

**BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF SOUTH DAKOTA**

In the Matter of the Petition of Sprint)
Communications Company L.P. for) DOCKET TC06-175
Arbitration Pursuant to the)
Telecommunication Act of 1996 to)
Resolve Issues Relating to an)
Interconnection Agreement with)
Interstate Telecommunications Coop.)

Rebuttal Testimony of James R. Burt

February 16, 2007

PUBLIC VERSION

1 **I. INTRODUCTION AND PURPOSE OF REBUTTAL TESTIMONY.**

2

3 **Q. Please state your name, business address, employer and current position.**

4 **A.** My name is James R. Burt. My business address is 6450 Sprint Parkway,
5 Overland Park, KS 66251. I am employed as Director – Policy for Sprint Nextel.

6

7 **Q. Are you the same James R. Burt that filed Direct Testimony in this**
8 **proceeding?**

9 **A.** Yes.

10

11 **Q. What is the purpose of your rebuttal testimony?**

12 **A.** The purpose of my rebuttal testimony is to respond to the direct testimony
13 submitted by ITC witnesses Larry Thompson, Jerry Heiberger and Dan Davis.

14

15 **II. RESPONSE TO DIRECT TESTIMONY OF LARRY THOMPSON**

16

17 **Q. What is your overall reaction to Mr. Thompson’s testimony regarding the**
18 **network configuration Sprint and MCC have chosen to deploy to serve**
19 **customers in ITC’s Brookings exchange (Thompson at 3-11)?**

20 **A.** My overall reaction to Mr. Thompson’s testimony regarding the network
21 configuration Sprint and MCC have chosen to deploy is that it supports Sprint’s
22 point that the Commission should not make a determination of whether Sprint has
23 the right to interconnect with ITC based on the technology being deployed in the

1 Sprint/MCC business model. Mr. Thompson seems to be suggesting that Sprint's
2 right to interconnect with ITC should be based on some technical detail or details
3 within the network. A technological evaluation is not appropriate and, if applied,
4 will not withstand the test of time because technology is constantly changing. Mr.
5 Thompson's suggestion is nothing more than a red herring.

6
7 A fundamental issue in this proceeding is whether Sprint has the right to
8 interconnect with ITC based on the business model being deployed by Sprint and
9 MCC in Brookings which is the same business model and network configuration
10 deployed elsewhere in South Dakota. To go down the path suggested by Mr.
11 Thompson is not necessary and would be a mistake. Mr. Thompson seems to
12 focus on "switching," as if that should be the determining factor, and whether
13 Sprint or MCC owns a particular portion of the network. Mr. Thompson's
14 opinion that switching takes place throughout the network, including Sprint's
15 switch supports Sprint's position that this should not be the basis for a carrier's
16 right to interconnect. The determination of whether Sprint has the right to
17 interconnect, regardless of the network configuration should not depend on whom
18 or what device performs a switching function. The facts show that Sprint and
19 MCC own different network components. This is why Sprint describes the
20 service as being jointly provided. Without the assets of both Sprint and MCC, the
21 service would not exist.

1 **Q. If the determination of Sprint's right to interconnect should not be based on**
2 **the network configuration being deployed by Sprint and MCC, how should it**
3 **be determined?**

4 A. Sprint's right to interconnect is based on its status as a telecommunications
5 carrier, not its chosen network configuration with MCC.
6

7 **Q. If the party to the interconnection agreement were to be based on network**
8 **functionality, is Sprint or MCC the appropriate party to interconnect with**
9 **ITC?**

10 A. Sprint is the appropriate party because it is Sprint's end office switch that
11 performs the interconnection. Sprint is the interconnecting party throughout the
12 31 states where Sprint has deployed the Sprint/cable business model.
13

14 **Q. Even though the technical details of how the network functions should not**
15 **define Sprint's right to interconnect with ITC, is Mr. Thompson's**
16 **understanding of the Sprint/MCC network accurate?**

17 A. No. Mr. Thompson suggests that a MCC customer can call another MCC
18 customer without the call passing through Sprint's end office switch (Thompson
19 at 7). That is not the case. Every call to or from a subscriber is routed through
20 Sprint's end office switch. But again, as I've stated before, this or any other
21 technical detail should not be the determining factor in whether Sprint has the
22 right to interconnect with ITC. If by some chance the Commission makes a
23 determination of Sprint's right to interconnect based on the network configuration

1 being used, there is no question that Sprint's end office switch is the only
2 connectivity to the PSTN, including the interconnection with ITC for the
3 exchange of local traffic. This is supported by the following facts.

- 4 • The interconnection trunks connecting the Sprint/MCC network to
- 5 ITC connects to Sprint's end office switch
- 6 • Sprint's end office switch is identified in LERG
- 7 • All telephone numbers whether Sprint native numbers or ported
- 8 numbers are associated with Sprint's end office switch
- 9 • 911 trunks connect to Sprint's end office switch
- 10 • The local routing number (LRN) that is used by the
- 11 telecommunications industry to determine the destination of a
- 12 voice call is associated with Sprint's end office switch
- 13 • The SS7 point code is associated with Sprint's end office switch
- 14 • SS7 signaling occurs at Sprint's end office switch
- 15

16 **Q: Mr. Thompson raises concern about Sprint utilizing its interconnection**
17 **trunks for another carrier's traffic (Thompson at 11-12). Please respond.**

18 A. Sprint is willing to take full responsibility for all the traffic it sends to ITC over
19 the local interconnection trunks. Therefore, Mr. Thompson's concerns about
20 being able to identify the proper carrier should be resolved.

21
22 **Q: What is Mr. Thompson's primary concern with regards to Sprint's request**
23 **to utilize the interconnection trunks more efficiently?**

24 A. It appears Mr. Thompson's primary concern with regards to Sprint's request to
25 utilize the interconnection trunks more efficiently stems from a concern over
26 whether proper intercarrier compensation will be paid to ITC. First of all, Sprint
27 is not suggesting that there be any changes to the current intercarrier
28 compensation schemes or what Sprint would pay ITC or what ITC would pay

1 Sprint for any particular traffic type, it only desires to make the interconnection
2 with ITC as efficient as possible.

