

Exhibit A

Union Telephone Company / IDT Interconnection rates

Appendix Pricing- Attachment A

Appendix Pricing- Attachment A

	Union Proposed		IDT Proposed	
	Monthly Recurring	Non Recurring	Monthly Recurring	Non Recurring
Service Order Charges				
Local Service Order (LSR) (limited to one physical location per order)				
Per Initial Order:		\$ 60.00	\$	7.00
Per Supplemental Order on Pending LSR already FOG'd		\$ 30.00	\$	3.50
Expedited Order		\$ 100.00	\$	35.20
Per cancelled order		\$ 30.00	\$	3.50
Other Service Charges				
Customer Service Record Order (CSR)- per Order (one customer per order)		\$ 30.00	\$	3.50
Miscellaneous Testing and other Additional Labor- charged in 1/2 hour increments and only in "No Trouble Found" instances for Trouble ticket events		Rate per 30 minutes		Rate per 30 minutes
Standard time (Normally scheduled hours)		\$ 32.50	\$	21.93
Overtime (outside normally sched hrs on schld work day)		\$ 47.50	\$	32.89
Premium Time -(outside of scheduled work day)		\$ 62.50	\$	43.86
N-1 routing service		TBD (per tariff)		N/A
Direct Interconnection Facilities				
1) Direct Trunk Transport Termination (per circuit termination / per month)				
a) DS1	\$ 121.37	\$ 330.00	\$ 45.23	\$ 155.00
b) DS3	\$ 779.39	\$ 445.00	\$ 477.20	\$ 204.00
2) Direct Trunk Transport Facility (per mile / per month)				
a) DS1	\$ 23.38		\$ 12.76	
b) DS3	\$ 203.77		\$ 89.33	
3) Multiplexing, Per Arrangement				
a) DS3 to DS1	\$ 708.99		\$ 277.25	
Note: these facility charges are only applicable from Union's meetpoint with FairPoint to Union's switches.				
RECIPROCAL COMPENSATION (see Appendix Recip Comp)				
Transit Traffic				
Per minute of use (to be determined if service offered in future)			N/A	N/A
Tandem Record Production (to be determined if needed)				
Local Traffic Termination**				
Should Local Traffic become out of balance (>60/40) a reciprocal Local Traffic Termination rate shall be developed and this Attachment shall be updated to incorporate such rate.		Bill and Keep**		Bill and Keep**
PERCENT LOCAL USAGE FACTOR (PLU) (See Appendix Recip Comp)				
Union Telephone Company Originated- IDT Terminated Traffic (PLU)		Use actuals or TBD		Use actuals or TBD
IDT Originated- Union Telephone Company Terminated Traffic (PLU)		Use actuals or TBD		Use actuals or TBD

Union would delete

Union wants to bill per term.

Note: Services provided pursuant to (or in additional to) this agreement that are not included above shall be charged, where applicable, in accordance with the Parties other operating tariffs.

All Charges are reciprocal and apply to both UNION and CLEC

ACCESS SERVICE

17. Rates and Charges (Cont'd)

17.4 Other Services

17.4.1 Access Ordering

	<u>Charge</u>	<u>Tariff Section Reference</u>
(A) <u>Access Order Charge</u>		5.4.1
Per order	\$76.00	(R)
(B) <u>Service Date Change Charge</u>		5.4.3
<p>A Service Date Change Charge will apply, on a per order per occurrence basis, for each service date changed. The Access Order Charge as specified in 17.4.1(A) preceding does not apply. The applicable charge is:</p> <p style="text-align: center;">Service Date Change Charge, per order</p>		
per order	\$60.00	(I)
(C) <u>Design Change Charge</u>		5.4.3
<p>The Design Change Charge will apply on a per order per occurrence basis, for each order requiring design change. The applicable charge is:</p>		
Design Change Charge, per order	\$84.00	(I)
(D) <u>Miscellaneous Service Order Charge</u>		5.4.2
Per Occurrence	\$123.00	(I)

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Director - Access Tariffs
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ACCESS SERVICE

17. Rates and Charges (Cont'd)

17.4 Other Services (Cont'd)

17.4.4 Miscellaneous Services (Cont'd)

(K) Blocking Service*

	<u>Nonrecurring Charge</u>	<u>Tariff Section Reference</u>
- Per exchange service line, or trunk and/or per Feature Group A Switched Access Line	\$11.20	13.8

(L) Billing Name and Address Service

* - Per BNA Order	\$50.94	13.9.4(A)
- Per BNA Record	\$ 0.33	13.9.4(A)
- Optional Magnetic Tape Charge-Per Magnetic Tape	\$91.44	13.9.4(B)
- Optional Format Programming Charge		
- Per each half hour or fraction thereof	\$37.20	13.9.4(C)

(M) Originating Line
Screening (OLS) Service

- Per exchange service line	\$ 7.95	13.10
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(N) Coin Supervision
Additive Service

	<u>Monthly Rate</u>	
- Per exchange service line	\$ 2.21	13.12

* Blocking access to 900 Service is offered to all subscribers at no charge

- (a) from November 1, 1993 through December 31, 1993 and
- (b) at the time telephone service is established at a new number and for 60 days thereafter.

(x) Issued to reflect new corporate address.

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 80 So. Jefferson Road, Whippany, NJ 07981

ACCESS SERVICE

17. Rates and Charges (Cont'd)

17.4 Other Services (Cont'd)

17.4.3 Additional Labor (Cont'd)

Additional Labor Periods

Each Half Hour or Fraction Thereof

<u>Installation and Repair Technician</u>	<u>Central Office Maintenance Technician</u>	<u>Tariff Section Reference</u>
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(C) Testing and Maintenance
 with other Telephone
 Companies, or Other Labor

①	<u>UNION</u>				
	32.50	- Basic Time per technician normally scheduled working hours	\$31.71	(I)	\$34.66 (I) 13.2.4 & 13.2.5
*	47.50	- Overtime per technician outside of normally scheduled working hours on a scheduled work day	\$47.57*	(I)	\$51.99* (I) 13.2.4 & 13.2.5
	62.50	- Premium Time per technician outside of scheduled work day	\$63.42*	(I)	\$69.32* (I) 13.2.4 & 13.2.5

* A call out of a Telephone Company employee at a time not consecutive with the employee's scheduled work period is subject to a minimum charge of four hours.

