STATE OF MICHIGAN

BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

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In the matter of the petition of **SPRINT SPECTRUM L.P.** for arbitration pursuant to Section 252(b) of the Telecommunications Act of 1996 to establish interconnection agreements with **MICHIGAN BELL TELEPHONE COMPANY, d/b/a AT&T MICHIGAN.**	)))))))	Case No. U-17349

At the December 6, 2013 meeting of the Michigan Public Service Commission in Lansing, Michigan.

PRESENT: Hon. John D. Quackenbush, Chairman
Hon. Greg R. White, Commissioner
Hon. Sally A. Talberg, Commissioner

ORDER

On July 22, 2013, Sprint Spectrum L.P. (Sprint) filed a petition seeking arbitration of terms and conditions of an interconnection agreement with AT&T Michigan. The parties agree that, pursuant to Section 252(b)(1) of the federal Telecommunications Act (FTA), 47 USC 252(b)(1), the Commission has jurisdiction to resolve the issues set forth in Sprint's petition. Sprint initially identified 31 issues needing resolution.

In a letter dated August 7, 2013, Administrative Law Manager Peter L. Plummer identified the members of the arbitration panel to include Commission Staff members Paul D. Negin and Carisa Neu, and Administrative Law Judge Mark E. Cummins. That letter further instructed AT&T Michigan to file its response to the arbitration petition by August 16, 2013.

On August 16, 2013, AT&T Michigan filed a response to the petition. In its response,

AT&T Michigan noted that, as a result of negotiation, a few of the issues were resolved, and some of the contract language it proposed was modified as a result of the settled issues.

By letter dated August 9, 2013, the arbitration panel set a schedule for the parties to submit their respective proposed decisions of the arbitration panel (PDAP), a date for issuance of the arbitration panel's decision, and the interval thereafter for filing of objections. Pursuant to the requirements of 47 USC 251, the Commission must issue an order no later than December 9, 2013.

On October 28, 2013, the arbitration panel issued its decision (DAP). On November 7, 2013, Sprint and AT&T Michigan filed their respective objections to the DAP.

Applicable Law and Standards

The framework within which the arbitration panel and the Commission must resolve the issues presented is contained in 47 USC 251 and 252, and Federal Communications Commission (FCC) rules promulgated thereunder, the Michigan Telecommunications Act, MCL 484.2101 *et seq.*, the Commission's final orders in Case Nos. U-11134 and U-13774, and the Commission's Procedures for Telecommunications Arbitrations and Mediations, R 460.701 *et seq.*

Pursuant to the May 2, 2003 order in Case No. U-13774, the arbitration proceeding follows a "baseball style" approach in resolving issues, and is described as follows:

> The arbitration panel shall issue a decision on the merits of the parties' positions on each issue raised by the request for arbitration and the response. Unless the result would be clearly unreasonable or contrary to the public interest, the panel will limit its decision on each issue to selecting the position of one of the parties on that issue. The panel will issue a written decision, with a brief explanation of the reasons for the decision on each issue, and will serve that decision on the parties. The parties may file objections to the panel's decision within 10 days of the issuance of that decision. The Commission will then issue an order approving, modifying, or rejecting the resulting agreement.

Id., p. 3. *See also*, R 460.706.

Discussion

In the sections below, the Commission discusses and decides the issues subject to the parties' objections *seriatim*. Any issue not subject to objection is deemed settled and will not be discussed. Absent express agreement otherwise, the Commission presumes that issues resolved by the arbitration panel, and not subject to objection, are resolved as determined by the arbitration panel.

A. Purpose and Scope of the Agreement

Issue 1 – Parties' Rights and Obligations Under the Agreement

Sprint proposed language for Sections 3.11.2.2 through 3.11.2.2.2.3 of the interconnection agreement (ICA) that would require AT&T Michigan to provide Sprint with internet protocol (IP) interconnection. Specifically, Sprint asserted "that all of the traffic that Sprint delivers to AT&T in IP format will be accepted into an IP-based system..., that any AT&T affiliate that allows AT&T access to softswitch functionality must also make such IP-related service available to Sprint..., and that each such facility would be available for selection by Sprint as a POI for purposes of establishing IP interconnection with AT&T's system." DAP, pp. 5-6.

According to Sprint, Section 251(c)(2) of the FTA requires AT&T Michigan to provide IP-to-IP interconnection in the same manner as it requires the company to provide time division multiplexing (TDM)-to-TDM interconnection. Sprint noted that AT&T Michigan's corporate affiliate, AT&T Corp.,[1] owns at least one IP-compatible softswitch, which allows AT&T Michigan to provide IP and TDM-based telephone exchange service to its customers. Therefore, Sprint argued that AT&T Michigan should be required to provide Sprint with IP interconnection in the same manner as AT&T Michigan receives IP interconnection from SBCIS. Sprint cited the D.C.

[1]On October 17, 2013, AT&T Michigan filed a letter stating that it misidentified AT&T Corp. as the affiliate that owns the softswitch, when in fact it is SBC Internet Services (SBCIS).

Circuit Court case, *Ass'n of Communications Enterprises v FCC*, 235 F3d 662 (2001) (*ASCENT*), in support of its position.

AT&T Michigan responded that the Commission should not address this issue for two reasons. First, because a similar issue is under consideration by the FCC, AT&T Michigan recommended that the Commission withhold its decision until the FCC acts. Second, AT&T Michigan asserted that it does not own an IP network to which Sprint may interconnect.

The arbitration panel found in favor of AT&T Michigan. The panel recommended, as it did in Case No. U-16906, that the Commission reserve its decision until after the FCC acts. In addition, the panel found the *ASCENT* case upon which Sprint relies inapplicable to this case.

Sprint objects that the panel's recommendation will impose unnecessary increased interconnection costs upon Sprint, and more importantly, is contrary to the following federal cases: *ASCENT*; the FCC's July 20, 2001 order, *In the Matter of Application of Verizon New York Inc, Verizon Long Distance, Verizon Enter Solutions, Verizon Global Networks Inc, and Verizon Select Servs Inc, for Authorization to Provide In-Region, InterLATA Servs in Connecticut*, 16 FCC Rcd 14147 (FCC *Verizon 271* decision); and the FCC's November 18, 2011 order in *Connect America Fund et al.*, WC Docket No. 10-90 *et al.* (*CAF* order). Sprint reiterates the arguments made in its brief, stating that its proposed IP interconnection contract terms are specifically detailed, its IP interconnection proposal is technically feasible pursuant to Section 251(c), IP interconnection is efficient and economical, the Commission has jurisdiction to order IP interconnection, and Case No. U-16906 is not dispositive on this issue.

The Commission finds that the arbitration panel's determination on this issue must be reversed. IP interconnection has become an important and prevalent form of interconnection in the telecommunications industry. TDM-based switching is declining, and the FCC has requested

that incumbent local exchange carriers (ILECs) negotiate IP interconnection in good faith. AT&T Michigan argued that it is unable to provide Sprint with IP interconnection because the applicable equipment is owned by a separate, but affiliated, out-of-state company. Sprint disputed this, and asserted that without Commission intervention, it will be forced to use inefficient and expensive TDM technology to the financial detriment of the company. The Commission agrees with Sprint, and finds that pursuant to Commission precedent, federal rules and law, Sprint's position on this issue should be adopted.

AT&T Michigan alleged that the interconnection requirement of Section 251(c)(2) does not extend to IP-to-IP interconnection. This legal question is currently pending before the FCC in a rulemaking proceeding. However, in its recent further notice of proposed rulemaking, the FCC observed that, "section 251 of the Act is one of the key provisions specifying interconnection requirements, and that its interconnection requirements are *technology neutral – they do not vary based on whether one or both of the interconnecting providers is using TDM, IP, or another technology in their underlying networks*." *CAF* order, ¶ 1342 (emphasis added). Although the FCC has yet to determine whether IP-to-IP interconnection falls under an ILEC's Section 251(c) obligations, the Commission notes that in the interim, the FCC did not request that state commissions refrain from deciding the issue.

More importantly, pursuant to the Second Circuit Court's decision in *S New England Tel Co v Comcast Phone of Conn, Inc*, 718 F3d 53 (2d Cir 2013) (*SNET*), the Commission is not required to delay its decision until the FCC rules on this issue. In its opinion, the Second Circuit Court stated that the FTA, "permits state commissions to regulate interconnection obligations so long as they do 'not violate federal law and until the FCC rules otherwise.'" *SNET*, p. 58, citing *Iowa Network Servs., Inc. v. Qwest Corp.*, 466 F3d 1091, 1097 (8th Cir 2006). As discussed further below, the

Commission's decision regarding IP interconnection is one of first impression and does not violate federal law.

The arbitration panel stated that in the February 15, 2012 order in Case No. U-16906 (February 15 order), the Commission determined that it would defer deciding the IP-to-IP interconnection question until after the conclusion of the FCC's rulemaking proceeding. However, a review of the February 15 order reveals that this was a recommendation by the arbitration panel in the January 9, 2012 DAP, not a conclusion adopted by the Commission in the February 15 order. The January 9, 2012 DAP recommendation is not binding in this case, and the Commission finds it prudent to decide the IP-to-IP interconnection issue at this time.

As set forth above, and pursuant to the Michigan Telecommunications Act (MTA), MCL 484.2201 *et seq.*, and Section 252 of the FTA, the Commission has jurisdiction to determine whether IP-to-IP interconnection falls under an ILEC's Section 251(c) obligations. The relevant portions of Section 251(c) state,

> (2) Interconnection
>
> The duty to provide, for the facilities and equipment of any requesting telecommunications carrier, interconnection with the local exchange carrier's network—
>
> (A) for the transmission and routing of telephone exchange service and exchange access;
>
> (B) at any technically feasible point within the carrier's network;
>
> (C) that is at least equal in quality to that provided by the local exchange carrier to itself or to any subsidiary, affiliate, or any other party to which the carrier provides interconnection....

AT&T Michigan asserted that Voice over Internet Protocol (VoIP) "providers – as well as providers of other IP-based information services – are not 'telecommunications carriers,' and

therefore may not invoke interconnection rights under section 251(c)(2)." AT&T Michigan's brief, p. 24. The Commission disagrees.

In certain circumstances, the FCC has determined that telephone-to-telephone VoIP service is a telecommunications service and is subject to regulation under the FTA. *In re Petition for Declaratory Ruling that AT&T's Phone-to-Phone IP Telephony Services are Exempt from Access Charges*, 19 FCC Rcd 7457, 7465 (2004). The Commission concludes that this factual situation is similar to the FCC's decision except for the fact that Sprint's traffic is wireless traffic in IP format in this case.

AT&T Michigan argued that even if VoIP providers are considered telecommunications carriers, "they would not be invoking [Section 251(c)(2)] in order to provide the local services identified in section 251(c)(2)(A): 'telephone exchange service and exchange access.'" AT&T Michigan's brief, p. 24. In support of its position, AT&T Michigan cited the FCC's *Vonage* order.[2] The Commission finds the *Vonage* order distinguishable because the FCC addressed a different set of facts and determined that computer-to-computer and computer-to-telephone/telephone-to-computer VoIP services are information services and therefore not subject to regulation under the FTA.

