

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of

Application by SBC Communications Inc.,
Southwestern Bell Telephone Company,
and Southwestern Bell Communications
Services, Inc. d/b/a Southwestern Bell Long
Distance for Provision of In-Region,
InterLATA Services in Oklahoma

CC Docket No. 97-121

To: The Commission

**APPLICATION BY SBC COMMUNICATIONS INC., SOUTHWESTERN BELL
TELEPHONE COMPANY, AND SOUTHWESTERN BELL LONG DISTANCE FOR
PROVISION OF IN-REGION, INTERLATA SERVICES IN OKLAHOMA**

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**SOUTHWESTERN BELL
OKLAHOMA § 271 APPLICATION**

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INTERCONNECTION AGREEMENT

BETWEEN

SOUTHWESTERN BELL TELEPHONE COMPANY

AND

SPRINT COMMUNICATIONS COMPANY L.P.

269

BEFORE THE CORPORATION COMMISSION OF THE STATE OF OKLAHOMA

APPLICATION OF SOUTHWESTERN BELL)
 TELEPHONE COMPANY FOR APPROVAL OF)
 INTERCONNECTION AGREEMENT WITH)
 SPRINT COMMUNICATIONS COMPANY L.P.) CAUSE NO. PUD 970000076
 PURSUANT TO § 252(e) OF THE)
 TELECOMMUNICATIONS ACT OF 1996.)

ORDER NO.

410921

HEARING: March 14, 1997
 Before Robert E. Goldfield, Arbitrator

APPEARANCES: Nancy Thompson, Attorney
 Sprint Communications Company L.P.
 Tracy Parks, Attorney
 Southwestern Bell Telephone Company
 Mickey S. Moon, Assistant Attorney General
 Office of the Attorney General, State of Oklahoma
 John W. Gray, Senior Assistant General Counsel
 Public Utility Division, Oklahoma Corporation Commission

FINAL ORDER APPROVING INTERCONNECTION AGREEMENT

BY THE COMMISSION:

The Corporation Commission (the Commission) of the State of Oklahoma being regularly in session and the undersigned Commissioners being present and participating, there comes on for consideration and action the request for approval of the Interconnection Agreement (Agreement) entered into between Sprint Communications Company L.P. (Sprint) and Southwestern Bell Telephone Company (SWB).

On February 12, 1997, SWB filed an Application for Approval of Interconnection Agreement with Sprint. On February 12, 1997, SWB filed a Motion for a Procedural Schedule requesting the Commission to set a date for hearing for approval of the Interconnection Agreement. By Order No. 409849 dated February 27, 1997, the Commission issued a Scheduling Order setting March 14, 1997, as the date for the hearing on the approval of the Interconnection Agreement.

A hearing was conducted on March 14, 1997, with counsel for Sprint, SWB, Staff and the Office of the Attorney General present. An exhibit list was circulated among the parties.

Counsel for Sprint stated that the Interconnection Agreement entered into between Sprint and SWB is in the best interests of the State of Oklahoma and is non-discriminatory as to any other telecommunications service provider and requested approval of the Agreement by the Commission.

Counsel for SWB and Staff counsel concurred in those statements and the request for approval of the Agreement by the Commission. Staff counsel further stated that Staff had reviewed the Agreement and that it was consistent with the requirements of the Commission's rules for approval of interconnection agreements, that the Agreement is consistent with the public interest, convenience and necessity and that the Agreement is

consistent with the pro-competitive aims of the Federal Act and the Commission's rules governing local exchange competition. No party objected to the approval of the Interconnection Agreement.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

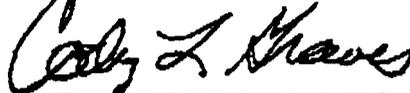
The Commission finds that it has jurisdiction over the above-entitled cause pursuant to 47 U.S.C. § 252 (the Federal Act), Article IX, Section 18 of the Oklahoma Constitution, 17 O.S. (1996) § 131, *et seq.*, and OAC 165:55-17. Further, the Commission finds that the parties have submitted a signed Interconnection Agreement reflecting an agreement for the provision of telecommunications between both parties.