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 80 So. Jefferson Road, Whippany, NJ

ACCESS SERVICE

17. Rates and Charges (Cont'd)

17.2 Switched Access Service

17.2.1 <u>Nonrecurring Charges</u>	<u>Rate</u>	<u>Tariff Section Reference</u>
(A) <u>Local Transport - Installation Per Entrance Facility</u>		6.4.1(B) (1)
- Voice Grade Two-Wire	\$450.00	(I)
- Voice Grade Four-Wire	\$450.00	(I)
* — High Capacity DS1	\$330.00	(R)
* — High Capacity DS3	\$445.00	(I)
- Synchronous Optical Channel OC3	\$360.00	
- Synchronous Optical Channel OC12	\$360.00	
(C) <u>Interim NXX Translation Per Order</u>		6.4.1(B) (2)
Per LATA or Market Area	\$220.00	(I)
(D) <u>FGC and FGD Conversion of Multifrequency Address Signaling to SS7 Signaling or SS7 Signaling to Multifrequency Address Signaling</u>		6.4.1(B) (3)
- Per 24 Trunks Converted or Fraction thereof on a Per Order Basis	\$442.00	(I)
(E) <u>Trunk Activation Per Order</u>		6.4.1(B) (1)
- Per 24 Trunks Activated or Fraction thereof, on a Per Order Basis	\$459.00	(I)
(F)		
(G) <u>Flexible Automatic Number Identification (Flex ANI)</u>		
- Per End Office, Per CIC	None	6.10.1(AA)

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Director - Access Tariffs
 80 So. Jefferson Road, Whippany, NJ 07981

A,4

ACCESS SERVICE

17. Rates and Charges (Cont'd)

17.2 Switched Access Service (Cont'd)

17.2.2 Local Transport (Cont'd)

Premium Access (Cont'd)

Tariff
 Section
 Reference
 6.1.3(A)(2)

Direct Trunked Transport (Cont'd)

Direct Trunked Termination, Per Termination

Monthly Rate

Rate Band	Voice Grade 2-Wire	(I) (R)	Voice Grade 4-Wire	(I) (R)	High Capacity DS1	(I) (R)	High Capacity DS3	(I) (R)	Synchronous Optical Channel OC3	(I) (R)	Synchronous Optical Channel OC12	(I) (R)
1	\$15.57	(I)	\$15.57	(I)	\$38.03	(R)	\$244.24	(R)	\$253.55	(R)	\$552.05	(R)
2	\$17.42	(R)	\$17.42	(R)	\$42.57	(I)	\$273.37	(I)	\$283.79	(I)	\$617.89	(I)
3	\$20.74		\$20.74		\$50.66		\$325.36		\$337.76		\$735.40	
4	\$22.18		\$22.18		\$54.19		\$348.00		\$361.26		\$786.58	
5	\$22.70		\$22.70		\$55.48		\$356.26		\$369.83		\$805.23	
6	\$25.40	(R)	\$25.40	(R)	\$62.05	(R)	\$398.47	(R)	\$413.65	(R)	\$900.65	(R)
7	\$35.48	(I)	\$35.48	(I)	\$86.69	(I)	\$556.71	(I)	\$577.92	(I)	\$1,258.31	(I)
8	\$42.58		\$42.58		\$104.03		\$668.05		\$693.50		\$1,509.97	
9	\$49.67	(I)	\$49.67	(I)	\$121.37	(I)	\$779.39	(I)	\$809.09	(I)	\$1,761.63	(R)
10	\$53.22	(N)	\$53.22	(N)	\$130.04	(N)	\$835.07	(N)	\$866.88	(N)	\$1,887.47	(N)

Refer to the Local Transport/Special Access Rate Band Table in Section 17.5.1, following, to view company specific rate band assignments.

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Director - Access Tariffs
 80 So. Jefferson Road, Whippany, NJ 07981

A.5

ACCESS SERVICE

17. Rates and Charges (Cont'd)

17.2 Switched Access Service (Cont'd)

17.2.2 Local Transport

Premium Access

Entrance Facility, Per Termination

Tariff
 Section
Reference
 6.1.3(A) (1)

Monthly Rate

Rate Band	Voice Grade 2-Wire		Voice Grade 4-Wire		High Capacity DS1		High Capacity DS3		Synchronous Optical Channel OC3		Synchronous Optical Channel OC12	
1	\$21.74	(I)	\$34.79	(I)	\$107.00	(R)	\$976.97	(R)	\$993.25	(R)	\$1,036.76	(R)
2	\$24.34	(R)	\$38.94	(R)	\$119.76		\$1,093.50		\$1,111.72		\$1,160.42	
3	\$28.96		\$46.35		\$142.54		\$1,301.46		\$1,323.15		\$1,381.11	
4	\$30.98		\$49.57		\$152.46		\$1,392.02		\$1,415.22		\$1,477.21	
5	\$31.71		\$50.75		\$156.07		\$1,425.03		\$1,448.78		\$1,512.24	
6	\$35.47	(R)	\$56.76	(R)	\$174.57	(R)	\$1,593.89	(R)	\$1,620.46	(R)	\$1,691.44	(R)
7	\$49.56	(I)	\$79.30	(I)	\$243.89	(I)	\$2,226.86	(I)	\$2,263.97	(I)	\$2,363.14	(I)
8	\$59.47		\$95.16		\$292.67		\$2,672.23		\$2,716.76		\$2,835.77	
9	\$69.38	(I)	\$111.02	(I)	\$341.45	(I)	\$3,117.60	(I)	\$3,169.56	(I)	\$3,308.40	(R)
10	\$74.34	(N)	\$118.95	(N)	\$365.84	(N)	\$3,340.29	(N)	\$3,395.96	(N)	\$3,544.71	(N)

Tariff
 Section
Reference
 6.1.3(A) (2)