Accordingly, the Commission finds that pursuant to Section 251(c)(2)(A), an ILEC, such as AT&T Michigan, not only must provide, for the facilities and equipment of any requesting telecommunications carrier, interconnection, but also IP interconnection, with the local exchange carrier's network—for the transmission and routing of telephone exchange service and exchange access.

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[2] *Vonage Holdings Corporation Petition for a Declaratory Ruling Concerning an Order of the Minnesota Public Utilities Commission*, 19 FCC Rcd 22404, 22415-16, 22423-24 ¶¶ 20, 31 (2004) (*Vonage* order), *aff'd, Minn PUC v FCC*, 483 F3d 570 (8th Cir 2007).

The Commission next finds that AT&T Michigan failed to provide a reasonable explanation as to why Sprint's proposed IP interconnection is not technically feasible pursuant to Section 251(c)(2)(B). Instead, AT&T Michigan alleged that the softswitch used to provide IP service to its customers is owned by its out-of-state affiliate, SBCIS, and is not a part of AT&T Michigan's network. The Commission rejects this argument for three reasons. First, AT&T Michigan and SBCIS together operate a network that allows AT&T Michigan to provide its customers with IP and TDM-based telephone exchange service. Second, even if the Commission accepted AT&T Michigan's argument that it operates a network separate of SBCIS, AT&T Michigan is still required by Section 251(c)(2)(C) to provide Sprint with IP interconnection. And third, pursuant to the *ASCENT* decision, AT&T Michigan cannot use the location of its IP softswitch as a reason to deny Sprint access to IP interconnection.

In its witness' testimony, AT&T Michigan acknowledged that it has retail U-verse customers whose calls originate and terminate in IP format. These calls are carried over equipment owned by AT&T Michigan, delivered to SBCIS's equipment, and then carried to SBCIS's IP softswitch. Testimony of Bill Anglin, pp. 11-12. The following additional facts are not disputed by AT&T Michigan:

1. When AT&T Michigan's U-verse customers' IP calls are to be directed to another IP carrier interconnected with SBCIS, the softswitch sends it to that IP provider.

2. If AT&T Michigan's U-verse IP calls are to be delivered "to a carrier connected with AT&T Michigan in TDM (or to an AT&T Michigan TDM customer), the softswitch converts the call to TDM for delivery back to AT&T Michigan to be delivered over TDM facilities." Testimony of James R. Burt, p. 49.

3. "[I]f a call is made by either an AT&T Michigan or third-party TDM customer *that is destined to an AT&T IP U-verse customer,* the same process occurs, only in reverse." *Id.*

Based on these facts, the Commission finds that AT&T Michigan and its affiliate, SBCIS, operate an integrated IP-TDM network that provides TDM-based service to TDM subscribers, IP-based services to U-verse subscribers, as well as the IP-TDM conversion services necessary to enable calls not only to and from U-verse customers, but also between AT&T Michigan's own U-verse and TDM customers. AT&T Michigan has created a situation where it is now unable to provide telephone exchange service between its IP U-verse customers and TDM customers without the use of SBCIS's equipment and softswitch. As a result, the Commission finds that AT&T Michigan has an integrated network with SBCIS and IP-capable equipment with which Sprint may interconnect.

Even supposing AT&T Michigan and SBCIS do not operate an integrated TDM-IP network, the Commission, nevertheless, finds that AT&T Michigan is obligated to provide Sprint with IP interconnection pursuant to Section 251(c) and the federal rules. Specifically, under Section 251(c)(2)(C), AT&T Michigan must provide Sprint with interconnection "that is at least equal in quality to that provided by the local exchange carrier to itself or to any subsidiary, affiliate, or any other party to which the carrier provides interconnection." Pursuant to AT&T Michigan's witness' testimony[3] and 47 CFR 51.5, there is an interconnection between AT&T Michigan's and SBCIS's separate networks. And, as previously discussed, AT&T Michigan is using SBCIS's softswitch to provide IP service to its U-verse customers. Because AT&T Michigan is providing IP service to its own customers, it must also provide Sprint with interconnection that is "at least equal in quality to that provided by the local exchange carrier to itself."

In reference to AT&T Michigan's Section 251(c) obligations, the arbitration panel found the *ASCENT* decision inapplicable in this case. The Commission disagrees. In *ASCENT*, the FCC

[3]Testimony of Mr. Anglin, p. 12.

approved a merger between two ILECs, Ameritech and SBC, which made Ameritech a subsidiary of SBC. The FCC permitted SBC to avoid the resale provisions of Section 251(c) by allowing SBC to provide, through its new affiliate, "advanced services," defined as "high-speed, switched, broadband telecommunications capability that enables users to originate and receive high-quality voice, data, graphics, and video telecommunications using any technology." *ASCENT*, 235 F3d at 664. The FCC determined that the market-opening obligations of Section 251(c) applied to ILECs and their successors and assigns, but not to affiliates. The D.C. Circuit Court reversed, finding that "to allow an ILEC to sideslip § 251(c)'s requirements by simply offering telecommunications services through a wholly-owned affiliate seems to us a circumvention of the statutory scheme." *ASCENT*, 235 F3d at 666. The Court added, "We do not think in the absence of the successor and assign limitation an ILEC would be permitted to circumvent § 251(c)'s obligations merely by setting up an affiliate to offer telecommunications services." *Id.*, p. 667. And because Congress did not include an affiliate structure for advanced services in the statute, it may be inferred that "Congress did not intend for § 251(c)'s obligations to be avoided by the use of such an affiliate." *Id.*, p. 668.

A short time later, the FCC mentioned *ASCENT* in its FCC *Verizon 271* decision. Although the decision did not directly address IP interconnection, the FCC cited *ASCENT*, contending that "data affiliates of incumbent LECs are subject to all obligations of section 251(c) of the Act." FCC *Verizon 271* Decision, ¶ 28. In addition, the FCC stated that "pursuant to *ASCENT*, Verizon is required to allow a competitive LEC to re-sell DSL service (a Section 251(c) obligation) over lines on which the competitive LEC re-sells Verizon's voice service 'even though the DSL service is provided exclusively by Verizon's advanced services affiliate.'" Sprint's brief, p. 32, quoting the FCC *Verizon 271* Decision, ¶ 28.

More recently, in its IP-to-IP interconnection rulemaking proceeding, the FCC noted that,

> [T]he record reveals that today, some incumbent LECs are offering IP services through affiliates. Some commenters contend that incumbent LECs are doing so simply in an effort to evade the application of incumbent LEC-specific legal requirements on those facilities and services, and we would be concerned if that were the case. We note that the D.C. Circuit has held that "the Commission may not permit an ILEC to avoid § 251(c) obligations as applied to advanced services by setting up a wholly owned affiliate to offer those services." In reaching that conclusion, the court relied on the fact that the affiliate at issue was providing "services with equipment originally owned by its ILEC parent, to customers previously served by its ILEC parent, marketed under the name of its ILEC parent." That holding remains applicable here....

CAF order, ¶1388, quoting *ASCENT*.

The Commission acknowledges that the facts of *ASCENT* differ from the immediate case. The arbitration panel found it inapplicable because it "dealt solely with the issue of resale." DAP, p. 8. However, the Commission finds the facts and legal issues sufficiently analogous and the holding broadly applicable to Section 251(c) so that *ASCENT* appropriately serves as persuasive authority in this case.

Based on the Commission's view of the facts in this case, it appears AT&T Michigan is feigning inability to provide IP interconnection in order to avoid its Section 251(c) obligations. As discussed in *ASCENT* and the FCC *Verizon 271* decision, adopting AT&T Michigan's position on this issue would permit the company to avoid its Section 251(c) obligations by allowing the company to sequester its assets within an affiliate, contrary to Congressional intent and the statutory scheme.

The Commission also finds it significant that in its *CAF* order, the FCC cited *ASCENT* in direct response to allegations that ILECs are using affiliates to avoid Section 251(c) obligations. As noted above, the *CAF* order stems from a federal IP-to-IP interconnection rulemaking proceeding. By referencing *ASCENT*, the FCC affirms that the holding of the case applies broadly

to Section 251(c) obligations, and that it prohibits ILECs from using an affiliate to evade IP interconnection obligations.

The arbitration panel also attempted to distinguish *ASCENT* on the basis that AT&T Michigan never owned the IP softswitch and that there was no proof that AT&T Michigan created the affiliate relationship with SBCIS in order to avoid its Section 251(c) obligations. Although it may be true that AT&T Michigan never owned the IP softswitch, in its discussion above, the Commission found that AT&T Michigan has IP capable equipment via its integrated network with SBCIS. The Commission also disagrees that the holding of *ASCENT* requires proof of intent that an ILEC created an affiliate for the purpose of evading Section 251(c) obligations; the court simply stated that an ILEC cannot use the affiliate structure to avoid its Section 251(c) obligations.

The fact that SBCIS's softswitch is not located in Michigan does not affect the Commission's determination. As argued by Sprint, "the Commission is arbitrating many terms in this interconnection agreement that impact [out-of-state] locations," including bill-and-keep compensation for intraMTA calls, which extends to Ohio; interconnection of calls that originate or terminate outside of Michigan; and one of Sprint's out-of-state switches, serving Michigan, that exchanges TDM traffic with AT&T Michigan. Sprint's brief, p. 22. AT&T Michigan does not allege that it cannot interconnect with Sprint because one of its switches is located outside of Michigan; the switch may be out-of-state, but it is still used to provide service in Michigan. Consequently, AT&T Michigan should not be permitted to deny Sprint IP interconnection because SBCIS's IP softswitch is located in Pennsylvania.

Pursuant to the above discussion and determinations, the Commission finds Sprint's proposed contract language reasonable and prudent, and adopts Sprint's position on this issue.

Issue 2 – Service and Traffic Related Definitions

According to AT&T Michigan, the definition of "Intra-Major Trading Area (intraMTA) Traffic" is traffic exchanged between Sprint's end users and AT&T Michigan's end users. Sprint disagreed, asserting that the definition should track FCC Rule 51.701(b)(2): "traffic exchanged between AT&T and Sprint that, at the beginning of the call, originates and terminates within the same MTA." Sprint's brief, p. 48.

The arbitration panel noted that the parties agreed that the definition should "include all IntraMTA calls subject to reciprocal compensation obligations." DAP, p. 10, *citing* AT&T Michigan's PDAP, p. 12. The arbitration panel found in favor of Sprint, stating that Sprint's definition tracks the FCC's rules, which includes all intraMTA calls subject to reciprocal compensation.

No objections were filed. The Commission adopts the recommendation of the arbitration panel and finds in favor of Sprint.

Issue 3 – Service and Traffic Related Definitions

Sprint proposed that the definition of "InterMTA Traffic" include separate definitions of "Non-toll InterMTA Traffic" and "Toll InterMTA Traffic," arguing that only toll traffic is subject to access charges. Sprint asserted that AT&T Michigan's proposed definition could lead to double recovery. In response, AT&T Michigan stated that its definition corresponds with the language in the current ICA and the FCC's rules, and argued that Sprint's definition excludes interMTA traffic to or from an inter-exchange carrier (IXC) and is contrary to the FCC's intercarrier compensation rules.

