STATE OF SOUTH DAKOTA
PUBLIC UTILITIES COMMISSION

In the Matter of Sprint Communications Company L.P.'s Petition for Consolidated Arbitration Pursuant to Section 252(b) of the Communications Act of 1934, As Amended by The Telecommunications Act of 1996, and The Applicable State Laws for Rates, Terms and Conditions of Interconnection with Interstate Telecommunications Cooperative.	))))))))))	Docket No. TC06-175

RESPONSE OF INTERSTATE TELECOMMUNICATIONS COOPERATIVE, INC. TO THE PETITION FOR ARBITRATION AND REQUEST FOR CONSOLIDATION OF SPRINT COMMUNICATIONS COMPANY, L.P.

Interstate Telecommunications Cooperative, Inc. ("ITC") files this Response to the Petition of Sprint Communications Company L.P. ("Sprint") for Consolidated Arbitration (the "Petition").

1. ITC is an incumbent local exchange carrier engaged in the provision of telephone exchange service in portions of the State of South Dakota pursuant to a certificate of convenience and necessity granted by the Commission. ITC is a "Rural Telephone Company" as that term is defined under the 1996 revisions of the Communications Act of 1934, as amended (the "Act"). *See* 47 U.S.C. § 153(37). ITC operates approximately 14,000 access lines within the State of South Dakota, and thus provides "telephone exchange service, including exchange access, to fewer than 50,000 access lines." 47 U.S.C. § 153(37)(B). Moreover, ITC is an "incumbent local exchange carrier"("ILEC") (*see* 47 U.S.C. § 251(h)) as it provided telephone exchange service prior to the date of the Act (ITC began to provide service in 1987) and ITC was and is a participant in the National Exchange Carrier Association pooling arrangements established by the Federal Communications Commission ("FCC") pursuant to 47 C.F.R. § 69.601(b).

2. On November 10, 2005, Sprint purported to request negotiations with ITC pursuant to Sections 251(a) and (b) of Act. The parties agreed to extend the arbitration window on April 10, 2006, May 15, 2006, June 9, 2006, July 11, 2006 and August 10, 2006.

3. On March 20, 2006, Sprint sent ITC a request for Local Number Portability pursuant to 47 C.F.R. § 52.23. Sprint indicated that it would utilize the Service Provider ID (SPID) of 8712 to provide telecommunications services in South Dakota and to place intra-modal porting requests (wireline-to-wireline) with ITC.

4. On October 16, 2006, Sprint filed a Petition with the South Dakota Public Utilities Commission ("Commission") to arbitrate unresolved issues surrounding the parties negotiations[1] for an interconnection agreement pursuant to Section 252 of the Act, SDCL § 49-31-81, and Commission Rule 20:10:32:29.

ITC AND ITS REPRESENTATIVES

5. Pursuant to Commission Rule 20:10:32:29(1), the names, addresses, telephone and fax numbers of ITC's representatives are:

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And

[1] As a general matter, ITC disagrees with any statement or assertion made by Sprint in its Petition that is contrary to those positions taken by ITC during negotiations. Moreover, to the extent that Sprint has set forth in its Petition only selected details or discussions from the parties' negotiations, ITC reserves the right to address in greater detail the substance of the negotiations during the testimonial portions of these proceedings.

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RESPONSE TO SPRINT'S STATEMENT OF UNRESOLVED ISSUES

6. Pursuant to Commission Rule 20:10:32:29(3), Sprint identified a list of unresolved issues, and its position on those issues, to which ITC hereby responds. For the reasons stated herein, ITC's responses on issues 2 through 11 will be based on the assumption that Sprint will compete with ITC for the end users physically located within ITC's service area. Sprint has no standing to request interconnection for purposes of complying with its private contractual obligations with MCC Telephony of the Midwest, Inc. ("MCC"). It is improper for Sprint to request interconnection with ITC for the end user customers of MCC. MCC is the entity that will complete with ITC for the end users located within ITC's service area and, according, MCC is the carrier responsible under the Act for interconnecting their end user customers with ITC. Sprint's interconnection request to ITC, as far as it is made as a wholesale private carrier supplier to MCC basis, is improper. Accordingly, once all of the facts and circumstances related to this arbitration are before the Commission, ITC respectfully submits

that the facts, law and rational public policy will demand that the issues be resolved in the manner suggested by ITC herein.[2]

ISSUE 1:

Should the definition of End User in this Agreement include end users of a service provider for which Sprint provides interconnection, telecommunications services or other telephone exchange services?

Related Agreement Provisions: Scope of the Agreement Sections 1.1 and 1.2; Definitions of End User, Section 2.5, and as the term is used throughout the document; Interconnection, Section 3.5.

ITC Response:

7. No. ITC respectfully submits that Sprint's definition of "end user" and its efforts to include the end user customers of MCC are improper and should be rejected by the Commission. Accordingly, ITC's proposed language identifying the "End User" as "the residence or business subscriber that is the ultimate user of retail telecommunications services provided by either of the Parties" should be adopted. *See* Petition, Exhibit D at 4 (§2.5).

8. As a preliminary matter, ITC notes that it agreed that it would voluntarily negotiate with Sprint under the time frames of Section 252 of the Act *solely* with respect to the specific standards of Section 251(b) of the Act. *See* Exhibits A, B, C and D attached hereto (correspondence between the parties specifying the scope of negotiations). Even though the Act permits entities to negotiate "without regard" to the Section 251(b) standards (*see* 47 U.S.C. § 252(a)(1)), at no time did ITC agree to expand the scope of the negotiation beyond those stated standards.[3] Such standards are based on the requesting entity's status as a "telecommunications

[2] For purposes of this Response, ITC will reiterate the issue stated by Sprint in its Petition along with Sprint's statement of related sections, and proceed to respond accordingly.

[3] Moreover, these standards are biding upon the Commission when it arbitrates the matters now before it. *See Bell Atlantic-Delaware, Inc. v. Global NAPs South, Inc.*, 77 F.Supp.2d 492, 500 (D. DE 1999); *compare AT&T Communications Systems v. Pacific Bell*, 203 F.3d 1183, 1188 (9th Cir. 1999); *Indiana Bell Telephone Company, Inc. v. Smithville Telephone Company, Inc.*, 31 F.Supp.2d 628, 632 (S.D. IL 1998).

carrier." That status must be proven by the entity and self-proclamation is insufficient. Sprint has failed to make those demonstrations.

9. Rather than meet its burden of proof, Sprint inappropriately *presumes* throughout its Petition that it is a telecommunications carrier when it meets its contractual obligations to MCC – the only "service provider" that Sprint has identified to date. The Commission cannot permit Sprint to make such an inappropriate presumption. Sprint must prove that status and its standing to assert Section 251(b) rights applicable to this proceeding. *Compare* Petition, Exhibit A and 47 U.S.C. §§ 251(b)(2), 251(b)(3) and 251(b)(5). Sprint cannot sustain this burden of proof and, therefore, Sprint's overly broad definition of "end user" cannot stand.

10. The Act is clear that only "telecommunications carriers" can request interconnection under Section 251(b). *See, e.g.*, 47 U.S.C. § 252(a)(1). The entity claiming such status has the burden of proving that status; self-proclamation is insufficient. *See Southwestern Bell Telephone Co. v. FCC,* 19 F.3d 1475, 1481 (D.C. Cir. 1994). To be a "telecommunications carrier" under 47 U.S.C. § 153(44), one must be a "common carrier." *See Virgin Islands Telephone Corporation v. FCC,* 198 F.3d 921, 926-927 (D.C. Cir. 1999) (*"VITELCO"); see also National Association of Regulatory Utility Commissioners v. FCC,* 525 F.2d 630 (D.C. Cir. 1976), *cert denied,* 425 U.S. 992 ("*NARUC I*").