Further, the Commission finds that the Interconnection Agreement is consistent with §§ 251 and 252 of the Federal Act and OAC 165:55-17-5 and 165:55-17-7 and is consistent with the public interest, convenience and necessity, that it does not discriminate against a telecommunications service provider not a party to the Agreement, and that the Agreement is consistent with the pro-competitive aims of the Federal Act and the Commission's rules governing local exchange competition.

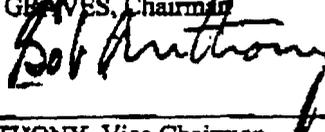
ORDER

IT IS THEREFORE THE ORDER OF THE OKLAHOMA CORPORATION COMMISSION that the Interconnection Agreement submitted by Sprint and SWB is hereby approved.

CORPORATION COMMISSION OF OKLAHOMA



CODY L. GRAVES, Chairman



BOB ANTHONY, Vice Chairman



ED APPLE, Commissioner

APRIL

DONE AND PERFORMED THIS 3 DAY OF MARCH, 1997, BY ORDER OF THE COMMISSION:



CHARLOTTE W. FLANAGAN, Secretary

Cause No. PLD 97000076

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REPORT OF THE ARBITRATOR

The foregoing Findings and Order are the Report and Recommendations of the Arbitrator.

Robert E. Goldfield
Robert E. Goldfield
Arbitrator

March 31, 1997
Date

FILED
FEB 12 1997

APPLICATION OF SOUTHWESTERN BELL)
TELEPHONE COMPANY FOR APPROVAL OF)
INTERCONNECTION AGREEMENT WITH)
SPRINT COMMUNICATIONS COMPANY L.P.)
PURSUANT TO § 252(e) OF THE)
TELECOMMUNICATIONS ACT OF 1996.)

COURT CLERK'S OFFICE - OKC
CORPORATION COMMISSION
OF OKLAHOMA

000076

CAUSE NO. PUD 970

APPLICATION OF SOUTHWESTERN BELL TELEPHONE COMPANY FOR APPROVAL
OF INTERCONNECTION AGREEMENT WITH SPRINT COMMUNICATIONS COMPANY L.P.

COMES NOW Southwestern Bell Telephone Company ("Southwestern Bell") and hereby files this Application for Approval of Interconnection Agreement (the Agreement), pursuant to § 252(e) of the Telecommunications Act of 1996 (the Federal Act) and OAC 165:55-17-1, *et seq.*, between Southwestern Bell and Sprint Communications Company L.P. ("Sprint"), and states as follows:

I. Parties

Applicant is Southwestern Bell, with its principal offices in Oklahoma located at 800 North Harvey, Oklahoma City, Oklahoma 73102.

II. Allegations of Fact.

Applicant presents to this Commission for approval an interconnection agreement negotiated and executed pursuant to the terms of the Federal Act (Agreement, Attachment II) and OAC 165:55-17-1, *et seq.* After weeks of intensive good faith negotiations addressing hundreds of complex issues involved in such an agreement, the parties executed

the Interconnection Agreement between Southwestern Bell and Sprint on February 10, 1997, filed herewith, together with various schedules, exhibits and appendices incorporated therein. All issues have been successfully negotiated and agreed upon. Therefore, no arbitration of any issue is required.

Applicant seeks the Commission's approval of the Agreement, consistent with the provisions of the Federal Act and OAC 165:55-17-1, *et seq.* Southwestern Bell believes that the implementation of this Agreement complies fully with § 252(e) of the Federal Act because the Agreement is consistent with the public interest, convenience and necessity and does not discriminate against any telecommunications carrier. The Agreement promotes diversity in providers, provides for interconnectivity between the parties' respective networks and will lead to increased customer choices for telecommunications services once Sprint's proposed tariffs are approved.