As in Issues 20 and 21, the arbitration panel found in favor of AT&T Michigan on this issue. The arbitration panel was not persuaded by Sprint's arguments to include separate definitions for

toll and non-toll interMTA traffic, and found that the FCC distinctly ordered in its *CAF* order that interMTA traffic is subject to access charges. In addition, the arbitration panel stated that Sprint did not cite any language in AT&T Michigan's proposed ICA that would allow double recovery.

Sprint objects to the arbitration panel's finding that there is no compensation distinction between toll and non-toll interMTA traffic. DAP, p. 9. Citing two cases, Sprint asserts that, "the Commission has long recognized that whether a call is subject to local compensation depends on whether a separate charge is assessed to subscribers." Sprint's objections, p. 17.

The Commission agrees and adopts the recommendation of the arbitration panel. Consistent with its decisions in Issues 20 and 21, the Commission finds that the *CAF* order clearly intended that interMTA traffic be subject to access charges and should not be classified as either toll or non-toll. The Commission rejects Sprint's proposed definition of "InterMTA Traffic."

Issue 4 – Service and Traffic Related Definitions

AT&T Michigan's proposed definition of "Switched Access Service" is "an offering of access to AT&T Michigan's network for the purpose of the origination or the termination of traffic, from or to End Users in a given area, pursuant to a Switched Access Services tariff." AT&T Michigan's brief, p. 33. Although Sprint's proposed definition is similar, it is limited to service provided to an IXC.

The arbitration panel recommended adopting AT&T Michigan's position on this issue. According to the panel, "Sprint's definition would limit the service to that provided to an IXC, excluding 'Switched Access Service' from applying to either AT&T or Sprint." DAP, p. 13. In addition, as in Issues 20 and 21, the panel found that the *CAF* order did not limit access charges to toll traffic.

Sprint objects that by accepting AT&T Michigan's definition, the arbitration panel effectively designated Sprint an IXC, despite the agreed-upon language in the ICA that Sprint, as a wireless service provider, is not an IXC. Sprint's objections, p. 18. In addition, Sprint argues that AT&T Michigan's definition of "Switched Access Service" is vague and overly broad under federal law.

The Commission agrees with the arbitration panel and, consistent with its decisions in Issues 20 and 21, finds in favor of AT&T Michigan. The Commission finds Sprint's definition too limiting and adopts AT&T Michigan's definition.

B. Issues Regarding How the Parties Interconnect

Issue 5 – Interconnection Methods

AT&T Michigan proposed a definition for "Interconnection" that refers only to Rule 51.5 of the FCC's rules, and a separate definition for "interconnection" that "refers to connections for the exchange of all Authorized Services traffic." AT&T Michigan's brief, p. 16. AT&T Michigan asserted that there is a relevant distinction between the two definitions, because "only those existing facilities used for Interconnection as defined in section 251(c)(2) and 47 C.F.R. § 51.5 (*i.e.*, "Interconnection Facilities") are subject to TELRIC-based pricing."[4] *Id.*

Sprint's proposed definition of "Interconnection" references the definitions in Parts 51 and 20 of the FCC rules. Sprint argued that Part 20 should apply to interconnection between AT&T Michigan as a local exchange carrier, and Sprint as a commercial mobile radio service (CMRS) provider, because it grants Sprint the interconnection rights to which it is entitled under Parts 51 and 20.

Contrary to Sprint's recommendation, the arbitration panel found it unnecessary to reference Parts 51 and 20 in the definition of "Interconnection," because the definitions in the rules are not

[4]"TELRIC" is an acronym for total element long run incremental cost.

materially different, it would add complexity to the ICA, and AT&T Michigan's simpler definition will suffice. DAP, p. 15. However, the panel disagreed with AT&T Michigan that Part 51 does not include indirect interconnection and found, consistent with its decisions in Issues 10 and 11, that AT&T Michigan's interpretation of Rule 51.5 is too narrow. *Id.* The arbitration panel asserted that, "this definition will have to be interpreted in the broader context of the ICA as a whole, including the language adopted for Issues 10 and 11." *Id.* Regarding AT&T Michigan's request for two separate definitions for "Interconnection" and "interconnection," the arbitration panel found the request unreasonable, asserting it would add unnecessary ambiguity to the ICA.

No objections were filed. The Commission adopts the recommendation of the arbitration panel.

Issue 6 – Points of Interconnection

Although the parties agreed that the point of interconnection (POI) is the physical demarcation point between the parties' two networks, AT&T Michigan argued that agreed upon language in the ICA states that the POI is also the financial demarcation point. Sprint disagreed, citing Commission orders, federal rules, and federal court cases that support its position.

The arbitration panel found in favor of Sprint on this issue. The panel stated, "There is clear Commission precedent from multiple cases that the POI does not always represent the financial demarcation between networks." DAP, p. 18. In support, the arbitration panel cited the August 18, 2003 order in Case No. U-13758; subsequent affirming orders in Case Nos. U-13931, U-15534, and U-16906; FCC orders; and federal court cases. The arbitration panel asserted that the language, "Unless otherwise specified in this Attachment…" preceding the ICA's clause about financial responsibility and the POI, indicates that an exception may exist. According to the

arbitration panel, "Sprint's proposal on Issue 24, if adopted, would create such an exception." *Id.*, p. 19.

AT&T Michigan filed several objections on this issue. First, AT&T Michigan states that the DAP failed to address what language should be adopted to express the linking of the two networks. AT&T Michigan recommends that the Commission approve its language "'where the Parties' networks meet' for the purpose of establishing Interconnection. This language should be adopted because it succinctly and accurately tracks what Sprint acknowledges to be the parties' agreement: 'The parties agree that the POI will serve as the physical demarcation point between their networks.'" AT&T Michigan's objections, p. 2. AT&T Michigan states that an opinion from the Fourth Circuit Court of Appeals [5] supports its position and that Sprint's language is less precise.

Second, AT&T Michigan argues that Sprint agreed to the following language: "Unless otherwise specified in this Attachment, each party is *financially* responsible for the provisioning of facilities on its side of the POI(s)." AT&T Michigan's objections, p. 2. Although the DAP states that Sprint's cost sharing proposal in Issue 24, if adopted, would create such an exception, AT&T Michigan urges the Commission, in Issue 24(a) below, to reject Sprint's sharing proposal and adopt the language on which the parties agreed, which includes the word "financially." *Id.*

Third, AT&T Michigan proposes that if the Commission finds that the word "financially" should not be included in the language, the Commission may adopt, in the alternative, AT&T Michigan's language with the word "financially" deleted.

Pursuant to R 484.706(2) of the Commission's Procedures for Telecommunications Arbitrations and Mediations, the arbitration panel must limit its decision to the position of one of

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[5] *See, New Cingular Wireless PSC, LLC d/b/a AT&T Mobility and Alltel Communications, LLC v North Carolina Utility Commission*, 674 F2d 225 (CA 4 2012).

the parties, unless it is clearly unreasonable or contrary to the public interest. Because the arbitration panel found in favor of Sprint on this issue, it rejected, by default, AT&T Michigan's proposed language and was not required to address each detail of AT&T Michigan's proposal.

The Commission agrees with the arbitration panel that there is abundant Commission and federal precedent in support of Sprint's proposed language, and adopts the conclusion of the arbitration panel. The Commission is not persuaded by AT&T Michigan's arguments that its language regarding the linking of the two networks is more specific and accurate than Sprint's. In addition, the Commission finds that AT&T Michigan's alternative proposal to adopt its language, but deleting the word "financially," was raised for the first time in its objections, is untimely, and is, therefore, rejected by the Commission. Finally, in Issue 24(a), the Commission adopted Sprint's proposal that the parties share the costs of two-way interconnection facilities, which, as noted by the panel, creates the exception to which Sprint agreed in the ICA.

Issue 7 – Points of Interconnection

The parties agreed that Sprint may establish a POI at any technically feasible point, however Sprint proposed language permitting it to unilaterally remove any previously established POI and interconnect at only one POI per local access and transport area (LATA). AT&T Michigan disagreed, arguing among other things, that unilateral decommissioning could reduce reliability and security, waste money invested by AT&T Michigan in the POIs, and may exhaust facilities and cause call blocking.

Finding in favor of Sprint, the arbitration panel cited the following language in Paragraph 1316 of the *CAF* order:

> Currently, under section 251(c)(2)(B), an incumbent LEC must allow a requesting telecommunications carrier to interconnect at any technically feasible point. The Commission has interpreted this provision to mean that competitive LECs have the option to interconnect at a single point of interconnection (POI) per LATA.

Although AT&T Michigan alleged that the above language applies only to establishing POIs, the arbitration panel found that it failed to cite any federal rules stating that this language does *not* apply to decommissioning. DAP, p. 20. The panel noted there are no Commission cases directly on point. However, the panel found that Sprint cited previous Commission decisions that provide relevant guidance on this issue. *Id.* The panel also found that AT&T Michigan did not meet the FCC's requirements for limiting interconnection, the cases cited in support of its position were not directly on point, and that, based on previous Commission decisions, Sprint "has the right to design its network as best suited for its business." *Id.*, p. 22.

In its objections, AT&T Michigan acknowledges that Sprint should have flexibility to manage its own network, but asserts that the arbitration panel erred by extending it to the "unbridled right to dismantle network connections that the parties agreed upon and established together." AT&T Michigan's objections, p. 3. AT&T Michigan argues that the panel's conclusion was incorrect for five reasons: (1) the cases cited by Sprint, and accepted by the panel, do not extend the right to establish a single POI per LATA to the right to decommission a POI; (2) the panel overemphasizes AT&T Michigan's authority under its proposal; (3) the panel erred in applying to Sprint's proposal the "clear and convincing evidence" standard of the March 3, 2000 order in Case No. U-12198; (4) the panel failed to consider the economic inefficiency AT&T Michigan will suffer; and (5) under Section 251(c)(2)(D), the Commission has authority to "adopt reasonable terms and conditions for the decommissioning of POIs." *Id.*, p. 7.

The Commission adopts the recommendation of the arbitration panel on this issue. The Illinois Commerce Commission cases cited by AT&T Michigan are not binding on this Commission, and its cited Commission cases are not relevant to this set of facts. Although the Commission has not previously addressed this issue, the cases cited by Sprint, specifically

Case No. U-12198, provide guidance, and the Commission finds that Sprint may unilaterally decommission POIs.

The Commission also notes that in Case No. U-16906, it found "no reason to enforce efficiency, as efficiency has its own incentive to lower costs for the provider," and that competitive local exchange carriers (CLECs) should have flexibility to manage their own networks. DAP, p. 22, *citing* the February 15, 2012 order in Case No. U-16906, p. 13. The Commission concurs with the arbitration panel that Sprint "has the right to design its network as best suited for its business, and not as dictated by AT&T" and finds it unlikely that Sprint would purposefully operate its network in an inefficient manner. *Id.* Finally, the Commission agrees that AT&T Michigan's arguments about stranded costs are an economic concern, and the FCC rules state that economic concerns are not valid reasons for restricting interconnection.

Issue 8 – Points of Interconnection

AT&T Michigan proposed "language that would require Sprint to establish additional POIs if traffic to an area served by an AT&T tandem exceeds the level of one DS3 for over three consecutive months." DAP, p. 24. Sprint disagreed, asserting that AT&T Michigan's position is not supported by Commission precedent.