11. The two-part test for determining whether a carrier is, *in fact*, a telecommunications carrier/common carrier is set forth in *NARUC*. The first prong of the test requires a determination of whether the entity, in this case Sprint, provides indiscriminate services to its potential users. *Id.* at 642. The second prong requires a determination of whether the carrier alters the content of the users' transmissions. *See National Association of Regulatory*

Utility Commissioners v. FCC, 533 F.2d 601, 609 (D.C. Cir. 1976) ("*NARUC II*")(the entity's "system must be such that customers 'transmit intelligence of their own design and choosing.'") (footnote omitted).

12. Moreover, in order to establish such status, a party must prove, though a fact-intensive inquiry, as it requires a demonstration that the entity "holds itself out indiscriminately." *See United States Telecom Association v. FCC*, 295 F.3d 1326, 1329 (D.C. Cir. 2002) *quoting Iowa v. FCC*, 218 F.3d 756, 759 (D.C. Cir. 2000).

> But a carrier will not be a common carrier where its practice is to make individualized decisions, in particular cases, whether and on what terms to deal. It is not necessary that a carrier be required to serve all indiscriminately; it is enough that its practice is, in fact, to do so.

NARUC I, 525 F.2d at 641 (footnotes omitted); *see also VITELCO*, 198 F.3d at 927.[4] To this end, it is equally clear that "holding out to serve indiscriminately" is the "key determinant" of common carrier/telecommunications carrier status. *VITELCO*, 198 F.3d at 927 *citing NARUC I*, 525 F.2d at 642.

13. When these standards are applied, the facts that Sprint has provided at best demonstrate: (1) that it has entered into a private contract with MCC where it supports in some undisclosed manner MCC's "offering of local and long distance voice services to the general public in the service territories of ITC" (Petition at 13 (¶23)); (2) that the only entity Sprint has such a relationship with is MCC because no other entity was disclosed (*see id.* (¶24)); and (3) that Sprint has provided no demonstration of the indiscriminate holding out to others and, in fact, no demonstration at all as to what its practice actually is in the State of South Dakota. *See id.* at 14-15 (¶25)(Sprint notations to other states within which it is operating).

[4] ITC notes that an entity may be a common carrier for some of its services, but not for others. *See NARUC II*, 533 F.2d at 608.

14. As a result, there is no basis for a finding of "telecommunications carrier" status by Sprint when it meets its contractual obligations to MCC, let alone any demonstration of the absolute predicate facts that the law requires to be demonstrated. Accordingly, Sprint's suggestion that it is a telecommunications carrier is without basis and should be rejected by the Commission and ITC's proposed definition for "end user" should be adopted.

15. Even in the unlikely event that Sprint could demonstrate that it possesses the necessary telecommunication carrier status when it fulfills its contractual obligations to MCC, that demonstration does not end the inquiry. The Section 251(b) duties that ITC owes to telecommunications carriers and that are at issue here – Sections 251(b)(2) (Local Number Portability ("LNP"), Section 251(b)(3) (Dialing Parity) and Section 251(b)(5) (Reciprocal Compensation) (*see* Petition, Exhibit A) – and require that the entity triggering those duties has a relationship with the end user for which ITC will compete. Sprint admits that this relationship is *solely* between MCC and the end user; Sprint has no relationship at all with the end user. *See id.* at 13 (¶24).

16. For example, the Section 251(b) duties at issue are applicable to *local exchange carriers*.

> The term `local exchange carrier' means any person that is engaged in the provision of telephone exchange service or exchange access. Such term does not include a person insofar as such person is engaged in the provision of a commercial mobile service under section 332(c), except to the extent that the Commission finds that such service should be included in the definition of such term.

47 U.S.C. §153(26). Telephone Exchange Service is defined as

> A) service within a telephone exchange, or within a connected system of telephone exchanges within the same exchange area operated to furnish to *subscribers* intercommunicating service of the character ordinarily furnished by a single exchange, and which is covered by the exchange service charge, or (B) comparable service provided through a system of switches, transmission

> equipment, or other facilities (or combination thereof) by which a *subscriber* can originate and terminate a telecommunications service.

47 U.S.C. §153(47)(emphasis added). The *subscribers* are the end users that, as Sprint admits, only MCC serves. *See* Petition at 13 (¶24).

17. The same conclusion is also reached with respect to LNP, dialing parity and reciprocal compensation. LNP is defined as the "ability of *users of telecommunications services to retain, at the same location, existing telecommunications numbers* without impairment of quality, reliability, or convenience when switching one telecommunications carrier to another." 47 U.S.C. § 153(30) (emphasis added). Moreover, as stated by the FCC, LNP was required of LECs so "that customers can change their local service providers without having to change their phone number. Number portability promotes competition by making it less expensive and less disruptive for a customer to switch providers, thus freeing the customer to *choose the local provider* that offers the best value. " *In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996; Interconnection between Local Exchange Carriers and Commercial Radio Service Providers, First Report and Order*, CC Docket Nos. 96-98,95-185, 11 FCC Rcd 15499 (1996) ("*First Report and* Order") at 11 FCC Rcd at 15511 (n.11)(emphasis added).

18. To be sure, telephone numbers are issued to an end user by his or her local service provider, and the end user receives service from that local service provider at his/her "location." The local service provider is MCC. While Sprint may provide some back office functions (*see* Petition at 13-14 (¶24)) related to the telephone numbers that are provided by MCC to *its* end users, those numbers are assigned to an end user by MCC, and Sprint has not suggested otherwise. If end users do choose to switch their service from ITC, that service would be

switched to MCC and not Sprint because MCC is the carrier who offers services and bills the end user customer.

19. Thus, all "users" of telephone numbers at issue in this proceeding, in the context of the only third party that is disclosed by Sprint, are those end users that are using MCC's local exchange services. Consequently, no ultimate end user customer will be asking Sprint to port his/her telephone number from ITC to Sprint. Only MCC has a relationship with the end user requiring a number, in fact, the end users likely do not even know that Sprint exists since the only relationship they have is with MCC.

20. The same requirement of the end user relationship is likewise applicable with respect to any Section 251(b)(3) Dialing Parity issue. Dialing Parity relates to the ability of consumers to route automatically, "without the use of any access code, their telecommunications to the telecommunications service provider of the customer's designation from 2 or more telecommunications service providers (including such local exchange carrier)." 47 U.S.C. § 153(15). In its very brief description of the relationship with MCC (*see* Petition at 13 (¶¶23 - 24)), Sprint has not indicated that it can be chosen by the end user making the choice of his or her local service provider when Sprint fulfills its contractual obligations to MCC. Likewise, the Act states that ITC's Section 251(b)(3) obligation is "the duty to provide dialing parity to competing providers of telephone exchange service and telephone toll service . . . ." 47 U.S.C. § 251(b)(3); *see also* 47 C.F.R. §§ 51.205 (Dialing Parity. General), 51.207 (Local dialing parity); 51.209 (Toll dialing parity). ITC's duties regarding dialing parity, in this case, would be to MCC not Sprint. As explained above, Sprint will not be a "competing" provider of telephone exchange service because it has no relationship with the subscribers/end users for whom ITC will compete. ITC's competitor is MCC.

21. Sprint has no ability to trigger the Section 251(b)(3) Dialing Parity obligations of ITC. Only the entity that will compete with ITC for end user services – which Sprint has identified as MCC – has that ability.[5] Accordingly, Sprint's efforts to assert dialing parity rights when Sprint acts under its private contract with MCC is without basis in law and fact.

22. Similarly, in the context of the proposed interconnection agreement, Sprint appears to have requested that ITC include MCC's end user subscriber listing information in the ITC white page directory. *See generally* Petition, Exhibit D at 17-18, *see also* Issue 11, *infra*. Access to directory listing information must comply with the requirements of Section 222 of the Act regarding, among other items, the provision of "subscriber list information" ("SLI"). 47 U.S.C. § 222(e). Section 222(e), in turn, clearly states that the obligation arises with respect to the relationship that the entity providing the information has with the subscriber/end user. "[A] telecommunications carrier *that provides telephone exchange service shall provide subscriber list information gathered in its capacity as a provider of such service. . . .*" *Id*. (emphasis added). As properly demonstrated above, Sprint provides no "telephone exchange service" as it has no relationship with a subscriber/end user when Sprint acts under its private contract with MCC.