3

4 **Q. Has Mr. Thompson identified any technical reasons why traffic cannot be**
5 **combined as Sprint is requesting?**

6 A. No. Mr. Thompson has not identified any technical reasons why traffic cannot be
7 combined as Sprint is requesting. While not directly related to what Sprint is
8 requesting because Sprint intends to take responsibility for all the traffic it
9 terminates to ITC, Mr. Thompson stated that it is technically feasible to
10 commingle multiple carriers' traffic on interconnection trunks (Thompson at 16).
11 This is not surprising since it is common practice today.

12

13 **Q: Mr. Thompson suggests that the use of factors or the contract language**
14 **contained in Section 5.6.2 suggests Sprint's approach for ensuring the proper**
15 **intercarrier compensation applies to all traffic is flawed (Thompson at 12).**
16 **Please respond.**

17 A. This is another red herring that Mr. Thompson is attempting to use to support its
18 reluctance to provide more efficient interconnection to Sprint. First of all,
19 Sprint's proposal says ITC can invoice Sprint based on the information provided
20 to them. If they do not want to or are not able to, Sprint will use the information
21 to develop the appropriate factors. This is entirely up to ITC. Second, Mr.
22 Thompson is certainly aware that the use of factors is very common throughout

1 the industry and the fact that ITC itself uses them as I stated in my Direct
2 Testimony.

3
4 **Q. Mr. Thompson also references Section 4.3 of the proposed interconnection
5 agreement as a basis for suggesting Sprint's proposal is flawed (Thompson at
6 12). How do you respond?**

7 A. Section 4.3 of the proposed interconnection agreement states that if either party
8 does not include calling party number ("CPN") and/or automatic number
9 identification ("ANI") on at least 95% of the its traffic the originating carrier
10 should pay the terminating carrier intrastate access charges. First of all, this
11 language protects both ITC and Sprint because if either carrier, as the originator
12 of traffic, does not provide CPN and/or ANI, the terminating carrier is not harmed
13 since it is allowed to invoice its highest intercarrier compensation rate, intrastate
14 access. Given ITC's uncertainty regarding the information Sprint says it will
15 provide, this condition should be very acceptable to them. In fact, purely from a
16 monetary perspective, they would likely prefer Sprint to never send them
17 adequate information.

18
19 Second, this language is common in interconnection agreements regardless of
20 whether there is any traffic other than 251(b)(5) traffic placed on the trunks. It
21 generally is used to acknowledge the fact that there are some instances when CPN
22 is not signaled, not at the fault of the carrier, but rather due to technical limitations
23 in equipment being used by end users, e.g., a PBX may not provide CPN.

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Third, Section 5.5.2 that Mr. Thompson refers to simply addresses the ability to jurisdictionalize the traffic using factors due to the fact that the agreement allows for multiuse and multi-jurisdictional trunks. The inability to jurisdictionalize this type traffic in a mechanized fashion could be due to factors other than the lack of CPN or ANI. For example, if, as Sprint suggests, ITC is not able to use or does not want to use the Originating Line Information Parameter (“OLIP”) to segregate wireless traffic from wireline traffic a factor can be developed.

Q: Mr. Thompson specifically mentions his concern about placing CMRS or wireless traffic on the interconnection trunks because there is no “industry standard” to identify the location of a wireless caller (Thompson at 12-13). Is his concern valid?

A. No. The fact of the matter is that the use of factors is the only way to jurisdictionalize wireless traffic for the reason Mr. Thompson stated. This is consistent with ITC’s interconnection agreement with Western Wireless in Section 7.2.3. See Attachment (JRB-4). ITC’s agreement with Western Wireless addresses Mr. Thompson’s “concern” by assigning an interMTA factor. This factor, many times negotiated between the parties, identifies the portion of the wireless traffic on the interconnection trunks that is not subject to 251(b)(5) compensation. The portion that is covered by the factor is billed at access rates. In effect, the agreement between ITC and Western Wireless allows for multi-

1 jurisdictional trunks and billing is accommodated through the use of factors.

2 However, when Sprint asks for this same ability, ITC refuses.

3

4 **Q: Mr. Thompson discusses phantom traffic and the use of common trunks and**
5 **the fact that this is an industry problem (Thompson at 13). How do you**
6 **respond?**

7 A. Mr. Thompson is obviously aware of the common practice within the industry to
8 use common trunks between a tandem provider and an end office provider. This
9 practice may create the situation whereby the terminating carrier is not able to
10 identify the originating carrier to whom termination charges should be invoiced or
11 the jurisdiction of the traffic. As Mr. Thompson states, this is an industry wide
12 concern and is before the FCC at this time as a result of the widespread use of
13 common trunks. Yet, Mr. Thompson suggests that it is acceptable to single Sprint
14 out in this instance by refusing it a form of interconnection used throughout the
15 industry. As I state below, Mr. Thompson's concerns are not valid with respect
16 to Sprint's request.

17

18 **Q: Does ITC currently receive combined traffic over common trunks?**

19 A. Yes. As Mr. Thompson discussed in his testimony, rural ILECs such as ITC,
20 receive combined traffic over common trunk groups and have difficulty
21 identifying the carrier and the type of traffic coming over those common trunk
22 groups (Thompson at 14). See Attachment (JRB-5) However, Sprint's
23 willingness to accept full responsibility for all the traffic it terminates to ITC

1 resolves the problem of identifying the appropriate carrier to invoice and Sprint's
2 proposal to provide SS7 parameters or billing factors resolves the problem of
3 identifying the type of traffic that ITC is terminating for Sprint allowing ITC to
4 correctly identify and bill the traffic.