Applicant respectfully requests that the Commission grant expeditious approval of this Agreement, without change, suspension or other delay in its implementation. This is a bilateral agreement, reached as a result of negotiations and compromise between competitors, and Southwestern Bell believes that procedures for review of the Agreement should be designed to permit expeditious implementation thereof, and that interventions should be strictly limited consistent with the scope of review specified by the Federal Act and the Commission's applicable rules.

The applicable standard of review is set forth in § 252(e) of the Federal Act and has been substantively adopted by this Commission in OAC 165:55-17-7(e). Section 252(e) provides as follows:

(e) APPROVAL BY STATE COMMISSION

- (1) APPROVAL REQUIRED. -- Any interconnection agreement adopted by negotiation or arbitration shall be submitted for approval to the State commission. A State commission to which an agreement is submitted shall approve or reject the agreement, with written findings as to any deficiencies.
- (2) GROUNDS FOR REJECTION. -- The State commission may only reject --
 - (A) an agreement (or any portion thereof) adopted by negotiation under subsection (a) if it finds that --
 - (I) the agreement (or portion thereof) discriminates against a telecommunications carrier not a party to the agreement; or
 - (ii) the implementation of such agreement or portion is not consistent with the public interest, convenience and necessity;

The affidavit of L. Bruce Sparling, Director-Competitive Assurance for Southwestern Bell, establishes that the Agreement submitted herein satisfies these standards (Affidavit, Attachment I).

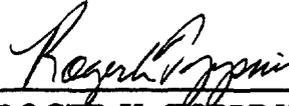
III. Legal Authority

The Commission is vested with requisite authority pursuant to Article IX, § 18 of the Oklahoma Constitution, 17 O.S. § 131, *et seq.*, OAC 165:55, *et seq.*, and 47 U.S.C. § 252(e).

IV. Relief Sought

WHEREFORE, Applicant respectfully requests that the Commission approve the Interconnection Agreement between Southwestern Bell and Sprint, and such additional relief as the Commission deems proper and reasonable.

Respectfully submitted,



ROGER K. TOPPINS, OBA #15410
TRACY A. PARKS, OBA #14292
800 North Harvey, Room 310
Oklahoma City, OK 73102
Telephone: (405)291-6751/291-6483

ATTORNEYS FOR SOUTHWESTERN BELL
TELEPHONE COMPANY

CERTIFICATE OF MAILING

On this 12th day of February, 1997, a true and correct copy of the foregoing was mailed, postage prepaid, to:

Maribeth Snapp, Deputy General Counsel
Oklahoma Corporation Commission
Jim Thorpe Building
Oklahoma City, OK 73105

Martha Jenkins
8140 Ward Parkway 5E
Kansas City, MO 64114-2006

Mickey Moon
Office of the Attorney General
112 State Capitol Building
Oklahoma City, OK 73105

Nancy Thompson
P. O. Box 18764
Oklahoma City, OK 73154-8764



BEFORE THE CORPORATION COMMISSION OF THE STATE OF OKLAHOMA

APPLICATION OF SOUTHWESTERN BELL)
 TELEPHONE COMPANY FOR APPROVAL OF)
 INTERCONNECTION AGREEMENT WITH)
 SPRINT COMMUNICATIONS COMPANY L.P.)
 PURSUANT TO § 252(e) OF THE)
 TELECOMMUNICATIONS ACT OF 1996.) CAUSE NO. PUD 970_____

AFFIDAVIT OF L. BRUCE SPARLING

STATE OF OKLAHOMA)
) ss:
 COUNTY OF OKLAHOMA)

Before me, the undersigned Notary Public, on the 12th day of February, 1997, personally appeared L. Bruce Sparling, Director-Competitive Assurance for Southwestern Bell Telephone Company ("Southwestern Bell") who, upon being duly sworn on oath, deposed and said the following:

1. My name is L. Bruce Sparling. I am over the age of 21, of sound mind and competent to testify to the matters stated herein. I am the Director-Competitive Assurance for Southwestern Bell, and I have knowledge concerning the Interconnection Agreement between Southwestern Bell and Sprint Communications Company L.P. ("Sprint") on behalf of Southwestern Bell. I have personal knowledge of the provisions of the Agreement. The parties diligently negotiated under the Telecommunications Act of 1996, culminating in an executed agreement on February 10, 1997.
2. The Interconnection Agreement, together with its schedules, exhibits and appendices incorporated therein, are an integrated package and are the result of good faith arm's-length negotiation and compromise between competitors.
3. The implementation of this Interconnection Agreement is consistent with the public interest, convenience and necessity. Once Sprint has effective tariffs and an approved Certificate of Convenience and Necessity, the Interconnection Agreement will allow the exchange of traffic between Southwestern Bell and Sprint, furthering the transition of telecommunications competition in the State of Oklahoma, a policy which has been advocated by

this Commission and the United States Congress. The Agreement allows diversity in providers, provides for interconnectivity and increases customer choices for telecommunications services.

4. This Interconnection Agreement is pro-competitive in that it allows for Sprint to compete with Southwestern Bell as a provider of local exchange service. The Interconnection Agreement allows Sprint's customers to be able to make and receive local telephone calls to the same extent as they could in receiving local telephone service from Southwestern Bell, including the ability to have their names listed in the Southwestern Bell white pages, access to 911 with no disparity in dialing, and an ability to place and receive alternatively billed calls.
5. Implementation of the Interconnection Agreement will provide end users with additional choice for local telephone service subject to the same service quality standards and service capabilities as those required by the Commission's rules and which end users have traditionally come to expect from their local service provider.
6. This Interconnection Agreement does not discriminate against any telecommunications carriers. The Agreement is available to any similarly situated telecommunications service provider in negotiating a similar agreement.
7. The Interconnection Agreement provides Sprint access and interconnection to Southwestern Bell network facilities for the provision of telecommunications services to both residential and business customers.

Further affiant sayeth not.



L. BRUCE SPURLING
Director-Competitive Assurance

Subscribed and sworn to before me this 12th day of February, 1997.



NOTARY PUBLIC

My Commission Expires:
August 28, 2000

INTERCONNECTION AGREEMENT-OKLAHOMA

between

Southwestern Bell Telephone Company

and

Sprint Communications Company L.P.

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SOUTHWESTERN BELL TELEPHONE COMPANY
AND
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INTERCONNECTION AGREEMENT - OKLAHOMA

This Interconnection Agreement - Oklahoma (Agreement) is between Sprint Communications Company L.P. (Sprint) a Delaware Limited Partnership, having an office at 8140 Ward Parkway, Kansas City, Missouri 64114, and Southwestern Bell Telephone Company (SWBT), a Missouri corporation, having an office at 1010 Pine Street, St. Louis, Missouri 63101, (collectively the Parties)

WHEREAS, pursuant to the Telecommunications Act of 1996 (the Act), the Parties wish to establish terms for the resale of SWBT services and for the provision by SWBT of Interconnection, Unbundled Network Elements, and Ancillary Functions as designated in the Attachments hereto.

NOW, THEREFORE, in consideration of the premises and the mutual covenants of this Agreement Sprint and SWBT hereby agree as follows:

1.0 INTRODUCTION

- 1.1 This Agreement sets forth the terms, conditions and prices under which SWBT agrees to provide (a) services for resale (hereinafter referred to as Resale services), (b) Unbundled Network Elements, (c) Ancillary Functions and (d) Interconnection to Sprint. This Agreement also sets forth the terms and conditions for the interconnection of Sprint's network to SWBT's network and reciprocal compensation for the transport and termination of telecommunications.
- 1.2 The Unbundled Network Elements or Resale services provided pursuant to this Agreement may be connected in any lawful manner to other Unbundled Network Elements or Resale services provided by SWBT or to any network components provided by Sprint itself or by any other vendor. Subject to the requirements of this Agreement, Sprint may at any time add, delete, relocate or modify the Resale services or Unbundled Network Elements purchased hereunder.
- 1.3 During the term of this Agreement, SWBT will not discontinue, as to Sprint, any Network Element or Ancillary Functions offered to Sprint hereunder. During the term of this Agreement, SWBT will not discontinue any Resale services or features offered to Sprint hereunder except as provided in Attachment 1: Resale hereto. This Section is not intended to impair SWBT's ability to make changes in its Network, so long as such changes are consistent with the Act and do not result in the discontinuance of the offerings of Unbundled Network Elements or Ancillary Functions made by SWBT to Sprint as set forth in and during the term of this Agreement.

