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 dba AT&T Ohio Pursuant to 47 U.S.C. 252(b) of the Telecommunications Act of 1996.	)	Case No. 14-1964-TP-ARB

ARBITRATION AWARD

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ARBITRATION AWARD

The Commission, considering the petition, the evidence of record, post-hearing briefs, and otherwise being fully advised, hereby issues its arbitration award.

APPEARANCES

Vorys, Sater, Seymour and Pease LLP by Mr. Stephen M. Howard, 52 East Gay Street, P.O. Box 10008, Columbus, Ohio 43216-1008, Briggs & Morgan, P.A by Philip R. Schenkenberg, 220 IDS Center, 80 South 8th Street, Minneapolis, Minnesota 55402, Ms. Diane Browning, 6450 Sprint Parkway, Overland Park, Kansas 66251, and Mr. Jeffrey M. Pfaff, 6450 Sprint Parkway, Overland Park, Kansas 66251, on behalf of Sprint Spectrum L.P.

Mr. Jon F. Kelly, 150 E. Gay Street, Room 4-C Columbus, Ohio 43215 and Mr. Karl Anderson 225 West Randolph, Floor 25, Chicago, Illinois 60606, on behalf of The Ohio Bell Telephone Company dba AT&T Ohio.

I. BACKGROUND

Under 47 U.S.C. 252(b)(1), incorporated as part of the Telecommunications Act of 1996 (the Act),[1] if parties are unable to reach an agreement on the terms and conditions for interconnection, a requesting carrier may petition a state commission to arbitrate any issues which remain unresolved despite voluntary negotiation under 47 U.S.C. 252(a).

On August 22, 2007, the Commission adopted carrier-to-carrier rules in Case No. 06-1344-TP-ORD, *In re the Establishment of Carrier-to-Carrier Rules*. The carrier-to-carrier rules became effective on November 30, 2007. These rules were reviewed in Case No. 12-922-TP-ORD, *In re the Commission's Review of Chapter 4901:1-7, of the Ohio Administrative Code, Local Exchange Carrier-to-Carrier Rules*, Finding and Order (Oct. 31, 2012). Under Ohio Adm.Code 4901:1-7-09(G)(1) an internal arbitration panel is assigned to recommend a resolution of the issues in dispute if the parties cannot reach a voluntary agreement.

II. HISTORY OF THE PROCEEDING

Ohio Adm.Code 4901:1-7-09(A) specifies that any party to the negotiation of an interconnection agreement may petition for arbitration of open issues between 135 and 160 days after the date on which a local exchange carrier (LEC) receives a request for negotiation. According to the petition for arbitration filed by Sprint Spectrum L.P.

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[1] The Act is codified at 47 U.S.C. Sec. 151 et seq.

(Sprint), the parties agree that Sprint formally requested The Ohio Bell Telephone Company dba AT&T Ohio (AT&T Ohio) to commence negotiations for an interconnection agreement on June 4, 2014. Sprint timely filed a petition on November 7, 2014, to arbitrate the terms and conditions of interconnection with AT&T Ohio pursuant to 47 U.S.C. 252. In its petition, Sprint presented 23 issues for arbitration. On December 2, 2014, AT&T Ohio filed its response to the petition for arbitration.

Consistent with the discussions at the prehearing conference held on December 4, 2014, the attorney examiner issued an Entry on December 5, 2014, establishing a procedural schedule. Included in the schedule were dates for the filing of direct and rebuttal testimony and the respective arbitration packets. A status conference was scheduled for February 10, 2015, for the purpose of determining if a formal evidentiary hearing was necessary in this matter or whether the matter would be considered based solely on the filed testimony. Based on the discussions that occurred at the February 10, 2015 status conference, it was decided that in lieu of a formal evidentiary hearing, the parties would proceed with a paper hearing premised on the prefiled direct and rebuttal testimony and the filing of initial and reply briefs.

On February 11, 2015, the parties filed arbitration packages containing exhibits and the written testimony of their respective witnesses. Pursuant to the agreement of the parties, cross-examination of the witnesses was mutually waived and the Commission was to consider this matter based on the prefiled testimony submitted in this proceeding. AT&T Ohio prefiled the testimony of the following two witnesses: (1) Patricia H. Pellerin and (2) Carl C. Albright, Jr. Sprint prefiled the testimony of (1) James R. Burt and (2) Mark G. Felton.

On February 18, 2015, as amended on February 26, 2015, AT&T Ohio and Sprint filed a joint motion for admission into evidence of certain exhibits. Pursuant to the Entry of March 2, 2015, a briefing schedule was established. Additionally, the Entry granted the joint motion for the admission into evidence of the identified exhibits. Initial briefs were filed by the parties on March 6, 2015. Reply briefs were filed by the parties on March 27, 2015.

III. ISSUES FOR ARBITRATION

Issue 1 What is the appropriate definition of "IntraMTA [Major Trading Area] traffic"?

Sprint proposes language with respect to the definition of "IntraMTA Traffic" in Section 2.66, General Terms and Conditions. Sprint asserts that its proposed definition of IntraMTA Traffic properly includes all IntraMTA calls that are subject to reciprocal compensation obligations, including all IntraMTA mobile-to-land calls, locally dialed IntraMTA land-to-mobile calls, and 1+ dialed IntraMTA land-to-mobile calls. As such,

Sprint claims that its proposed definition tracks precisely with 47 C.F.R. 51.701(b)(2), which refers to "[t]elecommunications traffic exchanges between a LEC and a commercial mobile radio service (CMRS) provider that, at the beginning of the call, originates and terminates within the same Major Trading Area [MTA]. . . ('IntraMTA Rule')." (Sprint Ex. 2 at 4-5; Sprint Initial Br. at 21.)

Citing *In re Connect America Fund*, Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd 17663 (2011), ¶1007 ("*CAF Order*"), Sprint claims that the Federal Communications Commission (FCC) has specifically determined that a LEC's 1+ dialed MTA land-to-mobile calls are within the scope of the reciprocal compensation requirements set forth in 47 U.S.C. 251(b)(5). Accordingly, Sprint asserts that 1+ dialed IntraMTA land-to-mobile calls should be included within the definition of "IntraMTA Traffic" subject to 47 U.S.C. 251(b)(5) reciprocal compensation obligations. (Sprint Initial Br. at 21-22.)

Sprint points out that AT&T Ohio wishes to limit the meaning of IntraMTA Traffic to include only traffic that is exchanged between the end users of Sprint and AT&T Ohio. According to Sprint, AT&T Ohio intends to exclude 1+ dialed IntraMTA land-to-mobile calls because it claims that those calls are from the interexchange carrier's (IXC's) end user, and not AT&T Ohio's own end user. Sprint recognizes that this issue may not have a practical impact from a per-minute-of use compensation perspective since the FCC has, in its *CAF Order*, ordered that bill-and-keep be the default compensation regime. However, to the extent the *CAF Order* is ever reversed, Sprint believes that it should be able to bill AT&T Ohio for IntraMTA calls even when they are delivered by an IXC. (Sprint Ex. 2 at 4-5.)

AT&T Ohio proposes language with respect to the definition of "IntraMTA Traffic" in Section 2.66, General Terms and Conditions. According to AT&T Ohio, Sprint's definition of IntraMTA Traffic is unduly vague and open to dispute. Further, AT&T Ohio contends that "traffic exchanged between Sprint and AT&T" could be interpreted to include any traffic that is exchanged by both parties, including transit traffic, even though transit traffic is actually exchanged between Sprint and third parties, i.e., not AT&T Ohio, and is not subject to reciprocal compensation. Therefore, AT&T Ohio believes that Sprint's definition could be interpreted in a manner that is inconsistent with the purpose of the definition of IntraMTA Traffic, which is to include only those calls subject to reciprocal compensation requirements. (AT&T Ohio Ex. 1A at 120.)

AT&T Ohio further believes its definition of IntraMTA Traffic should be adopted because it addresses the FCC's concern about abuse of the "IntraMTA Rule," which requires that traffic exchanged between a LEC and a CMRS provider that originates and terminates within the same MTA be subject to reciprocal compensation obligations rather than interstate or intrastate access charges. According to AT&T Ohio, the FCC stated that "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 "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 purposes of reciprocal compensation." (AT&T Ohio Initial Br. at 98 citing *CAF Order* at ¶1006).

AT&T Ohio asserts that it is important that the definition of IntraMTA Traffic specifically refer to the traffic exchanged between Sprint's end users and AT&T Ohio's end users in order to reduce the risk that a carrier adopting Sprint's interconnection agreement might improperly claim that it re-originates calls on its network and, therefore, improperly attempt to subject AT&T Ohio to bill-and-keep compensation rather than access charges. AT&T Ohio also takes issue with Sprint's assertion that by adding the term "end user," 1+ dialed IntraMTA landline-to-mobile calls would be excluded because those calls are from the IXC's end user rather than AT&T Ohio's end user, which could result in AT&T Ohio charging Sprint access charges on 1+ dialed IntraMTA calls. AT&T Ohio submits that such a result would require a substantive provision in the interconnection agreement. Since there is currently no such provisions allowing this result, AT&T Ohio acknowledges that it could not charge Sprint access charges on such calls. (AT&T Ohio Ex. 3 at 123; AT&T Ohio Reply Br. at 47-48.) AT&T Ohio believes that its definition of IntraMTA Traffic addresses the concern raised in the FCC's ruling, and, for this reason, believes that the Commission should adopt its definition.

Issue 1 Arbitration Award

Based on a review of the arguments set forth above, the Commission determines that the language proposed by Sprint should be adopted. The Commission recognizes that Sprint's definition tracks closely with the FCC rule codified at 47 C.F.R. 51.701(b)(2). This rule states:

> (b) Non-Access Telecommunications Traffic. For purposes of this subpart, non-access Telecommunications traffic means:
>
> (2) 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, as defined in §24.202(a) of this chapter.

IntraMTA traffic is traffic that originates and terminates within the same MTA and is subject to reciprocal compensation. Accordingly, IntraMTA traffic is non-access telecommunications traffic contemplated by the FCC rule. Sprint's proposed definition substitutes "IntraMTA Traffic" for "Non-Access Telecommunications Traffic," "AT&T Ohio" for "LEC," and "Sprint" for "CMRS provider." In all other regards, it is substantially the same as the FCC rule.

Further, the Commission agrees with Sprint that AT&T Ohio's proposed language is too narrow and shares Sprint's concern that AT&T Ohio's language could effectively exclude 1+ dialed IntraMTA land-to-mobile calls from reciprocal compensation obligations. The FCC made it clear in its *CAF Order* that all traffic between a LEC and a CMRS provider that originates and terminates within the same MTA, as determined at the time the call is initiated, is subject to reciprocal compensation regardless of whether or not the call is, prior to termination, routed to a point located outside that MTA, or outside the local calling area of the LEC. This is the case even if the traffic is exchanged indirectly via a transit carrier. (*See CAF Order* at ¶1007.) AT&T Ohio's proposed language leaves the applicability of reciprocal compensation obligations to 1+ dialed IntraMTA calls in question. Therefore, Sprint's proposed language should be adopted.

Issue 2 What are the appropriate definitions related to "InterMTA Traffic"?

Sprint proposes language with respect to the definition of "InterMTA Traffic" in Section 2.65, General Terms and Conditions including a definition for "Non-Toll InterMTA Traffic" in Section 2.65.1 of the General Terms and Conditions and for "Toll InterMTA Traffic" in Section 2.65.2, General Terms and Conditions.

Sprint believes that AT&T Ohio's proposed definition for InterMTA Traffic is too broad. According to Sprint, AT&T Ohio describes InterMTA Traffic as traffic "to or from Sprint's network." AT&T Ohio's broad definition could, according to Sprint, be construed to include traffic for which AT&T Ohio is neither the originating nor terminating party. In Sprint's view, InterMTA compensation provisions should only apply to calls that originate with an end user of one party and terminate with an end user of the other party. Sprint believes that AT&T Ohio's language could lead to calls that Sprint delivers to an IXC to deliver to AT&T Ohio or landline-originated 1+ dialed InterMTA calls that an IXC hands to AT&T Ohio to deliver to Sprint being included as InterMTA Traffic. Such calls, in Sprint's estimation, are not within the scope of the interconnection agreement and should not be subject to any compensation between the two companies. (Sprint Ex. 2 at 6-8.)

According to Sprint, its proposed language is appropriately restrictive in that it covers InterMTA Traffic properly subject to an interconnection agreement but excludes InterMTA calls delivered over other trunks and via other contractual arrangements (Sprint Initial Br. at 24). Sprint believes that with regard to InterMTA Traffic exchanged directly between itself and AT&T Ohio, access charges may only apply, if at all, when the calling party is charged a separate fee or "toll" charge. Sprint offered proposed definitions for "Non-Toll InterMTA Traffic" and "Toll InterMTA Traffic" in support of this position. (Sprint Ex. 2 at 7.)

Sprint offers nationwide local calling to its customers, hence there is no extra "toll" charge imposed by Sprint. Therefore, in Sprint's view, access charges should not be applied to those InterMTA calls as no extra "toll" is assessed. Sprint points to recently adopted FCC rules [i.e., 47 C.F.R. 51.903(h) and 47 C.F.R. 51.901(b)] to support its proposed definition for "Toll InterMTA Traffic." Sprint asserts that pursuant to these rules and the statutory language found in 47 U.S.C. 153(55), a "separate charge" is mandatory for a call to be "telephone toll service;" "telephone toll service" is mandatory for a call to be "exchange access;" and "exchange access" is mandatory for a call to be subject to access charges under 47 C.F.R. 51.901(b). Accordingly, Sprint argues that its proposed definitions are necessary to incorporate the FCC's compensation regime into the interconnection agreement; something Sprint believes that AT&T Ohio's proposed language fails to do. (Sprint Initial Br. at 26-27.)

Sprint objects to AT&T Ohio's assertion that the adoption of Sprint's proposed language will result in "a significant departure from the current compensation regime." Rather, Sprint avers that its proposal does not affect the provisions of the Act and the FCC rules regarding the proper application of access charges. Sprint points out, though, that its proposal would be a departure from the existing agreement that predates the *CAF Order*. (Sprint Ex. 4 at 2-3.)

AT&T Ohio proposes language with respect to the definition of "InterMTA Traffic" in Section 2.65, General Terms and Conditions. AT&T Ohio points out that the existing interconnection agreement between itself and Sprint defines "InterMTA Traffic" as "traffic to or from [Sprint's] network that originates in one MTA and terminates in another MTA (as defined by the geographic location of the Cell Site at the beginning of the call to which the mobile End User Customer is connected)." AT&T Ohio asserts that its proposed definition is consistent with the current interconnection agreement's definition as well as the FCC directives. (AT&T Ohio Ex. 1A at 125-126.)

Conversely, AT&T Ohio does not believe that Sprint's proposed language is consistent with the current interconnection agreement and would exclude certain InterMTA calls. Further, in AT&T Ohio's view, Sprint's proposed language would have the effect of placing all traffic under a bill-and-keep compensation regime since Sprint views the entire country as its local calling area. Therefore, AT&T Ohio submits that the access regime would effectively collapse if other carriers followed suit. AT&T Ohio does not believe that such a result is consistent with the FCC's *CAF Order* in that such a flash-cut to bill-and-keep would traumatize the industry. (AT&T Ohio Ex. 1A at 126-128.)

AT&T Ohio takes exception to Sprint's assertion that AT&T Ohio's proposed language could be read to obligate Sprint to pay compensation for third-party IXC traffic. AT&T Ohio states that Sprint does not identify a single provision in the interconnection agreement that uses the term InterMTA Traffic in a manner to support Sprint's assertion. AT&T Ohio further states that it does not presently bill Sprint in this manner and there is

nothing in AT&T Ohio's proposed language to change this practice. (AT&T Ohio Ex. 3 at 84.)

In response to Sprint's argument that it is required to pay access charges for termination only if its mobile-to-land InterMTA traffic imposes a separate "toll" upon its wireless customer, AT&T Ohio responds that Sprint's position is inconsistent with federal law. Further, AT&T Ohio asserts that this argument has been rejected by every commission and court that has considered it. The FCC divided telecommunications traffic into two categories: "Non-Access Telecommunications Traffic" and "Access Traffic." InterMTA traffic can only be classified as access traffic with IntraMTA traffic being included within the scope of non-access traffic pursuant to AT&T Ohio's reading of the FCC's rules. (AT&T Ohio Reply Br. at 49-50.) Additionally, AT&T Ohio argues that Sprint's belief that only "toll" InterMTA traffic with a "separate charge" should be classified as exchange access subject to access charges is wrong because the definitions that Sprint relies upon are expressly inapplicable where "the context otherwise requires." According to AT&T Ohio, the access charge context is just such a context because such charges have never been limited to traffic upon which a "separate charge" is made. (AT&T Ohio Reply Br. at 50-52.)

In encouraging the Commission to adopt its proposed language, AT&T Ohio notes that Sprint wishes to limit the definition of InterMTA Traffic to InterMTA traffic "exchanged directly over the Interconnection Trunks." AT&T Ohio points out that InterMTA traffic is InterMTA no matter what trunks are used by Sprint to deliver the traffic to AT&T Ohio. Accordingly, AT&T Ohio believes that the interconnection agreement should specify the appropriate treatment of this traffic regardless of whether Sprint routes the traffic over the appropriate trunks. AT&T Ohio further believes that because InterMTA traffic is subject to access charges, such traffic must be routed over the appropriate access trunks rather than Interconnection Trunks. (AT&T Ohio Reply Br. at 53.)

Issue 2 Arbitration Award

Based on a review of the arguments set forth above, the Commission determines that the language proposed by AT&T Ohio should be adopted. The Commission agrees with AT&T Ohio that Sprint's proposed definition of InterMTA Traffic is too narrow or restrictive. If adopted, Sprint's proposed language would only permit access charges to be assessed when the calling party is assessed a separate fee or "toll" charge. As previously noted, Sprint distinguishes between "Non-Toll InterMTA Traffic" and "Toll InterMTA Traffic." Adopting such a distinction would effectively permit Sprint to avoid paying any access charges to AT&T Ohio since Sprint views the entire country as a local calling area. The Commission disagrees with Sprint's application of 47 U.S.C. 153(20), (55) and FCC rules 47 C.F.R. 51.901(b) and 47 C.F.R. 51.903(h) to achieve this result.

Pursuant to 47 C.F.R. 24.202(a), there are 47 MTAs organized within the 50 states. In its *CAF Order*, the FCC clearly indicates that these MTAs are the appropriate points of demarcation to distinguish traffic between a LEC and a CMRS provider that is subject to reciprocal compensation from traffic between a LEC and a CMRS provider that is subject to access charges. This distinction only hinges upon whether traffic originates and terminates within the same MTA, and not upon whether a separate toll charge is assessed. (*See CAF Order* at ¶¶ 980-1002). Accordingly, the Commission rejects Sprint's proposed language to distinguish between toll InterMTA traffic and non-toll InterMTA traffic.