23. Thus, Sprint will never gather SLI that can be provided to ITC. Only MCC will have the relationship with the end user whose SLI Sprint is attempting to include in the ITC directory. Such a result cannot be reconciled with the requirements of Section 222(e) of the Act.

24. Finally, Section 251(b)(5) establishes the duty for LECs to enter into "reciprocal compensation arrangements", a duty that applies specifically to the arrangements between two LECs. *See, e.g., First Report and Order,* 11 FCC Rcd at 16012-16013 (¶¶1033-1034); 47 C.F.R. § 51.701(b); *Southwestern Bell Telephone v. Brooks Fiber Comms.*, 235 F.3d 493, 495 (10th Cir.

[5] ITC does not compete with Sprint for the services that Sprint offers to ITC. *See* Petition at 13-14 (¶24).

2000) ("Reciprocal compensation is designed to compensate an LEC for completing a local call from another LEC.") Here the 2 LECs will be MCC and ITC.[6]

25. Likewise, the FCC (in defining reciprocal compensation) and Congress (in defining the pricing standards for reciprocal compensation) acknowledged the significance of the LEC with the originating network. "For purposes of this subpart, a reciprocal compensation arrangement between two carriers is one in which *each of the two carriers* receives compensation from the other carrier for the *transport and termination* on each carrier's network facilities of *telecommunications traffic that originates on the network facilities of the other carrier*." 47 C.F.R. §§ 51.701 (c) and (e) (emphasis added). Congress stated clearly that "such terms and conditions provide for the mutual and reciprocal recovery by each carrier of costs associated with the transport and termination on each carrier's network facilities *of calls that originate on the network facilities of the other carrier*." 47 U.S.C. § 252(d)(2)(A)(i) (emphasis added). Sprint, in its private contract with MCC, does not "originate" a call. The "origination" of a call occurs *only* on the network of the ultimate provider of end user service which is MCC.

The FCC confirmed this analysis.

> We define "transport," for purposes of section 251(b)(5), as the transmission of terminating traffic that is subject to section 251(b)(5) from the interconnection point between *the two carriers* to the terminating carrier's end office switch that *directly serves the called party (or equivalent facility provided by an non-incumbent carrier).*

First Report and Order, 11 FCC Rcd at 16015 (¶1039) (emphasis added). Further, the applicable FCC rules expand upon the same concept.

> (c) *Transport.* For purposes of this subpart, transport is the transmission and any necessary tandem switching of telecommunications traffic subject to section

[6] ITC notes that MCC has requested authority to operate as a competitive local exchange carrier within ITC's service area. *See* In the Matter of the Application of MCC Telephony of the Midwest, Inc., d/b/a Mediacom for a Certificate of Authority to Provide Interexchange and Local Exchange Service in the Castlewood, Elkton, Estelline, Hayti, Lake Norden and White Exchanges, TC 06-189.

> 251(b)(5) of the Act from the interconnection point between *the two carriers* to *the terminating carrier's end office switch that directly serves the called party, or equivalent facility provided by a carrier other than an incumbent LEC.*
>
> *(d) Termination.* For purposes of this subpart, termination is the switching of telecommunications traffic at the *terminating carrier's end office switch, or equivalent facility, and delivery of such traffic to the called party' s premises.*
>
> *(e) Reciprocal compensation.* For purposes of this subpart a reciprocal compensation arrangement between two carriers is one in which each of *the two carriers* receives compensation from the other carrier for the *transport and termination* on each carrier's network facilities of *telecommunications traffic that originates on the network facilities of the other carrier.* (emphasis added).

47 C.F.R. §§ 51.701(c), (d) and (e). Since it is MCC that operates the terminating network and is one of "two carriers" (*see, e.g.*, 47 C.F.R. §§ 51.701 (c) and (e)) involved in the local traffic at issue, it is only MCC that can assert the right to enforce ITC's Section 251(b)(5) duty.

26. Accordingly, for all of these reasons, Sprint's suggestion through its definition of "end user" that it may assert the applicable Section 251(b) rights on behalf of other third parties, including MCC, should be rejected.

27. Finally, and in order to ensure that the record before the Commission is clear, ITC does not oppose MCC's efforts to contract with third parties (such as Sprint) for those services that MCC believes it requires to compete with ITC. Private contracts for back office functions and other network-based services are not uncommon. However, the need of MCC to have a contract with Sprint does not provide the basis for Sprint to then use that contract as a means of undermining the rights of ITC under the Act to negotiate directly with the entity with which ITC will compete with for the end users located in ITC's service area. That entity is MCC. The FCC's discussion of reciprocal compensation provided above, for example, confirms that the Act anticipates bilateral discussions with respect to competitive interconnection.

28. Accordingly, MCC is the real party in interest and has the obligation to come forward and enter into negotiations with ITC, and the Commission should ensure it is oversight of this interconnection arrangement. Therefore, the Commission should not let MCC hide behind Sprint, and Sprint should not be permitted to shield MCC from negotiating the terms and conditions of an interconnection agreement with ITC. Absent requiring such direct interconnection negotiations, the Commission would be ensuring that ITC does not have the opportunity to identify those issues and to propose those terms and conditions that ITC believes are necessary for fair competitive interconnection within its service area. Such a result is antithetical to the public interest and the Commission should ensure that such result does not occur. Thus, Sprint should not be permitted to assert, through the definition of "end user" within the proposed agreement, rights under the Act that only MCC can assert.

ISSUE 2:

Should the Interconnection Agreement permit the Parties to combine wireless and wireline traffic on interconnection trunks?

Related Agreement Provisions: Scope of the Agreement, Section1.1; Definition of Local Traffic, Section 2.16, and as used the term is used throughout the document; Definition of Telecommunications Traffic, Section 2.24, and as the term is used throughout the document; Definition of Percent Local Usage (PLU), Section 2.19, and as the term is used in Section 8.2.2; Interconnection, Section 3.5; and, Interconnection Facility, Section 5.5.

ITC Response:

29. No. From the outset, ITC respectfully submits that Sprint has expanded the request for interconnection it sent to ITC. In that request, Sprint defined the scope of the agreement that Sprint sought from ITC as the establishment of interconnection with Sprint in its role as a "competitive local exchange carrier" ("CLEC"). *See* Petition, Exhibit A. As such, the scope of the request was for CLEC interconnection which is land-line traffic that originates and

terminates within the ITC certificated area. A CMRS provider is not a Local Exchange Carrier. *See* 47 U.S.C. § 153(26). Sprint's efforts to expand the issues in this proceeding to include CMRS traffic (as well as other non-wireline local traffic such as through Issue 3) is, in effect, a new request for interconnection, the time for which arbitration has passed.

30. Sprint's initial request for interconnection and negotiations with ITC was dated November 10, 2005. On February 27, 2006, ITC provided Sprint with a proposed interconnection agreement which specifically excluded additional types of carrier traffic. On March 9, 2006, Sprint provided its comments and additions to the ITC proposed interconnection agreement. At that time, Sprint first inserted provisions relating to CMRS traffic.

31. The Commission should reject all efforts by Sprint to include additional types of carrier traffic (such as CMRS traffic) within the agreement that were beyond the scope of Sprint's November 2005 request for interconnection. Sprint's November 2005 correspondence to ITC is the only request that is ripe for Commission review. Thus, this Commission should reject Sprint's request to include CMRS traffic within any resulting interconnection agreement.

32. Moreover, Sprint has not demonstrated that it is authorized to provide CMRS service. Accordingly, it would not be Sprint's traffic that it is seeking to terminate to ITC. Consequently, for the reasons stated in Issue 1, the Commission should for this reason alone reject Sprint's efforts to expand the scope of the agreement that it originally requested in order to include CMRS traffic.