- 1.4 SWBT may fulfill the requirements imposed upon it by this Agreement by itself or may cause its Affiliates to take such actions to fulfill the responsibilities.
- 1.5 This Agreement includes and incorporates herein the Attachments listed in Section 60.0 (Other Requirements and Attachments) of this Agreement, and all accompanying Appendices, Addenda and Exhibits.
- 1.6 Unless otherwise provided in the Agreement, SWBT will perform all of its obligations concerning its offering of Resale services and Unbundled Network Elements under this Agreement throughout the entire service area where SWBT is the incumbent local exchange carrier; provided, that SWBT's obligations to provide Ancillary Functions or to meet other requirements of the Act covered by this Agreement are not necessarily limited to such service areas. Each Network Element, Ancillary Function and Resale Services may not necessarily be available in every specific area of Oklahoma as the requisite technology may not be present, (e.g., a certain central office switch may not support call waiting). Provided however nothing herein shall be interpreted to impair Sprint's right to employ the Special Request provisions of this Agreement.
- 1.7 SWBT will not discriminate against Sprint or Sprint customers. The Parties acknowledge that operational parity may not be fully realized until electronic interfaces are implemented.

2.0 **Effective Date**

- 2.1 This Agreement becomes effective (1) when executed by each Party and approved by the Oklahoma Corporation Commission (Commission) or (2) by operation of law pursuant to the Order of the State Commission, whichever is earlier.

3.0 **Negotiated Agreements**

This Agreement is the result of extensive negotiations between the Parties and reflects compromise on the part of both Parties as well as arbitration results. As such, this Agreement does not necessarily reflect either Parties' position on public policy issues, applications, complaints, etc. which may be under consideration by this Commission or the FCC at this time or in the future. Certain issues were agreed to on the basis of the Parties' understanding of the effect of other agreements as described in Section 32.0 (Effect of Other Agreements) and Sprint's assumption that pursuant to Section 32.0 more favorable terms made available through arbitrated or negotiated agreements between SWBT and other LSPs would be made available to Sprint.

4.0 **Reformation**

4.1 **Basis of Agreement**

This Agreement contains terms, conditions and rates derived from the FCC's order in Docket No. 96-98 and other FCC orders implementing the Telecommunications Act of 1996 ("FCC orders"); the Oklahoma Corporation Commission arbitration award in Cause No. PUD 960000218 ("arbitration award") and SWBT's draft interconnection agreement with AT&T in Texas ("AT&T/SWBT agreement").

4.2 **Reformation Re: FCC Order**

Should the FCC order be reversed or revised as a result of appellate action, the Parties agree that they will reform this Agreement to the extent necessary to reflect the outcome of such appeal.

4.3.1 **Reformation of Arbitrated Award Items**

The terms, conditions and rates contained herein which are based upon the arbitration award ("arbitration award items") are subject to commission reconsideration, stay or appeal. Any arbitration award items contained herein shall not be available to Sprint if stayed by the commission or any court. In the event of a stay, SWBT shall provide to Sprint such items at pre-arbitration award terms, conditions and rates contained in a commission approved agreement. Should any arbitration award item be reversed or modified as a result of reconsideration or appeal, the Parties will reform this Agreement to the extent necessary to reflect the outcome of such reconsideration or appeal.

4.3.2 **Interim Rates (including wholesale discounts)**

Additionally, to the extent specified in the arbitration award, some rates are interim. Such interim rates will be replaced with subsequent rates, as determined by the Commission. Interim rates will be subject to true up only where specifically required by the arbitration award.