Additionally, Sprint's proposed language excludes InterMTA calls delivered over trunks other than interconnection trunks and via other contractual arrangements. As previously stated, the MTA is the proper demarcation for LEC-CMRS traffic in determining whether such traffic is subject to reciprocal compensation or access charges. As AT&T Ohio has rightly pointed out, InterMTA traffic is InterMTA without regard to the trunks used by Sprint to deliver that traffic to AT&T Ohio. As such, the Commission agrees with AT&T Ohio that the interconnection agreement should specify the appropriate treatment of InterMTA traffic regardless of the trunks used to deliver the traffic. The Commission believes that AT&T Ohio's proposed language appropriately identifies this traffic regardless of the trunks used to carry it.

Finally, the Commission finds no merit in Sprint's assertion that AT&T Ohio's proposed language may be construed to include, as part of the defined term, traffic for which AT&T Ohio is neither the originating nor terminating party. Such an assertion is a "red herring." The Commission agrees with AT&T Ohio that its proposed language is consistent with the current interconnection agreement definition of InterMTA traffic and that Sprint has made no claim that AT&T Ohio has assessed access charges for traffic for which AT&T Ohio is neither the originating nor terminating party under the current definition. Rather, Sprint merely speculates as to what may happen if AT&T Ohio's proposed language is adopted. In contrast, AT&T Ohio asserts that it has not billed Sprint for third-party IXC traffic under the current interconnection agreement and claims there is nothing in the proposed language to change this practice.

Issue 3 What is the appropriate definition of "Switched Access Services"?

Sprint proposes language with respect to the definition of "Switched Access Service" in Section 2.105, General Terms and Conditions. In support of its position, Sprint submits that its definition is consistent with the traditional concept of switched access which recognizes that it is a category of exchange access service provided by a telephone exchange service provider to an IXC pursuant to an applicable access tariff. Sprint asserts that exchange access service is defined at 47 U.S.C. 153(55) to mean the provision of toll service. Sprint submits that AT&T Ohio is inappropriately attempting to subject it to the same switched access charges that would be imposed on IXCs.

Additionally, Sprint submits that under AT&T Ohio's theory of interconnection, InterMTA traffic cannot be exchanged over interconnection facilities but, instead, must be exchanged over switched access facilities. (Sprint Ex. 2 at 9; Sprint Ex. 6 Appendix B, at 2-3; Sprint Initial Br. at 28.)

Sprint submits that AT&T Ohio's provision of interconnection pursuant to 47 U.S.C. 251(c)(2) for the purpose of enabling telephone exchange and exchange access service is distinguishable from the service provided to an IXC. Therefore, Sprint contends that AT&T Ohio is not entitled to charge it switched access for traffic exchanged between the parties except in the limited scenario addressed in Issue 19 of this proceeding. Specifically, Sprint represents that it is not an IXC providing telephone toll service but, rather, a CMRS provider offering telephone exchange and exchange access services. In support of its position, Sprint references Section 2.63, General Terms and Conditions which defines an IXC as a carrier (other than a wireless service provider or a LEC) that provides, directly or indirectly, InterLATA [Local Access and Transport Area] or IntraLATA telephone toll service. Sprint states that, unlike the scenario for IXCs, the InterMTA traffic at issue here is exchanged directly between the itself and AT&T Ohio as telephone exchange service providers and that there are no toll charges assessed by Sprint to its customers, except in the limited situation addressed in Issue 19. Additionally, Sprint notes that, unlike IXCs, it does not hold a Carrier Identification Code (CIC). (Sprint Ex. 2 at 9-11.)

Inasmuch as it does not consider itself to be an IXC, Sprint contends that there is no reason for it to purchase "Switched Access Service" as defined by AT&T Ohio. Rather than purchasing the tariffed service, Sprint believes that it is purchasing via the interconnection agreement subject to the Act and that its traffic, including InterMTA, is authorized to be delivered over interconnection facilities pursuant to 47 U.S.C. 251(c)(2). (Sprint Ex. 4 at 3-4.) Therefore, Sprint believes that the terms "IXC" and "Exchange Access" should not be replaced with the general term "access" (Sprint Ex. 2 at 11-12).

AT&T Ohio proposes language with respect to the definition of "Switched Access Service" in Section 2.105, General Terms and Conditions. AT&T Ohio notes that its proposed language is virtually identical to the first sentence of the definition of "Switched Access Service" found in the current interconnection agreement. AT&T Ohio also points out that, while neither it or Sprint would be considered as an "IXC" pursuant to the agreed upon "IXC" definition in the interconnection agreement, based on the definition of "Interexchange Carrier" found in its state and federal access tariffs, any carrier that provides service between exchanges is subject to the access tariff provisions. Therefore, for the purpose of the application of its "Switched Access Services" tariff, AT&T Ohio believes that the provisions should apply to all carriers that use their networks to access AT&T Ohio's networks for the purpose of originating and terminating an interexchange call. In the case of Sprint, AT&T Ohio submits that this

would include the use of AT&T Ohio's network for the purpose of originating or terminating a call between MTAs. (AT&T Ohio Ex. 1 at 129-133.)

According to AT&T Ohio, if the switched access was limited to "IXCs" then no traffic exchanged directly by the parties would ever be considered "Switched Access Services" traffic and the state and federal access tariffs would never apply. According to AT&T Ohio, such an interpretation would result in Sprint avoiding the payment of legitimate switched access charges. Rather than such a result, AT&T Ohio believes that it is appropriate to have the interconnection agreement reference the application of the "Switched Access Services" tariff and to then apply the tariff in accordance with its own terms. (AT&T Ohio Ex. 1 at 129-133; AT&T Ohio Ex. 3 at 85-87; AT&T Ohio Initial Br. at 100-101.)

Issue 3 Arbitration Award

Based on a review of the arguments set forth above, the Commission determines that the language proposed by AT&T Ohio should be adopted. In reaching this decision the Commission finds that Sprint's intent to limit the application of "Switched Access" to just IXCs is too restrictive and inconsistent with the arrangement under which the parties have previously been operating. The Commission agrees with AT&T Ohio that to conclude otherwise would negate any potential application of AT&T Ohio's "Switched Access Services" tariff, which has its own specific terms, conditions, and definitions. Additionally, the Commission highlights that AT&T Ohio's language is consistent with our determinations throughout this Order including Issues 2, 16, 18, and 19.

Issue 4 (a) Should the definition of Interconnection be based on both Part 51 and Part 20 of the FCC's rules?

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

With respect to Issue 4(a), Sprint proposes language for Section 2.60, General Terms and Conditions. In support of its position, Sprint contends that with respect to the exchange of traffic between a CMRS provider's network and an incumbent local exchange carrier's (ILEC's) network, there is an interrelationship between the FCC's Part 20 and Part 51 rules. Therefore, as a CMRS provider, Sprint opines that Part 20 Section 20.3 of the FCC rules and Part 51 Section 51.3 of the FCC's rules are equally applicable to the interconnection arrangement between the parties and should both be referenced in the definition for interconnection. (Sprint Ex. 1 at 16, 17.) Specifically, Sprint submits that Part 51 Section 51.5 applies due to the fact that it is a requesting carrier. Sprint also submits that Part 20 Section 20.3 applies due to the fact that it is a CMRS provider. Sprint believes that the interconnection rights under Part 20 and Part 51 are similar if not equal. To the extent that Part 20 Section 20.3 provides broader rights than Part 51 Section 51.5,

Sprint believes that, as a CMRS provider, it is entitled to these broader rights. As further support for its position, Sprint avers that the FCC did not distinguish between Part 20 and Part 51 when granting ILECs the right to request interconnection with CMRS providers. (Sprint Ex. 1 at 17-18.) Sprint also cites to the FCCs determination (*CAF Order* at ¶806), whereby the FCC adopted bill-and-keep as the default methodology for non-access traffic exchanged between LECs and CMRS providers under Section 20.11 of its rules and Part 51 (Sprint Ex. 1 at 19).

With respect to the issue of AT&T Ohio's contention that Sprint is attempting to extend Total Element Long Run Incremental Cost (TELRIC) pricing beyond that required by 47 U.S.C. 251(c)(2), Sprint responds that this argument is outside the scope of this issue and will be addressed in Issues 10 and 13 and is not impacted by the definition of "Interconnection" (Sprint Ex. 1 at 18, 19; Sprint Ex. 3 at 6-8; Sprint Initial Br. at 31). Additionally, Sprint posits that referring to FCC rules outside of Part 51 (e.g., Part 20 Section 20.3) is not restricted by 47 U.S.C. 252(c). Sprint also references 47 C.F.R. 51.305 in support of its position on this issue (Sprint Initial Br. at 32).

With respect to Issue 4(a), AT&T Ohio proposes language for Section 2.60, General Terms and Conditions. In support of its position, AT&T Ohio states that the negotiation and arbitration of the interconnection agreement in this case was commenced by Sprint, and not AT&T Ohio, pursuant to 47 U.S.C. 251(c) and 47 U.S.C. 252. Therefore, AT&T Ohio contends that the definition of "Interconnection" should be similar to that of 47 C.F.R. 51.5, which was promulgated for the purpose of implementing 47 U.S.C. 251 and 47 U.S.C. 252. According to AT&T Ohio, 47 C.F.R. 51.5 defines "Interconnection" as the "linking of two networks for the mutual exchange of traffic." (AT&T Ohio Ex. 1 at 13-14; AT&T Ohio Initial Br. at 9.)

AT&T Ohio rejects Sprint's recommendation to add the definition of "Interconnection" set forth in 47 C.F.R. 20.3 as Part 20 was not promulgated for the purpose of implementing 47 U.S.C. 251 and 47 U.S.C. 252 but, instead, was issued in order to set forth the requirements and conditions applicable to CMRS providers upon a request for interconnection by an ILEC. Therefore, AT&T Ohio contends that Part 20 should not apply since the request was not initiated by the ILEC. (AT&T Ohio Ex. 3 at 9.) Additionally, AT&T Ohio believes that the Part 20 definition should not be utilized in this case since it goes beyond the requirements of 47 U.S.C. 251(c)(2) and is part of Sprint's improper attempt to obtain facilities at TELRIC-based rates, notwithstanding the fact that facilities are not used for the "mutual exchange of traffic" as defined by the FCC in 47 C.F.R. 51.5. According to AT&T Ohio, the FCC has interpreted the "mutual exchange of traffic" referenced in 47 C.F.R. 51.5 to signify the exchange of traffic between end user customers of the parties that are directly interconnected. Rather than being engaged in the mutual exchange of traffic, AT&T Ohio asserts that Sprint is seeking to use 47 U.S.C. 251(c)(2) interconnection in order to send traffic to third parties such as IXCs located anywhere in the public switched network. (AT&T Ohio Ex. 1 at 14-15;

AT&T Ohio Ex. 3 at 8-9; AT&T Ohio Initial Br. 7-9.) AT&T Ohio also rejects Sprint's contention that the *CAF Order* supports the linkage between Part 20 and Part 51 since the referenced language from the *CAF Order* pertains to the bill-and-keep treatment of IntraMTA traffic and does not address interconnection and InterMTA traffic (AT&T Ohio Ex. 3 at 8-9; AT&T Ohio Reply Br. at 9).

With respect to Issue 4(b), Sprint proposes language to Attachment 2, Section 1.1. In support of its position, Sprint asserts that there is no need to adopt AT&T Ohio's distinction between "Interconnection" and "interconnection" and that the addition of language defining "interconnection" adds ambiguity into the contract. Sprint avers that, consistent with its position set forth in Issue 4(a) and Issue 15, the definition of interconnection should be broad in scope and include the connection and facilities that carry traffic to/from an IXC. (Sprint Ex. 1 at 19-20.) Rather than considering the issue of interconnection in the context of 47 U.S.C. 251, Sprint believes that AT&T Ohio has applied 47 C.F.R. 51.5 in order to deny TELRIC pricing for facilities that interconnect the Sprint and AT&T Ohio networks that carry traffic that AT&T Ohio switches to/from IXCs (AT&T Ohio Initial Br. at 32, 33).

With respect to Issue 4(b), AT&T Ohio proposes language for Attachment 2, Section 1.1. In support of its position, AT&T Ohio states that consistent with its distinction of "Interconnection" pursuant to 47 U.S.C. 251(c)(2) and "interconnection" in general (e.g., facilities used for non-interconnection/non-mutual exchange traffic such as 9-1-1 and equal access), language must be provided in the agreement in order to properly reflect this difference. Therefore, AT&T Ohio proposes that "Interconnection" be utilized when specifically referencing interconnection contemplated in 47 U.S.C. 251(c)(2) and 47 C.F.R. 51.5 and that "interconnection" be utilized when discussing interconnection in general. Similar to the rationale discussed in Issue 4(a) discussed above, AT&T Ohio believes that this distinction is necessary based on its contention that only interconnection pursuant to 47 U.S.C. 251(c)(2) and 47 C.F.R. 51.5 is entitled to TELRIC-based pricing. (AT&T Ohio Ex. 1 at 16-17; AT&T Ohio Ex. 3 at 9-10; AT&T Ohio Initial Br. at 10.)

Issue 4 Arbitration Award

Based on a review of the arguments set forth regarding Issues 4(a) and 4(b), the Commission finds that the language proposed by AT&T Ohio should be adopted. Specific to Issue 4(a), the Commission finds that 47 C.F.R. 51.5 is the controlling rule as this arbitration centers on a request by Sprint for interconnection to AT&T Ohio's network pursuant to 47 U.S.C. 251(c)(2). While 47 C.F.R. 20.3 addresses interconnection, it does not pertain to the interconnection obligations of an ILEC in response to a request for arbitration, which is the scenario presented in this case. Rather, as set forth in 47 C.F.R. 20.1, Part 20 delineates the requirements and conditions applicable to CMRS providers. As a result, 47 C.F.R. 20.3 is limited to an "interconnection request" by an

ILEC to a CMRS provider. Therefore, the definition of "interconnection" contained in Part 20 does not apply in this case.

Specific to Issue 4(b), the Commission agrees with AT&T Ohio that the intended usage of the phrase "interconnection" in Attachment 2, Section 1.1, is more appropriate as a generic term related to "all Authorized Services traffic" and not intended to be applied as the specific defined term as discussed in Issue 4(a). This distinction is necessary in order to distinguish between "Interconnection" under which the ILEC must make facilities available at cost-based rates pursuant to 47 U.S.C. 251(c)(2) and "interconnection" which may include scenarios under which it does not have to make such an offering.

Issue 5 What is the appropriate definition of "point of interconnection"?

Sprint proposes language with respect to the definition of "point of interconnection" in Section 2.89, General Terms and Conditions. In support of its position, Sprint submits that its definition recognizes that the point of interconnection will be the point of physical demarcation, but will not be the point of financial demarcation. Sprint contends that AT&T Ohio is obligated to share in the cost of Interconnection Facilities. Sprint contends that the real implications of the parties' financial responsibilities are addressed in Issue 22 and there is no reason to distort or expand the definition of the point of interconnection to impart meaning to it other than what is intended. Sprint submits that it is undisputed that an Interconnection Facility connects the parties' two networks for the mutual exchange of traffic. Sprint further avers that consistent with the first two undisputed sentences of the contractually defined term "Interconnection Facilities," the parties agree that such facilities are the transmission facilities that connect Sprint's network with AT&T Ohio's network for the mutual exchange of traffic. (Sprint Ex. 1 at 21; Sprint Ex. 3 at 10; Sprint Ex. 6, Appendix B at 5.)

AT&T Ohio proposes language with respect to the definition of point of interconnection in Section 2.89, General Terms and Conditions. AT&T Ohio states that its proposed language accurately describes the point of interconnection as the point where the parties' networks meet and that each carrier is financially responsible for the transport facilities on its side of the point of interconnection. AT&T Ohio submits that the phrase "where the parties' networks meet for the purpose of establishing Interconnection" is consistent with agreed language in the definition stating that the point of interconnection "serves as a demarcation point between the facilities that each Party is physically responsible to provide." (AT&T Ohio Ex. 1A at 17-18; Sprint Ex. 6, Appendix B, at 5.)

According to AT&T Ohio, the parties have already agreed to language in Attachment 2, Section 2.1.1, that establishes the point of interconnection as the financial

demarcation point. AT&T Ohio submits that Sprint's opposition to describing the point of interconnection as the financial demarcation point is based entirely on its position in Issue 22(a) that AT&T Ohio should be required to share in the cost of Interconnection Facilities located on Sprint's side of the point of interconnection. AT&T Ohio contends that if it prevails on Issue 22(a), the Commission should also approve AT&T Ohio's proposed definition of point of interconnection. (AT&T Ohio Ex. 1A at 18-19.)

Issue 5 Arbitration Award

Based on a review of the arguments set forth above, the Commission determines that the language proposed by AT&T Ohio should be adopted. In reaching this decision the Commission finds that AT&T Ohio's proposed language is consistent with our determination on Issue 22(a) that AT&T Ohio should not be required to share in the cost of Interconnection Facilities on Sprint's side of the point of interconnection and that the point of interconnection is the physical and financial demarcation point between the Sprint and AT&T Ohio networks. Therefore, AT&T Ohio's proposed definition of the "point of interconnection" is adopted.

Issue 6 Must Sprint obtain AT&T Ohio's consent to Sprint's removal of a previously established point of interconnection?

Sprint proposes language for Attachment 2, Section 2.2.1.4. Sprint believes that it should be allowed to remove points of interconnection due to a change in traffic patterns, changes in technology, or in order to optimize network efficiency. In support of its position, Sprint contends that AT&T Ohio's proposed language would require the parties to negotiate the elimination of existing points of interconnection and require Sprint to utilize the dispute resolution procedures of the interconnection agreement if mutual agreement is not reached. Sprint contends that it should be entitled to decommission facilities at its own discretion rather than having to wait for the Commission or a court to render a decision pursuant to a dispute regarding the elimination of a point of interconnection. Sprint notes that a dispute resolution process could include at least 60 days of negotiation plus the time it would take waiting for a decision. (Sprint Ex. 2 at 12-13; Sprint Ex. 4 at 8.)

Sprint claims that as the requesting carrier, it is only required by the FCC to maintain one point of interconnection in each LATA in which it provides service and that it can determine where to interconnect with the ILEC. According to Sprint, to require it to maintain more than one point of interconnection in a particular LATA would violate this well-established FCC principle. Sprint avers that the FCC has recognized, and reaffirmed in the *CAF Order*, that a requesting carrier may interconnect with an ILEC in a given LATA via a single point of interconnection if the requesting carrier so chooses. Sprint submits that as long as the requesting carrier maintains a minimum of one point of

interconnection per LATA there should be no restriction on that carrier's ability to manage its network and points of interconnection with an ILEC. (Sprint Ex. 2 at 15-16.)

Sprint contends that it currently maintains more points of interconnection with AT&T Ohio than will be efficient on a going-forward basis. Sprint maintains that removing a point of interconnection is achieved simply by disconnecting the facilities that connect at the point of interconnection, which can be accomplished by giving the appropriate notice under either the access tariffs or the interconnection agreement. Sprint avers that as part of the process to disconnect the facilities, the parties would simply modify their routing tables to reflect that calls would be routed over other remaining facilities, which according to Sprint is a routine occurrence in the telecommunications industry. (Sprint Ex. 2 at 13-14.)

Sprint submits that AT&T Ohio's interpretation would stand 47 U.S.C. 251(c)(2) on its head by imposing duties on competitive carriers by requiring Sprint to interconnect at locations within AT&T Ohio's network where it no longer wants such interconnections and giving AT&T Ohio, as the ILEC the ability to determine where competitive carriers must interconnect within AT&T Ohio's network (Sprint Ex. 4 at 5-6).