5
6 **Q. Do ILECs commonly route wireless traffic to interconnecting CLECs over**
7 **the “wireline” interconnection trunks installed between the CLEC and the**
8 **ILEC?**

9 A. Yes. Sprint is a CLEC in several states and it does not have a single
10 interconnection with a wireless carrier yet Sprint subscribers and subscribers of
11 the jointly provided service of Sprint and its cable partners receive calls from
12 wireless carriers. This is accomplished through Sprint's interconnection with
13 ILECs. It is a very common practice for ILECs to send wireless traffic it has
14 received to terminating CLECs over the “wireline” interconnection trunks
15 installed between the ILEC and the CLEC. See Attachment (JRB-5) This
16 suggests there should be no reason why Sprint cannot do the same when it sends
17 traffic in the other direction, or in this case to ITC. Sprint has taken the additional
18 step that others do not do and that is to take responsibility for the traffic Sprint
19 sends and has proposed a means to allow for proper intercarrier compensation.

20
21 **Q: Mr. Thompson identifies the type of signaling that should be required to**
22 **ensure ITC can properly identify and jurisdictionalize the traffic terminating**
23 **to its network (Thompson at 13-14). Please respond.**

1 A. Mr. Thompson identifies eight “fields” as he calls them that should be required to
2 ensure ITC can properly identify and jurisdictionalize the traffic terminating to its
3 network. I address each of the fields identified by Mr. Thompson and provide
4 Sprint’s comments regarding those fields in Attachment (JRB-6).

5
6 **Q. Please explain how this information can be used to ensure multi-use and**
7 **multi-jurisdictional traffic is appropriately jurisdictionalized for invoicing**
8 **purposes.**

9 A. The information in Attachment (JRB-6) can be used to appropriately
10 jurisdictionalize traffic on multi-use/multi-jurisdictional trunks as follows.

11
12 First, traffic must be segregated between wireless and wireline. The Originating
13 Line Information Parameter (OLIP) is used to do this. Industry standards are used
14 to distinguish between wireline and wireless traffic – the characters 001
15 represents wireline traffic and 461 or 462 represent wireless traffic.

16
17 The wireless traffic is jurisdictionalized just like it is today. The interMTA factor
18 determines how much of the wireless traffic should be subject to access charges
19 based on the assumption that some of the traffic is mobile and the jurisdiction
20 cannot be determined by the Calling Party Number (CPN). I believe the
21 interMTA factor used between ITC and Western Wireless is 3%. If such a factor
22 were used, 97% of the traffic identified as wireless traffic would be subject to
23 reciprocal compensation and 3% would be subject to access charges.

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The traffic that is identified as wireline traffic is jurisdictionalized based on the CPN and Called Party Number (CLP). Traffic identified as within the local calling area would be subject to reciprocal compensation. Traffic identified as outside the local calling area would be subject to access charges.

Q. Given all you've explained regarding Sprint's desire to utilize multi-use and multi-jurisdictional trunking, is ITC's position regarding Arbitration Issue No. 2 and 3 discriminatory?

A. Yes, in my opinion it is. Even if Sprint had not proposed a workable solution for billing and identifying traffic exchanged between Sprint and ITC, it would be discriminatory for ITC to accept combined traffic over common trunk groups from SDN yet refuse to interconnect with Sprint because Sprint seeks to exchange combined traffic with ITC over a common trunk group. Even without Sprint's proposed solution, equity demands that Sprint be allowed to send traffic to ITC in the same manner as other carriers, combined over common trunk groups.

III. RESPONSE TO DIRECT TESTIMONY OF JERRY HEIBERGER

Q. Mr. Heiberger states that only certain ITC exchanges are subject to this proceeding (Heiberger at 3). Do you agree?

A. No. The interconnection agreement Sprint seeks with ITC will cover all ITC exchanges within the state of South Dakota. There is nothing in the terms being

1 negotiated by the parties or in dispute by the parties that suggests the agreement
2 only covers certain ITC exchanges.

3

4 **Q. How do you respond to Mr. Heiberger's description of the relationship ITC**
5 **has with another CLEC, Midcontinent Communications ("Midco"), that**
6 **operates in ITC exchanges (Heiberger at 4-7)?**

7 A. I'm not sure the relevance of Mr. Heiberger's description of the relationship with
8 Midcontinent Communications. Just because Midco agreed to a particular set of
9 terms and conditions doesn't mean Sprint should. Nor does it mean that ITC can
10 dictate interconnection to Sprint.

11

12 **Q. Mr. Heiberger states that "the exchange of traffic will ultimately be over the**
13 **network facilities that we have and the network facilities that MCC has."**
14 **(Heiberger at 9) How do you respond?**

15 A. I disagree with Mr. Heiberger's statement. The exchange of traffic will take place
16 between the switch owned by ITC and the switch owned by Sprint at a defined
17 point agreed to by the parties or determined by the Commission. Mr. Heiberger is
18 suggesting that the exchange of traffic takes place somewhere within MCC's
19 hybrid-fiber coax network or maybe at the MCC CMTS. Even though MCC
20 owns a portion of the facilities the exchange of traffic will not and can not take
21 place anywhere within its facilities. Exchange of traffic at any point within
22 MCC's network is not technically possible. In addition, there is no basis for
23 saying it must or should even if it were technically possible. The business model

1 entered into by Sprint and MCC identifies the Sprint switch as the device
2 interconnecting to the PSTN and there is no basis for suggesting it should be
3 somewhere else. The same is the case for ITC's network. The exchange of traffic
4 will take place at one of three host offices or each of ITC's three host offices
5 owned by ITC depending on how the Commission rules on Arbitration Issue No.
6 6. It is inconsistent for ITC to say on the one hand that the exchange of traffic
7 will be over the network ITC has within its exchanges and on the other hand say it
8 will interconnect with Sprint at its host offices and not some facility within each
9 of its exchanges.