The arbitration panel found in favor of Sprint, stating that this is another attempt by AT&T Michigan to dictate how Sprint must manage its network. The panel agreed with Sprint that the Commission "has consistently rejected ordering a threshold requiring a competitor to establish a new POI, including specifically declining to adopt the decision reached in Texas that AT&T cites as supporting its position." DAP, p. 25. Citing Case No. U-12198, the panel found that the Commission addressed this same issue, finding that it would rather require that the ILEC make needed investment in its network, than restrict the CLEC's choice of interconnection location.

Although AT&T Michigan argued that the DS1 threshold in Case No. U-12198 is different than the DS3 threshold in the immediate case, the panel disagreed, asserting that the Commission's decision and reasoning are still applicable, no matter the size of the threshold. *Id.*, pp. 25-26.

No objections were filed. The Commission adopts the recommendation of the arbitration panel and finds in favor of Sprint.

Issue 9 – Facilities and Trunking Provisions (Non-Compensation)

The parties agreed to the definition of "Interconnection Facilities," with the exception of two points. According to Sprint, the resolution of this issue is tied to its pro rata pricing proposal in Issue 22. AT&T Michigan proposed to omit Sprint's reference to Section 3.8.2 and instead cite Rule 51.5 in the definition, asserting that its position is supported by the FCC's rules and the United States Supreme Court's decision in *Talk America Inc v Michigan Bell Tel Co*, 131 S Ct 2254 (2011) (*Talk America*). In addition, AT&T Michigan recommended that the Commission reject Sprint's proposal because it permits Sprint to use interconnection facilities for both interconnection and backhaul traffic in direct contravention of the *Talk America* decision. AT&T Michigan's brief, p. 58.

Because the arbitration panel rejected Sprint's pro rata pricing proposal in Issue 22 (as discussed more fully *infra*), it found that Section 3.8.2 should not be included in the definition for "Interconnection Facilities." As a result, the arbitration panel found there was no need to address Sprint's claim that AT&T Michigan's proposed definition, if accepted, would prejudice Sprint's proposal in Issue 22. The arbitration panel contended that without the inclusion of Section 3.8.2, the parties' definitions are "functionally equivalent" and, therefore, selected AT&T Michigan's definition because it appeared to be more reasonable as a whole. DAP, p. 27.

No objections were filed. The Commission adopts the recommendation of the arbitration panel and finds in favor of AT&T Michigan.

Issue 10 – Facilities and Trunking Provisions (Non-Compensation)

The parties dispute the definition of "Backhaul." Sprint asserted that all calls "between the parties' switches are mutually exchanged between their networks" and are subject to TELRIC pricing. Sprint's brief, p. 71. Accordingly, Sprint's proposed definition of "Backhaul" is the "use of a transmission facility for the purpose of transmitting traffic that is not, at either end of such facility, switched by an AT&T Michigan Central Office Switch or Selective Router." *Id.*

AT&T Michigan disagreed, asserting that TELRIC pricing applies only to "calls originating between the parties' end users [that] are mutually exchanged between their networks." *Id.* AT&T Michigan argued that Sprint's position conflicts with the federal rules and the state, federal, and Commission cases cited by Sprint, and should be rejected by the Commission.

Contrary to AT&T Michigan's argument, the arbitration panel found that Sprint's proposed definition is supported by the *SNET* case, and does not conflict with the Supreme Court's opinion in *Talk America.* Although the Court did not specifically define "backhauling" in *Talk America,* the panel felt the Court's opinion more strongly supports Sprint's position. The panel also contended that there is ambiguity in the FCC amicus briefs cited by AT&T Michigan, and instead found that the briefs imply that the exchange of traffic between end users is one purpose of interconnection, not the *only* purpose. The panel noted that the other cited federal cases are not controlling in Michigan and the Commission orders do not support AT&T Michigan's proposal. Therefore, the panel found that Sprint's language is more reasonable and consistent with past Commission precedent, and should be adopted. DAP, pp. 31-32.

In its objections, AT&T Michigan claims that the arbitration panel erred by failing to consider Rule 51.5, which defines "Interconnection" as, "the linking of two networks for the mutual exchange of traffic." 47 CFR 51.5. According to AT&T Michigan, Sprint proposes to use interconnection facilities to transport its traffic to and from third-party IXCs or to 911 answering points, and not to mutually exchange traffic with AT&T Michigan's end-users. AT&T Michigan's objections, p. 9. AT&T Michigan argues that the cases on which the panel relied do not support Sprint's position.

The Commission adopts the analysis and conclusion of the arbitration panel, finding in favor of Sprint. The Supreme Court did not precisely define "backhaul" in the *Talk America* decision. However, the Court provided guidance, stating that backhauling "occurs when a competitive LEC uses an entrance facility to transport traffic from a leased portion of an incumbent network to the competitor's own facilities." *Talk America*, 131 SCt at 2259, n. 2. The Court stated that backhauling differs from interconnection, which "involves the linking of two networks for the mutual exchange of traffic," but does not specify that it *must* be between *end users*. *Id.*

As stated by the arbitration panel, the Commission finds that there is ambiguity in the amicus briefs cited by AT&T Michigan, and they are therefore, not persuasive. In addition, the Circuit Court decisions cited by AT&T Michigan are not persuasive or controlling law in Michigan. Although the Second Circuit Court's *SNET* decision is not controlling law, the Commission notes that the Court rejected AT&T Michigan's argument for the same reasons:

> [N]othing in the language of [Section] 251 suggests that the interconnection duty relates only to the transmission and routing of traffic between a CLEC and the ILEC's end-users. The FCC has ruled that carriers have the right to interconnect to exchange traffic that does not originate or terminate on their own networks…Therefore, the obligations associated with interconnection are not limited to situations where AT&T terminates the traffic.

SNET, p. 16. As such, the Commission finds that the *SNET* decision more closely supports Sprint's position.

The Commission also agrees with the arbitration panel that Case No. U-16906 may be distinguished from this case. In that case, the panel found that 911, operator services, and directory assistance were ancillary services that could "fall under the broad definition of interconnection," however, in the ICA, the parties had already agreed that entrance facilities "are for the mutual exchange of traffic and these ancillary services are for the benefit of the CLECs' customers." January 9, 2012 DAP in Case No. U-16906, p. 16. But for the parties' previous agreement, the panel in Case No. U-16906 would have found that interconnection has a more broad definition than asserted by AT&T Michigan.

Considering the above federal and Commission precedent, the Commission finds that Sprint's proposal is more persuasive, reasonable, and consistent, and adopts its proposed language.

Issue 11(a) – Facilities and Trunking Provisions (Non-Compensation)

Sprint proposed that the definition of "Interconnection Facilities" be subject to Attachment 2, Section 3.8.2, and would allow the use of interconnection facilities "'for the transmission and routing of Telephone Exchange Service and/or Exchange Access service ***and other AT&T switched traffic***' (Sprint's proposed language in bold italics)." DAP, p. 32. Sprint asserts that AT&T Michigan's definition is too narrow, violates federal law, and is contrary to good policy. AT&T Michigan disagreed, stating that for the same reasons argued in Issue 9, "Interconnection Facilities" may only be used for "Interconnection." AT&T Michigan's brief, p. 72.

The arbitration panel found in favor of Sprint. Reiterating its analysis from Issue 10, the panel asserted that interconnection is not limited to the exchange of traffic between the parties' end users. The panel also found the Commission decisions and federal rules and cases cited by AT&T

Michigan do not support its position. As stated in Issue 10, "the Panel believes that Sprint's position is more in line with the pro-competitive intent of the FTA and of the past policies of this Commission." DAP, p. 33. However, to be consistent with Issue 22, the panel recommended that Sprint's language be modified to remove "subject to Attachment 2, Section 3.8.2." *Id.*

AT&T Michigan objects, asserting that the arbitration panel's recommendation should be rejected for the same reasons stated under Issue 10.

For the reasons set forth by the arbitration panel and consistent with the Commission's decisions in Issues 9 and 10 above, the Commission adopts the recommendation of the panel and finds in favor of Sprint.

Issue 11(b) – Facilities and Trunking Provisions (Non-Compensation)

According to Sprint, it should be permitted to use Interconnection Facilities to deliver 911 calls because they are calls between the parties' switches, and Sprint either provides telephone exchange service on these calls, or they are "other" traffic that may use Interconnection Facilities. Sprint's brief, p. 81. Citing the February 15 order, AT&T Michigan argued that 911 calls are not traffic between the parties' end users, and are, thus, not interconnection traffic. In addition, AT&T Michigan asserted that Sprint agreed to be "solely responsible for 911 facilities and therefore should not be able to purchase them at TELRIC rates." DAP, p. 34.

The arbitration panel found in favor of Sprint, stating again that Case No. U-16906 is distinguishable from this case. Like Issue 10, the panel determined that 911 is an ancillary service that falls under the broad definition of "Interconnection." As a result of adopting Sprint's definition of "Backhaul" in Issue 10, along with its recommendation in Issue 11(a), the panel believed that a finding for Sprint on this issue must also follow. DAP, p. 34. Although Sprint

agreed to be solely responsible for 911 facilities, the panel interpreted it to mean the costs of the facilities, and that it "does not limit the facilities that it may use for 911 traffic." DAP, pp. 34-35.

AT&T Michigan objects, asserting that Sprint's proposal should be rejected for the reasons stated in Issue 11(a) and because it is contrary to ICA provisions to which Sprint agreed. According to AT&T Michigan, the parties agreed that "911 facilities are not connected to a POI (which is the physical and financial demarcation point between the parties' networks for the mutual exchange of traffic) the way Interconnection Facilities are." AT&T Michigan's objections, p. 13. AT&T Michigan argued that Sprint is wholly "responsible for the transport facilities that carry one-way 911 trunks all the way from Sprint to AT&T Michigan's Selective Router, which is the equipment used to provide the 911 functionality and switching necessary to handle 9-1-1 calls." *Id.* In addition, AT&T Michigan contends that "because 911 calls are routed directly to the Selective Router over trunks specially equipped for 911 traffic, they cannot be carried on Interconnection trunks used for the mutual exchange of telephone exchange service traffic (which ride over Interconnection Facilities that connect at the POI, not the Selective Router)." *Id.*, p. 14. Therefore, in AT&T Michigan's opinion, the parties agreed that 911 traffic is an ancillary service, not telephone exchange service. *Id.*

In its objections, AT&T Michigan misconstrues Sprint's proposed contract language, and the Commission finds that the language is not contrary to the ICA provisions to which Sprint agreed. In accordance with the Commission's decisions in Issues 10 and 11(a), Sprint's proposed language is adopted.

Issue 11(c) – Facilities and Trunking Provisions (Non-Compensation)

Sprint proposed contract language that would allow it to use interconnection facilities for equal access trunks. Sprint asserted that these calls are exchanged between Sprint's and AT&T

Michigan's switches, and therefore are properly within the scope of Section 251(c)(2). In response, AT&T Michigan argued that there is a third carrier (*i.e.*, an IXC) involved; thus, equal access trunks are not for the mutual exchange of traffic between end users and may not be considered within the scope of interconnection.