Direct Trunked Transport

Direct Trunked Facility, Per Mile

Monthly Rate

Rate Band	Voice Grade 2-Wire		Voice Grade 4-Wire		High Capacity DS1		High Capacity DS3		Synchronous Optical Channel OC3		Synchronous Optical Channel OC12	
1	\$1.55	(I)	\$1.55	(I)	\$7.33	(R)	\$63.86	(R)	\$68.16	(R)	\$85.54	(R)
2	\$1.73	(R)	\$1.73	(R)	\$8.20		\$71.47		\$76.28		\$95.74	
3	\$2.06		\$2.06		\$9.76		\$85.06		\$90.79		\$113.95	
4	\$2.21		\$2.21		\$10.44		\$90.98		\$97.11		\$121.88	
5	\$2.26		\$2.26		\$10.69		\$93.14		\$99.41		\$124.77	
6	\$2.53	(R)	\$2.53	(R)	\$11.95	(R)	\$104.18	(R)	\$111.19	(R)	\$139.56	(R)
7	\$3.53	(I)	\$3.53	(I)	\$16.70	(I)	\$145.55	(I)	\$155.35	(I)	\$194.98	(I)
8	\$4.24		\$4.24		\$20.04		\$174.66		\$186.42		\$233.98	
9	\$4.94	(I)	\$4.94	(I)	\$23.38	(I)	\$203.77	(I)	\$217.49	(I)	\$272.97	(R)
10	\$5.30	(N)	\$5.30	(N)	\$25.05	(N)	\$218.33	(N)	\$233.03	(N)	\$292.47	(N)

Refer to the Local Transport/Special Access Rate Band Table in Section 17.5.1, following, to view company specific rate band assignments.

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A.6

ACCESS SERVICE

17. Rates and Charges (Cont'd)

17.2 Switched Access Service (Cont'd)

17.2.2 Local Transport (Cont'd)

Premium Access (Cont'd)

Tariff
 Section
Reference
 6.1.3(A) (5)

Multiplexing, Per Arrangement

Monthly Rate

Rate Band	DS3 to DS1		DS1 to Voice	
	Rate	Code	Rate	Code
1	\$222.18	(R)	\$85.78	(R)
2	\$248.68		\$96.01	
3	\$295.97		\$114.27	
4	\$316.57		\$122.22	
5	\$324.07		\$125.12	
6	\$362.47	(R)	\$139.95	(R)
7	\$506.42	(I)	\$195.52	(I)
8	\$607.70		\$234.62	
9	\$708.99	(I)	\$273.73	(I)
10	\$759.63	(N)	\$293.28	(N)

X —

Tariff
 Section
Reference
 6.1.3(A) (7)

Customer Node, Per Node

Monthly Rate

Rate Band	OC3 155.52 Mbps		OC12 622.08 Mbps		Nonrecurring Charge All	
	Rate	Code	Rate	Code	Rate	Code
1	\$230.64	(R)	\$666.29	(R)	\$640.00	(I)
2	\$258.15		\$745.76		\$640.00	
3	\$307.24		\$887.59		\$640.00	
4	\$328.62		\$949.35		\$640.00	
5	\$336.41		\$971.86		\$640.00	
6	\$376.27	(R)	\$1,087.02	(R)	\$640.00	
7	\$525.70	(I)	\$1,518.70	(I)	\$640.00	
8	\$630.84		\$1,822.44		\$640.00	
9	\$735.98	(I)	\$2,126.18	(I)	\$640.00	(I)
10	\$788.55	(N)	\$2,278.05	(N)	\$640.00	(N)

Refer to the Local Transport/Special Access Rate Band Table in Section 17.5.1, following, to view company specific rate band assignments.

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A.7

Exhibit B

Synergies Law Group, PLLC

May 27, 2009

VIA ELECTRONIC DELIVERY

Debra A. Howland, Executive Director
New Hampshire Public Utility Commission
21 South Fruit Street, Suite 10
Concord, NH 03301-2429

Re: **Docket No. 09-048**
Motion to Dismiss of Union Telephone Company

Dear Director Howland:

On behalf of Union Telephone Company ("Union"), attached for filing is its Motion to Dismiss, in the above referenced Docket.

Pursuant to Commission rules, this letter is being electronically filed at executive.director@puc.nh.gov. In addition, an original and seven (7) copies of this letter are also being filed via overnight mail. Please date stamp and return the enclosed extra copy of this filing. Please contact the undersigned if you have any questions.

Sincerely,



Brian McDermott
Edward S. Quill, Jr.

Counsel for Union Telephone Company

cc: Service List

STATE OF NEW HAMPSHIRE

BEFORE THE PUBLIC UTILITIES COMMISSION

DT-09-048

MOTION TO DISMISS

Pursuant to Section 203 of the New Hampshire Code of Administrative Rules, Union Telephone Company ("Union") files this Motion in response to the Hearing Examiner Report filed in this docket and respectfully requests that the Commission dismiss the above captioned proceeding. In the Hearing Examiner Report in this docket (dated May 20, 2009) ("Hearing Report"), Examiner F. Anne Ross recommends that the "Commission not address potential arguments that IDT's request for interconnection is really a request for interconnection pursuant to section 251(c)(2)(A) until these arguments are raised and a record is developed."¹

Through this proceeding, IDT America Corp. ("IDT") seeks to require Union to enter into binding arbitration in order to obtain an interconnection agreement for local exchange traffic. It is well established that such interconnection can only be demanded through Section 251(c) of the Communications Act (as amended),² and not through Section 251(a). IDT therefore has no right to demand and Union has no obligation to provide the type of interconnection that IDT is demanding.

IDT's interconnection demands are, in reality, Section 251(c) demands, the plain reading of that correspondence and the Hearing Report notwithstanding, Union is not required to

¹ Hearing Report at 9.

² 47 USC ("The Act")

provide such interconnection. Union is a rural carrier and it is undisputed that Section 251(f) of the Act applies to it. Section 251(f) specifically exempts rural carriers from Section 251(c) interconnection obligations until carriers have received a *bona fide* request for interconnection and the state commission had determined that the request is not unduly economically burdensome, is technically feasible, and is consistent with section 254 of the Act. In short, Union is not required to provide interconnection of the type that IDT is seeking unless the Commission were to lift Union's rural exemption upon IDT's request. To date, IDT has not even made such a request for the Commission to consider.

I. Sections 251(a) and (b) Do Not Provide an Independent Basis to Demand Interconnection for Local Exchange Service – Such Authority Can Only Be Sought Under Section 251(c).

To date, IDT's sole interconnection demand has been made pursuant to Section 251(a) and 251(b). That conclusion is supported not only by the plain language of IDT's requests,³ but by the Hearing Report as well. While Section 251(a) may contain a broadbased requirement that carriers interconnect, the requirements of Section 251(a) do not obligate carriers to interconnect for the purposes of exchange access service.⁴ Indeed, this issue has already been considered by other state commissions which have determined that to reach such a result would undermine the entire Federal statutory regime relating to interconnection.