10
11 **Q. Mr. Heiberger suggests that ITC's rights are circumvented as a result of**
12 **Sprint interconnecting with ITC rather than MCC (Heiberger at 9-10). Are**
13 **ITC's rights being circumvented?**

14 A. No. Sprint has deployed this business model with 12 cable companies in 31 states
15 with approximately 50 rural ILECs, all the RBOCs and several second tier ILECs.
16 There has never been a claim by any of them that their rights have been
17 circumvented because Sprint has the interconnection agreement rather than
18 Sprint's cable partner.

19
20 **Q. In Mr. Heiberger's discussion on Issue 1 he identifies several concerns he has**
21 **with ITC interconnecting with Sprint rather than MCC (Heiberger at 9-12).**
22 **Please respond.**

1 A. In general, Sprint's experience deploying this business model shows that the
2 issues raised by Mr. Heiberger are not valid. I will address each of them in more
3 detail below.

4
5 **Q. Mr. Heiberger wonders why MCC hasn't requested interconnection with**
6 **ITC and wonders why MCC should "be able to get away with not sitting**
7 **down at the table" to identify its needs (Heiberger at 10-11). How do you**
8 **respond?**

9 A. The answer is simple. There is no need or requirement for MCC to seek an
10 interconnection agreement with ITC. As I have stated elsewhere, MCC is not
11 interconnecting and exchanging traffic with ITC, MCC is not porting numbers to
12 or from ITC, etc. Therefore, not only does it not need an interconnection
13 agreement with ITC, there is no requirement for MCC to have one since it is
14 Sprint's network that will be interconnecting with ITC, it is Sprint that will
15 porting numbers to and from ITC, etc. The business model Sprint and MCC are
16 deploying appropriately has Sprint as the party with the ILEC interconnection.
17 The assurance that there is "fair" competition is reduced to the terms and
18 conditions of the interconnection agreement and any other regulatory
19 requirements that apply to Sprint, MCC and ITC. With respect to the rights of
20 consumers, MCC must answer to its customers and any relevant regulatory
21 authority or law governing that relationship. To the extent Sprint actions impact
22 consumers, e.g., quality of service, it must answer to MCC and any relevant
23 regulatory authority or law that applies to it. Such is the case for ITC. It is not up

1 to MCC to ensure the rights of ITC's costumers are protected any more than it is
2 up to ITC to protect the rights of the MCC/Sprint customers.

3

4 **Q. Mr. Heiberger states that Sprint's inability to "speak for MCC" in Sprint's**
5 **discovery responses is a reason why ITC needs an agreement with MCC**
6 **(Heiberger at 11). Please respond.**

7 A. Sprint did say in its discovery that it cannot speak for MCC. However, this does
8 not lead to the conclusion reached by Mr. Heiberger that if any problems or issues
9 arise they can't be addressed adequately. This is absolutely not the case as
10 evidenced by Sprint's use of this business model throughout the United States. I
11 am not aware of a single carrier-to-carrier issue that has arisen that hasn't been
12 addressed adequately and in a timely manner.

13

14 Let's look at an example. Assume an ITC customer is not able to complete a call
15 to a MCC/Sprint customer. It is likely the ITC customer will call ITC. ITC's
16 troubleshooting process will likely isolate the problem to a trunk established
17 between Sprint and ITC. ITC would then contact Sprint. Sprint will either
18 resolve the issue itself or work in conjunction with MCC to resolve the issue.
19 Sprint does not need to know the details of MCC's network to make this process
20 work as suggested by Mr. Heiberger. The common practice of carriers is to
21 isolate the issue to the carrier level and then allow the other carrier to resolve the
22 issue within its network. There is rarely any familiarity with the details of a
23 connecting carrier's network by any of the carriers connecting to it. Certainly not

1 to the extent of being able to resolve any network issues. Each carrier
2 understands its own network and is charged with isolating and resolving problems
3 within it. As a matter of fact, Sprint considers the details of its network to be
4 proprietary information and believes other carriers would take the same position.
5 Therefore, the type of familiarity suggested by ITC is rarely available between
6 connecting carriers.

7
8 **Q. Mr. Heiberger says that ITC does not stand in the way of competition**
9 **(Heiberger at 12). What is your perspective on what Mr. Heiberger is**
10 **claiming.**

11 A. I think the actions of ITC speak much louder than its words. ITC is well aware of
12 the relationship between Sprint and MCC and is well aware of Sprint's
13 relationship with other cable companies throughout the United States. To suggest
14 that there is something "unique" in ITC's operating territory that warrants a
15 different market entry model is without merit. Regardless of ITC's "spin," its
16 objective is to delay or deny the Sprint/MCC business model. Through the course
17 of the negotiations it has not expressed nor attempted to resolve all of the
18 concerns expressed in its testimony. ITC has flatly refused to accept the business
19 model. If the concerns raised in ITC's testimony were genuine and it really wants
20 Sprint and MCC to enter its markets as a competitor, one must wonder why the
21 negotiations didn't focus on resolving its concern rather than on their just saying
22 no to the business model. It appears that ITC is simply creating a roadblock to
23 competition.

1 **Q. Is there any aspect of “fairness” that ITC should be concerned with?**

2 A. No. Whether from the perspective of ITC as a carrier or an end user perspective,
3 there is nothing ITC needs to be concerned about. The interconnection agreement
4 which is very typical of interconnection agreements Sprint has entered into
5 elsewhere is designed to address the carrier-to-carrier issues so those are covered.
6 As I stated previously, end users are protected by the rules, regulations and laws
7 that govern their relationship with their service provider.

8
9 The only aspect related to end user fairness that has not been addressed is their
10 ability to have a choice of voice service providers. Sprint is attempting to ensure
11 them of this right by the positions it is taking in this proceeding. ITC’s positions
12 have the effect of denying them their right to choose Sprint/MCC rather than ITC
13 as their voice service provider.

