# EXHIBIT

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STATE OF ILLINOIS

ILLINOIS COMMERCE COMMISSION

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| SprintCom, Inc., WirelessCo, L.P. NPCR, Inc. d/b/a Nextel Partners and Nextel West Corp. | : | |
| | : | 12-0550 |
| Petition for Arbitration pursuant to Section 252(b) of the Telecommunications Act of 1996 to Establish an Interconnection Agreement with Illinois Bell Telephone Company. | : | |

# ARBITRATION DECISION

June 26, 2013

Sprint currently sends Section 251(c)(2) and non-Section 252(c)(2) traffic over the same facilities. In order qualify for TELRIC pricing, both Sprint and AT&T will need to perform network work to separate the facilities. Until this work has been done it is appropriate that the Sprint continue to be billed according AT&T's access tariffs. AT&T's transition language is adopted with the exception of 1.2.1.1.2.

### C. IP-to IP Interconnection

**Issues 1, 11, and 18**

Sprint Issue 1: Should this Agreement preclude the exchange of Information Services traffic; or, require that traffic be exchanged in TDM format?

AT&T Issue 1: Should the ICA provide for IP-to-IP interconnection or should it provide that all traffic that Sprint delivers to AT&T under the ICA must be delivered in TDM format?

Issue 11: Should terms and conditions regarding IP Interconnection be included in the Agreement?

Sprint Issue 18: How and where will IP POIs be established?

AT&T Issue 18: Should the ICA address POIs for IP-to-IP interconnection and, if so, is Sprint's proposed language just and reasonable?

**Sprint's Position**

Sprint's proposed resolution of these issues reflects the changing nature of the telecommunications industry. Going forward, carriers will increasingly interconnect with each other in Internet Protocol ("IP"), and the importance and prevalence of Time Division Multiplexing ("TDM")-based switching equipment will decline. Section 251(c) and the FCC's rules provide for "technically feasible" interconnection without limitation on technology. This was affirmed by the FCC in the *CAF Order*: "[S]ection 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.

Sprint's proposed language would allow traffic to be exchanged in IP under the ICA. Implementation of IP Interconnection will begin with a specific request by Sprint. The parties would then negotiate in good faith any additional terms and conditions that may be necessary and any open issues would be resolved by the Commission under Sections 251/252 of the Act. This is in contrast to AT&T's position, which would defer the question of whether the Commission has jurisdiction to resolve open issues regarding IP interconnection. It is crucial, Sprint argues, for the Commission to find that IP interconnection is within the scope of Section 251(c)(2), and that it has jurisdiction and authority to arbitrate IP interconnection issues in the event any negotiations fail.

**AT&T's Position**

AT&T urges the Commission to resolve these issues by adopting the approach recommended by Staff and reflected in contract language that AT&T proposed in rebuttal testimony and Staff endorses. That resolution allows Sprint to request IP-to-IP

interconnection during the term of the parties' contract, and appropriately defers until such a request is made all arguments concerning whether AT&T must provide IP-to-IP interconnection to Sprint and, if so, on what terms and conditions. AT&T contends that even if the Act does require IP-to-IP interconnection when it is technically feasible, it would not be technically feasible with AT&T's current network, because there is no point on that network at which such an interconnection could be established. However, the resolution proposed by AT&T defers that determination for later, as well as the question whether the Commission could lawfully require AT&T to provide interconnection to Sprint at a point that is on the network of AT&T's affiliate, AT&T Corp.

AT&T explained that all traffic that AT&T exchanges with Sprint (and with every other carrier with which AT&T exchanges traffic) is exchanged in TDM format. Section 251(c)(2)(B) of the 1996 Act provides that interconnection is to be "at any technically feasible point within the [incumbent] carrier's network." Accordingly, AT&T states, the FCC has noted that section 251(c)(2) gives competing carriers the right to deliver traffic terminating on an incumbent LEC's network at any technically feasible point "on that network" (*Local Competition Order*, ¶ 209), and promulgated 47 C.F.R. § 51.305(a)(2), which requires interconnection "at any technically feasible point within the incumbent LEC's network." Indisputably, then, any IP-to-IP interconnection that Sprint might establish with AT&T would have to be at a point within AT&T's network. AT&T's evidence, however, establishes that there is no point within AT&T's network at which it would be technically feasible for Sprint to establish IP-to-IP interconnection.

Sprint claims it should be allowed to establish IP-to-IP interconnection at the AT&T Corp. switch that AT&T uses in the provision of service to its U-verse customers, but AT&T contends that that would be unlawful. The AT&T Corp. switch belongs to AT&T Corp., not to AT&T, and it is not part of AT&T's network. AT&T cannot lawfully be required to provide interconnection at a switch that it does not own and that is not part of its network; indeed, AT&T could not provide interconnection at the AT&T Corp. switch even if it were erroneously ordered to do so, because it is not AT&T's switch.

**Staff's Position**

Staff notes that Sprint proposes, with limited exceptions that the details of IP-to-IP Interconnection should be determined at a later date, but separately proposes the Commission determine that Sprint has a right to exchange traffic with AT&T in IP format. Staff explains, however, that in arbitrating disputes brought pursuant to Section 252(b) of the Act, the Commission is required by Section 252(c) to ensure that resolution and conditions of interconnection meet the requirements of Section 251 of the Act and the FCC's Part 51 rules implementing the requirements of Section 251. Staff recommends that the Commission make no such determinations because Sprint, with one exception, has not identified the terms and conditions under which it seeks IP interconnection and, therefore, the Commission does not have a proposal before it that would allow the Commission to assess whether the terms and conditions under which Sprint seeks IP interconnection meet the requirements of Section 251 of the Act and Part 51 of the FCC's rules implementing the requirements of Section 251.