4.4 **Reformation Re: Final Commission-approved AT&T/SWBT Agreement**

The rates, terms and conditions contained in this Agreement which may differ from the rates, terms and conditions in the commission-approved AT&T/SWBT agreement will, upon request of either Party, be reformed to reflect language contained in a final commission-approved AT&T/SWBT agreement.

4.5 In the event a court or regulatory agency of competent jurisdiction should determine that modifications of this Agreement are required to bring the services being provided hereunder into compliance with the Act, the affected Party will promptly give the other Party written notice of the modifications deemed required. Upon delivery of such notice, the Parties will expend diligent efforts to arrive at an agreement respecting such modifications required, and if the Parties are unable to arrive at such agreement within sixty (60) days after such notice, either Party may invoke the Dispute Resolution process set forth in Section 10.0 (Dispute Resolution) of this Agreement.

5.0 **Term of Agreement**

- 5.1 This Agreement will become effective as of the Effective Date stated above, and will expire after a three (3) year initial term plus two one year extensions, unless written Notice of Non Renewal and Request for Negotiation (Non Renewal Notice) is provided by either Party in accordance with the provisions of this Section. Any such Non Renewal Notice must be provided not later than 180 days before the day this Agreement would otherwise renew for an additional year. The noticing Party will delineate the items desired to be negotiated. Not later than 30 days from receipt of said notice, the receiving Party will notify the sending Party of additional items desired to be negotiated, if any. Not later than 135 days from the receipt of the Non Renewal Notice, both parties will commence negotiations.
- 5.2 The same terms, conditions, and prices will continue in effect, on a month-to-month basis as were in effect at the end of the latest term, or renewal, so long as negotiations are continuing without impasse and then until resolution pursuant to this Section. The Parties agree to resolve any impasse by submission of the disputed matters to the Oklahoma Commission for arbitration. Should the Commission decline jurisdiction, the Parties will resort to a commercial provider of arbitration services.
- 5.3 Upon termination of this Agreement, Sprint's liability will be limited to payment of the amounts due for Unbundled Network Elements and Resale Services provided up to and including the date of termination and thereafter as reasonably requested by Sprint to prevent service interruption, but not to exceed one (1) year. The Unbundled Network Elements and Resale services provided hereunder are vital to Sprint and must be continued without interruption. When Sprint provides or retains another vendor to provide such comparable Unbundled Network Elements or Resale services, SWBT and Sprint agree to co-operate in an orderly and efficient transition to Sprint or another vendor. SWBT and Sprint further agree to coordinate the orderly transition to Sprint or another vendor such that the level and quality of the Unbundled Network Elements and Resale Services is not

degraded and each Party will exercise its best efforts to effect an orderly and efficient transition.

6.0 **Assignment**

- 6.1 Provided that an assignee agrees to be bound by this Agreement either Party may assign this Agreement to a corporate affiliate or an entity under its common control or an entity acquiring all or substantially all of its assets or equity by providing prior written notice to the other party of such assignment or transfer. Any attempt at assignment or transfer contrary to this paragraph is void ab initio. Without limiting the generality of the foregoing, this Agreement shall be binding upon and inure to the benefit of the Parties' respective successors and assigns.
- 6.2 Each Party will notify the other in writing not less than 60 days in advance of anticipated assignment.

7.0 **Confidentiality and Proprietary Information**

- 7.1 For the purposes of this Agreement, "Confidential Information" means confidential or proprietary technical or business information given by the Discloser to the Recipient. All information which is disclosed by one party to the other in connection with this Agreement, during negotiations (also see the Confidentiality Agreement between the Parties dated July 11, 1996) and the term of this Agreement, will automatically be deemed proprietary to the Discloser and subject to this Agreement, unless otherwise confirmed in writing by the Discloser. In addition, by way of example and not limitation, all orders for Resale Services, Unbundled Network Elements placed by Sprint pursuant to this Agreement, and information that would constitute Customer Proprietary Network Information of Sprint's customers pursuant to the Act and the rules and regulations of the Federal Communications Commission (FCC), and Recorded Usage Data as described in Attachments 5 and 10 concerning Recorded Usage Data, whether disclosed by Sprint to SWBT or otherwise acquired by SWBT in the course of the performance of this Agreement, will be deemed Confidential Information of Sprint for all purposes under this Agreement.
- 7.2 For a period of five (5) years from the receipt of Confidential Information from the Discloser, except as otherwise specified in this Agreement, the Recipient agrees (a) to use it only for the purpose of performing under this Agreement, (b) to hold it in confidence and disclose it to no one other than its employees having a need to know for the purpose of performing under this Agreement, and (c) to