33. Further, and even if the issue were required to be addressed, Sprint's articulation of Issue 2 (as well as that involved in Issue 3) appears to be that Sprint is seeking to become a competitive tandem operator in the State of South Dakota. However, Sprint has not identified any provisions of the Act wherein competitive tandem arrangements are contemplated within the

standards of Section 251(b)(2), Section 251(b)(3) or Section 251(b)(5). Thus, for this reason, the Commission should also reject Sprint's position on Issue 2 (as well as Issue 3).

34. Assuming that the Commission determines there is a need to address CMRS traffic within this proceeding, ITC submits that the Commission should direct the parties to address the distinct treatment of CMRS through properly fashioned terms and conditions that reflect the factual differences between traditional CLEC landline service (which is what ITC is willing to address under the terms and conditions of the proposed agreement now before the Commission) and wireless services provided by CMRS providers.

35. Based on this Commission's experience in addressing CMRS related issues, ITC is confident this Commission is well aware of the differences between the treatment of landline service under the applicable FCC rules governing reciprocal compensation versus those applicable to CMRS traffic. This distinct treatment is reflected by the FCC rules themselves. By way of example, the Code of Federal Regulations, specifically Section 51.701(a) provides:

> The provisions of this subpart apply to reciprocal compensation for transport and termination of telecommunications traffic between LECS and other telecommunications carriers.

47 C.F.R. §51.701(a). "Telecommunications traffic" means:

> (1) Telecommunications traffic exchanged between a LEC and a telecommunications carrier other than a CMRS provider, except for telecommunications traffic that is interstate or intrastate exchange access, information access, or exchange services for such access (see FCC 01-131, paragraphs 34, 36, 39, 42-43); or
>
> (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.

47 C.F.R. § 51.701(b)(1) and (2). A "Major Trading Area" or "MTA" is vastly different in size than the local exchange of a LEC. While ITC operates in a well-defined, ascertainable local calling area, CMRS providers operate in Major Trading Areas ("MTA"), which are significantly

larger than the LEC's local calling area. In fact, the MTA within which ITC's service area is located is the Minneapolis MTA, which comprises, in part, a significant portion of the northeast part of South Dakota, let alone portions of several other states.

36. In light of geographic disparity alone, if CMRS traffic were to be delivered under the terms of the interconnection agreement, appropriate arrangements for the measurement, billing and compensation of that traffic would need to be made in order to ensure that ITC is properly compensated. It is only rational, therefore, that reciprocal compensation arrangements must necessarily differ based upon whether the agreement is intended to govern two LEC or a LEC and a CMRS provider. *See* 47 C.F.R. §§ 51.701(a) and (b).

37. Additionally, because of the mobile nature of the wireless caller, the location of the wireless caller at the time of the call is not known. As a result, LECs, like ITC, are dependent upon the CMRS provider for an accurate representation of the actual jurisdiction of the CMRS call and the location of the wireless caller. The consequences of this dependency by the LEC upon the CMRS provider to provide the proper information cannot be overstated – certainty as to whether a call is local, intraMTA or interMTA in nature determines the compensation arrangement which governs the traffic. Compounding this issue is the fact that, during the course of the negotiations, Sprint provided no specific information as to the identity of any CMRS providers to be included under the interconnection agreement; the scope of service and traffic, or what the geographic scope of service and traffic of these CMRS providers may be involved

38. Therefore, it would appear that under Sprint's current proposal, a CMRS provider that contracts with Sprint for the termination of that CMRS provider's traffic to ITC is given the benefit of originating a call anywhere within an MTA or across MTA boundaries and availing

itself of local transport and termination services to terminate those calls on the LEC's network. This result, should it be allowed (which ITC submits it should not), could result in the CMRS provider's avoidance of paying the LEC's tariffed access charges and depriving the LEC of the appropriate compensation as set by the LEC's applicable tariffs. This concern is not hypothetical. In light of the FCC's *First Report and Order*, the FCC indicated that interMTA traffic is not subject to Section 251(b)(5) reciprocal compensation under the Act and thus is subject to access charges. *See First Report and Order,* 11 FCC Rcd at 16016-16017 (¶1043); *see also* 47 C.F.R. § 51.701(b)(2). Section 251(b)(5) of the Act does not set forth the terms and conditions of access. Section 251(g) in fact excludes access services from the scope of 251(b). *See, e.g.,* 47 C.F.R. § 51.701(b)(1). As such, ITC's access rates as set by its applicable tariffs are not subject to negotiation and, more importantly, are not subject to arbitration under the Act.

39. For these reasons, and assuming *arguendo* that CMRS traffic were to be included in the agreement, the traffic should be segregated on separate trunks apart from wireline local traffic so that accurate measurement can occur and the proper compensation terms and conditions can be applied to CMRS traffic. This result, in turn, ensures that the proper differences from wireline traffic are recognized. If CMRS traffic were to be included, then there are issues of compensation and the nature of traffic to and from CMRS providers that need to be addressed, and on which Sprint has effectively remained silent in its Petition. While ITC is willing to agree to bill and keep for landline traffic subject to the absolute ability to reopen negotiations to alter that recovery mechanism (*see* Issue No. 9, *infra*), ITC cannot agree to such a bill and keep arrangement for CMRS traffic if such traffic were to be included within the agreement now before the Commission. Moreover, if CMRS traffic is to be combined improperly with other forms of traffic, then there are significant issues that must be addressed.

Those issues, however, have not been addressed adequately by Sprint in the first instance. For example, Sprint has not explained its proposal for traffic identification, traffic measurement, interMTA versus intraMTA calling components, the ability to audit any such traffic, and proper compensation to address out of balance considerations for the CMRS component of traffic.

40. Accordingly, ITC's position during negotiations was that any CMRS traffic which Sprint intended to deliver must be governed by a separate agreement between the parties which would account for the distinctions between wireless and wireline calling and ensure that ITC was properly compensated for the origination and termination of those wireless calls. Such an arrangement would require that CMRS traffic be separated from local wireline traffic on separate trunks. While Sprint has indicated that it will be "responsible for compensation for all traffic that is terminated over the interconnection facilities" and that it will provide the "necessary records for audit purposes to ensure accurate billing[]", such commitment rings hollow as it apparently affords Sprint the opportunity to terminate traffic without regard to the proper intercarrier compensation mechanisms – reciprocal compensation under 251(b)(5) and exchange access under Section 251(g) -- as well as the geographic distinctions and realities associated of the measurement of local and access traffic. *See* Petition at 16 (¶29).

ISSUE 3:

> **Should the Interconnection Agreement permit the Parties to combine all traffic subject to reciprocal compensation charges and traffic subject to access charges onto interconnection trunks?**
>
> **Related Agreement Provisions: Scope of the Agreement, Section 1.1 and 1.2; Definition of Traffic, Section 2.25 and as the term is used throughout the document; Definition of Percent Local Usage (PLU), Section 2.19, and as the tern is used in Section 8.2.2; Interconnection, Sections 3.4 and 3.6; and, Intercarrier Compensation, Sections 8.2.1and 8.2.2.**

ITC Response:

41. No. The terms and conditions that apply with respect to ITC's provision of exchange access service (which is an input to long distance/telephone toll service (*compare* 47 U.S.C. §§ 153(16) and 153(48)) are governed by ITC's intrastate special access price list and interstate access tariffs. These price lists and tariffs are not subject to the negotiation under Section 252(a)(1) of the Act and specifically excluded from the scope of Section 251(b)(5) by the FCC. *See, e.g., In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, and Intercarrier Compensation for ISP-Bound Traffic, Order on Remand and Report and Order*, CC Docket Nos. 96-98 and 99-68, FCC 01-131, released April 27, 2001 at ¶¶30-41. As the FCC has stated, this "limitation in section 251(g) makes sense when viewed in the overall context of the statute. All of the services specified in section 251(g) have one thing in common: they are all access services or services associated with access . . . . [B]oth the Commission and the states had in place access regimes applicable to this traffic . . . . Accordingly, Congress excluded all such access traffic from the purview of section 251(b)(5)." *Id*. at ¶37 (footnotes omitted.).