Sprint further submits that with regard to the expense of having established existing points of interconnection, AT&T Ohio has already been more than adequately compensated for the cost of the facilities through the special access rates paid by Sprint. Moreover, Sprint claims the costs of processing the orders to implement the facilities have been paid by Sprint in the form of service ordering charges. Sprint maintains that its opposition to being required to obtain AT&T Ohio's consent prior to decommissioning an existing point of interconnection does not signify that it is unwilling to cooperate with AT&T Ohio. Rather, Sprint submits that it would give ample notice to AT&T Ohio in order to avoid any disruption in service by either party and to ensure traffic continues to be exchanged successfully between the parties. Sprint claims this is the exact same process in place today for the disconnection of existing tariffed services. (Sprint Ex. 4 at 10.)

Finally, Sprint contends that the existing points of interconnection were not established by mutual agreement, as asserted by AT&T Ohio but, instead, were ordered under tariff. Therefore, Sprint believes that, under terms of the tariff, it is entitled to disconnect and cannot be prohibited from doing so. (Sprint Ex. 4 at 11.)

With respect to Issue 6, AT&T Ohio proposes language for Attachment 2, Section 2.2.1.4. In support of its position, AT&T Ohio states that the parties have had their networks interconnected in Ohio since 1998 and that during this time Sprint has established points of interconnection in 6 LATAs in Ohio, including at AT&T Ohio tandems and multiple AT&T Ohio end offices. AT&T Ohio contends that modifying these long standing interconnection arrangements may decrease Sprint's costs but would

adversely impact AT&T Ohio and would increase the risk of making the network more susceptible to failure. (AT&T Ohio Ex. 2A at 3.) AT&T Ohio asserts that both parties have incurred the expense and work effort to interconnect their networks at multiple points in each LATA in Ohio and Sprint should not be able to transform that arrangement into one with a single point of interconnection per LATA (AT&T Ohio Ex. 2A at 5). AT&T Ohio maintains that the existing points of interconnection demonstrate Sprint's recognition that it is more efficient for the parties to interconnect at multiple locations throughout the different LATAs (AT&T Ohio Ex. 2A at 6).

Further, AT&T Ohio contends that the parties exchange a significant amount of traffic and that from an engineering and reliability perspective, it is not good practice to maintain a single point of interconnection on a permanent basis or to convert an existing multiple point of interconnection arrangement into a single point of interconnection arrangement. While recognizing that a single point of interconnection helps a new carrier establish a presence in a given market or LATA, AT&T Ohio contends that as the volume of traffic increases, multiple points of interconnection provide the desired diversity, security, and reliability. Specifically, AT&T Ohio avers in a single point of interconnection environment, a catastrophic failure at that location could completely isolate that carrier's network from the public switched telephone network (PSTN). (AT&T Ohio Ex. 2A at 6-8.)

AT&T Ohio maintains that Sprint has voluntarily established its current multiple-point of interconnection network architecture over the years and has fully implemented it in Ohio, Illinois, Indiana, Michigan, and other states (AT&T Ohio Ex. 2A at 9). AT&T Ohio contends that each time a point of interconnection is established it requires the investment of time and money, which will both be wasted if a point of interconnection is decommissioned. Furthermore, AT&T Ohio claims that it will incur decommissioning costs associated with removing a point of interconnection that was previously requested by Sprint. Therefore, AT&T Ohio distinguishes the single point of interconnection rule from the scenario in which multiple points of interconnection are already in existence. AT&T Ohio claims the current use of multiple points of interconnection to interconnect the two carriers' networks balances costs between AT&T Ohio and Sprint so that the cost to transport traffic between networks does not fall mainly on AT&T Ohio. AT&T Ohio claims that in a single point of interconnection environment, it would be forced to bear an unequal share of the costs to transport traffic from a single point of interconnection to each of the tandems in a LATA. (AT&T Ohio Ex. 2A at 10-11, 14.)

AT&T Ohio rejects Sprint's contention that AT&T Ohio's proposal lacks an objective standard for the Commission to resolve any disputes in a timely manner. According to AT&T Ohio, interconnection agreements often include language that requires the parties to use the agreement's dispute resolution provisions in order to deal with disputes, and that such language does not typically include an objective standard by which every potential dispute will be resolved. Further, AT&T Ohio contends that at

most, it will take 60 days to complete the informal dispute resolution process provided for under the interconnection agreement and after that the Commission will promptly resolve the dispute using its complaint resolution mechanism. (AT&T Ohio Ex. 4 at 2-3.)

Issue 6 Arbitration Award

Based on a review of the arguments set forth regarding Issue 6, the Commission agrees with Sprint that it is not required to maintain more than one point of interconnection in a LATA and may remove previously established additional points of interconnection as long as it maintains at least one point of interconnection per LATA. Further, the Commission agrees with Sprint that the existing points of interconnection were established by tariff and, therefore, they can be disconnected consistent with the tariff.

However, because both parties have relied on these previously established points of interconnection to exchange traffic, the Commission agrees with AT&T Ohio that the removal of a previously established point of interconnection should be subject to negotiation. The negotiations should focus on the parameters under which the requested point of interconnection will be decommissioned or, in the alternative, negotiating revised terms and conditions by which the point of interconnection is provisioned in a manner whereby both parties could agree to maintain the point of interconnection. If the parties cannot agree to the parameters of such decommissioning or arrive at new terms and conditions to maintain the point of interconnection, either party may directly petition the Commission to resolve the dispute without invoking the dispute resolution provisions of the interconnection agreement.

Consistent with the above determinations, Sprint's proposed language that it may remove any previously established point of interconnection should be adopted. Further, AT&T Ohio's proposed language should be added followed by Sprint's language with one modification. Specifically, the second sentence should be amended to read "If the Parties do not agree, either party may directly petition the Commission to resolve the dispute."

Issue 7 (a) Should Sprint be required to establish additional points of interconnection when its traffic to an AT&T Ohio Tandem Serving Area exceeds one (1) DS3?

(b) Should Sprint establish these additional connections within 90 days?

According to Sprint, AT&T Ohio's position that Sprint must install additional points of interconnection based on predetermined traffic thresholds is diametrically opposed to the FCC's requirement of maintaining only one point of interconnection per

LATA. Sprint argues that AT&T Ohio is really attempting to shift its interoffice transport costs by requiring Sprint to build further into AT&T Ohio's network at multiple locations, likely using facilities that Sprint would need to lease from AT&T Ohio. Sprint maintains that the FCC does not permit AT&T Ohio to create an artificial threshold at which Sprint would be required to establish an additional point of interconnection. (Sprint Ex. 2 at 21.)

Sprint contends that AT&T Ohio's proposed language is impermissibly attempting to limit the application of the single point of interconnection per LATA rule in a way that decreases efficiency and increases Sprint's costs. Sprint maintains that the single point of interconnection requirement provides the requesting carrier control over where and when it chooses to interconnect with an ILEC. Sprint submits that while a requesting carrier may choose to establish additional points of interconnection based on its own criteria, it cannot be forced to incur additional costs by its competitor that is already getting paid a TELRIC-based rate which includes reasonable profits. Sprint avers that AT&T Ohio has provided no evidence of tandem exhaust, facilities exhaust, or network reliability concerns that would be mitigated by the presence of a DS-3 threshold. (Sprint Ex, 2 at 22-23.)

With respect to Issue 7, AT&T Ohio provides language for Attachment 2, Sections 2.2.1.3, 2.2.1.3.1, and 2.2.1.3.3. AT&T Ohio submits that its language is necessary because a single point of interconnection arrangement that concentrates too much traffic at a single location increases the chance that a catastrophic failure at that location could completely isolate that carrier's network from the PSTN. According to AT&T Ohio, adverse conditions in one carrier's network can introduce undesirable consequences into other carriers' networks in the form of blocked calls, affecting the reliability of the network (AT&T Ohio Ex. 2A at 15, 16.)

AT&T Ohio indicates that a single DS-3 can carry up to 5,600,000 minutes of use (MOU) per month and at that very high level of traffic to a Tandem Serving Area for which there is no existing point of interconnection, it is reasonable for a carrier to establish an additional point of interconnection for its interconnection traffic in order to address issues of network reliability. AT&T Ohio highlights that its proposed threshold of Sprint traffic exceeding 1 DS-3 to an AT&T Ohio tandem serving area must be met for three consecutive months prior to triggering the requirement of establishing an additional point of interconnection. Additionally, AT&T Ohio notes that its proposed language is less restrictive than the language in the current interconnection agreement which requires Sprint to establish a point of interconnection to each switch at a much lower traffic threshold of one DS-1 over three consecutive months. AT&T Ohio also contends that its proposed language will have no practical impact since Sprint has already established points of interconnection at all of the AT&T Ohio tandems in the six LATAs. (AT&T Ohio Ex. 2A at 16-17.)

AT&T Ohio contends that, based on its experience, 90 days is a reasonable amount of time for the parties to plan, order, and provision the transport facilities needed to establish a new point of interconnection (AT&T Ohio Ex. 2A at 20).

Issue 7 Arbitration Award

Based on a review of the arguments set forth regarding Issues 7(a) and 7(b), the Commission finds that the position advocated by Sprint should be adopted. This decision is consistent with our determination for Issue 6 that Sprint is only required to maintain one point of interconnection per LATA and that Sprint may decommission a point of interconnection where it has already established another one in a LATA. Therefore, Sprint is not required to add additional points of interconnection when AT&T Ohio's proposed predetermined traffic levels are exceeded. As a result of the Commission's determination relative to Issue 7(a), the issue of whether additional points of interconnection should be established within 90 calendar days is moot.

Issue 8 What is the appropriate definition of "Interconnection Facilities"?

With respect to Issue 8, Sprint proposes language for Section 2.61, General Terms and Conditions. Sprint explains that an Interconnection Facility is the outside plant and the associated electronics or optronics that two carriers install between their networks that is used to exchange traffic. Sprint submits that the Interconnection Facility is subject to regulated pricing and utilization. Sprint contends that aside from the issue of interconnection facility cost sharing addressed in Issue 22, the only other issue associated with Interconnection Facilities is how they may be used. Sprint claims that AT&T Ohio is attempting to limit the use of Interconnection Facilities so severely that the benefit to the requesting carrier is virtually nonexistent. (Sprint Ex. 2 at 25-26.)

Sprint contends that all traffic exchanged between its switches and those of AT&T Ohio fall under the category of either "telephone exchange" or "exchange access." Sprint submits that the only type of traffic that is not eligible for carriage over a cost-based priced Interconnection Facility is backhaul, which does not involve the exchange of traffic between the parties' switches. Sprint explains that backhaul is a term used to describe the situation when a carrier uses facilities to carry traffic between points within its own network. Sprint believes all other traffic that is switched by AT&T Ohio is, in some fashion, appropriately categorized as either telephone exchange or exchange access. (Sprint Ex. 2 at 31.)

Sprint submits that there are two elements of the definition of Interconnection Facilities that are the subject of this dispute. The first being the incorporation of a provision that makes the definition subject to Attachment 2, Section 3.8.3, clarifying that the Interconnection Facilities are subject to TELRIC pricing regardless of whether they

are in the form of a stand-alone DS1 or "DS1 Equivalent" that rides a high-capacity facility which is the subject of disputed Issue 20. (Sprint Ex. 2 at 39-40.)

According to Sprint, the second issue is whether it is appropriate to incorporate the language from the FCC definition of "Interconnection" or to simply refer to it. Sprint believes that using the language of the rule, rather than a citation is helpful and provides clarity, especially given AT&T Ohio's attempt to limit what constitutes "Interconnection." Specifically, Sprint believes that the express incorporation of the words of the FCC's rule make it clear that AT&T Ohio's proposed end user limitation does not exist. (Sprint Ex. 2 at 40.)

With respect to Issue 8, AT&T Ohio proposes language for Section 2.61, General Term and Conditions. AT&T Ohio maintains that its proposed language is an attempt to clarify that Interconnection Facilities are to be used by Sprint exclusively for "Interconnection" as the FCC has defined that term in 47 C.F.R. 51.5 in the context of 47 U.S.C. 251(c). AT&T Ohio contends that this clarification stems from the fact that 47 U.S.C. 251(c) is the only statutory basis of an ILEC's obligation to make cost-based entrance facilities available to requesting carriers. AT&T Ohio points out that in *In re Unbundled Access to Network Elements*, 20 FCC Rcd 2533, 2609-2611 (2005) (*Triennial Review Remand Order*), the FCC made a finding of "non-impairment with respect to entrance facilities, thereby eliminating the ILECs" obligation to provide competitive local exchange carriers (CLECs) with access to entrance facilities as unbundled network elements ("UNEs") pursuant to 47 U.S.C. 251(c)(3). (AT&T Ohio Ex. 1 at 20.)

AT&T Ohio submits that Sprint's proposed language tracks only the first sentence of the FCC's definition of Interconnection in 47 C.F.R. 51.5 and omits the qualifying second sentence, which states that Interconnection "does not include the transport and termination of traffic." AT&T Ohio objects to Sprint's proposal to reference Sprint's proposed language in Attachment 2, Section 3.8.2, regarding pro rata pricing of entrance facilities used for both Interconnection and backhaul, because the language is unrelated to the manner in which the term Interconnection Facilities itself is defined. Furthermore, AT&T Ohio avers that the issue of pro rata pricing is addressed in Issue 20, and the resolution of that pricing issue will have no effect on what constitutes Interconnection Facilities for the purposes of the interconnection agreement. (AT&T Ohio Ex. 1 at 21-22.)

Issue 8 Arbitration Award

Based on a review of the arguments set forth regarding Issue 8, the Commission finds that the language proposed by AT&T Ohio should be adopted. The Commission agrees with AT&T Ohio that 47 U.S.C. 251(c)(2) is the only statutory source of an ILEC's obligation to make cost-based entrance facilities available to requesting carriers. In the *Triennial Review Remand Order*, the FCC made a finding of "non-impairment" with respect to entrance facilities, thereby eliminating the ILECs' obligation to provide CLECs

with access to entrance facilities as UNEs pursuant to 47 U.S.C 251(c)(3). The Supreme Court agreed, stating that "entrance facilities leased under 47 U.S.C. 251(c)(2) can be used only for interconnection," *i.e.*, "to link the incumbent provider's telephone network with the competitor's network for the mutual exchange of traffic." *Talk Am. Inc. v. Mich. Bell Tel. Co.*, 131 S. Ct. 2254, 2257, 2264 (2011) (*"Talk America Decision"*). Therefore, AT&T Ohio's language properly reflects that Interconnection Facilities are to be used exclusively for Interconnection as defined at 47 C.F.R 51.5, which was promulgated for the purpose of implementing 47 U.S.C. 251 and 47 U.S.C. 252.

Issue 9 What is the appropriate definition of backhaul?

Sprint proposes language for Section 2.61, General Terms and Conditions. In support of its position, Sprint maintains that a definition of backhaul is necessary in that it provides a bright line to differentiate those facilities that are subject to TELRIC pricing from those that are not. Sprint contends that its proposed language provides a clear delineation between traffic eligible for carriage over the Interconnection Facility and traffic that is not eligible based upon the objective criteria of whether the traffic is switched by AT&T Ohio or not. Sprint avers that its definition gives meaning to the requirement that interconnection involves the mutual exchange of traffic between two parties' networks, *i.e.*, switches. (Sprint Ex. 2 at 41.)

AT&T Ohio proposes language for, Section 2.13, General Terms and Conditions. AT&T Ohio submits that while the parties have agreed in Attachment 2, Section 3.5.3(ii), that Interconnection Facilities may not be used for backhaul, Sprint seeks to define "backhaul" in a manner that would largely dilute this limitation, permitting Sprint to use entrance facilities for purposes other than the mutual exchange of traffic. Therefore, AT&T Ohio believes that it is important that backhaul be correctly defined. AT&T Ohio maintains that its definition of backhaul tracks the FCC's explanation of backhaul in its *Talk America Decision* at 2257, 2264. Specifically, AT&T Ohio relies on the FCC's Amicus Br. at 6, n.4, in which the FCC stated:

> Backhauling is not limited to calls that originate and terminate with a competitive LEC's customers. Instead, it occurs whenever a competitive LEC uses an entrance facility for a purpose other than interconnection with an incumbent. For example, backhauling occurs when a competitive LEC leases an incumbent's entrance facility to transport a call originated by one of its customers to a customer served by a wireless provider with which the competitive LEC is interconnected ***.

(AT&T Ohio Ex. 1A, Attach. PHP-3)

AT&T Ohio contends that Sprint's proposal narrowly defines "backhaul" as the use of an entrance facility for traffic that does not go to or through an AT&T Ohio central

office switch or 9-1-1 selective router regardless of the points of origination and termination. AT&T Ohio contends that Sprint's definition is contrary to the FCC's explanation that backhaul constitutes the use of an entrance facility for any purpose other than Interconnection, as defined in 47 C.F.R. 51.5, *i.e.*, the linking of the parties' networks for the mutual exchange of traffic. As a result, AT&T Ohio avers that under Sprint's definition, traffic that may go through AT&T Ohio's switch but which is not originated or terminated by an AT&T Ohio end user would not be considered" backhaul" even though the use of an AT&T Ohio entrance facility to carry such traffic does not constitute Interconnection, as defined in 47 C.F.R. 51.5. (AT&T Ohio Ex. 1A at 24-25.)

AT&T Ohio claims that Sprint's broad interpretation of Interconnection, and hence its narrow definition of "backhaul," is contradicted by the United States Supreme Court's assertion that the purpose of the interconnection requirement set forth in 47 U.S.C. 251(c)(2) is to "ensure that customers on a competitor's network can call customers on the incumbent's network, and vice versa" (AT&T Ohio Ex. 1A at 25 citing *Talk America Decision* at 2).

Issue 9 Arbitration Award

Based on a review of the arguments set forth regarding Issue 9, the Commission finds that the language proposed by AT&T Ohio should be adopted. The FCC, in its amicus brief to the United States Supreme Court in *Talk America*, clearly indicated that backhauling occurs whenever a CLEC uses an entrance facility for a purpose other than interconnection with the incumbent. Therefore, Sprint's proposed definition must be rejected as it would exclude from the definition of backhaul certain traffic that is not interconnection traffic as contemplated under 47 U.S.C. 251(c)(2). Additionally, the Commission notes that AT&T Ohio's proposed language mirrors the FCC's explanation of backhauling and offers examples of backhaul that the FCC referenced in its *Talk America* amicus brief. Accordingly, the Commission adopts AT&T Ohio's proposed language specific to Issue 9.

Issue 10

(a) Should the interconnection agreement 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?

(b) Should the interconnection agreement provide that Interconnection Facilities purchased at TELRIC-based prices may/may not be used for 9-1-1 trunks?

(c) Should Sprint be required to pay for diverse facilities for 9-1-1? If so, at what rate?

(d) Should the interconnection agreement provide that Interconnection Facilities purchased at TELRIC-based prices may/may not be used for Equal Access Trunks?