The arbitration panel adopted Sprint's position on this issue. As in Issue 10, the panel found the *SNET* decision supports Sprint's position that interconnection is not limited to calls that are terminated with the parties' end users, and that the facts of Case No. U-16906 may be distinguished from the immediate case. As noted in Issues 10 and 11(a), the panel stated that its recommendation is more consistent with the pro-competitive goals of the FTA and of the policies of this Commission.

Similar to its Issue 10 objections, AT&T Michigan argues that Sprint is not providing it with exchange access pursuant to Section 251(c)(2)(A). AT&T Michigan also disagrees that it and Sprint are jointly providing exchange access to an IXC. AT&T Michigan asserts that none of its exchange customers are involved, so AT&T Michigan is not providing access ("joint" or otherwise) to its exchange customers in any sense of the word. AT&T Michigan's objections, p. 15.

For the same reasons stated in Issues 10 and 11(a), the Commission agrees with the arbitration panel that Sprint's position on this issue should be adopted.

Issue 12 – Facilities and Trunking Provisions (Non-Compensation)

Issue 12 actually contains two sub-issues: whether Sprint should be solely responsible for the facilities that carry 911 trunks, and whether Sprint should be solely responsible for the facilities that carry equal access trunks. Sprint proposed that these facilities should be subject to cost sharing, because these types of calls benefit both parties. AT&T Michigan argued that because

neither of these types of traffic terminate with an AT&T Michigan end user, they are not eligible to be carried over interconnection facilities.

Consistent with its findings on Issues 6, 11, and 24, the arbitration panel found in favor of Sprint. Noting that it had thoroughly rejected AT&T Michigan's end user argument, the panel found that AT&T Michigan offered no reason to reach a different conclusion on this issue.

AT&T Michigan objects, arguing that the real dispute is whether Sprint should be solely responsible for the cost of the facilities used for equal access trunks. AT&T Michigan contends that Sprint's proposed 50% sharing factor improperly assigns to AT&T Michigan part of the cost of interconnection facilities that solely benefit Sprint and the originating IXC carrier, and is confiscatory. AT&T Michigan further argues that the panel's rejection of its end user argument does not actually answer this issue, because AT&T Michigan is entitled to full reimbursement from Sprint for the cost of these facilities.

For the same reasons set forth by the panel, and consistent with the Commission's decision in Issue 11, the Commission adopts the recommendation of the panel and finds in favor of Sprint.

Issue 13(a) – Facilities and Trunking Provisions (Non-Compensation)

AT&T Michigan proposed the inclusion of language that would allow it to request an independent audit of Sprint's use of interconnection facilities up to once per year. Sprint argued that the audit provisions were overly burdensome and unnecessary.

The arbitration panel found in favor of AT&T Michigan. The panel states that regardless of its findings on Issue 11, there will still be uses of interconnection facilities that will be prohibited under the ICA, and that audit provisions are common in ICAs, including the ICA resulting from Case No. U-16906.

There were no objections filed. The Commission adopts the recommendation of the arbitration panel and finds in favor of AT&T Michigan.

Issue 13(b) – Facilities and Trunking Provisions (Non-Compensation)

In conjunction with the audit provisions, AT&T Michigan proposed language that addresses the remedy if Sprint is found, as a result of an audit, to be non-compliant with the ICA's permitted uses of interconnection facilities. That language requires payment to AT&T Michigan of the difference between TELRIC and access rates for the period of non-compliance, and requires changing the non-compliant facilities to access facilities. Sprint argued that the latter provision was overly punitive.

The arbitration panel found in favor of AT&T Michigan, primarily because Sprint offered no alternative language. The panel noted that in any case, Sprint will have the option to dispute any findings of non-compliance and, if necessary, bring that dispute before the Commission.

There were no objections filed. The Commission adopts the recommendation of the arbitration panel and finds in favor of AT&T Michigan.

Issue 13(c) – Facilities and Trunking Provisions (Non-Compensation)

Addressing the cost of audits, AT&T Michigan proposed that if 10% or more of the facilities audited are non-compliant, Sprint would reimburse AT&T Michigan for 100% of the auditor's costs, and, if fewer than 10% of facilities are non-compliant, Sprint would be liable for an amount proportional to the number of non-compliant circuits. Sprint again argued that this was overly punitive.

The arbitration panel found in favor of AT&T Michigan, noting again that the proposed provisions are similar to those adopted in Case No. U-16906.

There were no objections filed. The Commission adopts the recommendation of the arbitration panel and finds in favor of AT&T Michigan.

Issue 14 – Facilities and Trunking Provisions (Non-Compensation)

Sprint proposed language that would allow it to use TELRIC-priced interconnection facilities to carry combined trunk groups. AT&T Michigan argued that combined trunk groups that carry both interMTA and intraMTA traffic are not eligible for TELRIC pricing.

The arbitration panel found in favor of Sprint, noting that Sprint is providing exchange access when exchanging interMTA traffic with AT&T Michigan, and finding that this type of traffic can reasonably be considered to fall within the definition of interconnection traffic. Again, the panel noted its rejection of AT&T Michigan's end user argument.

AT&T Michigan objects on grounds that Sprint is not using the interconnection facilities for the mutual exchange of traffic between Sprint and AT&T Michigan, and that AT&T Michigan is not providing exchange access services to Sprint in this situation but is simply an intermediate carrier for traffic that flows between Sprint and IXCs.

The Commission adopts the recommendation of the arbitration panel and finds in favor of Sprint. The Commission agrees with the panel that this type of traffic is interconnection traffic, and there is no requirement that traffic over TELRIC-priced interconnection facilities must be to or from an AT&T Michigan end user.

Issue 15 – Facilities and Trunking Provisions (Non-Compensation)

Whenever the transit traffic between Sprint and a single third party exceeds the level of one DS3, AT&T Michigan proposed that Sprint be required to establish direct interconnection or other alternate transit arrangements with that third party. Sprint disagreed, arguing that Commission precedent does not support AT&T Michigan's position; pursuant to federal law, Sprint has the

right to choose indirect interconnection; it has the right to manage its own network; and other CLECs are not obligated to directly interconnect, leaving Sprint without interconnection with these carriers.

The arbitration panel found in favor of Sprint on this issue. The panel asserted that the DAP and order in Case No. U-14152 do not support AT&T Michigan's position. In addition, the panel found that the precedent from Case No. U-13758 is more applicable and corresponds with its findings on other issues. And finally, the panel contended that its recommendation is consistent with the *SNET* decision and Commission policy.

AT&T Michigan objects and reiterates the same arguments set forth in its brief. In addition, AT&T Michigan asserts that the panel "overlook[ed] the Commission's policy to encourage carriers to directly interconnect 'when the traffic warrants it, rather than utilizing the less efficient method of paying for transit across a third party's network,'" and that *SNET* dealt with the rates an ILEC may charge for transit service, and not with establishing direct connections for transit traffic. AT&T Michigan's objections, pp. 20-21. Finally, AT&T Michigan contends that Sprint should not be allowed to independently engineer its network without any regard for the impact on AT&T Michigan's network.

For the same reasons cited by the arbitration panel, the Commission adopts Sprint's position on this issue. The Commission disagrees that the panel overlooked Commission policy – Sprint should be permitted to engineer its network in the most efficient manner, which is consistent with Commission policy and the *SNET* decision the Commission relied upon in deciding Issue 10.

C. Rating and Routing Issues

Issue 16 – Transmission and Routing of Traffic to or from an Inter-exchange Carrier

AT&T Michigan proposed that traffic between Sprint and IXCs be routed over equal access facilities because this IXC traffic does not qualify as interconnection traffic, and nothing in the *CAF* order changed how this traffic is routed. Sprint proposed language that would allow it to use interconnection facilities for the receipt and delivery of exchange access traffic.

Consistent with its resolution of Issue 11, the arbitration panel found in favor of Sprint. The panel rejected AT&T Michigan's narrow interpretation of interconnection, and found that interconnection facilities could be used for equal access trunks. The panel found that Sprint's proposed language adequately addresses the potential problem of arbitrage schemes by making clear that wireline originated traffic from an IXC will not be routed over interconnection facilities.

AT&T Michigan objects to this result, as it objects to Issues 10 and 11. AT&T Michigan argues that Sprint may not use interconnection facilities to send traffic to and from IXCs because it is not using them for the mutual exchange of traffic between Sprint and AT&T Michigan, and AT&T Michigan is not providing exchange access services to Sprint in this situation. AT&T Michigan further contends that the traffic at issue is traditional switched access traffic and should be routed over equal access trunk groups. In addition, Sprint's proposed language does not address the Halo traffic arbitrage scheme because it only states that Sprint will not route wireline originated traffic from an IXC over interconnection facilities and does not address the fact that Sprint could simply declare the traffic to be non-wireline.

As with Issue 11, the Commission adopts the recommendation of the panel and finds in favor of Sprint. This is consistent with the Commission's finding that interconnection facilities can be used for equal access trunks. Additionally, the Commission believes that Sprint's proposed

language regarding wireline originated traffic will address any potential problem with arbitrage schemes similar to the Halo scheme.

Issue 17 – Routing InterMTA Traffic Over Interconnection Facilities

AT&T Michigan proposed that mobile-to-land interMTA traffic should be routed over equal access facilities, and that land-to-mobile interMTA traffic that appears to be intraMTA traffic may be routed over either interconnection or equal access facilities. AT&T Michigan argued that historically, interMTA mobile calls have been exchanged this way, and that the *CAF* order preserved existing access arrangements. Sprint proposed that interconnection facilities may be used to route interMTA traffic. Sprint argued that it is appropriate to deliver interMTA mobile-to-land calls over interconnection facilities because Sprint is providing telephone exchange service, these calls can be delivered as "other" traffic on combined trunk groups, and routing through switched access facilities is not practical.

Again, consistent with Issue 11 (and Issue 20), the arbitration panel found in favor of Sprint, based on its finding that interconnection facilities may be used for equal access trunks and other AT&T Michigan-switched traffic. The panel states that AT&T Michigan never adequately explains why traffic that is subject to switched access charges must be carried over switched access facilities. The panel finds that the results of Issue 17 and Issue 20 must be consistent.

Though it agrees that Issues 17 and 20 must be consistent, AT&T Michigan objects to the fundamental finding that Sprint is authorized to route interMTA traffic over interconnection facilities rather than switched access facilities, even where there is no question that it is switched access traffic (interMTA traffic). AT&T Michigan simply argues that its tariff for switched access services (per minute and monthly) applies to switched access traffic. AT&T Michigan further

contends that the DAP does not address the issue of land-to-mobile calls that appear to be intraMTA but are really interMTA, stating,

> AT&T Michigan's proposed section 4.10.5 is therefore needed to address land-to-mobile calls that appear to be IntraMTA based on the calling and called parties' telephone numbers, but are in fact InterMTA because the called party has roamed out of the MTA associated with his/her telephone number. In this situation, AT&T Michigan does not know that the Sprint end user is located outside of the MTA and that the call is actually an InterMTA call. Accordingly, AT&T Michigan routes the call over the Interconnection Facilities as though it were a normal IntraMTA call. Pellerin at 135. This involves only a small amount of traffic, and AT&T Michigan and Sprint have been routing incidental land-to-mobile InterMTA traffic in this way for years. There is no reason to change this practice now.