When Level 3 sought to seek interconnection for the provision of local services in North Dakota from a rural carrier under Section 251(a) for example, the Commission rejected Level 3's right to do so, stating:

³ IDT's demand letter specifically reference Section 251(a) and (b) and makes no mention of Section 251(c).

⁴ IDT's Petition for Arbitration dated March 9, 2009 ("Petition for Arbitration") specifically states that the proposed agreement will be "for purposes of connection and exchange of Local Traffic."

If Level 3 is truly offering a local exchange service, then it cannot simply declare that it is filing an exclusive 251(a) interconnection agreement. The clear language of the act prevents that occurrence. When interconnecting with an ILEC, such as SRT, the transmission and routing of telephone exchange service and exchange access is clearly stated under 251(c)(2)(A). While Level 3 may want to apply under solely 251(a), there is no basis upon which to allow that to happen. We do not view the act as a buffet menu from which carriers are allowed to choose which parts of it they wish to file under, to the exclusion of those sections they would rather ignore. Such an interpretation would seriously undermine the protections afforded rural carriers by Congress in section 251(f).⁵

The situation in North Dakota is directly analogous to the current proceeding.

The State of Texas likewise considered this issue when Sprint attempted to interconnect with rural Brazos Telecommunications, Inc ("BTI") by means of Sections 251 (a) and (b). In that case, the Commission stated:

The Commission disagrees with Sprint's contention that it can receive interconnection through FTA [Federal Telecommunications Act] Section 251(a) to offer and provide telephone exchange service. FTA Section 251(c)(2) provides, in part, that an ILEC is obligated to provide interconnection for the transmission and routing of "telephone exchange service" and exchange access. FTA Section 251(a), however, does not require ILECs or other telecommunications carriers to interconnect for the express purpose of exchanging traffic relating to telephone exchange service. FTA Section 251(a) encompasses a broad duty to interconnect for all carriers. The duty of an ILEC to provide interconnection for purposes of exchanging "telephone exchange service" is solely and expressly a FTA Section 251(c) obligation. Therefore, according to FTA Section 251(f)(1)(A), BTI is exempt from this FTA Section 251(c) obligation until (1) it receives a bona fide request for interconnection and (2) the Commission determines that such request is not unduly economically burdensome, is technically feasible, and is consistent with FTA Section 254. Accordingly, the Commission finds that Sprint is requesting interconnection under FTA Section 251(c)(2), and therefore, Sprint is required to petition to lift BTI's rural exemption under FTA Section 251(f)(1)(A) before proceeding to negotiate and arbitrate an interconnection agreement.⁶

⁵ North Dakota Public Service Commission Order, Case No. PU-2065-02-465 (May 30, 2003) and ¶10. The entire Order is attached as Exhibit A.

⁶ Public Utility Commission of Texas, Order Denying Sprint's Appeal of Order No. 1, PUC Docket No. 31038 (December 2, 2005)(*emphasis added*). Order attached as Exhibit B

These precedents make clear that IDT simply does not have the right to demand arbitration for the purposes of forcing interconnection for local exchange traffic under Section 251(a). Therefore the Commission must dismiss this proceeding.

II. IDT's Arguments Related to Interconnection Obligations Are Invalid Because the Rights IDT Asserts Apply Only to Section 251(c) Interconnection.

Although IDT has sought to interconnect under only Sections 251(a) and (b), IDT has invalidly asserted that rights available only under Section 251(c) should apply. IDT also mentions numerous times that Union has failed to abide by its duty to negotiate in good faith. In fact, IDT's entire May 12th Supplement to the Record center around the duty to negotiate in good faith and requirements related to that duty codified at 47 C.F.R. §51.301. That regulation simply does not apply to this proceeding because the regulation applies only to Section 251(c) proceedings and not to Section 251(a).

In fact, Union has no duty to negotiate under Section 251(a). The duty to negotiate in good faith is set forth under Section 251(c). That Section states:

(c) Additional obligations of incumbent local exchange carriers
In addition to the duties contained in subsection (b) of this section, each incumbent local exchange carrier has the following duties:

(1) Duty to negotiate

The duty to negotiate in good faith in accordance with section 252 of this title the particular terms and conditions of agreements to fulfill the duties described in paragraphs (1) through (5) of subsection (b) of this section and this subsection. The requesting telecommunications carrier also has the duty to negotiate in good faith the terms and conditions of such agreements.

(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; and
- (D) on rates, terms, and conditions that are just, reasonable, and nondiscriminatory, in accordance with the terms and conditions of the agreement and the requirements of this section and section 252 of this title.⁷

In the Hearing Report, Examiner Ross acknowledges that Section 251(c)(1) does not apply to Union and that Union does not have a duty to negotiate in good faith. In short, to date, IDT has demanded interconnection only pursuant to Section 251(a). IDT has no ability to assert rights under Section 251(c) unless and until it demands interconnection under Section 251(c).

III. Interconnection Under Section 251(c) Is Not Available to IDT Because As a Rural Carrier, Union Is Exempt from Section 251(c) Obligations.

Even if, despite the conclusions made in the Hearing Report and the plain language of IDT's requests, the Commission was to construe IDT's demands as falling under Section 251(c), such interconnection rights are not available to IDT because Union is a rural carrier and therefore exempt from Section 251(c) obligations.

Specifically, Section 251(f)(1) clearly states that Section 251(c) does not apply to rural carriers "until (i) such company has received a *bona fide* request for interconnection, services, or network elements, and (ii) the State commission determines...that such request is not unduly economically burdensome, is technically feasible, and is consistent with section 254 of this title..."⁸ To date, such a *bona fide* request has neither been made nor ruled on. Instead, IDT is attempting to do an end run around Section 251(f) by demanding interconnection only under

⁷ 47 U.S.C. Section 251(c).

⁸ 47 U.S.C. Section 251(f).

Section (a) and then pretending that such interconnection ought to afford Section 251(c) rights.

Such a construction is neither available nor permissible under the Act.

For IDT to obtain Section 251(c) interconnection rights, IDT's recourse is first to make a *bona fide* request to have Union's rural exemption terminated under Section 251(f)(1). In that type of proceeding, the Commission would examine the totality of circumstances to determine whether making a rural interconnect is overly burdensome. Such an analysis is necessary in order to ensure that rural carriers can continue to serve their existing customers. For example, in this proceeding, IDT has asked Union to provide number portability, a service which would require Union to have to make new equipment purchases. IDT should not be permitted to force Union or other rural carriers to make such capital investments without any Commission examination as to the economic burden such investment would have on the rural carrier.