42. Moreover, Sprint's efforts to expand the scope of negotiations under Section 252 of the Act should be rejected outright by the Commission and the issue dismissed. As with Issue 2, Sprint's articulation of Issue 3 appears to be that Sprint is seeking to become a competitive tandem operator in the State of South Dakota. However, Sprint has not identified any provision of the Act contemplating competitive tandem arrangements are contemplated within the standards of Section 251(b)(2), Section 251(b)(3) or Section 251(b)(5). Thus, for this reason, the Commission should reject Sprint's position on Issue 3 (as it likewise should do with respect to Issue 2) and adopt ITC's position.

ISSUE 4:

Should the Interconnection Agreement contain provisions for indirect interconnection consistent with Section 251(a) of the Act?

Related Agreement Provisions: Definition of Interconnection, Section 2.10; Indirect Traffic Interconnection, Sections 6.1 and 6.2; and, Dialing Parity, Section 9.1.

ITC Response:

43. No. While ITC understands Section 251(a) of the Act requires direct or indirect interconnection with the facilities of other telecommunications carriers, ITC believes it is in compliance with the obligations and duties set forth in Section 251(a) as it has offered interconnection at technically feasible points within each of its exchanges. ITC notes, however, that Sprint has oversimplified this issue. *See* ITC Response to Issue 5, *infra*. ITC has proposed and respectfully requests that this Commission adopt its position that Sprint should establish points of interconnection within each of ITC's exchanges.

44. ITC has indicated willingness to establish a point of direct interconnection within each of its local exchange areas. This arrangement is both technically and economically feasible. Sprint presumably proposes to establish its point of interconnection ("POI") at the SDN tandem in Sioux Falls, South Dakota, although to date, it has refused to identify its POI. Sprint's proposal imposes an untenable obligation upon ITC by requiring it to transport Sprint's traffic to and from the SDN tandem at its own cost. Moreover, absent proper traffic identification efforts, by both parties, ITC may potentially jeopardize its terminating access revenue associated with Sprint-delivered traffic. Sprint's position, therefore, should be rejected by the Commission.

ISSUE 5:

In an indirect interconnection scenario, is the ILEC responsible for any facility or transit charges related to delivering is origination traffic to Sprint outside of its exchange boundaries?

Related Agreement Provisions; Indirect Traffic Interconnection, Section 6.3 and 6.4.

ITC Response:

45. No. Sprint's articulation of the issue misconstrues the scope and nature of Section 251(a)'s indirect interconnection obligation. As the FCC has stated, an "indirect connection" relates to the physical connection of the two networks, and has *nothing* to do with the exchange of traffic. *See In the Matter of Total Telecommunications Services, Inc. and Atlas Telephone Company, Inc. v. AT&T Corporation, Memorandum Opinion and Order*, File No. E-97-003, FCC 01-84, released March 13, 2001 ("*Atlas Decision*") at ¶23 ("We have previously held that the term 'interconnection' refers solely to the physical linking of two networks, and *not* to the exchange of traffic between networks."); *see also* 47 C.F.R. § 51.5 (Definition of "Interconnection"). The FCC also has concluded that Section 251(a) creates no requirement for carrier to deliver traffic to another carrier. *See Atlas Decision* at ¶¶26, 27. Similarly, Section 251(a) does not require the ITC to exchange traffic with Sprint nor does it require the ITC to deliver traffic through third party carriers as the request of Sprint.

46. Sprint sought interconnection from ITC. Thus, ITC's obligation is to provide to Sprint a point of connection within each ITC exchange. Even in the most onerous Section 251(c) interconnection obligations (which do not apply to ITC because it is a rural telephone company), the interconnection point must be within the ILECs' network. *See, e.g.*, 47 U.S.C. § 252(c)(2). It is illogical to conclude that the less onerous requirements of Sections 251(a) and 251(b) would require more of ITC. *See Atlas Decision* at ¶25 (Section 251 of the Act creates a three-tiered hierarchy of escalating obligations, and "[a]ccordingly, it would not be logical to confer a broader meaning to this term [referring to the term ["interconnection"] as it appears in the less-

burdensome section 251(a).") In any event, Sprint possesses options for its physical interconnection within the ITC network *(see First Report and Order,* 11 FCC Rcd at 16015(¶1039)), and the costs it incurs to do so are part of the costs that Sprint recovers from its reciprocal compensation arrangement with ITC. *See Texcom, Inc., d/b/a Answer Indiana v. Bell Atlantic Corp., d/b/a Verizon Communications, Order on Reconsideration,* File EB-00-MD-14, FCC 02-96, released March 27, 2002 ("*Texcom*") at ¶4 (The charges for the facility that connects the CLEC network to the incumbent's Point of Interconnection ("POI") are borne by the CLEC just as the incumbent LEC bears the costs of its dedicated facilities to the POI and is recoverable by the CLEC through reciprocal compensation.).

47. To be sure, ITC is not obligated to provision solely on behalf of Sprint a local transport arrangement that is superior to that provided by ITC to one of its end users. *See Iowa Utilities Board v. Federal Communications Commission,* 219 F.3d 744, 758 (8th Cir. 2000) (Court rejecting FCC superior quality rules). But that is, in effect, Sprint's demand of ITC - Sprint wants to impose transport and transit obligations upon ITC *solely as a result of* Sprint's selection as to how it will arrange for facilities to connect to the ITC network. Sprint's efforts should be rejected outright.

48. Sprint's reliance on other state commission decisions, Calling Party Pays ("CPP"), and Section 51.703(b) should not dissuade the Commission from rejecting Sprint's position. While other state commissions may have required these arrangements to be imposed upon LECs, ITC respectfully submits that those decisions are not consistent with the controlling requirements. As far as Sprint's reliance on CPP, ITC notes that Sprint's reference to CPP relies upon the "carriers' interconnection point" (Petition at 19(¶40)) which must be on the network of ITC as discussed above. Sprint's reliance on Section 51.703 is equally unavailing in that ITC is

not charging Sprint for any of the ITC-originated traffic. Rather, any transit charges are being assessed by the transiting carrier and not ITC, and, under *Texcom*, the transit charges that Sprint has elected to incur arising from its decision as to how to interconnect to the ITC network are solely Sprint's costs.

49. In any event, Section 251(a) does not require tandem providers to furnish transiting services. Such arrangements are purely voluntary and outside the Act. *See Petitions of WorldCom, Inc., Cox Virginia Telcom, Inc. and AT&T Communications of Virginia, Inc. Pursuant to Section 252(e)(5 of the Communications Act for Preemption of the Jurisdiction of the Virginia State Corporation Commission Regarding Interconnection Disputes with Verizon Virginia, Inc.*, Memorandum Opinion and Order, FCC 02-173, CC Docket Nos. 00-218, 00-249, and 00-251, released July 17, 2000, at ¶117. As indicated above (*see* Section 1, *supra*), ITC has agreed to negotiate with Sprint only with regard to the standards of Section 251(b) of the Act. Thus, there is nothing to arbitrate on Sprint's suggested transiting arrangements because such arrangements are beyond the scope of the parties' negotiations.

50. Assuming, *arguendo*, that some form of transiting obligation were to be imposed upon ITC, ITC respectfully requests that the Commission consider the consequences of such decision. First, ITC would be required to arrange and pay for network facilities outside of its ILEC service area. To date, that has not been required of it - ITC has no authority to do so. ITC is authorized to offer local exchange service only within its certificated area. Second, even if ITC and Sprint were to agree to mutually acceptable terms with the tandem provider, there is simply no duty under the Act which requires ITC, at its own expense and inconvenience, to agree to a service arrangement wholly for the benefit of Sprint. As a result, ITC requests that Sprint establish a technically feasible direct point of interconnection within each of ITC's exchanges.