AT&T Michigan's objections, pp. 25-26.

Based on the resolution of Issues 11 and 20, and in agreement with the reasoning of the panel, the Commission finds in favor of Sprint. In response to AT&T Michigan's argument that the panel failed to address the issue of land-to-mobile calls that appear to be intraMTA, the Commission finds that Sprint's proposed Section 4.10.4 language, which allows *all* interMTA Traffic to be routed over Interconnection Facilities, includes land-to-mobile calls that appear to be intraMTA, but are really interMTA. Because Sprint's proposed Section 4.10.4 language is adopted by the Commission, AT&T Michigan's proposed Section 4.10.5 language is unnecessary.

Issue 18 – Jurisdictional Information Parameter

This issue addresses whether the ICA should state that the parties will abide by the Ordering Billing Forum's (OBF) guidelines regarding the Jurisdictional Information Parameter (JIP). AT&T Michigan proposed that the parties be required to populate the JIP in accordance with the 2004 resolution of the OBF Issue 2308, because only by doing so will the JIP data be reliable. AT&T Michigan argues that the JIP data can be used in conjunction with the Calling Party Number to validate Sprint's cell site data. Sprint also proposed that the parties populate the JIP, but state specifically in the ICA that the JIP cannot accurately establish jurisdiction.

The arbitration panel found in favor of AT&T Michigan, because, unless Sprint agrees to comply with the OBF guidelines, the JIP data will not be useful. The panel found that, consistent with Issue 20, the JIP can provide useful data for validating cell site information.

There were no objections filed. The Commission adopts the recommendation of the arbitration panel and finds in favor of AT&T Michigan.

D. Compensation Issues

Issue 19 – Traffic Compensation and Related Terms and Conditions

AT&T asserted that it accurately identified types of traffic not subject to bill-and-keep, and that its proposed language eliminates ambiguity and minimizes disputes. Sprint disagreed, arguing that the parties' agreed-upon language appropriately implements FCC Rules 51.701(b) and 51.705(a), and that AT&T Michigan's proposed list of exclusions is unnecessary, vague, and confusing.

The arbitration panel recommended that the Commission adopt Sprint's proposed contract language. The panel found that "the agreed upon language tracks the FCC's rule regarding reciprocal compensation for telecommunications traffic, and AT&T['s]…proposed exclusions are not clearly defined, and as the exclusions are addressed elsewhere in the ICA, the Panel is persuaded that Sprint's language is sufficient." DAP, p. 48.

No objections were filed. The Commission adopts the recommendation of the arbitration panel and finds in favor of Sprint.

Issue 20 – Traffic Compensation and Related Terms and Conditions

The parties disputed the terms governing compensation for terminating interMTA traffic. AT&T Michigan proposed to assess access charges on all interMTA traffic, which in its opinion,

maintains the industry standard and is consistent with the terms of the parties' current ICA. AT&T Michigan also argued that it should not be assessed access charges when it delivers a call to Sprint for further transportation to a Sprint customer in a different MTA because Sprint, not AT&T Michigan, is serving as the interexchange carrier. To determine the percentage of interMTA traffic routed over non-access trunks for billing purposes, AT&T Michigan proposed using cell studies or the best data reasonably available. For the interMTA factor, AT&T Michigan requested using JIP data.

In contrast, Sprint suggested that both toll and non-toll interMTA traffic should be bill-and-keep pursuant to Commission precedent and FCC rules. Acknowledging that its preferred proposed language is a significant departure from industry practice, Sprint alternatively proposed that access rates be charged on 1% of terminating traffic, applicable to both companies.

In finding for AT&T Michigan, the arbitration panel was not persuaded to depart from current business practices. The panel found that the Commission orders cited by Sprint do not support the company's position. Furthermore, these orders are distinguishable because they apply to locally-dialed *wireline* calls, whereas the issue in this case involves non-local and locally dialed *wireless* calls. In addition, the panel found Sprint's reliance on FCC Rule 51.901(b) is misplaced because "the FCC has clearly determined in its Intercarrier compensation rules that interMTA traffic is switched access traffic." DAP, p. 51.

Regarding Sprint's proposal that access rates be charged on 1% of terminating traffic, the panel stated that Sprint's method is unreasonable. Sprint's adjustment to the interMTA factor is based on an actual cell site location specific traffic study, which only Sprint has the necessary information to complete. The panel also was not persuaded that the interMTA factor should apply to both parties.

In Issue 18, the panel found that the JIP can provide useful data for validating cell site information. Although Sprint is concerned with the accuracy of JIP, the panel felt that any inaccuracies in the data may be cured with the cell-site studies. If the parties are unable to agree on a factor, they may invoke the ICA's dispute resolution process.

The panel noted that "while this issue deals specifically with compensation for terminating interMTA Traffic, AT&T's proposed language also addresses routing, which is the focus of Issue 17." DAP, p. 52. The panel found in favor of Sprint in Issue 17 and in favor of AT&T Michigan in Issue 20, creating an inconsistency in subsections 6.5.1.1 and 6.5.1.2 regarding routing. To remedy the inconsistency, the panel recommended that the parties submit new language making the sections consistent.

In its objections, Sprint argues that the arbitration panel failed to "address the statutory terms and new FCC Rule that drive Sprint's argument." Sprint's objections, p. 21. Sprint disputes the panel's finding that the FCC clearly determined in its rules that interMTA traffic is switched access traffic. According to Sprint, the panel neglected to cite an FCC rule, and instead cited a section of the *CAF* order, which in Sprint's opinion, does not support the panel's analysis. Regarding the panel's finding that the cited Commission orders are distinguishable from the immediate case because they apply to locally-dialed wireline calls, Sprint asserts that such a distinction is of no consequence. Sprint argues that, "[t]he definitions of "access" and "Telephone Toll Service" do not distinguish between landline and wireless calls." *Id.*, p. 22. And from a policy perspective, because wireless customers demand nationwide calling plans, wireless carriers must base their local calling areas on this demand, and Sprint argues that the Commission should support these consumer preferences.

The Commission agrees with the arbitration panel and adopts AT&T Michigan's position on this issue. Like the panel, the Commission finds that the cases cited by Sprint in support of its position addressed different issues, namely locally-dialed wireline calls, and therefore, may be distinguished from the immediate case. The Commission also agrees that the *Universal Service Declaratory* order[6], the *CAF* order, and FCC Rule 51.901(b) do not support Sprint's proposal for a toll/non-toll distinction. In addition, consistent with its finding in Issue 18, the Commission finds JIP can provide useful data for validating cell site information and therefore, adopts AT&T Michigan's proposal.

The Commission found in favor of Sprint in Issue 17 and in favor of AT&T Michigan in Issue 20, creating an inconsistency in subsections 6.5.1.1 and 6.5.1.2 regarding routing. In response to the panel's request to submit new language, in its objections, Sprint proposed changes to AT&T Michigan's subsections 6.5.1.1 and 6.5.1.2 to make them consistent with the panel's recommendation. AT&T Michigan did not file a response, and therefore, the Commission finds that Sprint's proposed changes are accepted by AT&T Michigan and should be adopted.

Issue 21 – Traffic Compensation and Related Terms and Conditions

The parties disagreed as to what terms should govern compensation for originating interMTA traffic. AT&T Michigan asserted that the FCC rules support its proposal to assess access charges to Sprint for land-to-mobile interMTA traffic originated by AT&T Michigan and routed over interconnection trunks to Sprint for delivery to a Sprint customer that is "roaming" outside the MTA. In Sprint's opinion, access charges should not be assessed to either party for the locally-dialed interMTA calls it originates. Although both parties proposed language that would estimate

[6] *In the Matter of Universal Service Contribution Methodology*, 23 FCC Rcd 1411, Declaratory Order, at ¶ 8, n 29.

the volume of originating land-to-mobile interMTA traffic, AT&T Michigan proposed a factor of 5%, while Sprint proposed a factor of 1%.

The arbitration panel recommended adopting AT&T Michigan's proposal on this issue. The panel accepted AT&T Michigan's argument that the 1996 Local Competition order preserved the current procedure where most traffic between LECs and CMRS providers is not subject to interstate access charges, unless it is carried by an IXC, with the exception of certain interstate interexchange service provided by CMRS carriers, such as some roaming traffic that is carried over ILECs' switching facilities, which is subject to interstate access charges. DAP, pp. 53-54, *citing* 1996 Local Competition order, ¶ 1043. The FCC noted that "[i]n this case, the cellular carrier is providing not local exchange service but interstate, interexchange service." *Id.*, n. 2485. Accordingly, the panel found that locally-dialed "roaming" calls should be subject to access charges. Additionally, for the reasons discussed in Issue 20, the panel does not support a toll/non-toll distinction. DAP, p. 54. Finally, consistent with its findings in Issue 20, the panel found that Sprint's proposed factor of 1% to be unreasonable and recommended adopting AT&T Michigan's proposed language.

Sprint objects that the panel's recommendation effectively converts Sprint to an IXC. Citing Case Nos. U-11340 and U-12952 , Sprint argues that AT&T Michigan is not providing exchange service when it transfers these calls, and Sprint should not be assessed access charges. Sprint also contended that the 1996 Local Competition order "does not apply because the InterMTA land-to-mobile at issue in this case does not 'transit' AT&T's switch...," and "in 1996, wireless carriers did impose extra charges on InterMTA calls...." Sprint's objections, pp. 24-25.

The Commission adopts the recommendation of the arbitration panel. The Commission agrees that pursuant to the 1996 Local Competition order, the FCC intended for these locally-dialed

"roaming" calls to be subject to access charges. Again, as discussed by the Commission in Issue 20, there is no toll/non-toll distinction. And, for the reasons stated by the panel, the Commission finds Sprint's factor of 1% to be unreasonable. The Commission adopts AT&T Michigan's proposed language and factor of 5%.

Issue 22 – Interconnection Facilities Pricing and Cost Sharing

Sprint requested that it be permitted to purchase DS3 entrance facilities from AT&T Michigan on a pro-rata basis, as is commonly done in the industry, in order to operate a more efficient network. Sprint argued that its position is supported by *Talk America* and the FCC's definition of "facilities" in its rules. AT&T Michigan responded that Sprint's proposal improperly permits it to pay less than the TELRIC rate for a DS1 entrance facility, that *Talk America* actually supports AT&T Michigan's proposal, and that Sprint's proposal is too vague, resulting in extensive changes to AT&T Michigan's billing system.

Consistent with the decision in *Talk America* and the FCC's definitions, the arbitration panel found that a DS3 is a single facility, while each DS1 channel is not. Thus, under Sprint's proposal, it would pay less than the TELRIC rate for entrance facilities, which is contrary to federal regulations. In response to Sprint's argument that its proposal will improve network efficiency, the panel asserted that historically, the Commission has declined to order efficiency, and in any event, AT&T Michigan offered several efficient alternatives. Finally, the panel agreed that Sprint's proposed language is too vague. Therefore, the panel recommended adopting AT&T Michigan's position on this issue.