14
15 **Q. Mr. Heiberger states that ITC does not compete with Sprint (Heiberger at**
16 **13). Do you agree?**

17 A. No. The service being provided to end users is jointly provided by Sprint and
18 MCC. While Sprint does not put its name on the service at the retail level, Sprint
19 definitely considers the service a jointly provided offering and provides a very
20 successful means of competing in markets where Sprint may not be able to
21 compete without a relationship with a company like MCC.

22 (***) BEGIN CONFIDENTIAL (***)

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(*** END CONFIDENTIAL ***)

Q. Mr. Heiberger discusses numerous services that are provided on a contract basis and once again uses that as a basis for saying MCC has an obligation to seek interconnection with MCC (Heiberger at 14). How do you respond?

A. I would say Mr. Heiberger’s failure to cite any legal or regulatory obligation suggests that what he might really be saying is that he would prefer that MCC sought interconnection instead of Sprint. There is no obligation for MCC to seek interconnection as has been shown in multiple states. Mr. Heiberger may prefer to have an agreement with MCC, but Mr. Heiberger does not get to dictate how its competitors choose to operate their business.

Q. Mr. Heiberger expresses concern about the ability to port numbers back from customers of the service being provided by Sprint and MCC (Heiberger at 15). Are his concerns valid?

A. No. All telephone numbers, whether ported numbers or native numbers, reside on Sprint’s end office switch. Sprint routinely ports numbers to ILECs in other states where it is providing service with MCC as well as with every other cable company Sprint provides service with. This is occurring today and it is included

1 in the interconnection agreement Sprint is attempting to enter into with ITC. This
2 is not an issue.

3
4 **Q. Mr. Heiberger wonders how ITC will find out why calls are being dropped**
5 **(Heiberger at 15). Should there be a concern?**

6 A. No. I've stated this previously, but if ITC identifies a situation where calls are not
7 being completed, ITC will contact Sprint as the carrier providing the
8 interconnection for those calls. While I am sure this is not a common occurrence,
9 this is how issues of this type are handled in the 31 states where Sprint is
10 providing service using this business model. This is not an issue elsewhere and it
11 is not an issue in South Dakota.

12
13 **Q. Mr. Heiberger says he's concerned that MCC and Sprint might have "a**
14 **falling out," ITC would be caught in the middle with no where to turn (Mr.**
15 **Heiberger at 15). Should Mr. Heiberger be concerned?**

16 A. No. Both Sprint and MCC are major corporations that understand the importance
17 of the service they are providing. The agreement between Sprint and MCC
18 includes terms that address the situation whereby the two companies do not wish
19 to continue their relationship to ensure there is an orderly transition of service.
20 This concern makes it obvious that he is searching for anything he can possibly
21 point to in an attempt to show flaws in the Sprint business model. I am sure ITC
22 has numerous relationships with other parties that are vital to the service it
23 provides. To suggest that ITC's "business model" is invalid because ITC may

1 have “a falling out” with one of the companies it gets services from is
2 inappropriate and wrong. I can’t think of a single product, service or service
3 provider that doesn’t have some reliance on other companies. These relationships
4 are generally governed by contracts that protect the rights of both parties and, as
5 best they can, ensure service continuity. Sprint’s business model has been well
6 tested with the more than 1.5 million subscribers in 31 states with 12 different
7 cable companies serving the exchanges of about 50 rural ILECs, all the RBOCs
8 and most of the second tier independent telephone companies.

9
10 **Q. Mr. Heiberger expresses concern about slamming (Heiberger at 15). Should**
11 **he be concerned?**

12 A. No. Mr. Heiberger’s concern is no different as it relates to the service being
13 provided by Sprint and MCC than it is for anyone else that might slam a
14 customer. If a customer claims they’ve been slammed, they have multiple
15 avenues available to them. They may contact their old service provider, they may
16 contact their “new” service provider, they may contact the Commission or they
17 may contact the FCC. Some even contact law enforcement officials. This is the
18 industry process that applies in all circumstances. Whatever avenue is taken,
19 MCC – just like all other service providers – will be required to show it has
20 proper customer authorization. There is no need to change the process that is
21 already in place and working. Mr. Heiberger should not be concerned about
22 slamming.

1 **Q. Mr. Heiberger mentions law enforcement concerns. Do Sprint and the cable**
2 **companies it has agreements with comply with all law enforcement**
3 **requirements, such as CALEA?**

4 A. Yes. Sprint and the cable companies it has agreements with comply with all law
5 enforcement requirements, including CALEA. Mr. Heiberger's question about
6 what he does if he has to coordinate with MCC or Sprint can be answered very
7 easily. Mr. Heiberger can call Sprint or MCC security contacts and either will be
8 happy to coordinate any valid law enforcement requests.

9
10 **Q. Mr. Heiberger expresses multiple additional concerns in his testimony. Are**
11 **any of his concerns valid?**

12 A. No. As I've said previously, the business model being implemented by Sprint and
13 MCC has stood the test of time and many ILECs. If something new were to arise
14 that hasn't already arisen or been worked out, I'm certain it can be addressed in a
15 timely and efficient manner.

16
17 **Q. Mr. Heiberger states that "my costs of implementation and ongoing**
18 **monitoring of the arrangement" will increase if MCC migrates to another**
19 **service provider than Sprint (Heiberger at 15). How do you respond?**

20 A. Mr. Heiberger's statement does not provide any specifics or evidence. This is
21 pure speculation and should not be given any weight whatsoever in how the
22 Commission decides the issues before it.

1 The only costs that remotely have any relevance (and I'm not admitting they do)
2 in this proceeding are costs of interconnection. It is inappropriate to make such
3 speculation about events that may occur at some time in the future and suggest
4 this type of speculation should have some impact on the decisions before this
5 Commission now.

6
7 **Q. Mr. Heiberger states that an interconnection agreement with MCC will help**
8 **solve his "issues." Do you agree?**

9 A. No. As I have explained in my testimony, the concerns raised by Mr. Heiberger
10 are more appropriately addressed with an interconnection agreement with Sprint
11 or his concerns are not valid which is best demonstrated by Sprint's use of this
12 business model throughout the United States.