Staff explains that the only detail that Sprint originally proposed with respect to its IP interconnection proposal is that the parties will exchange traffic "at the existing

internet exchange points ('IXP' or 'IP POI'), where they are currently interconnected (e.g., Los Angeles, San Jose, Seattle, Chicago, Dallas, D.C. Metro, Miami, New York City, and or Atlanta) or such additional IP POIs as may be mutually agreed." According to Staff, the points identified by Sprint do not comport with the requirements of Section 251 of the Act or the FCC and ICC rules and regulations implementing it because: (1) including points that are not within AT&T's network is inconsistent with the Section 251(c)(2)(B) requirement that such points be "within the carrier's network"; and (2) requiring Sprint to have fewer than one interconnection point per local access and transport area is inconsistent with Commission rules, which do not confer on connecting carriers a right to less than one interconnection point per local access and transport area. According to Staff, this exemplifies and underscores why the Commission cannot determine whether Sprint's proposal, or any proposal, is compliant with the requirements of Section 251 of the Act or the FCC and ICC rules and regulations implementing it without the details of such a proposal.

In its Initial Brief, Sprint revised its proposal for IP interconnection such that instead of proposing to interconnect at a number of locations (including out-of-state locations), Sprint revised its proposal by proposing to connect to AT&T's network at the AT&T Corp. softswitch that supports the AT&T U-verse operations. Staff asserts that this aspect of Sprint's proposal does not remedy the concerns cited by Staff and that Sprint's proposal continues to suffer some of the same deficiencies identified by Staff with respect to Sprint's previous proposal, for example, allowing Sprint the right to interconnect with AT&T at fewer than one point per local access and transport area.

The Commission has never, heretofore, determined that any provider has the right, pursuant to the Act to exchange traffic with an incumbent local exchange carrier ("ILEC") in IP format. Nor has the Commission determined the rates, terms, and conditions under which such interconnection must occur consistent with the requirements of Section 251 of the Act or the FCC and ICC rules and regulations implementing it. The legal question of whether IP Interconnection can be compelled pursuant to Section 251 is an open one at the FCC. Thus, this is a case of first impression for the Commission that must be decided pursuant to Federal law, which the FCC has not yet interpreted. While the Commission might or might not have the authority to order IP interconnection, any such decision it makes will be momentous and the Commission should not and cannot make such a determination until it is presented with an IP-to-IP interconnection of sufficient detail to allow it to assess whether such plan is technically feasible or otherwise comports with the requirements of the Federal Act.

Similarly, Staff argues that the Commission should not take the momentous step of foreclosing IP interconnection. If the Commission decisively rejects the exchange of traffic in IP format under any circumstance, then parties that rely increasingly on IP protocol in their own networks might be forced to make needless protocol transfers to and from TDM format when exchanging traffic they carry on their own networks in IP format.

Staff recommends that the Commission require the parties to include in the ICA language that will allow Sprint (and AT&T, if it so desires) to develop language prescribing the rates, terms, and conditions for IP-to-IP interconnection, including those

for the transition from TDM-to-TDM to IP-to-IP interconnection, and to petition the Commission for inclusion of its language in the ICA. Of the two proposals responding to Staff's recommendation, AT&T's proposal follows precisely the recommendation of Staff by preserving Sprint's (or AT&T's) right to propose a specific IP-to-IP interconnection proposal without prejudging the merits of any such proposal. Staff recommends that the Commission adopt AT&T's proposed language under Issues 1, 11, and 18.

**Commission Analysis and Conclusion**

The Commission notes that it has not determined that any provider has the right to exchange traffic with an incumbent local exchange carrier in IP format. Indeed, the legal question of whether IP Interconnection can be compelled pursuant to Section 251 has not been decided by the FCC. Also, the Commission has not determined any rates, terms, or conditions under which IP interconnection would occur, consistent with the requirements of Section 251 of the Act or the FCC and ICC rules and regulations implementing it. While the Commission might or might not have the authority to order IP interconnection, this decision cannot be made until it is presented with an IP-to-IP interconnection proposal of sufficient detail to allow it to assess whether such a plan is technically feasible or otherwise comports with the requirements of the 1996 Act.

Staff witness Zolnierek recommended that the parties be directed to enter into operational discussions to establish IP interconnection, but stops short of recommending that the Commission give Sprint the right to IP Interconnection at this time. In response to Staff witness Zolnierek, Sprint and AT&T proposed language that would allow this issue to be decided later. AT&T's proposed language most accurately responded to Mr. Zolnierek's suggestions. Indeed, Sprint's language improperly finds that IP Interconnection is technically feasible. On this record, however, the Commission is not prepared to make that finding. For all these reasons, AT&T's proposed language contained in AT&T witness Albright's Rebuttal testimony is adopted.

**D. Points of Interconnection**

**Issue 15**

Sprint: What is the appropriate definition of the "Point of Interconnection"?

AT&T: Should the POI serve as both the physical and financial demarcation point between the parties' networks?

**Sprint's Position**

Sprint's proposed language reflects the relationship between the Interconnection Facilities that "link" the Parties' networks and the physical point of interconnection ("POI") location at which such facilities physically connect to AT&T's network. The POI establishes a physical demarcation point, but does not relieve AT&T of its additional federal duties related to the cost and cost-sharing of such Interconnection Facilities. Interconnection Facilities are subject to TELRIC pricing (Issue 44) and cost sharing (Issue 45). Sprint's language reflects that the POI represents the physical demarcation point, but is subject to ordered cost sharing.