51. Without waiving any arguments previously made, should this Commission determine that indirect interconnection is required by the Act, ITC asserts that it should bear no financial responsibility for any of the facility and transiting costs incurred as a result of indirect interconnection. Sprint has failed to articulate any infeasibility of direct connection within each ITC exchange. Consequently, to the extent that Sprint is allowed to dictate terms of indirect interconnection to ITC, Sprint should bear any and all costs associated therewith.

ISSUE 6:

What Direct Interconnection Terms should be contained in the Interconnection Agreement?

Related Agreement Provisions: Interconnection Sections 3, 3.1, 3.1.1, 3.1.1.1, 3.1.1.2, 3.2, 3.3, 3.4, Interconnection Facility, Sections 5.1, 5.1.1, 5.1.2, 5.1.3, 5.1.4, 5.1.5, 5.1.6, 5.2, 5.2.1., 5.2.2, 5.2.3, 5.2.4, 5.2.5.

ITC Response:

52. In its Petition, Sprint set forth the following position with regard to direct interconnection: "Sprint proposes to establish a POI on Interstate's network to deliver Sprint-originated traffic and for Interstate to establish a POI on Sprint's network to deliver Interstate originated traffic." ITC respectfully submits that the establishment of two POIs is nonsensical. Sprint cites no rules or regulations which provide authority or precedent for its proposal. As such, ITC can identify no rational basis for Sprint's position.

53. ITC respectfully submits that a POI within each ITC exchange should be established for the purpose of achieving physical interconnection. Each party is responsible for making necessary arrangements for the facilities to their respective side of the POI. ITC is willing to agree to such an arrangement. However, Sprint bears both the responsibility for the arrangement of and costs associated with any facilities required on its side of the POI. Moreover, and as discussed in response to Issue 5, the facilities and/or network arrangements

that Sprint may require to transport traffic to and from its side of the POI are Sprint's costs. *See generally Texcom*. The physical connection (i.e., the facilities) required to achieve interconnection is separate and part from the transport and termination of Section 251(b)(5) traffic.

ISSUE 7:

What are the appropriate rates for direct interconnection facilities?

Related Agreement Provisions: Interconnection Facility, Sections 5.3 and 5.4.

ITC Response:

54. As indicated in the response to Issue 6, ITC's proposed resolution for interconnection is the establishment of a POI within each ITC exchange. This directive, in turn, would require each party to be responsible for the facilities required by it on its side of the POI. Accordingly, there would be no need for direct interconnection facilities between the parties, and thus the need for the Commission to determine any rates would be unnecessary.

55. Assuming, *arguendo*, that the Commission nonetheless determines that rate needs to be established, Sprint's proposed use of TELRIC is without basis. The FCC has made clear that TELRIC pricing principles which Sprint advocates do not apply to rural telephone companies like ITC. *See First Report and Order*, 11 FCC Rcd at 15858 (¶706), 15891 (¶783), 15964 (¶934), 15973 at (¶957), 16026 (¶1059), 16301 (¶1068), 16041-42 (¶1088), and 16056 (¶1115). The FCC's decision was motivated by the fact that such pricing principles could in fact be harmful to rural LECs. *See Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, First Report and Order, 11 FCC Rcd 15499, 15858 at ¶706, 15891 at ¶783, 15964 at ¶934, 15973 at ¶957, 16026 at ¶1059, 16301 at ¶1068, 16041-42 at

¶1088, and 16056 at ¶1115, (1996) (CC Docket No. 96-98). Since ITC is a rural telephone company, Sprint' efforts to impose TELRIC pricing upon ITC should be rejected.

56. Sprint's Petition independently confirms this conclusion. Sprint cites to Section 252(d)(1)(A)(i) (Petition at 22 (¶48) as support for its position. That section clearly states that the standard relates to the "just and reasonable rate for the interconnection of facilities and equipment for purposes of subsection (c)(2) of section 251. . . ." 47 U.S.C. § 252(d)(1). However, Sprint has confirmed that it does not seek any Section 251(c) types of interconnection. *See* Exhibits A through D attached hereto (written correspondence between the parties evidencing the scope of negotiations). Thus, Sprint's Petition and actions demonstrate that TELRIC does not apply.

57. Accordingly, ITC asserts that the appropriate compensation rates for the facilities, if any, required by one of the parties from the other are those special access rates applicable to central equalized access services. These rates recover the facility costs associated with direct interconnection and should be adopted by the Commission.

ISSUE 8:

When a two-way interconnection facility is used, should Sprint and Interstate share the cost of the Interconnection Facility between their networks based on their respective percentages of originated traffic?

Related Agreement Provisions: Interconnection Facility, Sections 5.2, Schedule 1, 5.2.1, 5.2.2, 5.2.3., 5.2.4, 5.2.5, and 5.4.

ITC Response:

58. This issue as identified by Sprint is directly related to ITC's position as articulated in its responses to Issues 6 and 7 and ITC refers the Commission to its positions as outlined above. ITC does not believe any costs should be incurred with the establishment of facilities by both parties on their side of the POI within each exchange of ITC. If Sprint requires facilities

that are outside of ITC's network or that are within the ITC certificated area to reach Sprint's side of any POI, any costs associated therewith would be the sole responsibility of Sprint.

ISSUE 9:

What is the appropriate reciprocal compensation rate for the termination of Telecommunications Traffic, as defined by Sprint in the Agreement?

Related Agreement Provisions: Intercarrier Compensation, Section 8.1.1 and Schedule 1.

ITC Response:

59. ITC is willing to adopt bill and keep for purposes of intra-exchange, local landline traffic, *i.e.*, landline traffic that originates and terminates within a certificated exchange area of ITC, provided, however, that ITC reserves an absolute option of changing this intercarrier compensation mechanism should one of the parties determine that the traffic is out of balance.

60. To make clear, however, ITC's position ***does not*** apply to the exchange of CMRS traffic when per-minute of use charges should be applied for the reasons stated in response to Issue 2, *supra*.

61. Accordingly, ITC cannot agree with Sprint's bill and keep proposal because it applies to CMRS traffic and would otherwise be subject to change using an undefined and vague test –"significantly out of balance." *See* Petition at 25 (¶56).

ISSUE 10:

Should Sprint's proposed language regarding Local Number Portability be adopted and incorporated into the Interconnection Agreement?

Related Agreement Provisions: Local Number Portability, Sections 10.1, 10.2, 10.3, 10.4, 10.5, 10.6, 10.7, and 10.8

ITC Response:

62. Sprint has incorrectly characterized ITC's position on this issue. During negotiations, ITC indicated that it would provide LNP in accordance with the terms and conditions as set forth in this Commission's Final Decision and Order in TC04-054, dated September 30, 2004. The Order required the implementation of intramodal LNP after December 31, 2005. During negotiations, ITC agreed to provide intramodal LNP in accordance with the Commission's September 20, 2004 Final Decision and Order, within 60 days of the effective date of the execution of any interconnection agreement at the rates and as specified in the applicable appendix to the interconnection agreement. ITC proposed similar language which required Sprint to provide intramodal LNP to ITC within 60 days of the effective date of this agreement at the rates specified in the applicable appendix to the interconnection agreement.

63. This proposal, however, does not extend to the exchange of CMRS traffic with ITC. As made clear in its response to Issue 2, all CMRS traffic issues should be dismissed from this proceeding. *See* Issue 2, *supra*. Assuming, *arguendo*, that the Commission addresses CMRS issues in this proceeding, per-minute charges should be applied for the exchange of CMRS traffic for the reasons stated by ITC. *See id.* Moreover, this Commission has granted a suspension of any intermodal LNP obligations. In any event, the underlying FCC requirement that ITC, as a small telephone company, provide intermodal porting has been vacated. *See United States Telecom Ass'n v. FCC*, 400 F.3d 29 (D.C. Cir. 2005).