safeguard it from unauthorized use or disclosure using at least the same degree of care with which the Recipient safeguards its own Confidential Information. If the Recipient wishes to disclose the Discloser's Confidential Information to a third-party agent or consultant, such disclosure must be agreed to in writing by the Discloser, and the agent or consultant must have executed a written agreement of nondisclosure and nonuse comparable in scope to the terms of this Section.

- 7.3 The Recipient may make copies of Confidential Information only as reasonably necessary to perform its obligations under this Agreement. All such copies will be subject to the same restrictions and protections as the original and will bear the same copyright and proprietary rights notices as are contained on the original.
- 7.4 The Recipient agrees to return all Confidential Information in tangible form received from the Discloser, including any copies made by the Recipient within thirty (30) days after a written request is delivered to the Recipient, or to destroy all such Confidential Information if directed to do so by Discloser except for Confidential Information that the Recipient reasonably requires to perform its obligations under this Agreement. If either Party loses or makes an unauthorized disclosure of the other Party's Confidential Information, it will notify such other party immediately and use reasonable efforts to retrieve the lost or wrongfully disclosed information.
- 7.5 The Recipient will have no obligation to safeguard Confidential Information: (a) which was in the possession of the Recipient free of restriction prior to its receipt from the Discloser, (b) after it becomes publicly known or available through no breach of this Agreement by the Recipient; (c) after it is rightfully acquired by the Recipient free of restrictions on its disclosure; or (d) after it is independently developed by personnel of the Recipient to whom the Discloser's Confidential Information had not been previously disclosed. In addition, either Party will have the right to disclose Confidential Information to any mediator, arbitrator, state, or federal regulatory body, or a court in the conduct of any mediation, arbitration or approval of this Agreement, so long as, in the absence of an applicable protective order, the Discloser has been promptly notified by the Recipient and so long as the Recipient undertakes all lawful measures to avoid disclosing such information until Discloser has had reasonable time to negotiate a protective order with any such mediator, arbitrator, state or regulatory body or a court, and complies with any protective order that covers the Confidential Information.
- 7.6 The Parties acknowledge that an individual end user may simultaneously seek to become or be a customer of both Parties. Nothing in this Agreement is intended to limit the ability of either Party to use customer specific information lawfully obtained from end users or sources other than the Disclosing Party.

- 7.7 Each Party's obligations to safeguard Confidential Information disclosed prior to expiration or termination of this Agreement will survive such expiration or termination.
- 7.8 Except as otherwise expressly provided elsewhere in this Agreement, no license is hereby granted under any patent, trademark, or copyright, nor is any such license implied solely by virtue of the disclosure of any Confidential Information.
- 7.9 Each Party agrees that the Discloser may be irreparably injured by a disclosure in breach of this Agreement by the Recipient or its representatives and the Discloser will be entitled to seek equitable relief, including injunctive relief and specific performance, in the event of any breach or threatened breach of the confidentiality provisions of this Agreement. Such remedies will not be deemed to be the exclusive remedies for a breach of this Agreement, but will be in addition to all other remedies available at law or in equity.

8.0 **Liability and Indemnification**

8.1 **Limitation of Liabilities**

The Parties' liability to each other during any Contract Year resulting from any and all causes, other than as specified below in this Section and will not exceed the total of any amounts due and owing to Sprint pursuant to Section 47.0 (Performance Criteria) and the Attachment referenced in that Section, plus the amounts charged to Sprint by SWBT under this Agreement for the affected service or business practice during the Contract Year in which such cause accrues or arises. For purposes of this Section, the first Contract Year commences on the first day this Agreement becomes effective and each subsequent Contract Year commences on the day following that anniversary date.