Sprint objects to the arbitration panel's conclusion that its proposed contract language is too vague, arguing that "it allows combined trunks, while ensuring pro-rata pricing based on state-wide circuit counts." Sprint's objections, p. 25. In addition, Sprint disputes that it would pay less

than the TELRIC rate. Sprint asserts that under its proposal, AT&T Michigan would be paid a TELRIC rate for the portion used for interconnection, and special access for the portion used for backhaul. *Id.*, pp. 25-26.

The Commission agrees with the arbitration panel and adopts AT&T Michigan's proposal on this issue. *Talk America* and the FCC's definition of "facility" support AT&T Michigan's position that a DS3 is a single facility. In addition, Sprint's proposal is too vague and allows it to pay less than the TELRIC rate, which is contrary to federal regulations. As discussed by the panel, the Commission has declined to order efficiency, and notes that AT&T Michigan has offered Sprint several efficient alternatives.

Issue 23 – Interconnection Facilities Pricing and Cost Sharing

Sprint proposed adding language that states if the Commission approves a new forward-looking cost study for AT&T Michigan, those rates will become immediately available without an amendment to the ICA. AT&T Michigan disagreed, and asserted that neither party should be entitled to rates not included in the ICA.

The arbitration panel found in favor of AT&T Michigan, stating that when the Commission approves a cost study, it typically orders the carriers to amend the ICA to include the new costs and sets a date upon which these rates are effective.

No objections were filed. The Commission adopts the recommendation of the arbitration panel and finds in favor of AT&T Michigan.

Issue 24(a) – Interconnection Facilities Pricing and Cost Sharing

Sprint argued that because the facilities benefit both parties, AT&T Michigan should be required to share the cost of interconnection facilities on Sprint's side of the POI. Sprint asserted that its position is consistent with Commission precedent and is supported by federal regulations.

AT&T Michigan disagreed, contending that the orders on which Sprint relies are obsolete, and that *Talk America* and FCC rules support its position.

The arbitration panel recommended adopting Sprint's position on this issue, noting that the Commission has a long history of "requiring interconnecting carriers to share the costs of two way facilities used to directly interconnect their networks." DAP, p. 58. The panel cited several Commission orders requiring cost sharing for interconnection facilities, disputed AT&T Michigan's interpretation of *Talk America* and the *CAF* and *TSR Wireless*[7] orders, and found that cost sharing is consistent with public policy.

In its objections, AT&T Michigan argues that *Talk America* does not promote cost sharing, but instead requires an ILEC to lease its interconnection facilities at cost-based rates, which according to AT&T Michigan, supports its position. AT&T Michigan asserts that the arbitration panel failed to provide specific reasons why prior Commission orders support the panel's recommendation. In addition, because *Talk America* supports its position, AT&T Michigan argues that the panel's public policy arguments cannot trump a Supreme Court opinion. In any event, AT&T Michigan believes that public policy supports *its* proposal. Finally, AT&T Michigan reiterates that the panel's recommendation is contrary to the *CAF* order, which in AT&T Michigan's opinion, changed how FCC Rule 51.709(b) applies to this case.

The Commission adopts the analysis and conclusion of the arbitration panel on this issue. As discussed by the panel, the Commission has long standing precedent of requiring carriers to share the costs of two way interconnection facilities, including Case Nos. U-13758, U-13931, and U-16906. The Commission finds that *Talk America* supports Sprint's position, disagrees with

[7] *TSR Wireless, LLC v. U S West Communications, Inc.*, FCC 00-194 (rel. Jun. 21, 2000).

AT&T Michigan's interpretation of the *CAF* and *TSR Wireless* orders, and finds that cost sharing is consistent with the Commission's policy of encouraging direct interconnection.

Issue 24(b) – Interconnection Facilities Pricing and Cost Sharing

Sprint proposed that each carrier be responsible for half of the cost of two way interconnection facilities, asserting that this is a fair and administratively simple proposal to implement, it closely represents the volume of traffic for each carrier exchanged over interconnection facilities, and it is consistent with the FCC's requirement that both parties benefit from a call when it adopted bill-and-keep in the *CAF* order.

In the event the arbitration panel adopted Sprint's proposal in Issue 24(a), AT&T Michigan proposed alternative language that would limit its share of the cost for the interconnection facilities to 20%, or 15% if the panel found for Sprint in Issue 11(c).

The arbitration panel found in favor of Sprint. The panel stated that because it rejected AT&T Michigan's end user argument in other issues, the panel is not persuaded by AT&T Michigan's assertion that IXC and transit traffic should be Sprint's sole responsibility. In the panel's opinion, "when AT&T delivers this traffic to Sprint on behalf of another carrier, it bills that carrier and is not left unable to recover its costs." DAP, p. 61. The panel also found it unreasonable, as proposed by AT&T Michigan, to delay the sharing of interconnection facilities' costs until Sprint has transitioned all facilities from its current pricing to TELRIC. *Id.*

AT&T Michigan objects that the arbitration panel inappropriately recommended that it pay for the cost of interconnection facilities used to carry transit traffic and traffic Sprint exchanges with IXCs. AT&T Michigan's objections, p. 33. AT&T Michigan disputes the panel's finding that it "is not left unable to recover its costs," because "[t]he IXCs do *not*, and have no obligation to, compensate AT&T Michigan for the costs of the facilities that run between AT&T Michigan and

Sprint." *Id.*, pp. 34-35. In addition, AT&T Michigan cites FCC orders that purportedly support its position, asserts that the panel improperly rejected its end-user argument, and requests that the Commission adopt no more than a 20% sharing factor, or 15%, in the event that the Commission affirms the DAP's decision on Issue 11(c).

The Commission adopts the recommendation of the arbitration panel and finds in favor of Sprint. Although AT&T Michigan argued that the panel's rejection of the end-user argument in previous issues was in a completely different legal context, the Commission finds that the same rationale applies. Pursuant to the *CAF* order, the Commission agrees that Sprint should not be solely responsible for IXC and transit traffic. The FCC determined that both parties benefit from a call, and therefore, a 50/50 division of the costs of two-way interconnection facilities is appropriate. Finally, the Commission declines to adopt AT&T Michigan's proposal to delay the sharing of interconnection facilities' costs.

Issue 24(c) – Interconnection Facilities Pricing and Cost Sharing

Sprint proposed that it should share the nonrecurring costs that AT&T Michigan charges for interconnection orders and, as such, should be reduced by 50%. In response, AT&T Michigan argued that when placing an interconnection order, Sprint creates the cost. AT&T Michigan also argues that Sprint's proposed language is unclear and would likely lead to disputes.

The arbitration panel found in favor of AT&T Michigan, stating that "[w]hen Sprint places an order for interconnection facilities with AT&T, Sprint should be responsible for the nonrecurring costs that result from that order." DAP, pp. 61-62. The panel also found Sprint's proposed contract language to be unclear and confusing.

In its objections, Sprint reiterates arguments that both parties benefit from the facilities, and asserts that its language is necessary to remedy an inconsistency between the panel's recommendation and AT&T Michigan's proposed language.

The Commission rejects Sprint's arguments, and finds that because Sprint is the cost causer, it should be solely responsible for the nonrecurring costs in interconnection orders because AT&T Michigan incurs costs for work it performs. The Commission agrees that Sprint's proposed language is unclear and may lead to disputes, and therefore, adopts AT&T Michigan's language.

Issue 25 – Interconnection Facilities Pricing and Cost Sharing

This issue concerns transitioning Sprint's existing tariffed rate interconnection facilities to TELRIC rate facilities. Sprint's proposed language allows it to transition a facility by identifying that facility and submitting an Access Service Request (ASR) to AT&T Michigan. Sprint agreed to the ASR charge, but contested any disconnection, reconnection, or re-arrangement charges. According to Sprint, all that will be required to transition a facility will be an adjustment in AT&T Michigan's billing system. Sprint argued that its proposal is supported by the FCC's rules, and that it best allows Sprint to manage its own network.

AT&T Michigan argued in response that "its proposed language is necessary to both ensure an orderly transition and to maintain the current interconnection arrangements while a transition plan is developed." DAP, p. 62. Because the current interconnection facilities may be carrying both interconnection traffic and other traffic not eligible to be carried over TELRIC-priced facilities, AT&T Michigan alleged that new facilities will be needed. AT&T Michigan also argued that Sprint's proposed language is unclear and permits Sprint to alternate between tariffed or TELRIC-priced interconnection facilities at will.

The arbitration panel found Sprint's position more reasonable. In the panel's opinion, regardless of the type of pricing applied, the facilities Sprint seeks to transition to TELRIC pricing are physically the same. The panel believed that a long transition plan as proposed by AT&T Michigan is unnecessary, would delay Sprint receiving the pricing to which it is entitled under *Talk America*, and could also result in disputes, thereby delaying the transition even further.

AT&T Michigan objects that the arbitration panel assumes that the transition will be simple and easy. AT&T Michigan asserts that a transition plan is imperative because it must timely manage Sprint's conversion orders and accurately implement all the billing permutations. AT&T Michigan's objections, p. 39. In addition, AT&T Michigan contends that Sprint currently uses the same access facilities to carry both interconnection and backhaul traffic, and therefore, contrary to the panel's recommendation, Sprint will, in fact, "need to provision new facilities." *Id.*, p. 40, *citing* DAP, p. 63.

The Commission adopts the analysis and conclusion of the arbitration panel on this issue. The panel correctly found that the facilities Sprint seeks to transition to TELRIC pricing are physically the same regardless of what type of pricing is applied, and development of new facilities and disconnection of current ones is unnecessary. As mentioned by the panel, the Commission expects that Sprint will relocate any traffic that is not eligible to be carried over these facilities before they are transitioned, and AT&T Michigan may invoke the audit provisions approved in Issue 13 if Sprint fails to comply. The Commission also agrees that a long transition plan is unnecessary, burdensome, and will cause delays. Because Sprint has agreed to the appropriate ASR charges, and as provisioning new facilities is unnecessary, the Commission finds that AT&T Michigan will be appropriately compensated for the work it performs in transitioning facilities.

E. Bill and Payment Issues

Issue 26(a) – Deposits

AT&T Michigan proposed language that does not limit the amount of time a billed party is subject to providing information regarding its credit and financial condition. In contrast, Sprint argued that five years is sufficient time for the billing company to assess the credit worthiness of a company.

The arbitration panel found in favor of Sprint. The panel asserted that AT&T Michigan's reasoning is insufficient to require the billed company to provide its credit information to AT&T Michigan for an indefinite period of time.

No objections were filed. The Commission adopts the recommendation of the arbitration panel and finds in favor of Sprint.

Issue 26(b) – Deposits

Sprint and AT&T Michigan agreed to two circumstances in which a deposit may be required, but disagreed regarding subsections 9.2.2 and 9.2.3. According to AT&T Michigan, a low credit rating by Standard & Poor's (S&P) should be a deposit trigger. In addition, AT&T Michigan proposed language requiring a deposit for missing the payment due date three times in a 12-month period. For subsection 9.2.2, Sprint disagreed that the company's S&P's credit rating should be a trigger because deposit requests should be based on payment experience and not the opinion of a third party. Sprint did not propose any additional language beyond the agreed upon language for subsection 9.2.3.