ISSUE 11:

Should the Interstate- proposed Directory Listing provisions, as modified by Sprint, be adopted and incorporated into the Interconnection Agreement?

Related Agreement Provisions: Directory Listings and Distribution Services, Sections 15.2 and 15.3.

ITC Response:

64. ITC notes that the overarching issue in this Section is the proper definition of "end user" under the Agreement. ITC has explained its position on this issue in response to Issue 1, *supra*, and requests that the Commission adopt ITC's position regarding such definition.

65. In addition, however, Sprint seeks to add a line to Section 15.3 that states: "If Sprint provides "non-published" information regarding Sprint's End User to TELCO, TELCO will not charge Sprint." ITC is unclear as to what Sprint intends by this addition. Moreover, ITC does not provide any "non-published" service and thus should not be required to implement any procedures beyond those that ITC has in place to date. Accordingly, with respect to Section 15.3, the Commission should reject Sprint's proposed additional language.

ISSUE 12:

Whether this Commission should grant Sprint's request to consolidate the above-captioned matter with Sprint's Petition for Arbitration with Brookings Municipal Utilities d/b/a Swiftel Communications.

ITC Position:

66. In its Petition, Sprint made a formal request to have the above-captioned arbitration proceeding consolidated with Sprint's Petition for Arbitration with Brookings Municipal Utilities d/b/a Swiftel Communications ("Swiftel"), TC 06-176. While there may be a similarity of issues in the Petitions as filed by Sprint, ITC will not be in a position to make a firm decision with regard to Sprint's request until such time as its representatives have had the opportunity to review Swiftel's Response to Sprint's Petition for Arbitration. Accordingly, at this time, ITC is not in a position to agree that Sprint's request for consolidation is appropriate. Therefore, ITC respectfully requests an opportunity to update this Commission on the request for consolidation after its representatives have completed a review of Swiftel's responsive pleading.

ADDITIONAL ISSUES

67. Pursuant to Commission Rule 20:10:30 ITC identifies the following issue for arbitration by this Commission.

ISSUE 13:

Whether Extended Area Service ("EAS") traffic is covered under the proposed agreement?

ITC Position:

68. As the Commission is aware, ITC currently offers its end users within each of its exchanges the ability to augment their local exchange service to include optional EAS. In the discussion leading to the proposed agreement now before the Commission, a reference to EAS was included. *See* Exhibit D at 4 (§2.8). No substantive discussion of the provision was had between the parties regarding whether the reciprocal compensation arrangements envisioned by the proposed agreement would cover this form of optional EAS. Consistent with the Commission's authority to establish the definition of local areas for purposes of reciprocal compensation (*see, e.g., First Report and Order*, 11 FCC Rcd 16013-16014 (¶1035), ITC submits that excluding optional EAS from the scope of this agreement by the Commission is proper.

Sprint Position:

69. Unkonown.

CONCLUSION

For the foregoing reasons, ITC respectfully requests that this Commission find in favor of ITC on each of the issues as outlined above and approve an interconnection agreement which appropriately and accurately reflects those positions.

Dated this 13 day of November, 2006.

Respectfully submitted,
INTERSTATE TELECOMMUNICATIONS COOPERATIVE, INC.

By: Meredith A Moore

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing was sent via email to the following:

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on this 13th day of November, 2006.

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November 18, 2005

Ms. Heather Forney, Executive Director
South Dakota Public Utilities Commission
500 East Capitol Avenue
State Capitol Building
Pierre, South Dakota 57501

Re: Request for Interconnection from Sprint Communications Company L.P.

Dear Ms. Forney:

On November 10, 2005, Interstate Telecommunications Cooperative Inc. ("ITC") received a "Request for Interconnection" from Sprint Communications Company L.P. ("Sprint") which seeks negotiation for interconnection pursuant to Sections 251(a) and (b) of the Communications Act of 1934, as amended ("the Act"). Sprint also requests negotiations pursuant to Section 252(b)(1) of the Act, which establishes the arbitration deadlines for compulsory arbitration before this Commission.

The purpose of this letter is to notify the Commission and Sprint that ITC disputes whether Sprint is a telecommunications carrier entitled to interconnection pursuant to Section 251(a) and (b) of the Act, in ITC's service area. Therefore, ITC believes that Sprint's request is not a bona fide request for interconnection services. ITC raises this issue based on its understanding that local service would be provided over Mediacom Communications Corporation ("Mediacom") facilities and that Mediacom, in fact, would be offering service to subscribers. In this case, ITC believes that Mediacom would be the telecommunications carrier entitled to interconnection, once it applies for and receives authority from this Commission for a certificate of authority. ITC notes that a similar issue was raised in connection with Sprint's efforts to seek interconnection in Nebraska and Iowa. In those cases, the respective state commissions found that Sprint was not the "telecommunications carrier" entitled to seek interconnection services pursuant to Section 251 of the Act. *See* Application No. C-3429, Nebraska Public Service Commission, *Findings and Conclusions*, entered September 13, 2005; and In Re Arbitration of Sprint Communications Company L.P., Docket No. ARB-05-2, *Order Granting Motions to Dismiss*, Iowa Utilities Board, May 26, 2005. (Attached hereto).

In addition, to the extent Sprint alleges that it is the "telecommunications carrier" in connection with its requested interconnection, ITC questions whether Sprint has complied with this Commission's Order in TC96-156. In that Order, the Commission granted Sprint statewide

authority to offer local exchange services. The Commission, however, found that before Sprint can provide service in the service area of a rural telephone company, Sprint must "come before the Commission in another proceeding" and show that it would satisfy eligible telecommunications carrier service obligations. To ITC's knowledge, Sprint has not complied with this requirement, which also is set forth in ARSD Section 20:10:32:15. Accordingly, ITC believes that Sprint is not authorized to provide local service in ITC's service area.

Based on the foregoing, ITC believes that Sprint's request is not a valid request for interconnection and, therefore, ITC is not required to enter into negotiations with Sprint. If Sprint has information to refute the claims in this letter, please provide such information to ITC and it will re-evaluate the request for interconnection.

Sincerely,

CUTLER & DONAHOE, LLP

Ryan J. Taylor
For the Firm

Enclosures
cc: Jerry Heiberger
Richard D. Coit
Jack Weyforth, Sprint Communications Company L.P.

Sprint
Together with NEXTEL

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Sheryl Cronenwett
Interconnection Services
Sheryl.M.Cronenwett@sprint.com

Via Overnight Courier, Return Receipt Requested

February 17, 2006

Cutler & Donohoe, LLP
Mr. Ryan J. Taylor
100 North Phillips Avenue, 9th Floor
Sioux Falls, SD 57104

Re: Request for Interconnection with Interstate Telecommunications Cooperative, Inc. and McCook Cooperative Telephone Company

Dear Mr. Taylor:

I am in receipt of your letter dated February 8, 2006, regarding negotiation of an interconnection agreement and the requested questions and responses directed to Sprint Communications Company L.P. (Sprint). Sprint had provided earlier correspondence (November 9, 2005 and December 9, 2005) requesting negotiations of an interconnection agreement in the state of South Dakota.

In your letter dated February 8, 2006, you asked whether Sprint would be willing to participate in joint discussions with the RLECs. **Sprint is agreeable to pursuing negotiations with the applicable seven (7) RLECs in South Dakota.** A mutual time and date has been arranged with the South Dakota RLECs for February 24, 2006 from 9:00 am – 11:00 am. I have notified Mr. Schudel that if this time doesn't work for the larger group, we can be in contact to reschedule. In addition, you also requested that Sprint jointly negotiate interconnection with Interstate in conjunction with both the South Dakota and Minnesota exchanges. At this time, Sprint believes that since each state falls under the jurisdiction of a different Commission, joint negotiations will not be an option. To this point, the approach to negotiations in South Dakota has not been handled under the same methodology as it was conducted in Minnesota.