With respect to Issue 10, Sprint proposes language for Attachment 2, Sections 3.5.2, 3.5.3, 3.10.2 and Attachment 5, Sections 3.3.2, 4.2.1. Sprint submits that disputes in Issue 10 pertain to the appropriate use of TELRIC-priced Interconnection Facilities pursuant to 47 U.S.C. 251(c)(2). With respect to Issue 10(a), Sprint contends that AT&T Ohio agrees to provide Interconnection Facilities at TELRIC rates but would limit Sprint's ability to realize the benefits of TELRIC pricing by prohibiting Sprint from delivering "other" AT&T Ohio-switched interconnection traffic along with telephone exchange and exchange access traffic. Sprint agrees with AT&T Ohio that the use of Interconnection Facilities at TELRIC-based prices are only available for facilities used for 47 U.S.C. 251(c) traffic as long as the Commission clearly rejects AT&T Ohio's proposed end user limitation on 47 U.S.C. 251(c)(2) traffic in disputed Issues 8 and 9. Sprint further proposes to cross-reference Section 3.8.2 so that this provision will be consistent with the Commission's decision in Issue 20 regarding pro rata pricing for high capacity facilities. (Sprint Ex. 2 at 43; Sprint Ex. 6, Appendix B at 10-11.)

With respect to Issue 10(b), Sprint contends that AT&T Ohio's rationale for not considering Equal Access or 9-1-1 traffic as traffic pursuant to 47 U.S.C. 251(c)(2) is problematic. In particular, Sprint points out that, unlike backhaul traffic, 9-1-1 traffic and Equal Access traffic are each exchanged between the parties' networks and do not stay solely within Sprint's network. Sprint contends that the interconnection agreement should allow 9-1-1 trunks to be established on Interconnection Facilities. Sprint contends that 9-1-1 traffic is telephone exchange service traffic originated by a Sprint customer that AT&T Ohio switches via a selective router to AT&T Ohio's Public Safety Answering Point (PSAP) customer. Therefore, Sprint concludes, the interconnection agreement should provide that 9-1-1 trunks can ride on Interconnection Facilities purchased at TELRIC-based prices. (Ex. 2 at 44; Sprint Ex. 6, Appendix B at 11.)

With respect to Issue 10(c), Sprint maintains that while there is no dispute that AT&T Ohio is entitled to be paid something if Sprint decides to provision the 9-1-1 portion of its telephone exchange service using diverse facilities; there is a dispute as to the applicable rate. Sprint contends that how it chooses to design and obtain the interconnection necessary to enable 9-1-1 services is its decision to make. Sprint avers that AT&T Ohio cites no authority in support of its requirement that Sprint only use tariff-priced facilities if Sprint wants to provide 9-1-1 telephone exchange service using diverse facilities. (Sprint Reply Br. at 21.)

With respect to Issue 10(d) Sprint contends that equal access traffic is either telephone exchange or exchange access service traffic exchanged between Sprint and an AT&T IXC customer and, therefore, the interconnection agreement should allow for equal access trunks to be established on Interconnection Facilities. Sprint maintains that when equal access traffic is exchanged between the Sprint network and AT&T Ohio's, the call is carried on a trunk to/from the AT&T Ohio switch that exchanges the call with the

AT&T IXC customer. Therefore, Sprint argues the interconnection agreement should provide that such trunks can ride on Interconnection Facilities purchased at TELRIC-based prices. (Sprint Ex. 6, Appendix B at 11-12.)

With respect to Issue 10, AT&T Ohio proposes language for Attachment 2, Sections 3.5.2, 3.5.3, 3.10.2, and Attachment 5, Sections 3.3.2, 4.2.1. With respect to Issue 10(a), AT&T Ohio objects to two portions of language inserted by Sprint in Attachment 2, Section 3.5.2. AT&T Ohio's first objection is to the reference to Section 3.8.2, which would require pro rata pricing of facilities used for both interconnection and backhaul. AT&T Ohio submits that the parties' dispute regarding the language in Sprint's proposed Section 3.8.2 is addressed in Issue 20. AT&T Ohio maintains that, to the extent the Commission finds in AT&T Ohio's favor on Issue 20, any reference to Section 3.8.2 within Section 3.5.2 would be inappropriate. AT&T Ohio's second objection concerns the proposed language that would permit Sprint to use Interconnection Facilities for "other AT&T-switched traffic" which AT&T Ohio interprets to include traffic that is not mutually exchanged telephone exchange service or exchange access. AT&T Ohio contends that Sprint's position is based on Sprint's assertion that the phrase "mutual exchange of traffic," as used in the 47 C.F.R. 51.5 definition of interconnection, includes the transmission of any traffic that happens to touch an AT&T Ohio switch, even if that traffic is not being exchanged with end users of AT&T Ohio. AT&T Ohio avers for the reasons discussed in connection with Issues 8 and 9, Sprint's position should be rejected. (AT&T Ohio Ex. 1A at 27-28.)

With respect to Issue 10(b), AT&T Ohio objects to Sprint's proposal to include language that would allow Sprint to fulfill its obligation to provide and pay for the transport facilities used for 9-1-1 service by using Interconnection Facilities purchased under the interconnection agreement. AT&T Ohio avers that Sprint's position should be rejected because it is fundamentally at odds with the parties' agreements regarding the way in which 9-1-1 calls are routed. AT&T Ohio maintains that under the agreed upon language of the interconnection agreement, it is not possible for a 9-1-1 call to be carried over an Interconnection Facility. In support of its position, AT&T Ohio contends that pursuant to the agreed upon definition, "Interconnection Facilities" are transport facilities that connect to the point of interconnection for the mutual exchange of traffic and the point of interconnection serves as the demarcation point between the facilities that each party is responsible to provide for the mutual exchange of traffic. (AT&T Ohio Ex. 1A at 31-32.)

According to AT&T Ohio, Sprint acknowledges that the transport facilities used to carry 9-1-1 trunks do not go to the point of interconnection but, rather, are required to be routed from Sprint's network to the selective router, which is the equipment that provides switching for 9-1-1 calls. Therefore, AT&T Ohio asserts that 9-1-1 calls cannot be carried over Interconnection Facilities because the Interconnection Facilities connect to the point of interconnection and not the meet point at the selective router. Further,

AT&T Ohio contends that since Sprint uses 9-1-1 trunks to carry its customers' 9-1-1 traffic from Sprint's switch to the selective router that serves the PSAPs, Sprint's 9-1-1 trunks are used for the sole purpose of making 9-1-1 service available to its own customers and are not used to carry traffic to/from AT&T Ohio's end users. AT&T Ohio claims that the mere fact that the 9-1-1 service that Sprint provides to its customer may use a "telephone exchange service" does not bring 9-1-1 traffic within the scope of interconnection pursuant to 47 U.S.C. 251(c)(2). Specifically, AT&T Ohio submits that in providing 9-1-1 service to its PSAP customers, it is not acting in its capacity as an ILEC within the context of 47 U.S.C. 251(c)(2). (AT&T Ohio Ex. 1A at 32-33.)

With respect to Issue 10(c), AT&T Ohio contends that the Commission should reject Sprint's proposed language for the same reasons discussed in Issue 10(b). AT&T Ohio states that even if the Commission was to decide pursuant to Issues 10(b) and 11(a) that Sprint may use Interconnection Facilities for its 9-1-1 traffic, it is Sprint's option as to whether to provide diverse facilities, which are not necessary for its provision of 9-1-1 service or its connection to AT&T Ohio's selective router. Therefore, AT&T Ohio argues that such diverse facilities should only be available from AT&T Ohio pursuant to its tariff. (AT&T Ohio Ex. 1A at 36-39.)

With respect to Issue 10(d), AT&T Ohio submits that by the agreed language in Section 2.48, General Terms and Conditions, an Equal Access Trunk Group is a trunk group used by Sprint solely to deliver traffic through an AT&T Ohio access tandem to or from an IXC, using Feature Group D protocols. AT&T Ohio contends that equal access trunks are not interconnection facilities because they are not used for the "mutual exchange of traffic" between the end users of Sprint and AT&T Ohio. Instead, AT&T Ohio contends that equal access trunks connect Sprint with IXCs for the exchange of traffic between Sprint's end users and the IXCs' customers. AT&T Ohio contends that the traffic that it carries on Sprint's behalf to/from IXCs is not mutually exchanged between the parties' end users and, therefore, does not constitute 47 U.S.C. 251(c)(2) traffic. Moreover, according to AT&T Ohio, while Sprint has been exchanging traffic with IXCs through AT&T Ohio's access tandems for years, the traffic has never been sent over Interconnection Facilities. Rather, according to AT&T Ohio, this traffic has always been treated as switched access traffic and routed over Feature Group D trunks, which have always been carried over transport facilities leased from AT&T Ohio's switched access tariff. Additionally, AT&T Ohio claims that since all CLEC interconnection agreements with AT&T Ohio require the use of Feature Group D trunks carried over transport facilities leased from AT&T Ohio's access tariff for the traffic to/from IXCs, there is no reason that Sprint should be treated differently than all other carriers. (AT&T Ohio Ex. 1A at 39-41.)

Issue 10 Arbitration Award

Based on a review of the arguments set forth regarding Issue 10(a) the Commission finds that the language proposed by AT&T Ohio should be adopted. As the Commission has rejected Sprint's proposed Section 3.8.2 regarding pro rata pricing of facilities in Issue 20, any reference to Section 3.8.2 is inappropriate. Further consistent with our award for Issue 9, the mere fact that traffic may be switched by AT&T Ohio does not make it 47 U.S.C. 251(c) traffic. Therefore Sprint's proposed language that Interconnection Facilities can be used for "other AT&T switched traffic" is rejected.

Based on a review of the arguments set forth regarding Issue 10(b), the Commission finds that the language proposed by Sprint should be adopted with clarification. This Commission has previously determined in *In re the Application of Intrado Communications Inc.*, Case No. 07-1199-TP-ACE, Finding and Order (February 3, 2009) at 5, that an entity providing E9-1-1 service to a PSAP is providing telephone exchange service pursuant to 47 U.S.C. 251. Therefore, when AT&T Ohio is providing the selective router for termination to the PSAP, Sprint's 9-1-1 traffic is considered 47 U.S.C. 251(c)(2) traffic. If a carrier other than AT&T Ohio is providing the selective router that is serving the PSAP then those calls are not 47 U.S.C. 251(c)(2) traffic and cannot be sent over Interconnection Facilities.

With respect to Issue 10(c), the Commission finds that the language provided by Sprint should be adopted. The Commission has determined on Issue 10(b) that 9-1-1 traffic to a PSAP served by an AT&T Ohio selective router is 47 U.S.C. 251(c) traffic. The mere fact that 9-1-1 traffic may be sent over diverse facilities does not change this designation. Therefore, Sprint may use Interconnection Facilities for providing 9-1-1 traffic routing diversity.

With respect to Issue 10(d), the Commission finds that the language provided by AT&T Ohio should be adopted. This is consistent with our determination in Issue 9 that the use of an entrance facility for a purpose other than interconnection with the ILEC is considered backhaul. Equal Access Trunks are trunks that connect Sprint's network with IXCs, not end user customers of AT&T Ohio. Therefore, Interconnection Facilities purchased at TELRIC-based prices may not be used for Equal Access trunks.

Issue 11 (a) Should the interconnection agreement provide that Sprint is solely responsible, including financially, for the facilities that carry E9-1-1 Trunk Groups?

(b) Should the interconnection agreement provide that Sprint is solely responsible, including financially, for the facilities that carry Equal Access Trunk Groups?

Sprint submits that Issue 11 is essentially an extension of Issue 10 in that it deals with the financial responsibility for the Interconnection Facilities that carry 9-1-1 trunks and Equal Access trunk groups. Sprint contends that AT&T Ohio's position that Sprint should be fully responsible for the costs of all such facilities is inconsistent with the principle that the parties should share the costs of Interconnection Facilities. Sprint believes that Interconnection Facilities are subject to be shared on a 50/50 basis regardless of the types of traffic that are carried on the Interconnection Facilities. Therefore, Sprint believes that no additional interconnection agreement language is necessary specific to E9-1-1 and Equal Access Trunk Groups. (Sprint Ex. 2 at 54.)

Specific to Issues 11(a) and 11(b), AT&T Ohio proposed language for Attachment 2, Section 3.4. With respect to Issue 11(a) AT&T Ohio submits that E9-1-1 Trunk Groups are one-way trunk groups used by Sprint to carry 9-1-1 traffic from its end user customers to the PSAP. AT&T Ohio contends that the facilities used to carry those one-way trunk groups solely benefit Sprint's own customers. Accordingly, AT&T Ohio argues that Sprint should be solely responsible, including financially, for the facilities that carry those trunk groups. (AT&T Ohio Ex. 1A at 46.)

With respect to Issue 11(b), AT&T Ohio contends that Equal Access Trunk Groups are used by Sprint to exchange traffic with IXCs. AT&T Ohio avers that 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. Furthermore, AT&T Ohio contends it is not compensated by the IXC for the cost of the facilities between Sprint and AT&T Ohio that are used by Sprint to exchange traffic with IXCs. Accordingly, AT&T Ohio argues that Sprint should be solely responsible, including financially, for the facilities that carry those trunk groups. (AT&T Ohio Ex. 1A at 48-49.)

Issue 11 Arbitration Award

Based on a review of the arguments set forth regarding Issues 11(a), the Commission finds that the language proposed by AT&T Ohio should be adopted. Specifically, in our award on Issues 10(b) and 10(c) the Commission determined that Sprint could send E9-1-1 traffic over Interconnection Facilities at TELRIC-based prices. In our award for Issues 5 and Issue 22, the Commission determined that AT&T Ohio is not required to share in the cost of Interconnection Facilities and that Sprint is financially responsible for facilities on its side of the point of interconnection. Therefore, AT&T

Ohio's language that Sprint is financially responsible for the facilities that carry E9-1-1 Trunk Groups is adopted.

With respect to Issue 11(b), the Commission finds that the language proposed by AT&T Ohio should be adopted. In our award for Issue 10(d) the Commission determined that Interconnection Facilities purchased at TELRIC-based prices may not be used for Equal Access Trunk Groups. Therefore, such traffic must be carried over non-Interconnection Facilities. The Commission notes that Sprint has not asserted that the cost of such facilities must be shared. Therefore, AT&T Ohio's proposed language that Sprint is financially responsible for facilities that carry Equal Access Trunk Groups is adopted.

Issue 12 (a) If either party files a Commission complaint regarding an auditor's report pertaining to a Facility Audit, when should such report be considered final?

(b) Should an AT&T Ohio audit regarding Sprint's use of Interconnection Facilities be completed within 120 days of AT&T delivering its notice of such audit to Sprint?

With respect to Issue 12(a) and 12(b), Sprint proposed language for Attachment 2, Section 3.5.5.5 and 3.5.5.6.2. According to Sprint, the parties have agreed that AT&T Ohio will have the contractual right to audit the use of Interconnection Facilities but there are two aspects to this disputed Issue 12 that remain unresolved; the first relates to the point at which the auditor's report will be considered final and the second pertains to the time period to which a true-up is applied to the extent one is warranted by the auditors' findings. (Sprint Ex. 2 at 56.)

Sprint notes that if AT&T Ohio believes that Sprint is utilizing the Interconnection Facilities in a manner that does not comply with the terms of the interconnection agreement, it may initiate an audit of the Interconnection Facilities in question one time per calendar year. Once the audit is completed and its findings presented, Sprint would have 45 days to dispute any aspect of the auditor's report with which it disagrees pursuant to the agreed to dispute resolution provisions of the interconnection agreement. Sprint submits that the dispute resolution procedures include the option to file a complaint with the Commission to the extent the parties are unable to resolve the dispute on their own. (Sprint Ex. 2 at 57.)

With respect to Issue 12(a), Sprint contends that if Sprint files a complaint with this Commission regarding the findings in the auditor's report and the Commission rules in favor of AT&T Ohio, the language proposed by AT&T Ohio would essentially foreclose any further appeal options available to Sprint. Specifically, Sprint emphasizes that AT&T Ohio's language would require it to pay the difference between the amount

actually billed by AT&T Ohio and the amount that AT&T Ohio would have billed had Sprint purchased the noncompliant interconnection facilities from the applicable AT&T Ohio tariff. AT&T Ohio's proposed language would also require Sprint to modify its Interconnection Facilities to remedy the alleged noncompliance. Sprint argues that requiring it to pay the cost difference and modify its network arrangement may be premature until all appeals are exhausted. In particular, Sprint avers that if it were to further appeal the auditor's finding and the finding is ultimately reversed, Sprint would experience significant operational disruption for no good reason. Sprint posits that AT&T Ohio will not be harmed if the network arrangement is left in place until all appeals are exhausted since Sprint has contractually agreed to make AT&T Ohio financially whole in the event AT&T Ohio ultimately prevails in the dispute. (Sprint Ex. 2 at 58.)

With respect to Issue 12(b), Sprint believes it is reasonable for the completion of the audit to be time-bound specific to any true-up period resulting from the audit. Sprint contends that it is not reasonable for the audit to continue for an undetermined period of time with the possible result being an ever-growing true-up payment. Therefore, Sprint believes that its proposed language tying the true-up to the completion of the audit within no more than 120 days from the receipt of the audit notice should be adopted. (Sprint Ex. 2 at 58.)

With respect to Issue 12(a) and 12(b), AT&T Ohio contends that Sprint's proposed clarifying language should be rejected. In support of it position on Issue 12(a), AT&T Ohio explains that the question of when the report becomes final is significant because pursuant to the agreed upon language in the interconnection agreement, Sprint is not obligated to remedy its noncompliance until 45 days from when the auditor's report is final. If Sprint does not accept a report's finding of noncompliance, Sprint will have the right to invoke the dispute resolution provisions of the interconnection agreement and in the event the dispute is not resolved, either party will have the right to request that the Commission resolve the dispute. AT&T Ohio proposes that an auditor's report shall be deemed final upon the Commission's issuance of an order affirming the auditor report's finding of noncompliance. (AT&T Ohio Ex. 1A at 51.)

AT&T Ohio contends that Sprint's proposal that a report not become final until Sprint has exhausted it appeal options could prolong its noncompliance for months if not years while its complaint worked it way through the courts, effectively granting Sprint an indefinite stay of the Commission's order. AT&T Ohio submits that in general an appeal of a Commission order does not automatically stay the effectiveness of the order and that the appeal of a Commission order affirming the findings of an independent auditor should not be treated any differently. (AT&T Ohio Ex. 1A at 51-52.)

In support of its position on Issue 12(b), AT&T Ohio submits that the parties have agreed that when Sprint is found to be in noncompliance, Sprint will remit payment for

the difference between the TELRIC-based rates it paid and the tariffed rates it should have paid. According to AT&T Ohio, the parties agree that the time period covering Sprint's additional payment should go back to the date noncompliance began, but no longer than 12 months from the date that AT&T Ohio sent the audit notice to Sprint. AT&T Ohio highlights that under Sprint's proposal, the company would only need to pay if an audit is completed within 120 days of Sprint's receipt of the audit notice. AT&T Ohio explains that under the terms of the interconnection agreement, an audit notice must be sent to Sprint a minimum of 30 days prior to commencing an audit. As a result, an auditor would have a maximum of 90 days to conduct a thorough study of Sprint's Interconnection Facilities and prepare a detailed report. While AT&T Ohio agrees that it is possible that an auditor might complete a relatively small audit within that time period, it is impossible to predict how long a comprehensive audit would take. Moreover, AT&T Ohio contends that the auditor will be dependent on Sprint to provide the auditor with input regarding Sprint's use of the Interconnection Facilities and that it is equally impossible to predict Sprint's responsiveness. (AT&T Ohio Ex. 1A at 53-54.)