VI. Conclusion

As the foregoing makes clear, IDT has sought only interconnection under Sections 251(a) and (b). That Section simply does not afford IDT the right to interconnection for the purposes of exchanging local traffic. Union is only obligated to provide such interconnection pursuant to a Section 251(c) interconnection demand. Yet even if IDT had requested Section 251(c) interconnection (which it hasn't), Section 251(c) rights are not available to IDT because Union is a rural carrier and therefore exempt from Section 251(c) due to Section 251(f). For IDT to obtain Section 251(c) rights, therefore, IDT must first file to extinguish Union's rural exemption. Since to date, that has not occurred, IDT has no right to demand Section 251(c) interconnection and the Commission must therefore dismiss this proceeding.

Respectively submitted,



Brian McDermott
Edward S. Quill, Jr.

Counsel for
Union Telephone Company

Dated: May 27, 2009

Exhibit A

STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION

Level 3 Communications, LLC
Interconnection Arbitration
Application

Case No. PU-2065-02-465

ORDER

May 30, 2003

Appearances

Frank G. Lamancusa, Telecom Dispute Solutions, Inc., Ashton, Maryland,
appearing as Arbitrator.

Michael W. Fleming, Attorney at Law, Swidler Berlin Shereff Friedman, LLP,
3000 K Street N.W., Suite 300, Washington, D.C. 20007-5116, appearing for Level 3
Communications, LLC.

David J. Hogue, Attorney at Law, Pringle & Herigstad, 20 First Street S.W.,
Suite 201, P.O. Box 1000, Minot, North Dakota 58702-1000, appearing for SRT
Communications, Inc.

William W. Binek, Special Assistant Attorney General, Public Service
Commission, State Capitol, Bismarck, ND 58505-0480, appearing for the Public
Service Commission.

Patrick Fahn and Jerry Lein, Public Service Commission, State Capitol,
Bismarck, ND 58505-0480, appearing as Technical Assistant to the Arbitrator.

Preliminary Statement

On August 30, 2002, Level 3 Communications, LLC (Level 3) filed a Petition for Arbitration with the Public Service Commission (Commission), under 47 U.S.C. § 252(b) and N.D. Admin. Code Chapter 69-02-10, to establish an interconnection agreement between Level 3 and SRT Communications Cooperative a/k/a SRT Communications, Inc. (SRT) pursuant to Sections 251 and 252 of the Telecommunications Act of 1996 (Act). Level 3 requested, under 47 U.S.C. § 251(a), interconnection with SRT to provide

a telecommunications service that, in turn, supports the services of Internet Service Providers (ISPs).

On September 4, 2002, a Notice of Appearance was filed by David J. Hogue, Attorney for SRT Communications, Inc.

On September 16, 2002, Level 3 submitted names of proposed arbitrators, and on September 28, 2003, Level 3 filed an via e-mail a joint recommendation by the parties on Frank G. Lamancusa as the neutral arbitrator in this case. On September 19, 2002, the Commission appointed Frank G. Lamancusa as the arbitrator, and on October 10, 2002, the Commission appointed Patrick Fahn and Jerry Lein as staff advisors to the arbitrator.

On September 26, 2003, SRT filed its response to the petition for arbitration and a motion to dismiss

On October 7, 2002, Level 3 filed its response to SRT's motion to dismiss, and on October 29, 2002 Level 3 filed a supplement to that response.

On October 18, 2002, the parties filed a stipulation for an extension of time beyond the statutory nine-month timeframe for the Commission to render its final decision in the case. On October 23, 2003, the Commission granted the joint request of the parties for an extension of the deadline under Section 252(b)(4)(C) extending the deadline for the arbitrator's decision to January 31, 2003.

On October 29, 2002, the arbitrator filed his recommended order concerning SRT's motion for dismissal recommending that the motion be denied. On November 4, 2002, SRT filed comments on the recommendation. On November 20, 2002, the Commission issued its order denying SRT's motion for dismissal.

On October 31, 2002, the arbitrator filed his Prehearing Conference Order setting forth the arbitration procedural schedule and listing the disputed issues to be determined in the arbitration proceeding. On November 11, 2002, the Commission issued its notice of the arbitration hearing scheduling the arbitration hearing and setting forth the issues to be determined in the arbitration proceeding as follows:

1. Has SRT satisfied its duties under the Communications Act of 1934, as amended, with respect to Level 3's section 251(a) interconnection request?
2. Does SRT have a duty to negotiate with Level 3 to establish fair and reasonable terms and conditions for interconnection when it receives a request for interconnection pursuant to section 251(a) of the Communications Act of 1934, as amended?

3. Are Level 3's proposed services exchange services that are subject to negotiated transport and termination arrangements or are they interexchange services subject to access charges?
4. For calls to NXX numbers assigned to the same local calling area, are the interconnection, intercarrier compensation, and local service customer billing requirements different based on whether the call terminates within the original local calling area or terminates outside of that local calling area.
5. Has Level 3 made a *bona fide* request for interconnection under section 251(f)(1) of the Act?
6. Is SRT exempt from negotiation and interconnection obligations pursuant to section 251(f)(1) of the Communications Act of 1934, as amended?
7. Does the North Dakota Public Service Commission have jurisdiction to adjudicate disputes concerning ISP-bound traffic in the context of an interconnection agreement arbitration?

A hearing in this proceeding was held beginning December 9, 2002, in the Commission Hearing Room, 12th floor, State Capitol, Bismarck, North Dakota. Notice thereof was published in the weekly newspapers throughout the state as required by law.

On March 3, 2003, the arbitrator filed his decision and recommendations in this proceeding.

On April 2, 2003, the parties filed an interconnection agreement incorporating the arbitrator's decisions and recommendations in compliance with N.D. Admin. Code § 69-02-10-30.

On April 16, 2003, Polar Communications (Polar) and Reservation Telephone Cooperative (RTC) filed comments on the interconnection agreement, and on April 17, 2003, Level 3, SRT, and the North Dakota Association of Telecommunications Cooperatives (NDATC) filed comments on the interconnection agreement.

On May 15, 2003, Level 3 filed a letter with four state commission decisions as supplemental authority pertaining to state commission jurisdiction to establish interconnection arrangements under a section 251(a) interconnection request.

Discussion

In this order, the Commission dismisses, without prejudice, Level 3's interconnection arbitration application. The Commission's decision is based on interpretation of state and federal law and FCC rules and decisions.