8.2 **No Consequential Damages**

NEITHER SPRINT NOR SWBT WILL BE LIABLE TO THE OTHER PARTY FOR ANY INDIRECT, INCIDENTAL CONSEQUENTIAL, RELIANCE, OR SPECIAL DAMAGES SUFFERED BY SUCH OTHER PARTIES (INCLUDING WITHOUT LIMITATION DAMAGES FOR HARM TO BUSINESS, LOST REVENUES, LOST SAVINGS, OR LOST PROFITS SUFFERED BY SUCH OTHER PARTIES), REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT, WARRANTY, STRICT LIABILITY, OR TORT, INCLUDING WITHOUT LIMITATION NEGLIGENCE OF ANY KIND WHETHER ACTIVE OR PASSIVE, AND REGARDLESS OF WHETHER THE PARTIES KNEW OF THE POSSIBILITY THAT SUCH DAMAGES COULD RESULT. EACH PARTY HEREBY

RELEASES THE OTHER PARTY (AND SUCH OTHER PARTY'S SUBSIDIARIES AND AFFILIATES, AND THEIR RESPECTIVE OFFICERS, DIRECTORS, EMPLOYEES, AND AGENTS FROM ANY SUCH CLAIM. NOTHING CONTAINED IN THIS SECTION WILL LIMIT SWBT'S OR SPRINT'S LIABILITY TO THE OTHER FOR (i) WILLFUL OR INTENTIONAL MISCONDUCT (INCLUDING GROSS NEGLIGENCE); (ii) BODILY INJURY, DEATH, OR DAMAGE TO TANGIBLE REAL OR TANGIBLE PERSONAL PROPERTY PROXIMATELY CAUSED BY SWBT OR SPRINT'S NEGLIGENT ACT OR OMISSION OR THAT OF THEIR RESPECTIVE AGENTS, SUBCONTRACTORS OR EMPLOYEES, NOR WILL ANYTHING CONTAINED IN THIS SECTION LIMIT THE PARTIES INDEMNIFICATION OBLIGATIONS, AS SPECIFIED BELOW.

8.3 **Obligation to Indemnify**

- 8.3.1 Each Party will and hereby agrees to defend at the other's request, indemnify, and hold harmless the other Party and each of its officers, directors, employees, and agents (each, an Indemnitee) against and in respect of any loss, debt, liability, damage, obligation, claim, demand, judgment, or settlement of any nature or kind, known or unknown, liquidated or unliquidated, including without limitation all reasonable costs and expenses incurred (legal, account or otherwise) (collectively, Damages) arising out of, resulting from, or based upon any pending or threatened claim, action, proceeding or suit by any third party (a Claim) (i) alleging any breach of any representation, warranty, or covenant made by such indemnifying Party (the Indemnifying Party) in this Agreement, (ii) based upon injuries or damages to any person or property or the environment arising out of or in connection with this Agreement that are the result of the Indemnifying Party's actions, breach of Applicable Law, or the actions or status of its employees, agents, and subcontractors.
- 8.3.2 Sprint is responsible for obtaining any license or right to use agreement associated with a Unbundled Network Element purchased from SWBT, and further will provide SWBT, prior to using any such Network Element, with either: (1) a copy of the applicable license or right to use agreement (or letter from the licensor attesting as such); or (2) an affidavit signed by Sprint attesting to the acquisition of any known and necessary licenses or right to use agreements. SWBT will provide a list of all known and necessary licenses or right to use agreements applicable to the subject Network Element(s) within seven days of a request for such a list by Sprint. SWBT agrees to use its best efforts to facilitate the obtaining of any necessary license or right to use agreement. In the event such an agreement is not forthcoming for a Network Element ordered by Sprint, the Parties commit to negotiate in good faith for the provision of alternative Elements