Based on these concerns, AT&T Ohio contends that its right to collect access charges for noncompliant Interconnection Facilities should not be premised on how long it takes the auditor to conduct the audit and complete its report. AT&T Ohio submits that since Sprint would have to cooperate with the auditor, Sprint's proposed language would provide a strong incentive for the company to drag its feet to delay completion of the audit past 90 days. In contrast, AT&T Ohio opines, it has no incentive to prolong an audit, since it will not collect any associated revenues for noncompliant facilities until after the audit is final. (AT&T Ohio Ex. 1A at 55.)

Issue 12 Arbitration Award

Based on a review of the arguments set forth regarding Issues 12(a) the Commission finds that the language proposed by AT&T Ohio should be adopted. In reaching this determination, the Commission agrees with AT&T Ohio that a Commission order is not typically stayed when one or more parties appeal a Commission decision. If remedies for noncompliance are not made until all appeals are exhausted, this could result in an ever-growing true-up payment required from Sprint. The Commission notes that Sprint raises this same concern with respect to Issue 12(b) discussed below.

With respect to Issue 12(b), the Commission recognizes Sprint's concern that if an audit takes an unreasonable amount of time to complete, the result could be an ever-growing true-up payment required from Sprint. The Commission also shares AT&T Ohio's concern that 90 days may not be enough time to complete a comprehensive audit, especially since the audit would require Sprint participation. To remedy these two issues, the Commission directs the parties to include in the interconnection agreement language that would limit the true-up from the completion of the audit to either twelve

months prior to the audit notice, as already agreed to by the parties, or eighteen months prior to the completion of the audit, whichever is shorter.

Issue 13 What are the appropriate terms that should be included in the interconnection agreement regarding Combined Trunk Groups?

With respect to Issue 13, Sprint proposes language for Attachment 2 Section 4.2.3. In support of its position Sprint submits 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. Sprint contends that under AT&T Ohio's end user limitation argument, AT&T Ohio 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 maintains that its proposed language ensures that TELRIC-priced Interconnection Facilities purchased under this agreement can be used to carry traffic via Combined Trunk Groups. (Sprint Ex. 6, Appendix B at 17-18.)

With respect to Issue 13, AT&T Ohio proposes language for Attachment 2, Section 4.2.3. In support of its position, AT&T Ohio submits that it is clear that Sprint cannot obtain Interconnection Facilities at TELRIC-based rates unless those facilities are used exclusively for Interconnection. Since IXC traffic is not Interconnection traffic, AT&T Ohio contends that transport facilities over which IXC traffic is carried are not available at TELRIC-based rates. AT&T Ohio contends that InterMTA Traffic to/from IXCs is an access service and that the facilities over which the Combined Trunk Group is carried are access facilities subject to AT&T Ohio tariffed access charges. AT&T Ohio claims that other carriers interconnect indirectly with IXCs via AT&T Ohio in the same manner that it is offering to Sprint. AT&T Ohio avers that a carrier, including Sprint, may elect to lease these transport facilities from AT&T Ohio's access tariff, from another carrier, or self-provision the facility. (AT&T Ohio Ex. 1A at 100-101.)

Issue 13 Arbitration Award

Based on a review of the arguments set forth regarding Issue 13, the Commission finds that the language proposed by AT&T Ohio should be adopted. In our award for Issue 10(d), the Commission found that traffic between Sprint's network and an IXC is non-47 U.S.C. 251(c)(2) traffic and that Interconnection Facilities purchased at TELRIC-based prices may not be used for Equal Access Trunks. This issue concerns Combined Trunk Groups that carry both traffic between Sprint and IXCs and traffic between Sprint and AT&T Ohio. Because Combined Trunk Groups carry both 47 U.S.C. 251(c)(2) traffic and non-47 U.S.C. 251(c)(2) traffic, and facilities for non-47 U.S.C. 251(c)(2) traffic are not entitled to be purchased at TELRIC-based rates, AT&T Ohio's proposed language is adopted.

Issue 14 Should the interconnection agreement provide that 9-1-1 Trunks are subject to the nonrecurring and monthly recurring charges, as identified on the pricing sheet?

With respect to Issue 14, Sprint proposes language for Attachment 2, Section 4.3.1.2 and Pricing Sheets line 317. Sprint contends that 9-1-1 trunks are not for the sole benefit of Sprint and its end users as AT&T Ohio claims. Rather, Sprint states that AT&T Ohio's PSAP customers also benefit from the 9-1-1 trunks. Sprint avers that 9-1-1 trunks enable the PSAP to receive calls from Sprint customers and to connect these callers to the public safety services they require. Sprint maintains, as it discussed in Issues 10(b), 10(c), and 11(a), that 9-1-1 service is Telephone Exchange Service and, therefore, 9-1-1 calls are Interconnection traffic and eligible for carriage over Interconnection Facilities. Sprint maintains that Interconnection Facilities are priced at TELRIC-based rates and that there are no separate nonrecurring or monthly recurring trunk charges associated with them. (Sprint Ex. 4 at 35.)

AT&T Ohio proposes to charge Sprint its standard charges for 9-1-1 trunks, as set forth in the Pricing Sheets. According to AT&T Ohio, it provides these trunks to Sprint for the sole benefit of Sprint and Sprint's end users calling 9-1-1. AT&T Ohio explains that facilities are different than trunks in that facilities provide the pipe, and the trunks provide the switch ports and software necessary to send and receive calls that are transported between the switches over that pipe. AT&T Ohio maintains that in the recent Illinois and Michigan arbitrations, Sprint agreed to the same language proposed by AT&T Ohio in this case. (AT&T Ohio Ex. 1A at 103-104.)

AT&T Ohio explains that E9-1-1 trunks are defined as one-way terminating circuits which provide a trunk-side connection between Sprint's network and the AT&T Ohio 9-1-1 Selective Router Tandem equipped to provide access to 9-1-1 services. AT&T Ohio further claims that unlike Interconnection trunks, 9-1-1 trunks must be capable of transmitting Automatic Number Identification (ANI) to the selective router for delivery to the PSAP in order that the caller may be identified by his/her telephone number without having to speak. In addition, AT&T Ohio explains that 9-1-1 trunks require a voice grade, DS0 trunk port on the selective router, while Interconnection trunks use DS1 trunk ports on a tandem or end office switch. Based on these differences, AT&T Ohio contends that a 9-1-1 call routed to an interconnection trunk would not complete. (AT&T Ohio Ex. 1A at 105.)

AT&T Ohio contends that a 9-1-1 trunk group benefits only the customers of Sprint who make the 9-1-1 calls. AT&T Ohio maintains that it does not charge the PSAP for any aspect of Sprint's 9-1-1 interconnection to AT&T Ohio, including the nonrecurring costs associated with installing Sprint's 9-1-1 trunks at the selective router and the ongoing maintenance of those trunks. Therefore, AT&T Ohio argues that, absent its 9-1-1 trunk charges to Sprint, it has no mechanism to recover these costs. AT&T Ohio

avers that even if the Commission concludes in Issues 10(a) and 10(b) that Sprint may use Interconnection Facilities to carry 9-1-1 trunk groups, the Commission should still consider the pricing of 9-1-1 trunks independently from its determination regarding the underlying facilities. AT&T Ohio maintains that the type of trunk needed for a particular call is unrelated to the pricing of the facility over which that trunk rides. In other words, AT&T Ohio states that even if the Commission permits 9-1-1 trunks to ride Interconnection Facilities, it does not change 9-1-1 trunks into Interconnection trunks. (AT&T Ohio Ex. 1A at 106.)

Issue 14 Arbitration Award

Based on a review of the arguments set forth regarding Issue 14, the Commission finds that the language proposed by AT&T Ohio should be adopted. The Commission agrees with AT&T Ohio that 9-1-1 trunks and standard interconnection trunks are distinguishable since they provide different functionalities. While the Commission agrees that Sprint's 9-1-1 traffic can ride on Interconnection Facilities at TELRIC-based prices, the Commission recognizes that the type of trunk needed for a particular call is unrelated to the pricing of the facility over which that trunk rides. Our determination is also consistent with past arbitrations where the Commission determined that, consistent with the FCC's findings in *In the Matter of the Revision of the Commissions Rules to Ensure Compatibility with Enhanced 9-1-1 Emergency System, Request of King County,* 17 FCC Rcd. 14789, para. 1 (2002), and with certain geographic limitation, the point of interconnection for 9-1-1 traffic should be at the selective router of the E9-1-1 service provider that serves the caller's designated PSAP and that the calling party should bear the cost of getting to the point of interconnection. *See In re Intrado,* 07-1216-TP-ARB, Arbitration Award, September 24, 2008, at 33-34; *In re Intrado,* 07-1280-TP-ARB, Arbitration Award, March 4, 2009, at 32-33.

Issue 15 What provision should be included in the interconnection agreement regarding the transmission and routing of traffic to or from an IXC?

Sprint proposes language with respect to the transmission and routing of traffic to or from an IXC in Attachment 2, Section 4.8.9 and Section 4.10.3. Sprint submits that language in Section 4.8.9 that cross-references Section 3.11.2.2 of the General Terms and Conditions is intended to prevent an arbitrage scenario addressed by the FCC in the *CAF Order,* sometimes referred to as a "Halo" call scenario. Specifically, Sprint describes this concern as attempting to prevent a scenario whereby an IXC or CLEC directly connects to a CMRS carrier and uses the connection to the CMRS provider to deliver wireline-originated traffic to the CMRS provider. The CMRS provider then delivers such traffic (purported to be wireless traffic but actually wireline traffic) to an ILEC over interconnection facilities established between the CMRS and ILEC networks. While Sprint recognizes that such a practice could result in an arbitrage of the intercarrier regime, it represents that it has already agreed to language in Section 3.11.2.2; thereby

assuring that it will not engage in such arbitrage practices. Therefore, while Sprint considers Section 4.8.9 to be unnecessary, to the extent that it is added, Sprint contends that it must reference Section 3.11.2.2. (Sprint Ex. 2 at 64-65; Sprint Ex. 6, Appendix B, at 20-21.)

In support of its position in regard to Section 4.10.3, Sprint submits that traffic to or from an IXC via the AT&T Ohio network is precisely what is contemplated by 47 U.S.C. 251(c)(2). Sprint avers that Congress provided that an ILEC, such as AT&T Ohio, must provide interconnection "for the transmission and routing of telephone exchange and exchange access." Sprint also states that the traffic AT&T Ohio seeks to exclude from the interconnection facility falls squarely into "exchange access." (Sprint Ex. 2 at 65.)

AT&T Ohio proposes language with respect to the transmission and routing of traffic to or from an IXC in Attachment 2, Section 4.8.9 and Section 4.10.3. In support of its position for Section 4.8.9, AT&T Ohio submits that the traffic addressed in this section is traditional switched access traffic and it should continue to be routed over equal access trunks. Therefore, AT&T Ohio believes that its proposed language appropriately provides that Sprint shall not route over interconnection trunks, traffic that it receives from an IXC and that is destined to an AT&T Ohio end office switch. AT&T Ohio also submits that the parties' current interconnection agreement has similar language to that which it is proposing in this case. (AT&T Ohio Ex. 1A at 112-113; AT&T Ohio Ex. 3 at 78.) AT&T Ohio states that Sprint's suggestion that Section 4.8.9 is intended to address the "Halo arbitrage" and the potential future exchange of wireline-originated traffic is incorrect. AT&T Ohio further states that the current interconnection agreement already allows Sprint to send only wireless traffic and its proposed language is directed at wireless traffic, not just wireline traffic. AT&T Ohio also states that wireless InterMTA traffic destined to it is subject to switched access charges as explained in Issue 18. AT&T Ohio asserts that because the wireless InterMTA traffic is switched access, it should be delivered over equal access trunks in the event that Sprint accepts the traffic from an IXC and delivers it to AT&T Ohio (AT&T Ohio Ex. 1A at 112-113; AT&T Ohio Initial Br. at 91-92.)

In support of its position for Section 4.10.3, AT&T Ohio submits that the proposed language makes clear that the status quo is preserved by using equal access trunks for Sprint traffic to or from an IXC. AT&T Ohio also submits that Sprint's language would allow Sprint to "elect" whether or not to route traffic over equal access trunks. AT&T Ohio states that a "call between a Sprint customer and an IXC does not involve an AT&T Ohio customer and, thus, is not 47 U.S.C. 251(c)(2) traffic." (AT&T Ohio Initial Br. at 92.)

Issue 15 Arbitration Award

Based on a review of the arguments set forth above, the Commission determines that the language proposed by AT&T Ohio in Section 4.8.9 and 4.10.3 should be adopted.

In reaching this decision the Commission finds erroneous Sprint's allegation that traffic to or from an IXC via the AT&T Ohio network is 47 U.S.C. 251(c)(2) traffic. The Commission agrees with AT&T Ohio that traffic to or from an IXC via the AT&T Ohio network is traditional switched access traffic. This scenario pertains to a call between a Sprint end user and an IXC and does not involve an AT&T Ohio end user. As such, this is not 47 U.S.C. 251(c)(2) traffic and cannot be routed on Interconnection Facilities.

Issue 16 (a) Should Sprint be allowed to route its originating InterMTA Traffic to AT&T Ohio over Interconnection Facilities?

(b) Should AT&T Ohio be allowed to route over Interconnection Facilities traffic to Sprint that is InterMTA because the Sprint customer has roamed outside the MTA?

With respect to Issue 16(a) and (b), Sprint proposes language for Attachment 2, Sections 4.10.4 and 4.10.5. In support of its position for Section 4.10.4, Sprint states that InterMTA traffic is non-toll. As such, Sprint submits that when its delivers InterMTA calls for its customers, it is providing telephone exchange service, which brings those calls within the scope of 47 U.S.C. 251(c)(2). In addition, Sprint also states that even if InterMTA mobile-to-land calls are not within the scope of 47 U.S.C. 251(c)(2), it could still deliver those calls as "other" traffic on Interconnection Facilities. Sprint states that from a practical, network engineering standpoint, there will always be some InterMTA mobile-to-land calls that are delivered on Interconnection Facilities with IntraMTA calls. (Sprint Ex. 2 at 69; Sprint Ex. 6, Appendix B at 21; Sprint Initial Br. at 79-80.)

In support of it position for Section 4.10.5, Sprint states that AT&T Ohio's proposed language requiring separate switched access facilities is unnecessary and violates the spirit of 47 U.S.C. 251(c)(2) by requiring Sprint to route InterMTA traffic over separate switched access facilities. Sprint further states that AT&T Ohio's proposed language will require Sprint's originated InterMTA Traffic to be routed over Feature Group D facilities while AT&T Ohio's own originated InterMTA traffic is routed over Interconnection Facilities. (Sprint Ex. 2 at 69.)

With respect to Issue 16(a) and (b), AT&T Ohio proposes language for Attachment 2, Sections 4.10.4 and 4.10.5. In support of its position for Section 4.10.4, AT&T Ohio submits that when Sprint originates an InterMTA call destined to an AT&T Ohio end user, Sprint is acting as an interexchange carrier providing long distance service. AT&T Ohio further submits that federal law requires Sprint to pay terminating switched access charges for such traffic. As such, AT&T Ohio states that its proposed language provides that Sprint should continue to route this traffic over switched access facilities and not over the Interconnection Facilities established under 47 U.S.C. 251(c)(2). In addition, AT&T Ohio states that this is the way traffic has been historically exchanged between it and all other wireless carriers, including Sprint, and is the manner by which it is

exchanged in accordance with the existing interconnection agreement. (AT&T Ohio Ex. 1A at 40, 116.)

According to AT&T Ohio, Sprint contends that its originating InterMTA traffic should be treated like local exchange traffic because Sprint does not charge its customers toll for making InterMTA calls. However, similar to its position relative to Issue 18, AT&T Ohio submits that for intercarrier compensation purposes, the FCC has never adopted the toll distinction that Sprint is attempting to make and that courts and commissions have rejected Sprint's theory. (AT&T Ohio Initial Br. at 94.)

In support of its position for Section 4.10.5, AT&T Ohio states that when its end user places a call to a Sprint customer, it does not know whether the call is IntraMTA or InterMTA. AT&T Ohio further states that while it can determine, based upon the MTA associated with the Sprint customer telephone, whether the call should be IntraMTA or InterMTA, AT&T Ohio has no way to determine if the Sprint customer has remained or traveled outside of that MTA. As such, when AT&T Ohio delivers traffic to Sprint that AT&T Ohio deems as IntraMTA, some minor percentage of that traffic may actually be InterMTA traffic. (AT&T Ohio Ex. 1A at 116-117.)

Issue 16 Arbitration Award

Based on a review of the arguments set forth above, the Commission determines that the language proposed by AT&T Ohio should be adopted. In reaching this decision the Commission, as set forth in our discussion of Issue 18, rejects Sprint's contention that its originating InterMTA traffic should be treated like local exchange traffic because it does not charge its customer a toll for making such calls. The Commission agrees with AT&T Ohio that when Sprint originates an InterMTA call destined to an AT&T Ohio end user, Sprint is acting as an interexchange carrier providing long distance service. These calls are not 47 U.S.C. 251(c)(2) traffic and, therefore, cannot be routed on Interconnection Facilities. Sprint cannot change the treatment of InterMTA traffic simply because it does not charge its customer for long distance.

In addition, the Commission agrees with AT&T Ohio that when a call appears to be IntraMTA based upon the telephone numbers of the calling parties, but is really InterMTA traffic as a result of the Sprint customer roaming outside of the MTA, AT&T Ohio may still route this traffic over Interconnection Facilities. However, if AT&T Ohio can determine that the call is InterMTA traffic, such traffic cannot be routed over Interconnection Facilities.

Issue 17 Should the interconnection agreement identify the traffic that is not subject to bill-and-keep? If so, what traffic should be excluded?

Sprint contends that it is not necessary for the interconnection agreement to identify traffic that is not subject to bill-and-keep. Rather, Sprint asserts that the parties' undisputed language recognizes that IntraMTA Traffic exchanged between the parties both directly and indirectly is subject to bill-and-keep. Specifically, Sprint proposes language in Section 6.3.1 regarding compensation for IntraMTA Traffic. Sprint asserts that the parties disagree on the approach to identify traffic that is not subject to bill-and-keep compensation. Further, Sprint objects to AT&T Ohio's approach to excluding the following six categories of traffic from bill-and-keep in Attachment 2, Section 6.3.2: Non-CMRS, Toll-Free, Third-Party, InterMTA, IXC, and any other type of traffic found to be exempt from bill-and-keep by the FCC or the Commission. In support of its position, Sprint states that AT&T Ohio's overall compensation language is overly complex, confusing, and ambiguous and that the proposed exclusions are either unnecessary or patently incorrect. In addition, Sprint submits that exchanged traffic between the parties falls into four categories: IntraMTA, Non-Toll InterMTA, Toll InterMTA, and Transit. Sprint argues that since Non-Toll InterMTA Traffic is telephone exchange service which is essentially the same as IntraMTA telephone exchange service this traffic should be exchanged as bill-and-keep. (Sprint Ex. 2 at 71-73.)