Under N.D.C.C. § 49-21-09 the Commission may direct the use by one telecommunications company of facilities or services of another telecommunications company.

Under N.D.C.C. § 49-21-01.7(8) the Commission has the authority to mediate or arbitrate agreements for interconnection, services, or network elements under sections 251 and 252 of the Act, and under N.D.C.C. § 49-21-01.7(9) the Commission has the authority to approve or reject such agreements.

Under 47 U.S.C. § 252(b)(4)(A) the Commission must limit its consideration of any petition for arbitration to the issues set forth in the petition and issues set forth in responses to the petition from other parties. Under 47 U.S.C. § 252(b)(4)(C) and 252 (c) the Commission must resolve each issue set forth in the petition and the response by imposing appropriate conditions to (1) ensure that such resolution and conditions meet the requirements of 47 U.S.C. § 251, including regulations prescribed by the Federal Communications Commission (FCC) pursuant to section 251; (2) establish any rates for interconnection, services, or network elements according to subsection 47 U.S.C. § 252(d); and (3) provide a schedule for implementation of the terms and conditions by the parties to the agreement.

Under 47 U.S.C. § 252(e)(1) the Commission may approve or reject an interconnection agreement adopted by arbitration, with written findings as to any deficiencies. Under 47 U.S.C. § 252(e)(2)(B) the Commission may only reject such interconnection agreement adopted by arbitration, or portion thereof, if it does not meet the requirements of 47 U.S.C. § 251, including regulations prescribed by the FCC pursuant to section 251, or the standards set forth in 47 U.S.C. § 252(d).

Part 47 U.S.C. § 251(a) requires that a telecommunications carrier interconnect directly or indirectly with the facilities and equipment of other telecommunications carriers.

Part 47 U.S.C. § 251(b) requires that each local exchange carrier not prohibit the resale of its telecommunications services; provide number portability; provide dialing parity to competing providers of telephone exchange service and telephone toll service; provide nondiscriminatory access to telephone numbers, operator services, directory assistance, and directory listing; afford access to poles, ducts, conduits, and rights-of-way to competing providers telecommunications services; and establish reciprocal compensation.

Part 47 U.S.C. § 251(c) requires that each incumbent local exchange carrier (1) negotiate in good faith the particular terms and conditions of interconnection agreements; (2) provide interconnection with the local exchange network for the transmission and routing of telephone exchange service and exchange access, at any technically feasible point within the local exchange network; (3) provide nondiscriminatory access to network elements on an unbundled basis at any technically feasible point; (4) offer for resale any telecommunications service that it provides at

retail to subscribers who are not telecommunications carriers; (5) provide notice of changes that would affect the interoperability of facilities and networks; and (6) provide for physical collocation of equipment.

Part 47 U.S.C. § 153 defines telephone exchange service as "(A) service within a telephone exchange, or within a connected system of telephone exchanges with the same exchange area operated to furnish to subscribers intercommunicating service of the character ordinarily furnished by a single exchange, and which is covered by the exchange service charge, or (B) comparable service provided through a system of switches, transmission equipment, or other facilities (or combination thereof) by which a subscriber can originate and terminate a telecommunications service."

Part 47 U.S.C. § 153 defines exchange access as "the offering of access to telephone exchange services or facilities for the purpose of the origination or termination of telephone toll services." Part 47 U.S.C. § 153 defines telephone toll service as "telephone service between stations in different exchange areas for which there is made a separate charge not included in contracts with subscribers for exchange service."

Part 47 U.S.C. § 252(d) addresses pricing standards and provides that rates for interconnection and network elements and transportation and termination of traffic must be just and reasonable, nondiscriminatory, and be based on the cost of providing the interconnection or network element or service.

If the Commission does not act to approve or reject the agreement, the FCC will assume the responsibility of the Commission and act for the Commission.

The Commission having reviewed the evidence of record and being fully informed in the matter makes the following:

Findings of Fact

1. Level 3 is requesting interconnection with SRT to provide a telecommunications service that, in turn, supports the services of Internet Service Providers (ISPs). The FCC in 47 § C.F.R. 51.5 defines interconnection as the linking of two networks for the mutual exchange of traffic and states that this term does not include the transport and termination of traffic. Level 3 requested negotiations for interconnection on March 26, 2002 by sending an information package to SRT. The information package provided an overview of Level 3's goals to offer telecommunications services to support dial-up services offered by ISPs, to maintain SRT's rural exemption, and to implement a bill-and-keep mechanism for the exchange of traffic. The package included a proposed traffic exchange agreement containing terms and conditions for interconnection, and for the routing and exchange of traffic between the Parties' networks. Level 3 also provided a network drawing depicting one possible way in which Level 3 might route traffic from SRT to Level 3's network.

2. Level 3 states that it is making its request for interconnection under section 251(a) and believes that the request for interconnection is therefore not subject to terms and conditions set forth in 251(b) or 251(c).

3. SRT moved to dismiss Level 3' petition for arbitration for the following reasons: (a) that Level 3 had not made a *bona fide* request for an interconnection under section 251(f)(1)(A) of the Act; (b) that Level 3 had not requested nor had the Commission determined that SRT's exemption from negotiation and interconnection should be terminated; and (c) that the interconnection Level 3 seeks under section 251(a) is not a kind of interconnection that is the subject of the obligations imposed under section 251(c)(1) and the related arbitration provisions under section 252 of the Act, and as such, Level 3 is not entitled to the negotiation and arbitration provisions of section 252. SRT argued that neither the Act nor any regulations promulgated under the Act required SRT to negotiate or to submit to arbitration under section 251(a).

4. Level 3 responded that it was not requesting interconnection under section 251(c) of the Act but rather under section 251(a) and that the restrictions of section 251(c) were inapplicable. Level 3 argued that section 252 negotiation and arbitration procedures apply to section 251(a) requests.

5. The arbitrator issued a decision finding that Level 3 requested interconnection under section 251(a) of the Act, and consequently concluded that the restrictions of section 251(c) were inapplicable. The arbitrator also determined that the arbitration provisions in section 252 were available for all section 251 requests including interconnection under section 251(a). The Commission concurred with the arbitrator's finding that the arbitration provisions of 252 are available for all 251 requests, and denied SRT's motion to dismiss.