13
14 The most significant issue relates to whose networks will be interconnecting. As
15 I've stated, it is Sprint's network and ITC's network that will be interconnected.
16 Sprint's end office switch will be interconnected with one or more of ITC's host
17 offices. It is only appropriate that the interconnection agreement be between
18 Sprint and ITC.

19
20 Second, issue resolution pertaining to the interconnection and exchange of traffic
21 should be addressed by the carriers interconnecting with one another. Again, that
22 is Sprint and ITC. The fact that MCC owns fiber optic cable, coaxial cable or a
23 CMTS is not relevant. The traffic being exchanged, which is the primary purpose

1 of the interconnection agreement, will be exchanged between ITC's switch and
2 Sprint's switch. Any issues related to the traffic being exchanged are the
3 responsibility of the entity exchanging the traffic, i.e., Sprint and ITC.
4

5 **Q. Mr. Heiberger states that Sprint did not raise the issue of terminating**
6 **wireless traffic over the interconnection trunks until approximately one year**
7 **ago in March of 2006 rather than when Sprint first requested**
8 **interconnection with ITC. Please explain this timing.**

9 A. Mr. Heiberger raises this issue in the context of Arbitration Issue 2 which is
10 whether Sprint can combine wireless and wireline traffic on interconnection
11 trunks. I have addressed many of the aspects of this issue in my rebuttal to Mr.
12 Thompson's direct testimony and I will try not to repeat that testimony here.

13
14 The issue of requesting to combine wireless and wireline traffic is relatively new
15 to Sprint. I don't know exactly when it was determined to seek to combine the
16 traffic with ITC, but apparently it was after Sprint's initial interconnection request
17 was made. I don't believe the timing of Sprint's request, which was nearly a year
18 ago, has any impact on how the Commission should decide this issue. Finally,
19 parties are not barred from raising new issues during the course of negotiations.

20
21 **Q. Mr. Heiberger claims that Sprint's proposal to place access traffic on**
22 **interconnection trunks – Arbitration Issue 3 – will add complexity for ITC**
23 **(Heiberger at 19-20). How do you respond?**

1 A. The introduction of competition does add some complexity to the ILEC's
2 business. Things are not the way they were 11 years ago when the ILECs had a
3 monopoly prior to local markets being opened up to competition. The Act doesn't
4 say competition is good except for where the ILEC's business will be more
5 complex. The fact that Sprint and MCC are entering ITC's markets, provides
6 local customers there with the benefits of local competition and opens up the
7 opportunity for Sprint to seek a more efficient form of PSTN interconnection by
8 combining traffic. Increased complexity is not a basis for denying Sprint's
9 request.

10

11 **Q. Mr. Heiberger discusses the importance of intercarrier compensation**
12 **(Heiberger at 20). Do you agree with his stated purpose of ensuring**
13 **compensation is applied to all traffic properly?**

14 A. Yes. In fact, Sprint, like ITC, relies on its intercarrier compensation revenues as
15 well. It is very important to Sprint that intercarrier compensation is done
16 properly. Sprint's proposal ensures that intercarrier compensation will be
17 addressed properly.

18

19 **Q. Mr. Heiberger states that Sprint's positions regarding interconnection are**
20 **somehow negated by Mr. Heiberger's belief that MCC has network facilities**
21 **within ITC's service areas (Heiberger at 22). How do you respond?**

22 A. Mr. Heiberger is merely speculating as to where MCC may have fiber optic
23 facilities. However, he does not know what type of equipment is attached to the

1 fiber optic cable. Given the extent of his speculation it is unreasonable for him to
2 also speculate that interconnection could take place using these facilities. Even if
3 he were right, it would not be relevant. Sprint is the party seeking interconnection
4 with ITC and Sprint has the right to request the type and place for that
5 interconnection within the boundaries of the rules. The suggestion that ITC could
6 dictate the point of interconnection for Sprint's requested interconnection and do
7 so through the use of third party facilities has no regulatory support that I am
8 aware of.

9
10 Furthermore, the MCC facilities are not capable of supporting interconnection. It
11 may be technically possible for fiber optic cable to support interconnection if the
12 right equipment were purchased and attached to the cable assuming there are
13 spare fibers, there is adequate equipment space, and numerous additional
14 requirements. MCC, like most cable companies, do not use traditional telephony
15 type optical transmission or termination equipment because the information being
16 transmitted is different and the standards used in the cable industry are different.
17 In simple terms, they do not use traditional time division multiplex ("TDM")
18 based fiber optic transmission or termination equipment.

19
20 Finally, to use this equipment would require that circuits be routed from each
21 exchange as Mr. Heiberger suggests back to a central point within MCC's
22 network, then to a Sprint POP probably located in Sioux Falls, then to Sprint's
23 switch in Kansas City, then all the way back to the ITC exchanges and then to

1 ITC. I'm sure ITC would expect Sprint to pay for the routing I just described plus
2 purchase all the equipment that would be necessary to use the MCC fiber optic
3 cable assuming that is even possible. This would likely be tens or hundreds of
4 thousands of dollars in expense since ITC is suggesting Sprint's use MCC's
5 facilities in three of its exchanges, Estelline, Clark and Clear Lake. I haven't even
6 attempted to estimate the length of time it would take to construct such a network.
7 Compare this to Sprint's proposal which is to have one connection between
8 Sprint's POP in Sioux Falls and one of ITC's host offices. TDM facilities already
9 exist between those locations and the cost is likely to be a few thousand dollars in
10 non-recurring expense and a couple of thousand dollars in recurring expense.

11 Installation should take 30 – 60 days.

12
13 Furthermore, it is important to point out that Sprint does not have facilities within
14 ITC exchanges.