AT&T Ohio proposes language in Sections 6.3.1 and 6.3.2 regarding the compensation for IntraMTA Traffic. In support of its position, AT&T Ohio contends that bill-and-keep should only apply to the transport and termination of IntraMTA Traffic between an AT&T Ohio end user and a Sprint end user. Therefore, AT&T Ohio asserts that the interconnection agreement should clearly identify the types of traffic that are not subject to bill-and-keep in order to eliminate ambiguity and minimize disputes. (AT&T Ohio Ex. 1A at 134.) Specifically, AT&T Ohio's proposed list of traffic types that should be excluded from bill-and-keep compensation and the associated justifications for its position include: (1) "Non-CMRS Traffic," since bill-and-keep is only applicable to the transport and termination of IntraMTA Traffic between an AT&T Ohio end user and a Sprint end user; (2) "Toll-free Calls," since such traffic is already subject to the existing access charge regime and exempt from bill-and-keep; (3) "Third-Party Traffic," since the traffic is not subject to reciprocal compensation with respect to AT&T Ohio and Sprint due to the fact that AT&T Ohio is acting as an intermediary between Sprint and a third-party telecommunications carrier; (4) "InterMTA Traffic," since, pursuant to the *CAF Order*, bill-and-keep only applies to IntraMTA traffic; (5) "IXC Traffic," since it is subject to the existing access charge regime and exempt from bill-and-keep; and (6) "any other types of traffic that is found to be exempt by the Commission or the FCC" (AT&T Ohio Ex. 1A at 134-135).

Issue 17 Arbitration Award

Relative to AT&T Ohio's proposed delineation of traffic not subject to bill-and-keep, the Commission agrees with the rationale stated by AT&T Ohio specific to (1) "Non-CMRS Traffic," (2) "Toll-free Calls," (3) "Third-Party Traffic," (4) "InterMTA Traffic," and (5) "IXC" Traffic. With respect to AT&T Ohio's proposed bill-and-keep exclusion of "any other types of traffic that is found to be exempt by the Commission or the FCC", the Commission finds that such language should not be adopted at this time. Rather than attempting to address potential future action of a regulatory body, the future exclusion of traffic from bill-and-keep treatment should be considered at the appropriate time pursuant to Section 18.0 of the interconnection agreement. Finally, with respect to Sprint's request that "Non-Toll InterMTA Traffic" be exchanged as bill-and-keep, this matter will be addressed in Issue 18.

Issue 18 What terms should be included in the interconnection agreement governing compensation for terminating InterMTA traffic?

Sprint submits that this issue pertains to the circumstances under which access charges apply to InterMTA traffic. Sprint believes that when properly applied, the law only allows for the application of access charges to InterMTA traffic when the originating carrier assesses a toll charge to the calling party. Sprint asserts the InterMTA issues are largely legal in nature and center around the interpretation of the statutory terms "Exchange Access" and "Telephone Toll Service." (Sprint Ex. 2 at 76.) Specifically, Sprint proposed language in Attachment 2, Sections 6.5.1.1 through 6.5.1.4 regarding compensation for terminating InterMTA Traffic (Sprint Ex. 6, Appendix B).

According to Sprint, AT&T Ohio believes that since IntraMTA Traffic is subject to reciprocal compensation, all non-IntraMTA Traffic is therefore necessarily subject to access charges. Sprint rejects this position and asserts that the FCC has never promulgated a rule stating that access charges apply to InterMTA traffic. Instead, Sprint notes that, pursuant to 47 C.F.R. 51.901(b) adopted in the FCC's *CAF Order*, access charges are authorized to be imposed on telecommunications traffic exchanged between telecommunications providers that is interstate or intrastate exchange access, information access, or exchange services for such access, other than special access. Sprint notes that the statutory definitions of "exchange access" and "telephone toll service" are set forth in 47 U.S.C. 153(16) and (47) respectively. Specifically, "exchange access" is defined as the offering of telephone exchange services or facilities for the purpose of the origination or termination of telephone toll services. "Telephone toll service" is defined 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. Sprint believes that "telephone toll service" "is, in colloquial terms, a long distance calling service" but "under the Communications Act of 1934, it is only long distance service for which the provider charges extra." (Sprint Ex. 2 at 77-78.)

Sprint submits that the FCC, in *In re Universal Service Contribution Methodology*, 23 FCC Rcd 1416 WC Docket No. 06-122, (2008) ("*Wireless Toll Declaratory Order*"), has explicitly recognized that wireless carriers do not provide toll service with their national flat-rated service plans since wireless carriers do not assess a separate toll charge for calls outside of a home calling area. While recognizing that this determination in the *Wireless Toll Declaratory Order* was limited in context to the issue of universal service contribution obligations, Sprint contends that the FCC in its *CAF Order* subsequently utilized this same analysis in the context of intercarrier compensation to determine that "[t]he default rate applicable to all non-toll VoIP-PSTN traffic is whatever rate applies to other 47 U.S.C. 251(b)(5) traffic exchanged between the carriers." (Sprint Ex. 2 at 78-80.)

Sprint contends that the exact same analysis is applicable to compensation for non-toll wireless InterMTA traffic. Specifically, Sprint asserts that its wireless plans do not assess toll charges except in rare instances where customers have maintained legacy plans and that the local calling area for the vast majority of its customers is the entire United States. Therefore, according to Sprint, if the wireless carrier does not apply a separate toll charge to the nationwide flat-rated service plans then LECs, such as AT&T Ohio, are not providing "exchange access" relative to the termination of non-Toll InterMTA calls and, thus, the traffic is not subject to the FCC's transitional access charge rules. Instead, Sprint believes that the default reciprocal compensation of bill-and-keep is applicable to wireless traffic. (Sprint Ex. 2 at 81-82.) Additionally, Sprint believes that its InterMTA traffic should be terminated on a bill-and-keep basis due to the fact that, similar to IntraMTA traffic, the calls are handed off between the parties and AT&T Ohio performs the exact same transport and terminating functions associated with reciprocal compensation (Sprint Ex. 2 at 82).

While recognizing that it has a small amount of toll calls (less than 0.5 percent of the total billed domestic wireless revenue), Sprint believes that bill-and-keep is appropriate since, while both parties send InterMTA Traffic to each other over interconnection trunks, the level of traffic is de minimis and it would be administratively inefficient to continue to identify subcategories of traffic (Sprint Ex. 3 at 82-83).

If the Commission decides that InterMTA traffic should not be compensated at bill-and-keep then Sprint believes that the parties must mutually agree upon a methodology for developing an InterMTA factor using actual data and to apply the factor only to InterMTA traffic for which a toll charge is assessed in order for both parties to bill for terminating InterMTA traffic. In particular, Sprint proposes that each party create its own carrier-specific default terminating InterMTA factor to charge the other until one of the parties can produce a cell-site specific traffic study to warrant changing the factor. (Sprint Ex. 2 at 83-84; Sprint Ex. 6, Appendix B §6.5.1.3.)

Sprint states its purpose for the proposed language in Appendix B §6.5.1.4 is based on the industry's Ordering and Billing Forum ("OBF")[2] published Issue 2308 recognition that Jurisdictional Information Parameter ("JIP") does not sufficiently determine jurisdiction because it does not necessarily identify the MTA of the cell tower serving the wireless subscriber. According to Sprint, JIP is a non-mandatory six digit code within the signaling message indicating the location of the originating caller or switch. Sprint believes that, although it may be OBF's preferred solution for measuring wireless traffic, JIP is an unworkable solution due to industry limitations. Therefore, Sprint posits that, if the Commission rules in AT&T Ohio's favor on the issue of the applicability of access charges, JIP should not be used in developing InterMTA factors as AT&T Ohio is attempting to force the use of JIP in a manner that the industry has noted to be inaccurate regarding wireless traffic. (Sprint Ex. 2 at 84-85.)

AT&T Ohio proposes language in Attachment 2, Sections 6.5.1.1 through 6.5.1.4, regarding the compensation for terminating InterMTA Traffic. AT&T Ohio asserts that Issue 18 concerns the appropriate compensation when AT&T Ohio terminates InterMTA mobile-to-land calls from Sprint and that its proposed language maintains the status quo since this type of traffic is currently subject to tariffed terminating access charges. According to AT&T Ohio, CMRS providers should pay LECs terminating access charges for mobile-to-land InterMTA calls, just as wireline long distance carriers pay these charges for the termination of long distance calls. AT&T Ohio further states that Sprint's proposed language should be rejected because Sprint's language proposes that all InterMTA traffic be made subject to bill-and-keep, which is a radical departure from the manner in which the traffic is treated under the current interconnection agreement. Moreover, AT&T Ohio claims that Sprint is seeking to treat InterMTA traffic as if it were IntraMTA traffic, which is directly contrary to the FCC rules and the *CAF Order*. (AT&T Ohio Ex. 1A at 135-140.)

In support of its position, AT&T Ohio contends the FCC in *In the Matter of Implementation of Local Competition Provisions in the Telecommunications Act of 1996*, CC Docket No. 96-98, 11 FCC Rcd 15499, First Report and Order (rel. Aug. 8, 1996) ("*Local Competition Order*") addressed how calls are jurisdictionalized (local, intrastate, interstate) and the applicable compensation charges for each category. AT&T Ohio opines that the

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[2] OBF is an industry committee that resolves issues that impact ordering, billing, provisioning, and the exchange of information relating to interconnection services and other connectivity between telecommunications providers and customers. OBF is responsible for the development of specifications to enable automated exchange of information needed to support Local, Access, and Wireless service ordering, along with the standards for inter-company billing and record exchange, for Internet Protocol-based and Time Division Multiplier (TDM)-based networks. OBF is a subcommittee of the Alliance for Telecommunications Industry Solutions. (Alliance for Telecommunications Industry Solutions website http://www.atis.org/obf/)

FCC rules governing compensation do not focus on whether the CMRS provider charges its end users an extra, usage-based toll charge. Rather, AT&T Ohio states that the determining factor is the location of the calling and called parties at the beginning of the call. AT&T Ohio notes that all CMRS carriers (including AT&T Mobility) are assessed tariffed access charges on InterMTA traffic by AT&T Ohio, its affiliated LECs, and most if not all other LECs, without regard to the manner in which CMRS carriers choose to bill their own end users for such calls or whether the calls are part of "nationwide non-toll plans." (AT&T Ohio Ex. 1A at 140-141.) According to AT&T Ohio, Sprint relies upon a definition of "telephone toll service" in the Communications Act, dating from 1934, to support its contention that only toll InterMTA traffic with a separate charge can be "interstate or intrastate exchange access, information access, or exchange services for such access" subject to access charges. AT&T Ohio contends that Sprint's position has been rejected by the courts. (AT&T Ohio Ex. 1A at 139-141; AT&T Ohio Initial Br. at 106-107.)

AT&T Ohio notes that in lieu of carriers attempting to determine the precise geographic location of the CMRS device at call origination, the FCC, in its *Local Competition Order*, determined that the location of the initial cell site when a call begins should be used as the determinant of the geographic location of the mobile customer. AT&T Ohio states that for the purposes of billing compensation, it currently utilizes the FCC's method for identifying mobile calls and the amount of InterMTA traffic being originated by the CMRS carrier and terminated to AT&T Ohio. (AT&T Ohio Ex. 1A at 139.)

AT&T Ohio avers that in its *Local Competition Order*, the FCC relied upon 47 U.S.C. 251(g) in support of its conclusion that reciprocal compensation provisions do not apply to transport and termination of interstate or intrastate interexchange traffic. Based on this determination, AT&T Ohio asserts that the FCC focused on the distinction between local and interexchange traffic, rather than the distinction between local and toll interexchange traffic. Applying this rationale to CMRS traffic, AT&T Ohio contends that the FCC set forth a bright line between IntraMTA and InterMTA traffic by holding that "traffic to or from a CMRS network that originates and terminates within the same MTA is subject to transport and termination rates under 47 U.S.C. 251(b)(5), rather than interstate and intrastate access charges." *Local Competition Order* at ¶1036. AT&T Ohio submits that the distinctions in non-access and access traffic were maintained in the *CAF Order*. Specifically, AT&T Ohio points out that the FCC, in its *CAF Order* at ¶987, established that traffic between a LEC and a CMRS provider that originates and terminates within the same MTA is subject to reciprocal compensation obligations rather than interstate or intrastate access charges. AT&T Ohio argues that InterMTA traffic cannot be classified as "Non-Access Telecommunications Traffic" subject to bill-and-keep because 47 C.F.R. 51.701(b)(2) specifically defines Non-Access Telecommunications Traffic to include CMRS only when it originates and terminates in the same MTA. According to AT&T Ohio, the consistent years of past precedent and industry practice

support the argument that InterMTA traffic can only be classified as "access" traffic. (AT&T Ohio Initial Br. at 107-109.) Further, AT&T Ohio contends that under established industry practice and the current interconnection agreement between AT&T Ohio and Sprint, CMRS carriers pay terminating access charges for mobile-to-land InterMTA calls transported on wireless networks and no distinction is made between "toll" and "non-toll" InterMTA Traffic (AT&T Ohio Ex. 3 at 88).

With respect to Sections 6.5.1.1 and 6.5.1.3, AT&T Ohio considers Sprint's proposed language as establishing an obligation on both parties to pay terminating access charges for InterMTA traffic. AT&T Ohio believes that when Sprint delivers InterMTA traffic to AT&T Ohio, Sprint is effectively acting like a long distance carrier providing non-local, InterMTA service which is subject to terminating access. AT&T Ohio distinguishes this scenario from the one in which it originates a call that it delivers to Sprint who, in turn, then transports the call to its customer in a different MTA. AT&T Ohio asserts that under this scenario, it is not providing non-local service or acting like a long distance carrier, since the company is delivering the call to Sprint at the nearest point of interconnection and Sprint then hauls the call to the terminating customer in a different MTA, resulting in Sprint acting like a long distance carrier. Therefore, under this scenario, AT&T Ohio does not believe that that there is a lawful basis for Sprint to suggest that AT&T Ohio should pay terminating access charges to Sprint for InterMTA traffic originated by AT&T Ohio. (AT&T Ohio Ex. 1A at 149-150; AT&T Ohio Initial Br. at 111-112.)

Regarding Section 6.5.1.4, AT&T Ohio suggests that Sprint is inappropriately attempting to limit the use of JIP by proposing to state that a traffic study performed to determine, for billing purposes, the percentage of traffic delivered over interconnection trunks that is InterMTA will not use JIP to classify traffic for the purposes of compensation pursuant to Section 6.5.1.3. AT&T Ohio asserts that while it is not disputing that JIP alone is not sufficiently reliable for billing purposes, there is no basis to prohibit the use of JIP data in a traffic study because the data may still provide useful information such as helping to validate or cross check cell site study data. Moreover, AT&T Ohio maintains that it is not proposing to use JIP to establish the jurisdiction of a call but, rather, to assist in validating other data used to develop the InterMTA factor as this is what it already does in the current interconnection agreement with Sprint. (AT&T Ohio Ex. 1A at 147-148; AT&T Ohio Initial Br. at 112-113.)

Issue 18 Arbitration Award

After careful consideration of the arguments, the Commission determines that AT&T Ohio's language for Sections 6.5.1.1 through 6.5.1.4 should be adopted. The Commission is not persuaded by Sprint's argument of distinguishing InterMTA traffic into "Toll" and "Non-Toll" and applying access charges only to those calls in which a separate "toll" charge is assessed to its customers. Sprint's reliance on the use of the

separate "toll" charge for the purpose of determining whether traffic is local or long distance is not consistent with the intent of the *Local Competition Order* or the *CAF Order.*

Specifically, the FCC, in its *Local Competition Order* at ¶1036, noted that "*** traffic to or from a CMRS network that originates and terminates within the same MTA (defined based on the parties' locations at the beginning of the call) is subject to transport and termination rates under 47 U.S.C. 251(b)(5), rather than interstate or intrastate access charges." The Commission agrees with AT&T Ohio that the FCC preserved this distinction in its *CAF Order* at ¶987. The Commission finds that consistent with the *CAF Order,* InterMTA traffic between Sprint and AT&T Ohio is access traffic since it does not satisfy the definition of non-access telecommunications traffic set forth in 47 C.F.R. 51.701(b)(2) which requires that the traffic exchanged between a LEC and CMRS provider, at the beginning of the call, originates and terminates within the same MTA. Additionally, the Commission notes that the intention of the *CAF Order* is not to immediately switch access charges to bill-and-keep but to transition them over a period of years. Therefore, with established industry practice and the currently effective interconnection agreement between Sprint and AT&T Ohio, the Commission finds that AT&T Ohio's language should be adopted. Further, the Commission notes that, under the existing interconnection arrangement, intercarrier compensation is determined based upon the geographic locations of the calling and called party and not by the manner in which a carrier chooses to bill its customers, as Sprint argues.

With respect to Sprint's arguments regarding Section 6.5.1.3 which permits both parties to mutually agree upon an alternative method of developing an InterMTA factor to apply solely to what Sprint labels as "Toll" InterMTA traffic and to allow both parties to bill for terminating InterMTA traffic, the Commission disagrees. As AT&T Ohio notes, there is no legal basis that authorizes Sprint to bill AT&T Ohio for terminating InterMTA traffic because whether Sprint delivers this type of traffic to AT&T Ohio or AT&T Ohio delivers a call to Sprint, in both instances Sprint is performing the functions of an interexchange carrier in that Sprint is transporting the call to a different MTA. Consequently, since Sprint is the party subject to access charges, the Commission adopts AT&T Ohio's proposed language.

Regarding the use of JIP for Section 6.5.1.4, the Commission disagrees with Sprint's argument because AT&T Ohio's proposed language does not intend to use JIP in that manner. On the contrary, AT&T Ohio is not disputing that stand-alone JIP data is unreliable for billing purposes; instead it proposes to use JIP data merely as a cross-check to aid in validating other data such as cell site study data. Since AT&T Ohio is not proposing to use the JIP data to determine the jurisdiction of a call but only as a validation tool, the Commission adopts AT&T Ohio's proposed language.

Issue 19 What terms should be included in the interconnection agreement governing compensation for originating InterMTA traffic?

Sprint opines that originating access charges are never appropriate unless the originating end user is charged a separate toll charge. Regarding its position, Sprint proposed language in Sections 6.2, 6.5.2, and 6.5.2.1, regarding compensation for originating InterMTA Traffic.

This issue centers on the appropriate compensation due under the scenario in which an AT&T Ohio customer calls a Sprint customer who has a telephone number that is assigned in the same MTA but may be located outside of the MTA at the time of the call. Specifically, Sprint contends that for traffic under this scenario, AT&T Ohio originated InterMTA calls delivered to Sprint over interconnection facilities are dialed as "local". According to Sprint, AT&T Ohio delivers the call to Sprint at the nearest point of interconnection and Sprint then hauls the call to the terminating customer wherever they are traveling.