6. Following hearing of the arbitration proceeding, the arbitrator found that SRT does not have a duty to negotiate for interconnection under section 251(a) of the Telecommunications Act (Act), but then determined that while SRT may, but is not required to negotiate under section 251(a), it is not exempt from the arbitration requirements under the Act nor from its duties to interconnect. Essentially, the arbitrator found that the statutory language of section 251(a) does not require an incumbent local exchange carrier (ILEC) to negotiate, but that arbitration under the Act does not require negotiations as a condition precedent. We agree.

7. Level 3 emphatically claims it seeks to offer telephone exchange or exchange access service.¹ In fact it chides SRT for suggesting that the Level 3 service is primarily interexchange in nature. Level 3 states "SRT bases its argument, in large part, on the mistaken belief Level 3 is an interexchange carrier that requests interconnection solely for the purposes of originating interexchange traffic, rather than for the provision of 'telephone exchange' or 'exchange access' as those terms are defined in the Act."² And further, Level 3 states³ "... SRT's arguments are factually incorrect because Level 3's

¹ Level 3's Post Hearing Brief at pages 26-28.

² *Id.* at 26-27.

proposed service is a local telephone exchange service that is consistent with its authority granted by this Commission.³

8. The Commission makes no determination as to whether the Level 3 offering is truly local or interexchange. We have no need to make such a finding because Level 3 itself declares it to be offering telephone exchange access or exchange service. But if we accept that the Level 3 offering is truly local exchange service in nature, then the provisions of section 251(c) would have to apply. Level 3 is unable to claim it is offering a local exchange service, while at the same time maintaining section 251(c) inapplicability. If the Level 3 offering is truly a local exchange service, then we must note that SRT still qualifies for the rural carrier exemption as defined in 251(f). No bona fide request has been made to terminate the exemption, and as such, we conclude SRT would be unable to be made the subject of such an interconnection arbitration prior to this Commission making a determination on SRT's 251(f) rural exemption.

9. Level 3 points to the CPCN this commission granted as proof that it is enabled to offer telephone exchange access in the SRT service territory. Yet Level 3 and the arbitrator ignore that the Commission ordered such certification without prejudice of the rural exemption provided in 251(f).⁴

10. If Level 3 is truly offering a local exchange service, then it cannot simply declare that it is filing an exclusive 251(a) interconnection agreement. The clear language of the act prevents that occurrence. When interconnecting with an ILEC, such as SRT, the transmission and routing of telephone exchange service and exchange access is clearly stated under 251(c)(2)(A). While Level 3 may want to apply under solely 251(a), there is no basis upon which to allow that to happen. We do not view the act as a buffet menu from which carriers are allowed to choose which parts of it they wish to file under, to the exclusion of those sections they would rather ignore. Such an interpretation would seriously undermine the protections afforded rural carriers by Congress in section 251(f).

11. While an ILEC has the duty to negotiate in good faith under section 251(c)(1), section 252(a)(1) makes negotiation permissive. We find that this can only be interpreted to mean that SRT may, but is not required to, negotiate. However, when negotiations have begun, SRT is required to negotiate in good faith.

12. SRT chose not to voluntarily negotiate an agreement for the interconnection requested by Level 3.

13. In its request for interconnection Level 3 stated that one of its goals was to maintain SRT's rural exemption. Level 3 chose not to file a bona fide request when it requested interconnection from SRT in March 2002.

³ Id. at 27.

⁴ Commission order dated March 13, 2002, Case No. PU-2065-02-11

14. We find that Level 3 must file a bona fide request before SRT must provide interconnection and therefore the Arbitrated Interconnection Agreement submitted in this proceeding must be rejected.

15. Because we find that a bona fide request must be made before SRT must provide interconnection, no findings or conclusions are made regarding the other issues in this proceeding.

From the foregoing Findings of Fact, the Commission now makes its:

Conclusions of Law

1. The Commission has jurisdiction over the Parties and the subject matter of this proceeding.

3. SRT's duties to provide the interconnection Level 3's seeks are set forth under the section 251 duties for a rural ILEC and those duties include duties in addition to duties specified 251(a).

4. The provisions of section 252 apply to the interconnection requested by Level 3.

5. SRT may, but is not required, to negotiate an interconnection agreement with Level 3.

6. SRT chose not to voluntarily negotiate the interconnection agreement, and therefore Level 3 must file a bona fide request to seek interconnection with SRT.

7. The arbitration process used in this proceeding does not meet the requirements of section 251 and therefore this proceeding should be dismissed.

From the foregoing Findings of Fact and Conclusions of Law, the Commission now issues its:

Order

The Commission orders that Level 3's interconnection arbitration application is dismissed without prejudice.

PUBLIC SERVICE COMMISSION

**Susan E. Wefald
Commissioner**

**Tony Clark
President**

**Leo M. Reinbold
Commissioner**

STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION

Level 3 Communications, LLC
Interconnection Arbitration
Application

Case No. PU-2065-02-465

CONCURRING OPINION
Commissioner Susan E. Wefald

May 30, 2003

I concur with the Order that Level 3's interconnection arbitration application should be dismissed, however I do not agree with many of the findings of fact and conclusions of law that support the adopted order.

This case hinges on whether or not SRT has interconnected directly or indirectly with Level 3, not on whether or not Level 3 has filed a bona fide request for an interconnection agreement. The facts of the case show that SRT has interconnected indirectly with Level 3, and has met the requirements of Section 251(a) of the Federal Telecommunications Act (Act).

This case has been very difficult, since the service that Level 3 wishes to provide is exchange internet service provider (ISP) bound traffic.⁵ Federal law and rules do not give clear guidance on how to treat this type of service within Section 251 of the Act. However, the FCC has determined under 251(c)(2) that an IXC requesting interconnection solely for the purpose of originating or terminating its interexchange traffic, not for the provision of telephone exchange service and exchange access to others, on an incumbent LEC's network is not entitled to receive interconnection from an ILEC.⁶ Also, the FCC has determined that the LEC-provided link between an end-user and an ISP is properly characterized as interstate access,⁷ when addressing intercarrier compensation.

Level 3 requested in this case to directly interconnect with SRT because of the traffic volumes it expects to exchange with SRT and because it would give Level 3 more control over facilities used to exchange traffic, forecasting, and traffic management.

⁵ Level 3's Post Hearing Brief at page 3.

⁶ First Report and Order at para. 191; 47 C.F.R. 51.305.