15
16 **IV. RESPONSE TO DIRECT TESTIMONY OF DAN DAVIS.**

17
18 **Q. Please describe ITC's position relative to Sprint's request for interconnection**
19 **under Sections 251 (a) and 251(b) as a wholesale provider (Davis at 4 and 11-**
20 **14).**

21 **A.** Mr. Davis believes that Sprint does not have section 251(a) and 251(b) rights as a
22 wholesale telecommunications carrier. This is because Mr. Davis believes that
23 Sprint cannot be a telecommunications carrier because it is merely providing

1 wholesale services. In addition, Mr. Davis does not think Sprint can ask ITC to
2 comply with their 251(b) obligations because Sprint is not a CLEC.

3
4 **Q. Is Sprint a telecommunications carrier?**

5 A. Yes. Sprint meets the definition of a telecommunications carrier because it
6 provides telecommunications services.

7 • 47 U.S.C. (44) states “The term ‘telecommunications carrier’ means **any**
8 **provider of telecommunications services,...**” (Bold added for emphasis).

9
10 47 U.S.C. (46) states “The term ‘telecommunications service’ means the
11 offering of telecommunications for a fee directly to the public, **or to such**
12 **classes of users as to be effectively available directly to the public,**
13 regardless of the facilities used” (bold added for emphasis).
14

15 Sprint is clearly offering telecommunications for a fee to a class of users (the
16 cable companies) that are effectively available directly to the public.

17
18 **Q. Is there further evidence supporting Sprint’s rights as a wholesale provider?**

19 A. Yes. In its Non-Accounting Safeguards Order, the FCC supported the position
20 that wholesale services are telecommunications services the same as retail
21 services. The FCC’s order stated,

22
23 “.... The definition of telecommunications services is intended to
24 clarify that telecommunications services are common carrier
25 services, which include wholesale services to other carriers.”¹

¹ See *In the matter of Implementation of the Non-Accounting Safeguards of Sections 271 and 272 of the Communications Act of 1934, as amended*, CC Docket No. 96-149, 11 FCC Rcd 21905; 1996 FCC LEXIS 7126 (Rel. December 24, 1996, paragraph 263..

1 Sprint, as a wholesale carrier, has the right to interconnect with an ILEC as a
2 wholesale provider of telecommunications service even when it is not providing a
3 retail service.

4

5 **Q. How do you respond to Mr. Davis' assertion that Sprint does not have the**
6 **right to request 251(b) because it is not a CLEC (Davis at 13-19)?**

7 A. Mr. Davis' assertion that Sprint must be a CLEC is wrong. 251(b) identifies the
8 obligations of local exchange carriers. This does not mean only a local exchange
9 carrier or competitive local exchange carrier is the only entity qualified to request
10 ITC to comply with its duties as a local exchange carrier. For example, a CMRS
11 provider is not a local exchange carrier,² yet they are entitled to seek 251(b) local
12 number portability and reciprocal compensation.³

13

14 Even if Sprint were required to be a local exchange carrier, it would qualify
15 because it meets that definition.

16 47 U.S.C. 153(26) Local Exchange Carrier – The term “local exchange
17 carrier” means a person that is engaged in the provision of **telephone**
18 **exchange service or exchange access**. Such term does not include a
19 person insofar as such person is engaged in the provision of a commercial

² 47 U.S.C. 153(26) Local Exchange Carrier – The term “local exchange carrier” means a 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. (emphasis added)

³ See *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, CC Docket No. 96-98 and *Interconnection Between Local Exchange Carriers and Commercial Mobile Radio Service Providers*, CC Docket No. 95-185, First Report and Order, FCC 96-325, Released August 8, 1996, at para 1008 (*Local Competition Order*).

1 mobile service under section 332(c), except to the extent that the
2 Commission finds that such service should be included in the definition of
3 such term. (Emphasis added)
4

5 There is no doubt that Sprint provides exchange access in its own name which in
6 itself qualifies Sprint as a local exchange carrier. In addition, Sprint provides
7 telephone exchange service as that term is defined.
8

9 47 U.S.C. 153(47) Telephone Exchange Service – the term “telephone
10 exchange service” means (A) a service within a telephone exchange or
11 within a connected system of exchanges within the same exchange area
12 operated to furnish to subscribers intercommunicating service of the
13 character ordinarily furnished by a single exchange, and which is covered
14 by the exchange service charge or (B) comparable service provided
15 through a system of switches, transmission equipment, or other facilities
16 (or combination thereof) by which a subscriber can originate and
17 terminate a telecommunications service. (Emphasis added)
18

19 Sprint provides a service that is, at a minimum, comparable to telephone exchange
20 service by using a system of switches, transmission equipment and other facilities
21 by which subscribers can originate and terminate a telecommunications service.

22 This definition does not require service to be provided directly to subscribers as
23 Mr. Davis suggests, although Sprint could argue that it does. The definition only
24 says that Sprint’s equipment must allow a subscriber, regardless of whose
25 subscriber it is, to originate and terminate a telecommunications service.
26

27 **Q. Do you agree with Mr. Davis’s position that ITC does not have an obligation**
28 **to provide reciprocal compensation to Sprint (Davis at 19)?**

29 **A.** No. Mr. Davis’s position is based on a misunderstanding of reciprocal
30 compensation rules. First, reciprocal compensation is paid by the

1 telecommunications carrier that originates the call to the telecommunications
2 carrier that terminates the call. Thus, when an ITC customer originates a call and
3 Sprint terminates the call, ITC pays Sprint for terminating the call. The FCC’s
4 First Report and Order on Local Competition and the subsequent rules in 47 CFR,
5 define termination for purposes of reciprocal compensation. The FCC stated in
6 the First Report and Order on Local Competition in Section XI. “Obligations
7 Imposed on LECs by Section 251(b)”, Subsection A. “Reciprocal Compensation
8 for Transport and Termination of Telecommunications”, paragraph 1040 that

9 “We define “termination,” for purposes of section 251(b)(5), as the
10 switching of traffic that is subject to section 251(b)(5) at the
11 terminating carrier’s end office switch (or equivalent facility) and
12 delivery of that traffic from that switch to the called party’s
13 premises.”⁴
14

