developing a Unified Intercarrier Compensation Regime*, 20 FCC Rcd. 4685, 2005 WL 495087, ¶ 135 (2005) ("The purpose of the intraMTA rule is thus to distinguish access traffic from section 251(b)(5) CMRS traffic.").
[49] *Global NAPs, Inc. v. Verizon New England, Inc.*, 454 F.3d 91, 98 (2d Cir. 2006),
[50] *See supra* note 40.
[51] Sprint Mem. at 13.

where the calls originated. Thus, the calls are interMTA, *i.e.*, access calls. As the Award correctly concluded, and consistent with the Award on Issue 18, Sprint is providing interexchange service to its customers on these calls; AT&T Ohio is providing exchange access to Sprint, and is entitled to charge Sprint originating access charges – without regard to whether Sprint charges its customers a separate toll charge.[52]

Sprint argues that it has no relationship with the AT&T Ohio end users who place these calls to Sprint customers roaming outside the originating MTA, and that it is not obtaining access to AT&T Ohio's network to provide a long distance service to any AT&T Ohio customer.[53] These are the same arguments the Commission already rejected,[54] and they are no more persuasive now than they were the first time. If the arguments held water, Sprint would *never* have to pay access charges. That is, of course, Sprint's position on Issue 18, but the Commission appropriately rejected it and should not reconsider for the reasons set forth above.

Finally, there is no basis in Sprint's submission, or in the record, for Sprint's contention that the roaming service that the FCC described in the *Local Competition Order* and to which the Award refers (at 46) existed only "in the early days of wireless service" and does not pertain to "the calls at issue here."[55] There is also no basis for Sprint's suggestion that the Award on Issue 19 somehow hinged on the notion that the calls in question "transit" ILEC facilities, rather than originating on them.[56] Indeed, the word "transit" appears nowhere in the Arbitration Award on Issue 19.[57]

[52] Award at 46.
[53] Sprint Mem. at 14.
[54] *See* Award at 44.
[55] Sprint Mem. at 15.
[56] *Id.*
[57] Award at 46-47.

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Certificate of Service

I hereby certify that a copy of the foregoing has been served this 28th day of September 2015 by e-mail and/or U.S. Mail on the parties shown below.

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Summary: Brief Brief of AT&T Ohio in Opposition to Application for Rehearing electronically filed by Mr. Mark R Ortlieb on behalf of AT&T Ohio and Ohio Bell Telephone Company