For subsection 9.2.2, the arbitration panel found in favor of AT&T Michigan, stating that it was not persuaded by Sprint's arguments and that the "Commission supported a trigger based on S&P's credit ratings in Case No. U-13758." DAP, pp. 66-67. Although billing history

demonstrates willingness to pay, the panel determined that S&P's credit rating is a better indicator of the billed party's ability to pay. However, the panel found Sprint's proposed language more reasonable in subsection 9.2.3. The panel rejected AT&T Michigan's deposit language, because the late payment provisions of the ICA are adequate to address its concerns.

Sprint objects to the arbitration panel's recommendation to adopt AT&T Michigan's trigger based on S&P's credit ratings in subsection 9.2.2. Sprint reiterates its arguments contained in its brief, arguing that requiring a deposit based on the opinion of a third party "is not commercially reasonable and is at odds with Commission policy on deposits as set forth in Case Nos. U-13758 and U-124670." Sprint's objections, p. 27.

The Commission adopts the recommendation of the arbitration panel. A trigger based on S&P's credit ratings is supported by the Commission's decision in Case No. U-13758, and it will best assist AT&T Michigan in assessing the billed party's capacity of paying. For subsection 9.2.3, the Commission finds the language to which AT&T Michigan and Sprint agreed more reasonable because, in light of the late payment provisions of the ICA, AT&T Michigan's additional deposit language is unnecessary.

Issue 26(c) – Deposits

The parties have resolved this issue.

Issue 26(d) – Deposits

Because the ICA requires it to provide service for three months after the billed party stops payment, AT&T Michigan proposed that the maximum deposit amount be three months of anticipated charges. Sprint responded that the deposit should be the lesser of either the undisputed unpaid amount, or two months charges.

The arbitration panel found in favor of AT&T Michigan, determining that when a carrier stops paying, AT&T Michigan must continue providing services for approximately three months, exposing the company to losses for that period of time. The panel stated that AT&T Michigan's proposed deposit amount should be sufficient to cover these losses and is supported by Case No. U-13758.

Sprint objects, arguing that its "proposed language imposes a reasonable restriction on the amount of a required deposit (*e.g.*, makes a Billing Party seriously consider whether a deposit should even be requested for a non-material failure to pay)." Sprint's objections, p. 27.

The Commission agrees with the arbitration panel and finds in favor of AT&T Michigan. The Commission finds AT&T Michigan's proposal to require a deposit of three months of anticipated charges is reasonable and that its position is supported by Case No. U-13758.

Issue 26(e) – Deposits

Although the parties agreed that the billing party shall pay interest to the billed party on any cash deposits that are returned, the parties disagreed on the rate. AT&T Michigan proposed using the prime lending rate, while Sprint suggested setting the interest rate at 6%, consistent with Case No. U-16906.

The arbitration panel agreed with AT&T Michigan. In response to Sprint's argument that a higher interest rate is necessary to discourage needless deposit requests, the panel found it inappropriate to set an artificially high interest rate on deposits, and that "[t]he ICA's dispute resolution terms are sufficient to address deposit issues that may arise." DAP, p. 69. The panel also distinguished Case No. U-16906 by stating that, unlike the immediate case, the parties agreed to the 6% interest rate. Finally, in response to Sprint's concern that the prime rate was not clearly defined, the panel recommended adopting AT&T Michigan's additional language that defines the

prime rate as the rate "published in the Eastern print edition of the Wall Street Journal®." Testimony of William E. Greenlaw, p. 26.

No objections were filed. The Commission adopts the recommendation of the arbitration panel and finds in favor of AT&T Michigan.

Issue 26(f) – Deposits

The parties disputed the remedies to be included in the ICA in the event the billed party fails to comply with a deposit request. AT&T Michigan proposed "several remedies (1) depending on whether the billed party is a new entrant or not, and (2) if not a new entrant, depending on which deposit trigger prompted the deposit request." DAP, p. 70. Sprint argued that its proposed language reasonably limits disconnection for failure to pay, whereas AT&T Michigan's remedies are overly broad and permit disconnection of services even if the billed party is making payments. *Id.*

The arbitration panel found that it is appropriate for the deposit triggers to have a remedy for a failure to pay, and therefore, finds AT&T Michigan's proposed language more reasonable.

In its objections, Sprint asserts that its language reasonably limits disconnection, AT&T Michigan's proposal is too broad, and the recommendation of the panel is not commercially reasonable.

The Commission adopts the analysis and conclusion of the arbitration panel, finding in favor of AT&T Michigan.

Issue 26(g) – Deposits

The parties have resolved this issue.

Issue 27 – Escrow

The parties agreed on the definition of "Unpaid Charges," however, they disagreed as to whether the word "undisputed" should be inserted before "charges" in the definition. According to AT&T Michigan, the word "undisputed" should not be included because it makes Section 11.3 nonsensical. Citing AT&T Michigan's poor billing accuracy, Sprint argued that the word should be included because disputed bills should not be portrayed as unpaid, and AT&T Michigan's proposed language may diminish Sprint's right to dispute charges. DAP, p. 71.

Finding in favor of AT&T Michigan, the arbitration panel stated that by including the word "undisputed," Section 11.3 does not make sense. In addition, the panel found that Sprint failed to cite any specific sections of the ICA that would be negatively affected if the word is included.

No objections were filed. The Commission adopts the recommendation of the arbitration panel and finds in favor of AT&T Michigan.

Issue 28 – Escrow

The parties have resolved this issue.

Issue 29 – Disconnection for Non-Payment

Regarding the circumstances and terms under which a party may disconnect the other party for nonpayment, AT&T Michigan divided Issue 29 into several parts: (a) whether AT&T Michigan's proposed GT&C Section 10.14 should be included in the ICA; (b) how the ICA should describe a failure to pay charges that is a ground for disconnection; (c) when the ICA allows the billing party to discontinue services due to non-payment, should the billing party be required to petition the Commission for an order authorizing the discontinuation of service; (d) (this issue was resolved); and (e) whether the ICA should provide the billing party with the remedies proposed by AT&T

Michigan for GT&C sections 11.5 through 11.8.3 for failures of the billed party to fulfill its contractual duties. DAP, p. 72.

With regard to Issue 29(a), AT&T Michigan argued that non-payment of undisputed charges should result in termination of all services under the ICA. AT&T Michigan contended in Issue 29(b) that it is appropriate to specifically spell out the charges that, if not paid, may result in termination of services. In Issue 29(c), AT&T Michigan asserted that pursuant to Case No. U-13758, the billing party should not be required to petition the Commission for an order authorizing the termination of services. Finally, AT&T Michigan stated in Issue 29(e) that its proposed remedies benefit both the billing and billed parties by providing alternative remedies to disconnection. *Id.*, pp. 72-73.

According to Sprint, disconnection is a severe remedy, disruptive to customers, and should only be carried out with prior approval of the Commission. With regard to Issue 29(a), Sprint argued that disconnection should result from non-payment of undisputed charges and should only include those services for which payment was not made. In addition, Sprint asserted that the non-paying party should have 45 days to pay undisputed charges before the billing party may request a disconnection order from the Commission.

Regarding Sections 10.14 and 11.1, the arbitration panel found that Case Nos. U-13758 and U-12460 support AT&T Michigan's position that non-payment of undisputed charges may result in termination of all services under the ICA without the need for prior Commission authorization. Therefore, the panel recommended adopting AT&T Michigan's proposal for Sections 10.14, 11.1, and 11.2. The panel noted that the period of time preceding a discontinuance notice is addressed in Issue 30.

The arbitration panel asserted that in Sections 11.5 through 11.8.3 (not including Section 11.5.2, which the parties resolved), there were alternatives to the more severe remedy of disconnection and found in favor of AT&T Michigan, with the exception of subsections 11.5.4.1 and 11.5.4.2. "Consistent with Case No. U-13758, which authorizes remedies only after the billed party was provided 60-days' notice," the panel adopted Sprint's proposal for subsections 11.5.4.1 and 11.5.4.2. DAP, p. 74.

Sprint objects that AT&T Michigan's language allows disconnection of services for which payment has been received. In addition, Sprint argues that AT&T Michigan's proposal is anti-competitive, adversely impacts consumers, and is contrary to Commission precedent.

The Commission adopts the recommendation of the arbitration panel. In Case No. U-13758, the Commission found that a billing party may cease providing new service, or may discontinue service, to the non-paying party without prior Commission authorization, provided the billing party gives 60 days' notice from the bill's due date. The Commission's decision in Case No. U-12460 was similar. Therefore, the Commission agrees with the panel that precedent supports adopting AT&T Michigan's position on Sections 10.14, 11.1, and 11.2. The Commission also agrees that AT&T Michigan's remedies for failure to pay in Sections 11.5 through 11.8.3 (excepting subsections 11.5.2, 11.5.4.1, and 11.5.4.2) are preferable to the strict remedy of disconnection, and adopts that company's position. Finally, the Commission finds that consistent with Case No. U-13758, Sprint's proposal for subsections 11.5.4.1 and 11.5.4.2 should be adopted.

Issue 30 – Disconnection for Non-Payment

The parties disagree whether the period of time in which the billed party must remit payment in response to a discontinuance notice should be 45 or 15 days. AT&T Michigan argued that 15 days is sufficient because the billed party had 30 days to provide payment and has an additional 10

business days prior to disconnection. Because disconnection is a drastic remedy, Sprint proposed 45 days from the receipt of a discontinuance notice so that the billed party may investigate and cure the breach.

The arbitration panel found that consistent with the decisions in Case Nos. U-13758 and U-12460, Sprint's proposal is more reasonable.

In its objections, AT&T Michigan argues that its proposal is better supported by Commission precedent and that it is unclear from the panel's recommendation when the discontinuance notice must be given.

The Commission agrees with the arbitration panel and finds in favor of Sprint. The Commission notes that this same issue was decided in Case Nos. U-12460 and U-13758, and consistent with those decisions, finds Sprint's proposal reasonable. In response to AT&T Michigan's allegation that the DAP is unclear as to when the notice must be given, the Commission finds that Case No. U-12460 provides guidance. In that case, the Commission determined that the billing party would present the non-paying party with written notice immediately after the bill due date, and the non-paying party would have 60 days from the bill due date to remedy the breach. October 24, 2000 order in Case No. U-12460, pp. 18-19.

Issue 31 – Billing Disputes

The parties have resolved this issue.

THEREFORE, IT IS ORDERED that the decision of the arbitration panel, as modified by this order, is adopted. The parties shall submit conforming interconnection agreements for Commission approval within 30 days of the date of this order, unless further Commission action is required to resolve remaining differences. Thereafter, the Commission will resolve any remaining dispute and set a new deadline for submission of conforming interconnection agreements.

The Commission reserves jurisdiction and may issue further orders as necessary.

Any party aggrieved by this order may file an action in the appropriate federal District Court pursuant to 47 USC 252(e)(6).

MICHIGAN PUBLIC SERVICE COMMISSION

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John D. Quackenbush, Chairman

_____

Greg R. White, Commissioner

_____

Sally A. Talberg, Commissioner

By its action of December 6, 2013.

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Mary Jo Kunkle, Executive Secretary