With regard to the questions you outlined in your letter, please note that Sprint is seeking interconnection with the RLECs pursuant to section 47 U.S.C. § 251(a) and not § 251(c) for both retail and wholesale purposes. Sprint does not have any specific diagrams for the interconnection and exchange of traffic as you have requested. The network arrangements, however, will be a key topic in our upcoming discussions. Finally, Sprint is reviewing the number portability orders and ARSD 20:10:32:15 that you mentioned in your letter.

If the RLECs would like electronic (soft) copies of the Interconnection agreement which were mailed to the individual companies on November 9, 2005, please contact me at: sheryl.m.cronenwett@sprint.com This methodology will allow the companies to exchange edits and begin negotiations. Sprint has available time during the last two (2) weeks of February for initial review

and discussions of the contract. We are currently scheduled at the time noted above or as I noted to Mr. Schudel, we are also available from 2:00 pm – 4:00 pm on Thursday, February 23rd. Please note that Monica Barone, counsel for Sprint, should be included in all communications between the parties.

Sincerely,

Sheryl Cronenwett
Sprint Communications Company L.P.

cc: M. Barone
P. Schudel

Meredith Moore

From: Paul M. Schudel [PSCHUDEL@woodsaitken.com]
Sent: Tuesday, February 21, 2006 5:09 PM
To: Cronenwett, Sheryl [NTK]
Cc: Barone, Monica [LEG]; Mary Sisak; Bill Heaston; Jeff Larson; Ryan Taylor; Meredith Moore
Subject: Response to Your February 16, 2006 Correspondence

Dear Ms. Cronenwett:

I received your February 16 correspondence and prior emails and I wanted to respond to you at a time when I could provide you with as complete a report as possible. I now have had the opportunity to consult with most of the counsel for the South Dakota RLECs to which Sprint has issued requests for interconnection. I have asked for a reaction to your indication that Sprint is agreeable to pursue joint discussions with such RLECs. To date, I have only been able to receive a partial response as to whether your proposal is acceptable. Accordingly, please be advised that counsel for Interstate Telecommunications Cooperative, Inc. and McCook Cooperative Telephone Company, and counsel for Santel Communications Cooperative, as well as my clients, Bridgewater-Canistota Independent Telephone Company and Vivian Telephone Company (the latter two collectively referred to as the "Golden West Companies"), are willing to participate in such joint discussions. Counsel for Swiftel Communications and Prairie Wave Communications will be responding later after necessary consultations with their respective clients.

Based on the foregoing, I agree with your observation in your February 16 correspondence that, in light of these developments, we should reschedule the February 24 conference call to a later date. I have suggested to other counsel for the South Dakota RLECs that we reschedule for either March 2 or 3, as these dates seem to be generally available on their schedules. Given the number of parties that will be involved in these discussions, however, we believe that a face-to-face session with Sprint representatives as opposed to a conference call (although some participants will undoubtedly be connected via conference call) would be most productive and efficient in an effort to identify and narrow the scope of the issues between the parties.

In this regard, it would seem that Omaha would be a convenient central location for such a meeting. Accordingly, please advise if a meeting in Omaha is acceptable to Sprint, and also please indicate whether March 2 or 3 is preferred by Sprint. I would be pleased to arrange for a location for the Omaha conference.

In your February 16 correspondence to me you also indicated "that Sprint is seeking interconnection with the RLECs pursuant to section 47 U.S.C. sec. 251(a) and not sec. 251(c) for both retail and wholesale purposes." I note in the November letter from Sprint to the Golden West Companies that Sprint had also referenced Sections 251(b)(2),(3) and (5). Was the omission of the reference to Section 251(b) in your February 16 correspondence inadvertent or should we proceed to discussions solely with respect to Section 251(a) of the Act? Please let me know.

Please be advised that the Golden West Companies envision that any discussions with respect to Section 251(a) and (b) arrangements will be limited to services that Sprint intends to provide to its *end users which are the ultimate users of the retail end user services that Sprint will offer.* Further, while the Golden West Companies do not understand that Sprint has adopted a contrary position, the Golden West Companies also want to make clear that they do not intend to engage in discussions with Sprint in respect to arrangements that are "without regard to the standards set forth in subsection[ ] (b) . . . of section 251." 47 U.S.C. §252(a)(1). To the extent that Sprint may seek to discuss any arrangement that is "without regard" to the established interconnection standards and controlling rules associated with Sections 251(a) and (b) of the Act, please let me know.

Finally, I would also note that the Golden West Companies would still appreciate receiving from Sprint full and complete responses to the inquiries set forth in my February 3, 2006 letter to Mr. Weyforth. As I am sure you can appreciate, the lack of a complete responses from Sprint makes the process of finalizing a draft document for your consideration more difficult.

I expect to be in a position later this week to forward to you a discussion draft of an interconnection agreement that the Golden West Companies propose be used for the discussions. As a discussion draft, the document will be still subject to review and revision by the Golden West Companies (which will be all the more necessary if Sprint's responses to my February 3rd letter have not been received). In any event, this should provide you with adequate time to study such counter offer prior to the proposed conference in Omaha.

Please note that my office is located in Lincoln at the address indicated below. Your February 16 letter was inadvertently directed to my Firm's Omaha office. At your request, I am copying Ms. Barone on this email.

I will look forward to your response to this email. Thank you.

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Meredith Moore

From: Cronenwett, Sheryl [NTK] [Sheryl.M.Cronenwett@sprint.com]
Sent: Wednesday, February 22, 2006 6:20 PM
To: Paul M. Schudel
Cc: Barone, Monica [LEG]; Mary Sisak; Bill Heaston; Jeff Larson; Ryan Taylor; Meredith Moore
Subject: RE: Response to Your February 16, 2006 Correspondence

Mr. Schudel -

Thank you for your note.

At this time, Sprint would like to start verbal negotiations with all South Dakota RLECS, whether they are involved jointly or representing themselves as an individual entity. If possible, we would still like to hold discussions on Friday, February 24th with those RLECs who wish to negotiate jointly, just to initially determine and highlight key issues.

Regarding the suggestions for a face-to-face meeting, the representatives from Sprint have time constraints. We have handled numerous negotiations via conference call and from a time and resource standpoint believe this will work based on our upcoming time crunch to complete discussions. If anyone would lilke to meet personally, we do have conference facilities on the Sprint campus and would welcome anyone wishing to travel here for some one-on-one sessions. Right now, we have availability on March 2nd from 3:00 - 5:00 pm and March 3rd from 2:00 - 4:00 pm to conduct conference calls. We could meet both of those times to work toward completion.

In response to your question regarding interconnection and the applicable references, Sprint requests to negotiate an interconnection agreement pursuant to sections 251 and 252 to include 251(a), 251(b)5, 251(b)2, 251(b)3, as noted in the original RFI letter sent to the companies on November 9th, 2005. Therefore, we will be proceeding with discussions regarding both Sections 251 (a) and (b).

Sprint provided several responses to your questions in the February 16th correspondence. We are presently researching network plans and do not have specific diagrams or network arrangements to discuss until we get started with the negotiations and understand how the parties will exchange traffic with one another. In addition, we have put forth our suggested interconnection agreement and have agreed to review a suggested template from your group. If you wish to utilize our template and have questions/issues with the contents, please redline your questions and comments accordingly and we will follow up in negotiations. Sprint is the company seeking an interconnection agreement. While Sprint does not believe it is relevant to how the parties will interconnect, Sprint is requesting interconnection for both wholesale and retail purposes. With regard to wholesale services, Mediacom is a customer of Sprint. Therefore, it appears the parties disagree on the scope of the interconnection which will be reflected as disputed language in the contract.

Please confirm whether we will still be able to have our first discussion on Friday, February 24th from 9:00 am - 11:00 am. We will be available at that time this Friday and both of the times I have suggested for March 2nd and 3rd.

Thank you for your assistance.

Sheryl Cronenwett

Sprint Nextel Interconnection Services