⁷ Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, CC Docket No. 96-88; Intercarrier Compensation for ISP-Bound Traffic, CC Docket No. 99-66, Order on Remand and Report and Order, FCC 01-131; adopted April 18, 2001, released April 27, 2001; para.57.

Although Level 3 preferred direct interconnection, it also wanted more provided through indirect interconnection than SRT presently provides.

Level 3 is currently purchasing telecommunications services from SRT. Level 3 leases seven ISDN PRI's (Integrated Services Digital Network Primary Rate Interface) and seven meet-point DS1's from SRT. This arrangement provides a means for traffic to flow between Level 3 and SRT so there is a mutual exchange of traffic, which constitutes indirect interconnection between SRT and Level 3.

Both parties have put considerable time and effort into this case. I agree with the arbitrator's finding that SRT does not have a duty to negotiate under section 251 (a) of the Act, but that arbitration under the Act does not require negotiations as a condition precedent.

Exhibit B

2005 DEC -2 AM 10:59

2005 DEC -2 AM 10:59

PUC DOCKET NO. 31038

FILED

PETITION OF SPRINT COMMUNICATIONS §
COMPANY L.P. FOR COMPULSORY §
ARBITRATION UNDER THE FTA TO §
ESTABLISH TERMS AND CONDITIONS FOR §
INTERCONNECTION TERMS WITH §
BRAZOS TELECOMMUNICATIONS INC. §

PUBLIC UTILITY COMMISSION
OF TEXAS

ORDER DENYING SPRINT'S APPEAL OF ORDER NO. 1

This Order denies Sprint Communications Company LP's (Sprint's) appeal of Order No. 1 issued by the Arbitrators in this proceeding on June 14, 2005, which dismissed Sprint's petition for compulsory arbitration against Brazos Telecommunications, Inc. (BTI). The Commission agrees with the Arbitrators that BTI's rural exemption must be terminated before it can consider a petition for arbitration.

I. Background

On April 23, 2005, Sprint, a competitive local exchange carrier (CLEC) holding a certificate of operating authority and authorized to provide local exchange service within the State of Texas, filed a petition for compulsory arbitration of certain terms and conditions for interconnection with BTI, a rural incumbent local exchange carrier (ILEC) pursuant to P.U.C. PROC. R. 22.95(a), P.U.C. SUBST. R. 26.272(g)(1), and Federal Telecommunications Act of 1996 (FTA) Section 252.¹ Sprint claimed that it was seeking interconnection and traffic exchange pursuant only to FTA §§ 251(a) and (b) and not FTA § 251(c). In response, BTI maintained that Sprint was seeking FTA § 251(c)(2) terms and conditions and that as a result, it had no duty to negotiate an interconnection agreement with Sprint because of its rural carrier exemption under FTA § 251(f)(1).

On June 14, 2005, the Arbitrators issued Order No. 1, finding that Sprint's request for arbitration and proposed interconnection agreement went beyond the general duty to interconnect

¹ Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (codified as amended in scattered sections of 15 and 47 U.S.C.) (FTA).

pursuant to FTA § 251(a) and instead included FTA § 251(b) and (c) obligations. Further, the Arbitrators found that BTT's rural exemption extended to FTA § 251(c)(1), which includes the duty to negotiate obligations under FTA § 251(b). The Arbitrators granted BTT's motion to dismiss, concluding that Sprint's request for compulsory arbitration was premature, and noted that Sprint's recourse is to petition the Commission to terminate BTT's rural exemption.

On August 23, 2005, the Commission issued an order that affirmed in part, and reversed in part, the Arbitrators' Order No. 1 and referral of the docket to the State Office of Administrative Hearings (SOAH) for processing. The Commission indicated that the record was unclear as to whether Sprint was requesting interconnection solely under FTA § 251(a) and (b), and referred this matter to SOAH for a hearing to develop the evidentiary record. The Commission also held that if it was determined that Sprint was requesting interconnection under § 251(c), then Sprint must file a petition to lift BTT's rural exemption under FTA § 251(f)(1)(A).

On September 9, 2005, Sprint filed a motion for clarification and reconsideration of the Commission's August 23 order. On September 21, 2005, the Commission rescinded its order, finding that further briefing on the issues in this docket was necessary to determine what type of interconnection Sprint was requesting.

II. Discussion

In reviewing the briefs submitted in this case, it is clear that Sprint's request is expressly for the ability to offer and provide telephone exchange service.² In order for Sprint to accomplish this, Sprint stated that it must be able to connect with other carrier's networks in order to exchange traffic, specifically "telephone exchange" traffic.³ Sprint argued that it seeks interconnection only through FTA §§ 251(a), and not (c).⁴

The Commission disagrees with Sprint's contention that it can receive interconnection through FTA §§ 251(a) to offer and provide telephone exchange service. FTA § 251(c)(2) provides, in part, that an ILEC is obligated to provide interconnection for the transmission and

² Sprint Brief in Response to Order Requesting Briefing at 3 (Oct. 18, 2005).

³ *Id.*

⁴ Sprint's Response to Motion to Dismiss at 17-18 (May 20, 2005).

routing of "telephone exchange service" and exchange access. FTA § 251(a), however, does not require ILECs or other telecommunications carriers to interconnect for the express purpose of exchanging traffic relating to telephone exchange service. FTA § 251(a) encompasses a broad duty to interconnect for all carriers. The duty of an ILEC to provide interconnection for purposes of exchanging "telephone exchange service" is solely and expressly an FTA § 251(c) obligation. Therefore, according to FTA § 251(f)(1)(A), BTI is exempt from this FTA § 251(c) obligation until (1) it receives a bona fide request for interconnection and (2) the Commission determines that such request is not unduly economically burdensome, is technically feasible, and is consistent with FTA § 254.

Accordingly, the Commission finds that Sprint is requesting interconnection under FTA § 251(c)(2), and therefore, Sprint is required to petition to lift BTI's rural exemption under FTA § 251(f)(1)(A) before proceeding to negotiate and arbitrate an interconnection agreement. Until Sprint seeks termination of BTI's rural exemption and the Commission makes a determination regarding same, BTI is not obligated to negotiate and arbitrate an interconnection agreement with Sprint.

SIGNED AT AUSTIN, TEXAS THIS 2nd day of December 2005.

PUBLIC UTILITY COMMISSION OF TEXAS



PAUL HUDSON, CHAIRMAN



JULIE PARSLEY, COMMISSIONER



BARRY T. SMITHERMAN, COMMISSIONER