15 The FCC’s definition of termination for purposes of determining reciprocal
16 compensation was codified in 47 CFR Section 51.701(d) that states:

17 “(d) *Termination.* For purposes of this subpart, termination is the
18 switching of telecommunications traffic at the terminating carrier’s
19 end office switch, or equivalent facility, and delivery of such
20 traffic to the called party’s premises.”⁵
21

22 In paragraph 1057 of the Local Competition Order, the FCC further clarified that
23 the “additional costs” for which reciprocal compensation is intended to
24 compensate the terminating LEC are the usage-sensitive costs of end office

⁴ See *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, CC Docket No. 96-98 and *Interconnection Between Local Exchange Carriers and Commercial Mobile Radio Service Providers*, CC Docket No. 95-185, First Report and Order, FCC 96-325, Released August 8, 1996, at para 1040 (*Local Competition Order*).

⁵ See 47 CFR Subpart H – Reciprocal Compensation for Transport and Termination of Telecommunications Traffic §51.701(d).

1 switching to terminate the call and not for the non-traffic sensitive costs of the
2 local loop. Specifically, the FCC stated,

3 “We conclude that such non-traffic sensitive costs should not be
4 considered "additional costs" when a LEC terminates a call that
5 originated on the network of a competing carrier. For the purposes
6 of setting rates under section 252(d)(2), only that portion of the
7 forward-looking, economic cost of end-office switching that is
8 recovered on a usage-sensitive basis constitutes an "additional
9 cost" to be recovered through termination charges.”
10

11
12 Sprint provides the end office switching to terminate the local call and fully
13 satisfies the definition of terminating local calls from ITC under reciprocal
14 compensation. Thus, ITC has an obligation to enter into an agreement with Sprint
15 to pay reciprocal compensation for local calls.
16

17 **Q. You have provided definitional basis for why ITC should comply with its**
18 **duty to comply with its 251(b) obligations, is there an end user perspective to**
19 **this issue that is important?**

20 A. Yes. Some of the duties outlined in 251(b) have significant impacts on end users
21 services. Fundamental to effective competitive services is the ability of an end
22 user to port its telephone number to a new service provider or to allow the same
23 dialing patterns to work when switching service providers. These are really rights
24 afforded to end users. It is nonsensical to think that Congress would establish a
25 system whereby a competing carrier could interconnect and exchange traffic, but
26 not ensure these fundamental rights for its subscribers. Therefore, one only needs
27 to be a telecommunications carrier in order to gain the rights to 251(a) and it only

1 stands to reason that one only needs to be a telecommunications carrier to gain the
2 rights to 251(b).

3
4 **Q. Is the Sprint business model consistent with the intent of Congress in its**
5 **passing of the Act?**

6 A. Yes. It cannot be disputed that the intent of Congress was to create an
7 environment that fostered local competition. While Congress could not foresee
8 all possible business models the definitions they provided make it clear that the
9 creativity demonstrated by Sprint's business model is just what they had in mind.
10 As I have demonstrated above, a critical reading of the relevant definitions makes
11 it clear that Sprint's business model is consistent with the intent of Congress.

12
13 **Q. Mr. Davis suggests that the timing of when Sprint raised the issue of placing**
14 **wireless traffic on the interconnection trunks should disqualify Sprint's**
15 **request (Davis at 23). How do you respond?**

16 A. Mr. Davis is suggesting that Sprint should have started a new negotiation clock
17 because it has raised a new issue. Sprint is not requesting to negotiate a different
18 interconnection agreement. It is merely seeking specific terms in the agreement
19 currently being negotiated and arbitrated to allow it to have a more efficient
20 interconnection network by placing wireless traffic on the interconnection trunks.
21 Sprint does not desire or intend to alter the current compensation scheme for
22 wireline or wireless 251(b)(5) traffic. The fact of the matter is that the agreement
23 does cover 251(b)(5) traffic and that is what Sprint is asking for with respect to

1 Arbitration Issue 2 – multi-use trunking. For these reasons, Sprint’s request is
2 valid in the context of its original request. Furthermore, parties are not barred
3 from raising new issues throughout the course of negotiations.
4

5 **Q. Mr. Davis implies that ITC may not have been given adequate time to**
6 **negotiate the issue of adding wireless traffic to the interconnection trunks**
7 **(Davis at 23). How do you respond?**

8 A. ITC admits knowing of Sprint’s request in March of 2006. That is nearly 12
9 months ago and approximately seven months before arbitration was filed. This
10 was more than enough time to consider Sprint’s request and negotiate adequate
11 terms. However, as ITC admits (Heiberger Direct at 18) it did not negotiate this
12 issue with Sprint because it didn’t think it had to.
13

14 **Q. Mr. Davis says that “there should be no reason to include CMRS traffic as**
15 **part of the negotiations as each LEC originates landline traffic, not CMRS**
16 **traffic” (Davis at 24). Is Mr. Davis’s assumption correct?**

17 A. No. The interconnection agreement being negotiated is for interconnection
18 pursuant to Section 251(a) and 251(b). This request is not exclusive to wireline
19 traffic, interconnection for wireless traffic is pursuant to those same terms. In
20 addition, there is nothing that says a single entity, Sprint for example, can’t have
21 both wireless and wireline traffic. Sprint, is a both a wireline and wireless service
22 provider. There is no reason why it would need two interconnection agreements
23 if it desires one.

1

2 **Q. Mr. Davis discusses operational and regulatory differences between wireless**
3 **and wireline traffic and the challenges they present when mixed on the same**
4 **trunks. Have you addressed these issues elsewhere in your testimony?**

5 A. Yes. I have addressed the issues raised by Mr. Davis elsewhere in my testimony.
6 I will not repeat those statements here.

7

8 **Q. Does this conclude your rebuttal testimony?**

9 A: Yes.