According to Sprint, for the purpose of compensation, these calls should be treated as though the call was local since neither the originating or terminating company knows the location of the mobile called party. Further, Sprint submits that AT&T Ohio is not providing exchange access since AT&T Ohio's local customer has paid for the right to make this type of call as part of the telephone exchange service it receives from AT&T Ohio and, therefore, the call must be delivered without imposing a toll or collecting originating access charges from Sprint. (Sprint Ex. 2 at 88.) Moreover, Sprint claims that since the calling party is a customer of AT&T Ohio only, with no customer or billing relationship with Sprint, it makes no sense for it to pay access for that customer's call origination. Additionally, Sprint asserts that these two-party calls cannot be reconciled with the FCC's pronouncement that all traffic is 47 U.S.C. 251(b)(5) traffic since, by definition, these compensation obligations extend to transport and termination, and not the origination of traffic. (Sprint Initial Br. at 86.)

In addition, Sprint contends since it is incurring the cost of transporting the call while receiving no incremental revenue for that function, it believes neither party should impose access charges on an InterMTA call where no toll charge is assessed to the end user. However, Sprint maintains that should the Commission permit AT&T Ohio to impose such charges on Sprint, it would then be fair and reasonable to entitle Sprint to do likewise on AT&T Ohio for the inverse traffic Sprint originates and AT&T Ohio terminates to its customer. Furthermore, Sprint asserts that it is providing AT&T Ohio a wholesale termination service which permits AT&T Ohio to offer a bundled service to its own customers ensuring that AT&T Ohio customer-originated calls are completed to Sprint end users. (Sprint Ex. 2 at 92-94.)

AT&T Ohio proposes language in Sections 6.5.2, 6.5.2.1, 6.5.2.2, Pricing Sheets lines 311-312 regarding the compensation for originating InterMTA Traffic. AT&T Ohio asserts it seeks to collect originating access charges where an AT&T Ohio customer calls a Sprint customer that normally would be an IntraMTA call, but is carried by Sprint outside the originating MTA (making it an InterMTA call) because the Sprint customer is "roaming" outside the MTA. AT&T Ohio explains that when its end user dials a Sprint customer where both the calling and called party are assigned within the same MTA the call is routed over AT&T Ohio's IntraMTA Interconnection Trunks. However, AT&T Ohio asserts, that if the same called Sprint customer is outside of their home MTA, at the beginning of the call, then the call will cross MTA boundaries for termination which causes a locally-dialed IntraMTA call to become an InterMTA call and its proposed language in Section 6.5.2.1 captures this scenario. (AT&T Ohio Ex. 1A at 151.)

In support of its argument, AT&T Ohio cites to ¶1043 of the FCC's *Local Competition Order* in which the FCC stated that "most traffic between LECs and CMRS providers is not subject to interstate access charges unless it is carried by an IXC, with the exception of certain interstate interexchange services provided by CMRS carriers, such as 'roaming' traffic that transits ILEC's switching facilities ***." Additionally, in its argument AT&T Ohio points to footnote 2485 of the *Local Competition Order*, stating the FCC noted that "[s]ome cellular carriers provide their customers with a service whereby a call to a subscriber's local calling number will be routed to them over interstate facilities when the customer is 'roaming' in a cellular system in another state" and, "in this and other situations where a cellular company is offering interexchange service, the local telephone company providing interconnection is providing exchange access to an interexchange carrier and may expect to be paid the appropriate access charge." Therefore, according to AT&T Ohio, Sprint's argument that access charges do not apply because these calls are locally-dialed is contrary to the FCC since it has conclusively held that InterMTA calls are not local. Moreover, AT&T Ohio contends that Sprint's argument that it is providing telephone exchange service to its own customers on these calls is a red herring because the point is that AT&T Ohio is providing exchange access to Sprint since Sprint is acting as an IXC by transporting the call outside the MTA. (AT&T Ohio Initial Br. at 114-115.)

AT&T Ohio avers since the parties are unable to directly measure originating landline-to-mobile InterMTA traffic it proposes to estimate the volume of the traffic using a surrogate usage percentage of 5 percent applying it to the total minutes of use AT&T Ohio delivers to Sprint of which it will bill to Sprint at the $0.005366 access rate proposed in the Pricing Sheet. AT&T Ohio contends that this is similar language to the existing interconnection agreement between the parties in which AT&T Ohio charges Sprint originating access on land-to-mobile InterMTA calls. In response to Sprint's argument that AT&T Ohio should not be allowed to assess originating access charges on this type of traffic because they are not toll calls, AT&T Ohio submits Sprint's arguments are the same as in Issues 2 and 18, which for the same reasons, the FCC's Orders, make it

clear that compensation for land-to-mobile or mobile-to-land calls are not determined by how the call is placed or if the end user of the originating carrier is assessed a separate "toll" charge but rather the originating and terminating points at the beginning of the call. (AT&T Ohio 1A at 152-153.)

Finally, AT&T Ohio maintains that it would not be "fair, reasonable, and non-discriminatory" to permit Sprint to assess originating access charges to AT&T Ohio since Sprint is acting as an interexchange carrier when it transports calls across MTA boundaries, regardless of the direction of the call, and as such AT&T Ohio is entitled to impose tariffed access charges just as it does with other IXCs and CMRS carriers acting as IXCs (AT&T Ohio Ex. 3 at 99). Adopting Sprint's proposed language, according to AT&T Ohio, would cause the current capped originating access charges to immediately convert to bill-and-keep, which is not consistent with the FCC's intention to transition to bill-and-keep (AT&T Ohio Initial Br. at 100).

Issue 19 Arbitration Award

When AT&T Ohio's end user originates a locally dialed call to Sprint's end user, AT&T Ohio does not know whether Sprint's end user is in the same or a different MTA yet the call initially begins its route over IntraMTA trunks and is then handed to Sprint who terminates the call in the MTA that the Sprint end user is located in at the time the call is answered. If Sprint's end user is in a different MTA then where the call originated, then the call traversed over MTA boundaries and the IntraMTA call has converted into an InterMTA call and Sprint has performed the functions of an IXC. The Commission agrees with AT&T Ohio's position that it is entitled to originating access charges since, consistent with the *Local Competition Order*, these "roaming" calls where the CMRS carrier is providing interexchange access service are considered InterMTA traffic and are subject to access charges (AT&T Ohio Ex. 1A at 151-152). Consistent with our determination relative to Issue 18, the origination and termination points of the call, and not a determination of whether a toll charge is assessed, is the controlling factor as to the applicable compensation for such traffic. AT&T Ohio provides exchange access to any carrier that transports the call to a different MTA. It is, therefore, permitted to impose originating access charges for this type of InterMTA traffic. Therefore, the Commission adopts AT&T Ohio's language for Sections 6.5.2 and 6.5.2.1.

With respect to AT&T Ohio's proposed use of a surrogate percentage, the Commission finds that AT&T Ohio's language is reasonable with respect to Section 6.5.2.2 and Pricing Sheet lines 311-312. Since both parties are unable to measure landline-to-mobile InterMTA traffic, and Sprint does not specifically object to the percentage or offer any alternative language, the Commission adopts AT&T Ohio's proposed language.

Finally, regarding Sprint's argument that if the Commission awards AT&T Ohio allowance to assess originating access charges to Sprint then it should also be allowed to

assess the same to AT&T Ohio for Sprint originated traffic that terminates to AT&T Ohio, the Commission does not agree. As AT&T Ohio notes, when the call in either direction is transported across MTA boundaries, it is Sprint who is performing the transporting function, which converts the call to an InterMTA call, thus Sprint is the carrier who is functioning as an IXC. Consistent with the *Local Competition Order*, "the local telephone company providing interconnection is providing exchange access to an interexchange carrier and may expect to be paid the appropriate access charge." (*Local Competition Order*, fn 2485.) The appropriate access charge would be originating access and not bill-and-keep. In addition, subjecting this type of traffic to bill-and-keep is not the intent of the FCC's access charge regime which applies only to terminating access traffic not originating. Therefore, the Commission rejects Sprint's argument and agrees that AT&T Ohio is appropriate in charging originating access charges to Sprint for originating InterMTA traffic.

Issue 20 (a) **Should the Interconnection Facilities prices for high capacity facilities be applied on a pro rata basis as described in Sprint's proposed Attachment 2, Section 3.8.2.1? (Sprint framed issue)**

(b) **Should the prices for DS3 or higher capacity facilities be determined based on assumptions made, and the pro rata method described in Sprint's proposed Attachment 2, Sections 3.8.2 and 3.8.2.1?**

Sprint proposes language with respect to the pricing for high capacity facilities in Attachment 2, Sections 3.8.2 and 3.8.2.1. In support of its position, Sprint submits that it is common industry practice for carriers to purchase a high-capacity facility (DS3) and split it into individual DS1s (28 DS1s per DS3), with each DS1 used for a specific purpose such as interconnection for the mutual exchange of traffic or backhaul. Sprint further submits that it should be permitted to obtain pro rata pricing on the individual DS1s, meaning it would pay TELRIC rates for the portion of the facilities that is used for "interconnection" and special access rates for the portion used for "backhaul." As a result, Sprint posits that the price for the DS3 would be a weighted average of the DS3 access and TELRIC rates, based on the number of DS1 channels used for "interconnection" and "backhaul." Sprint argues that this arrangement would enable it to use facilities more efficiently. It believes that there are no technical impediments to pro rata pricing and that it would only require a "simple mathematical calculation." Sprint contests AT&T Ohio's assertions that this arrangement would present significant billing challenges. According to Sprint, AT&T Ohio will always have the ability to know from the end points of an ordered DS1 as to whether it is being used for interconnection. Additionally, Sprint states that the parties already have a similar arrangement in the legacy BellSouth 9-state territory whereby the parties meet periodically to adjust charges based on the number and purpose of DS1s used by Sprint. It avers that a similar approach should be utilized in Ohio as well. Sprint believes that AT&T Ohio is unwilling

to accept its proposed approach regarding the use of DS3 facilities due to the fact that it will reduce AT&T Ohio's revenues and decrease Sprint's costs. (Sprint Ex. 1 at 40-51; Sprint Ex. 3 at 19, 22-23.)

Sprint does not agree with AT&T Ohio that permitting this pricing regime would result in below-TELRIC prices, in violation of the *Talk America Decision* (Sprint Ex. 1 42, 51-52). Rather, Sprint believes that, consistent with the *Talk America Decision*, when a facility is used for the purpose of linking the parties' networks for the mutual exchange of traffic, it is an Interconnection Facility subject to TELRIC pricing with respect to that portion of the DS3 used for the purpose of interconnection. Therefore, under its proposal, Sprint would either pay TELRIC, if the DS3 is used only for interconnection, or a higher rate, if a portion of the DS3 is used for the backhaul of traffic. (Sprint Ex. 1 at 53.)

Sprint further submits that if it is not permitted to split the channels on a DS3 between interconnection and backhaul, it would effectively have to establish two DS3 networks and pay for the inefficiency that such arrangement would cause, despite the fact that only one DS3 is necessary. Sprint also does not agree with AT&T Ohio that its proposal would improperly allocate spare capacity. Rather, Sprint argues that spare capacity should not be priced completely as all TELRIC or all special access but, rather, should be priced based on same ratio as utilized capacity. (Sprint Ex. 1 at 42-43, 51-53; Sprint Ex. 3 at 20, 22.)

AT&T Ohio asserts that the Commission should reject Sprint's proposal that it be permitted to use a high-capacity facility to carry both interconnection and backhaul traffic and price the traffic on a prorated basis. In addition to generally disagreeing that the proposed pro rata pricing is a common industry practice, AT&T Ohio objects to the proposal on five specific grounds.

First, AT&T Ohio argues that the proposal would violate restrictions on the use of TELRIC-priced Interconnection Facilities as described by the FCC and the United States Supreme Court in its *Talk America Decision*. AT&T Ohio posits that in its *Talk America Decision*, the Court clearly stated that carriers (whether CLEC or CMRS) are not entitled to the benefit of TELRIC-based pricing for entrance facilities unless the facilities are used exclusively for Interconnection as defined in 47 C.F.R. 51.5. Additionally, AT&T Ohio disagrees with Sprint's contention that it is a common industry practice to price one portion of a high capacity entrance facility at access rates and another portion of the same facility at TELRIC-based rates and that each DS1 channel on a DS3 or higher capacity facility could be used exclusively for either interconnection or backhaul. Instead, AT&T Ohio argues, that while a DS1 facility and a DS3 facility are both stand-alone facilities, the DS1 channels on a DS3 facility are not considered facilities anymore than the DS0 channels on a DS1 facility are considered facilities. Relying upon the *Talk America Decision* and the *CAF Order*, AT&T Ohio contends that the term "facility" refers to the

actual facility and not the individual channels of capacity on a physical facility. Similarly AT&T Ohio believes that a DS1 channel of a DS3 facility is not itself a facility but, instead, is a bandwidth partition of a DS3 facility. (AT&T Ohio Ex. 1A at 57-61; AT&T Ohio Ex. 3 at 45-46.)

Second, AT&T Ohio contends that the proposal would result in below TELRIC prices for Interconnection Facilities, which violates federal law. Specifically, AT&T Ohio maintains that should Sprint's proposal be approved, it would result in Sprint effectively paying a DS1 rate that is lower than the applicable TELRIC rate. According to AT&T Ohio, this would occur because Sprint already pays a discounted rate for a DS3 compared to individual DS1s and this proposal would extend this discount to the DS1 level. (AT&T Ohio Ex. 1A at 61-63; AT&T Ohio Ex. 3 at 44.)

Third, AT&T Ohio argues the proposal would improperly allocate spare capacity as it requires it to provide the spare DS1 capacity at below TELRIC rates with no indication of whether the channels would be used solely for interconnection in the future. AT&T Ohio further argues that should the Commission permit Sprint to combine interconnection and backhaul on the same facilities, then Sprint should only be entitled to TELRIC pricing on the channels actually used for interconnection and all spare channels should be apportioned at access service rates. (AT&T Ohio Ex. 1 at 64-65.)

Fourth, AT&T Ohio argues that Sprint's proposal provides no mechanism in which to initially apportion facilities between access and interconnection and fails to address future orders for DS3s or activation/rearrangement/deactivation of DS1 channels (AT&T Ohio Ex. 1A at 64-65).

Finally, AT&T Ohio argues that the proposal would cause it significant billing challenges because AT&T Ohio would need to develop new billing systems that would only benefit Sprint in Ohio. AT&T Ohio submits that it would need to perform a full analysis of its system to determine what changes would need to be implemented to accommodate the pro rata pricing. AT&T Ohio argues that is has never mechanically billed a single facility at both tariff and interconnection agreement rates as Sprint's proposal would require. Lastly, AT&T Ohio contends that if it could not revise its billing system to accommodate pro rata pricing, it would be required to manually adjust Sprint's bill every month for each DS3 and that these costs would not be recovered. (AT&T Ohio Ex. 1A at 64-66; AT&T Ohio Ex. 3A at 46.)

Issue 20 Arbitration Award

Based on a review of the arguments set forth above, the Commission finds that AT&T Ohio's position should be adopted. Specifically, the Commission agrees with AT&T Ohio that Sprint's proposal is inconsistent with the holding in the *Talk America Decision* at 2262, providing that entrance facilities leased under 47 U.S.C. 251(c)(2) can be

used only for interconnection, i.e., to link the incumbent provider's telephone network with the competitor's network for the mutual exchange of traffic, and not for backhauling. Additionally, the Commission believes that based on the *Talk America Decision*, while on a stand-alone basis a DS1 or DS3 may be considered facilities of the permitted interconnection, they cannot be further broken down (*e.g.*, channel level) and still be considered facilities for this purpose. In this context, the 28 individual DS1 channels on a DS3 are not themselves "facilities" but, instead, are simply individual channels.

As noted by AT&T Ohio, the *Talk America Decision* at 2254 defined entrance facilities as being transmission facilities (typically wires or cables) that connect CLECs' networks with ILECs' networks. As further support for this decision, the Commission notes that in 47 C.F.R. 54.201(e), the FCC defines facilities as the physical components of the telecommunications network that are used in the transmission of the services that are designated for support. Reading these determinations together, it is reasonable to conclude that facilities are the physical components of the network and not the digital allocations of the channels within these facilities. Therefore, in the case of a DS3, Sprint's desire to allocate individual DS1 channels for the purpose of backhauling does not constitute physical components. Finally, the Commission recognizes AT&T Ohio's contention that Sprint's request will necessitate a new billing system since its current billing system cannot currently bill for the requested divided use of a DS3. Therefore, if Sprint wishes to carry both interconnection and backhaul over the same facilities, it must continue to purchase an access facility pursuant to tariff and pay the applicable higher tariffed access rates.

Issue 21 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 interconnection agreement?

Sprint proposes language that would immediately entitle it to new TELRIC-based rates in the event that the Commission approves a new forward-looking economic cost study in Attachment 2, Section 3.8.3.

In support of its position on this issue, Sprint submits that it is entitled to TELRIC-based rates for all of AT&T Ohio's Interconnection obligations. Further, Sprint submits that if the Commission conducts a new TELRIC rate proceeding, Sprint should automatically be entitled to receive the new rates, without filing an amended interconnection agreement and waiting 90 days, since there are no physical changes to the network and the only applicable changes pertain to price. Sprint argues that AT&T Ohio can achieve the same effect of an amended interconnection agreement through its "Accessible Letter" process and a written notice. Sprint further argues that its proposed automatic incorporation eliminates unnecessary inefficiencies that are associated with

following the Commission's contract amendment procedures. Sprint further does not agree with AT&T Ohio's assertion that for Sprint to receive TELRIC pricing, the existing facilities must be disconnected and new facilities ordered (the "transition"), which would further require Sprint to pay non-recurring charges per an Access Service Request (ASR) . Sprint also does not agree with AT&T Ohio's claim that "it is not possible to 'flash cut' from the existing arrangement at the moment that the interconnection agreement is effective." (Sprint Ex. 1 at 55-56; Sprint Ex. 3 at 25-26, 30.)

AT&T Ohio argues that neither party should be entitled to different rates without amending the applicable interconnection agreement. It further argues that updating the interconnection agreement should not be considered an obstacle or burdensome, and even if it were, the parties are subject to the existing interconnection agreement rates, terms, and conditions until such time that they are amended. AT&T Ohio avers that it cannot be obligated to provide service pursuant to rates that conflict with the rates in the agreement itself. (AT&T Ohio Ex. 1A at 68-69; AT&T Ohio Ex. 3 at 52-53.)

Issue 21 Arbitration Award

Based on a review of the arguments set forth above, the Commission determines that the language proposed by Sprint should be rejected. In reaching this decision, the Commission finds that any change in rates that derive from a generic rate proceeding should be brought formally before the Commission as an amended interconnection agreement. It is important to keep these agreements up to date in the event of disputes and because other carriers are entitled to adopt the rate, terms, and conditions of an existing interconnection agreement. In order for this objective to be accomplished, any potential adopter must be aware of the full terms and conditions contemplated by the agreement. The Commission further finds that this requirement should not be burdensome or a barrier to Sprint. Negotiating and amending an interconnection agreement is standard industry practice and should be done in accordance with Commission rules and procedures.

Issue 22 **(a) Should AT&T Ohio be required to share the cost of Interconnection Facilities located on Sprint's side of the Point of Interconnection?**

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

(c) Should the interconnection agreement obligate Sprint to pay the full price for AT&T Ohio to process Sprint's Interconnection-related to service orders?

Specific to Issue 22(a), Sprint proposes language with respect to how the costs of Interconnection Facilities should be shared between the parties in Attachment 2, Sections 3.3, 3.9, 3.9.1, 3.9.2, 3.9.3, and 3.9.3.1.

Sprint argues that the cost of Interconnection Facilities should be shared equally by both parties, even though the facilities will always be on Sprint's side of the point of interconnection. In support of its position, Sprint cites *In re TSR Wireless LLC v. US West Commc'ns Inc.*, 15 FCC Rcd. 11166 *("TSR Wireless Order")* in which Sprint believes that the FCC applied the rules set forth in 47 C.F.R. 51.703(b) and 51.709(b) to dedicated transport facilities and determined that the cost is to be shared by the parties. Sprint also relies upon Ohio Adm.Code 4901:1-7-17(B)(2)(c) to support its position that the facilities costs should be shared. (Sprint Ex. 1 at 28; Sprint Ex. 3 at 30.)

In response to Sprint's position, AT&T Ohio contends that such a proposal is contrary to 47 U.S.C. 252(d)(1) which requires a cost-based rate for interconnection pursuant to 47 U.S.C. 251(c). AT&T Ohio disagrees with Sprint that the interconnection sharing proposal is consistent with 47 C.F.R. 51.703(b) and 47 C.F.R. 51.709(b). Rather, AT&T Ohio argues that subpart H of the FCC's Part 51 rules only applies to reciprocal compensation for the transport and termination of non-access traffic under 47 U.S.C. 251(b)(5) and does not apply to the pricing of Interconnection Facilities, which is governed by 47 C.F.R. 51.501 and 47 C.F.R. 51.503. (AT&T Ohio Ex. 1A at 75-78; AT&T Ohio Ex. 3 at 57; AT&T Ohio Initial Br. at 69-71.)

According to AT&T Ohio, consistent with 47 C.F.R. 51.501 and 47 C.F.R. 503, an ILEC's rates for and methods of obtaining interconnection shall be established pursuant to TELRIC methodology and that the Commission does not have the authority to create its own pricing methodology for 47 U.S.C. 251(c)(2) interconnection. (AT&T Ohio Ex. 1A at 71-72). Referencing Attachment 2, Section 3.3, AT&T Ohio notes 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. Based on the assumption that the point of interconnection represents the physical demarcation point between the two parties' networks, AT&T Ohio submits that the Interconnection Facilities located on Sprint's side of the point of interconnection are part of Sprint's network regardless of whether the facilities are provided by Sprint, leased or purchased from a third party, or acquired from AT&T Ohio at TELRIC-based prices. Therefore, AT&T Oho asserts that Sprint is responsible for the cost of these facilities. (AT&T Ex. 1A at 73-74; AT&T Ohio Initial Br. at 68-69.)

Regarding Sprint's reliance on the *TSR Wireless Order*, AT&T Ohio asserts that the Order did not address pricing for entrance facilities provided under 47 U.S.C. 251(c)(2) and, instead, pertained to 47.C.F.R. 51.703(b) and (h). Further, AT&T Ohio represents that the *TSR Wireless Order* supports the conclusion that Sprint is responsible for paying

the full cost of interconnection (*i.e.*, on Sprint's side of the point of interconnection). With respect to Sprint's reference to Ohio Adm.Code 4901:1-7-17(B)(2)(c) to support its position that the facilities costs will be shared, AT&T Ohio responds that this rule is inapplicable to Interconnection Facilities since, in actuality, the facilities in question are not being shared but, instead, are dedicated transport facilities. AT&T Ohio asserts that the costs for these facilities are being properly recovered through flat-rated charges consistent with Ohio Adm.Code 4901:1-7-17(B)(2)(b). (AT&T Ohio Ex. 3 at 60; AT&T Ohio Initial Br. at 74.)

Specific to Issue 22(b), Sprint proposes language with respect to the sharing of the cost of Interconnection Facilities located on Sprint's side of the point of interconnection in Sections 3.9.3.1, 1.3.2, 1.3.3, and 1.4.2, Pricing Schedules.

In support of its position on Issue 22(b), Sprint argues that its proposed 50/50 splitting of the cost of interconnection facilities represents the parties' relative use of the Interconnection Facilities on a given call. Sprint further argues that the FCC has determined in the *CAF Order* that each party and their customers benefit from a call, regardless of the direction, and should bear an equal cost. Sprint opines that the same cost sharing should apply even on one-way calls, because both parties are still receiving a benefit from being connected to the network. Sprint asserts that in order to equitably and efficiently implement this 50/50 cost sharing, the billing party should reduce its charges for Interconnection Facilities by 50 percent on each invoice sent to the billed party. According to Sprint, its proposed 50 percent cost sharing is an equitable and administratively easy percentage to implement and follows current FCC rationale as to how carriers and their current customers benefit from any given call. Sprint notes that its agreements with AT&T Ohio's affiliate ILECs in nine southeastern states equally share the cost of Interconnection Facilities. Additionally, Sprint asserts that AT&T Ohio's alternative cost-sharing language places barriers on Sprint's right to obtain TELRIC pricing for Interconnection Facilities. (Sprint Ex. 1at 29-33; Sprint Ex. 3 at 30.)

In support of its position on Issue 22(b), AT&T Ohio argues that if the Commission decides in its favor relative to Issue 22(a), then it need not consider Issue 22(b) since there will be no obligation to share in the cost of interconnection (AT&T Ohio Initial Br. at 75). Notwithstanding its position relative to this issue, to the extent that a sharing factor is applied, AT&T Ohio believes that it should be 21 percent based on AT&T Ohio's proportionate share of local traffic actually exchanged between the parties. In the event that Sprint is permitted to exchange traffic with IXCs over Interconnection Facilities, AT&T Ohio avers that the sharing factor should be reduced to 16 percent. (AT&T Ohio Ex, 1A at 79.)

Specific to its rejection of Sprint's language, AT&T Ohio asserts that Sprint's proposal that AT&T Ohio bear a portion of the cost of Interconnection Facilities used by Sprint to receive transit and IXC traffic from third-parties conflicts with the FCC's *TSR*

Wireless Order and *Texcom Inc. d.b.a. Answer Indiana v. Bell Atlantic Corp. d.b.a Verizon Communications* Memorandum and Order, FCC 01-347 rel. November 28, 2001 (*"Texcom Order"*) which permitted transiting carriers (*e.g.*, AT&T Ohio) to charge a terminating carrier (*e.g.*, Sprint) for the portion of facilities used to deliver transiting traffic to the terminating carrier. Therefore, AT&T Ohio posits that the transit traffic should be treated as Sprint's for the calculation of the Interconnection Facility sharing factor. (AT&T Ohio Ex. 1A at 81; AT&T Ohio's Initial Br. at 75-77.) AT&T Ohio notes that if Sprint chose to interconnect with a third-party carrier or an alternate tandem provider, AT&T Ohio would not even need to transit the traffic. Furthermore, AT&T Ohio argues that it is not compensated by the third-party for carrying this traffic, only for switching, and certainty not for the cost of the facilities between itself and Sprint. Additionally, AT&T Ohio disagrees with Sprint that the *CAF Order* is applicable to the issue of sharing interconnection costs. AT&T Ohio maintains that the *CAF Order* only addresses 47 U.S.C. 251(b)(5) transport and termination and cannot be extended to bill-and-keep for a CMRS-ILEC traffic exchange. Therefore, AT&T Ohio concludes that there is no basis for requiring any sharing of the costs of the Interconnection Facilities under reciprocal compensation. (AT&T Ohio Ex. 1A at 78-82; AT&T Ohio Ex. 3 at 61.)

Specific to Issue 22(c), Sprint proposes language with respect to the pricing for AT&T Ohio to process Sprint's service orders in Section 1.4.2 of the Pricing Schedule. In support of its position on Issue 22(c), Sprint states that cost sharing should not be limited to monthly recurring costs. Rather, Sprint believes that all costs that are reasonably related to an Interconnection Facility used by both parties should be shared equally, including those related to creation, implementation, ongoing existence, and ultimate discontinuation of an Interconnection Facility that exists for the benefit and use of both parties. Sprint further states that AT&T Ohio is incorrect in its attempt to apply the *Talk America Decision* to this issue since the decision does not address cost sharing. Sprint argues that AT&T Ohio's alternative cost sharing language must be read in conjunction with its point of interconnection definition (Issue 5) and that AT&T Ohio is improperly attempting to eliminate any cost sharing for Interconnection Facilities. Sprint maintains that AT&T Ohio's position ignores the FCC rules and previous decision interpreting the rules. (Sprint Ex. 1 at 31-33.)

Sprint also suggests that AT&T Ohio's proposed language ignores the *CAF Order* and would improperly allocate costs associated with AT&T IXC and wholesale customer traffic. Sprint further states that AT&T Ohio's alternative language would only allocate 16 percent or 21 percent of the costs of new Interconnection Facilities and that sharing would be suspended until Sprint transitions 100 percent of its existing facilities pursuant to AT&T Ohio's proposed transition process. Sprint argues that this language interferes with Sprint's right to obtain TELRIC pricing for Interconnection. Sprint further argues that AT&T Ohio's s language is significantly different from how the parties interact under the current interconnection agreement. Specifically, Sprint argues that the parties currently use and apply a cost sharing mechanism to DS1s (via a shared facility factor

discount) and high-capacity facilities (via a high capacity per minute of use credit) purchased by Sprint out of tariff at non-TELRIC access rates. Additionally, Sprint asserts that AT&T Ohio's language has two negative impacts. First, the current shared facility factor would only apply to existing facilities and second, upon transition, AT&T Ohio would no longer share any facility costs. Sprint argues that this will impair its ability to obtain TELRIC pricing to which it is entitled. (Sprint Ex. 1at 33-35; Sprint Ex. 3 at 30.)

In support of its position on Issue 22(c), AT&T Ohio asserts that even if the Commission rules in Sprint's favor relative to the sharing of the recurring interconnection costs, Sprint has failed to demonstrate that the nonrecurring costs to process an order for and install (or disconnect, rearrange, or change) an Interconnection Facility should be shared by AT&T Ohio. Instead, AT&T Ohio represents that Sprint should be responsible for these costs. Specifically, AT&T Ohio asserts that Sprint is the cost causer of these costs due the fact that they are incurred by AT&T Ohio in response to Sprint's request and unilateral decision. For the same reasons discussed in Issue 22(b), AT&T Ohio contends that even if it is responsible for sharing some of the nonrecurring costs, it is not at the 50/50 level proposed by Sprint. Further, AT&T Ohio believes that Sprint's proposed language is confusing and difficult to interpret as to when AT&T Ohio would charge 50 percent for an Interconnection Facility, or if it could be permitted to charge Sprint anything at all. (AT&T Ohio Ex. 1A at 85-88.)

Issue 22 Arbitration Award

In regards to Issue 22(a), and consistent with Issue 5, the Commission finds that 47 C.F.R. 51.501 and 51.503 are controlling as they set forth the applicable pricing parameters for interconnection. Therefore, the Commission finds that AT&T Ohio should not be required to share in the cost of facilities on Sprint's side of the point of interconnection. The Commission determines that the point of interconnection is the both the physical and financial demarcation point between the Sprint and AT&T Ohio networks. Inasmuch as Sprint is already leasing interconnection facilities pursuant to 47 U.S.C. 251(c)(2) at TELRIC, further reducing the charge by 50 percent would be inappropriate and would result in below-cost pricing. Finally, we determine that the *TSR Wireless Order* addresses charges for facilities on AT&T Ohio's side of the point of interconnection and does not support Sprint's contention that AT&T Ohio should be required to share the costs for facilities on Sprint's side of the point of interconnection.

In regards to Issue 22(b), the Commission finds that due to our determination in Issue 22(a) that AT&T Ohio is not required to share in the cost of facilities on Sprint's side of the point of interconnection, the issue of the appropriate percentage to be applied to the sharing of the cost of interconnection is inapplicable and moot.

In regards to Issue 22(c), the Commission finds that Sprint should be required to pay the full nonrecurring TELRIC rate for AT&T Ohio to process Sprint's

Interconnection-related services orders. By placing an order, Sprint is the cost-causer and would be obligated to pay any other provider for theses installation services. Therefore, Sprint must issue standard ordering ASRs triggering the transition period to the 47 U.S.C. 251(c)(2) agreement and pay the applicable nonrecurring costs for the processing and implementation of the order.

Issue 23 What are the appropriate transition rates, terms, and conditions?

Sprint proposes language with respect to the appropriate transition rates, terms, and conditions that will apply when transitioning to TELRIC pricing relative to Attachment 2, Sections 1.2.1-1.2.1.2.2, 3.5.1, 3.5.4, 3.8, 3.8.1, and 3.8.4.

In support of its proposed language, Sprint submits that the parties are currently mutually exchanging traffic using Interconnection Facilities that were purchased out of AT&T Ohio's special access tariffs and not at TELRIC, and are subject to a cost-sharing mechanism. Sprint argues that it is entitled to receive these facilities at TELRIC per the *Talk America Decision* and should receive the new pricing once the new interconnection agreement is effective. According to Sprint, AT&T Ohio is attempting to force it to give up its right to cost sharing as a prerequisite to receiving TELRIC pricing. Additionally, Sprint takes issue with AT&T Ohio's requirement that requesting carriers, such as Sprint, must choose on an all or nothing basis between using Interconnection Facilities that are purchased via tariff at special access prices or using Interconnection Facilities that are purchased via a interconnection agreement at TELRIC prices. Rather, Sprint would prefer to pick-and-choose which facilities are based on TELRIC and which are subject to tariffs after taking certain economic factors into consideration. According to Sprint, to the extent that facilities are purchased pursuant to tariff, they should continue to be subject to the cost sharing arrangement under the interconnection agreement. In regard to the issue of a cost sharing plan, Sprint reiterates its concerns set forth in Issue 22. Further, Sprint would like to transition existing tariff priced Interconnection Facilities to TELRIC pricing without disconnecting/reconnecting the existing facility and, instead, handling the process as a nonchargeable, record keeping billing adjustment. (Sprint Ex. 1 at 57-61, 65; Sprint Ex. 3 at 30-31.)

AT&T Ohio proposes language relative to the Section 2.100, General Terms and Conditions. In support of its position on Issue 23, AT&T Ohio states that the parties currently operate under a CMRS Interconnection model that is not in accordance with 47 U.S.C. 251(c)(2). AT&T Ohio reiterates its arguments set forth in Issue 20 in response to Sprint's contention that the *Talk America Decision* entitles it to TELRIC-based pricing on tariffed entrance facilities that it currently uses for both interconnection and backhauling. AT&T Ohio insists that in order for Sprint to receive TELRIC-based prices, the parties must transition from the CMRS model to a 47 U.S.C. 251(c)(2)) model. AT&T Ohio contends that its proposed language establishes a process with associated rates, terms, and conditions for this transition. AT&T Ohio further does not want to begin the

transition until a plan is in place so that the parties have a roadmap that will allow for an orderly transition that will not exceed AT&T Ohio's ability to handle the volume of orders that will be required. To the extent that a transition plan cannot be agreed upon, AT&T Ohio believes that the dispute resolution process set forth in the interconnection agreement should be utilized. Finally, AT&T Ohio maintains that it does not agree to permit Sprint to revert to the existing CMRS arrangement once the transition has begun, because there are significant differences between the two types of interconnection arrangements. (AT&T Ohio Ex. 1A at 88-91.)

AT&T Ohio disputes Sprint's claim that the transition can be accomplished via an easy "flash cut" process. In support of its position, AT&T Ohio explains that while Sprint currently utilizes the same transport facilities for both interconnection traffic and non-interconnection traffic, the same cannot occur under Sprint's current request due to the reasons discussed in Issue 20. Therefore, as part of the transition from the existing CMRS arrangement to a 47 U.S.C. 251(c)(2) interconnection arrangement, Sprint will be required to obtain Interconnection Facilities that are separate from the existing transport facilities used to backhaul traffic. Additionally, from a network engineering standpoint, AT&T Ohio would need to identify and/or place additional interoffice transport facilities to provide for the transport for interconnection trunk groups to the various offices on its respective side of the point of interconnection. While AT&T Ohio is willing to maintain the existing shared facilities factor of 25 percent during the interim period until Sprint requests the transition, AT&T Ohio states that it is unwilling to continue to pay for any facilities costs on Sprint's side of the point of interconnection once the transition has occurred. AT&T Ohio also argues that Sprint should be responsible for any ASRs that it initiates for the conversion of service and the cost of any network connections and or disconnections including any termination fees associated with the disconnection of existing facilities. (AT&T Ohio Ex. 1A at 91-95; AT&T Ohio Ex. 3 at 69-73; AT&T Ohio Ex. 2A at 22-27.)

Issue 23 Arbitration Award

With respect to Issue 23, the Commission finds that AT&T Ohio's proposed language should be adopted as it more appropriately addresses the requisite transition plan. Because Sprint currently sends both 47 U.S.C. 251(c)(2) traffic and non-47 U.S.C. 251(c)(2) traffic over the same facilities, both Sprint and AT&T Ohio will need to make changes to the network to appropriately reallocate the requisite facilities. This will take time, planning, and expense so as to be efficient and not to overload AT&T Ohio or negatively affect other customers. AT&T Ohio has agreed to maintain the current arrangement until Sprint requests the changes, at which point the transition plan will begin. This is a reasonable solution for both parties. Additionally, Sprint should be responsible for the costs of placing and implementing these change orders since it is the party requesting these changes. Finally, it is not appropriate to require AT&T Ohio to permit Sprint to transition back and forth on an individual facility basis. Sprint is

voluntarily requesting to leave a customized interconnection arrangement for a 47 U.S.C. 251(c)(2) arrangement. Sprint is not entitled to have a "third-way" hybrid that requires AT&T Ohio to maintain two interconnection models for only the benefit of Sprint. Notwithstanding this determination, the Commission notes that the parties may mutually agree to another type of arrangement.

It is, therefore,

ORDERED, That Sprint and AT&T Ohio incorporate the directives set forth in this Arbitration Award within their final interconnection agreement. It is, further,

ORDERED, That, within thirty days of this Arbitration Award, Sprint and AT&T Ohio shall docket their entire interconnection agreement for review by the Commission, in accordance with the Ohio Adm.Code 4901:1-7-09. If the parties are unable to agree upon an entire interconnection agreement within this time frame, each party shall file, for the Commission to review, its version of the language that should be used in a Commission-approved interconnection agreement. It is, further,

ORDERED, That, within ten days of the filing of the interconnection agreement, any party or other interested persons may file written comments supporting or opposing the proposed interconnection agreement language and that any party or other interested persons may file responses to comments within five days thereafter. It is, further,

ORDERED, That nothing in this Arbitration Award shall be binding upon this Commission in any subsequent investigation or proceeding involving the justness or reasonableness of any rate, charge, rule, or regulation. It is, further,

ORDERED, That this Arbitration Award does not constitute state action for the purpose of antitrust laws. It is not our intent to insulate any party to a contract from the provisions of any state or federal law that prohibits restraint of trade. It is, further,

ORDERED, That a copy of this Arbitration Award be served upon Sprint, AT&T Ohio, their respective counsel, and all interested persons of record.

THE PUBLIC UTILITIES COMMISSION OF OHIO

Andre T. Porter, Chairman

Lynn Slaby

M. Beth Trombold

Asim Z. Haque

Thomas W. Johnson

JSA/dah

Entered in the Journal

AUG 19 2015

Barcy F. McNeal
Secretary