STATE OF NORTH CAROLINA
UTILITIES COMMISSION
RALEIGH

DOCKET NO. P-294, SUB 30

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of		
Petition of Sprint Communications Company, L.P.	)	RECOMMENDED
For Arbitration of Interconnection Agreement	)	ARBITRATION
With Randolph Telephone Company	)	ORDER

HEARD IN: Commission Hearing Room, Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina, on January 29 and 30, 2008

BEFORE: Commissioner Sam J. Ervin, IV, Presiding, and Commissioner James Y. Kerr, II, and Commissioner William T. Culpepper, III

APPEARANCES:

FOR SPRINT COMMUNICATIONS COMPANY, L.P.:

William R. Pittman, The Pittman Law Firm, PLLC, 1312 Annapolis Drive, Suite 200, Raleigh, North Carolina 27608

William R. Atkinson, Director and Attorney, Sprint Nextel Corporation, 233 Peachtree Street, N.E., Suite 2200, Atlanta, Georgia 30303

Joseph M. Chiarelli, Senior Counsel, Sprint Nextel Corporation, 6450 Sprint Parkway, Overland Park, Kansas 66251

FOR RANDOLPH TELEPHONE COMPANY:

Daniel C. Higgins, Burns, Day & Presnell, P.A., Post Office Box 10867, Raleigh, North Carolina 27605

FOR THE USING AND CONSUMING PUBLIC:

Robert S. Gillam, Staff Attorney, Public Staff – North Carolina Utilities Commission, 4326 Mail Service Center, Raleigh, North Carolina 27699-4326

BY THE COMMISSION: This arbitration proceeding is pending before the North Carolina Utilities Commission pursuant to Sections 251 and 252 of the

Telecommunications Act of 1996 (the Act) and North Carolina General Statute 62-110(f1).

On March 16, 2007, Sprint Communications Company L.P. (Sprint) filed a Petition for Arbitration of an Interconnection Agreement (or ICA) with Randolph Telephone Company (Randolph). Sprint's Petition was accompanied by the prefiled testimony and exhibits of witness James A. Burt and witness Ellen M. Fuller.

On March 30, 2007, Randolph filed a Motion to Dismiss or for Stay Pursuant to Section 251(f)(1). On April 3, 2007, the Commission issued an Order seeking comments on the Motion to Dismiss or for Stay Pursuant to Section 251(f)(1).

On April 10, 2007, Randolph filed its Preliminary Response to Sprint's Petition for Arbitration.

On April 23, 2007, Sprint filed its Response to Randolph's Motion to Dismiss or for Stay. After being granted an extension of time, the Public Staff filed its comments on Randolph's Motion to Dismiss or for Stay on April 27, 2007.

On June 4, 2007, the Commission issued its *Order Denying Motion to Dismiss and Consolidating Matters for Hearing*.

On June 15, 2007, Randolph filed a Motion for Reconsideration of the Commission's *June 4, 2007 Order*. The Commission issued an Order on June 18, 2007 seeking comments on Randolph's Motion for Reconsideration.

On June 29, 2007, Sprint filed its comments regarding Randolph's Motion for Reconsideration.

After being granted extensions of time, Randolph and Sprint filed a Joint Arbitration Issues Matrix and Proposed Procedural Schedule on July 18, 2007.

On July 23, 2007, the Commission issued its *Order Scheduling Hearing and Establishing Procedures* wherein the Commission set this docket for hearing on January 29, 2008.

On September 18, 2007, Sprint filed the supplemental direct testimony of witnesses Burt, Fuller, and Randy Farrar. In addition, on September 18, 2007, Randolph filed the direct testimony of Jean Thaxton.

After motions for extension of time were granted, on December 17, 2007, Sprint filed the additional supplemental direct testimony and rebuttal testimony of witness Farrar and the rebuttal testimony of witness Burt. On December 18, 2007, Randolph filed the rebuttal testimony of witness Thaxton.

On January 23, 2008, the parties filed a Revised Joint Arbitration Issues Matrix.

Approximately 20 customers of Randolph, as well as the Towns of Liberty and Staley, have filed statement of position letters in this docket. All of these letters support Randolph's position and urge the Commission to deny the relief sought by Sprint.

This matter came on for hearing as scheduled on January 29, 2008. The hearing continued through January 30, 2008. Sprint offered the testimony of witnesses Burt, Fuller, and Farrar. Randolph offered the testimony and exhibits of witness Thaxton.

On February 28, 2008, Sprint filed corrected exhibits RGF-3, RGF-4, and RGF-5 sponsored by witness Farrar.

On March 17, 2008, Sprint, Randolph, and the Public Staff filed their Post-Hearing Briefs and/or Proposed Orders in this matter.

A glossary of the acronyms referenced in this *Order* is attached as Appendix A.

Based on the foregoing and the entire record in this matter, the Commission makes the following

FINDINGS OF FACT

1. Randolph is a rural telephone company within the meaning of Section 251(f)(1)(A) of the Act, and, as such, is exempt from the obligations imposed by Section 251(c) of the Act, subject to the Commission's authority to terminate its exemption.

2. Randolph has not waived its right to the exemption granted by Section 251(f)(1)(A) of the Act.

3. In accordance with Section 251(f)(1)(A) of the Act, Sprint has made a bona fide request to terminate Randolph's rural telephone company exemption from the obligations imposed by Sections 251(c)(1) and (2).

4. Sprint's request for a partial termination of Randolph's rural telephone company exemption is technically feasible.

5. Sprint's request for a partial termination of Randolph's rural telephone company exemption is not unduly economically burdensome and is consistent with Section 254 of the Act (other than subsections (b)(7) and (c)(1)(D) thereof).

6. Sprint's request for a partial termination of Randolph's rural telephone company exemption should be granted, and Randolph should be required to comply with the provisions of Sections 251(c)(1) and (2) of the Act.

7. Sprint is entitled to interconnect and exchange traffic with Randolph pursuant to Sections 251(a) and (b) of the Act as a wholesale telecommunications

provider of services to other carriers, including Voice over Internet Protocol (VoIP) telephony service.

8. The parties, with the assistance of the Public Staff, should negotiate a definition of local exchange traffic that is consistent with the modifications described in this Order for use in the ICA.

9. Randolph is required to provide number portability to Sprint.

10. The interconnection agreement between Sprint and Randolph should not limit the number of port requests allowed per business day.

11. The directory-related indemnity and liability provisions proposed by Randolph should not be included in the ICA in their present form, but the parties should determine, in a manner consistent with the *LEXCOM-Time Warner Recommended Arbitration Order (RAO)*, what indemnity and limitation of liability provisions, if any, should be included in the ICA.

12. It is appropriate to order Sprint and Randolph to further negotiate the issue of deposits and advance payment requirements. First and foremost, the parties, with the assistance of the Public Staff, should discuss whether a deposit and advance payment requirement are necessary given Sprint's contention that zero or minimal money will be changing hands between Sprint and Randolph on a monthly basis. If the parties determine that a deposit and advance payment requirement are necessary, then the parties, with the assistance of the Public Staff, should mutually develop appropriate language based on the Commission's previous decisions concerning deposits and advance payment requirements.

13. Attachment I proposed by Randolph, subject to certain modifications, should be included in the ICA. It should include the directory delivery fees and access charges on which the parties have agreed. The parties, with the assistance of the Public Staff, should seek to reach an agreement on other charges to be included in the attachment.

EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 1 THROUGH 6

ISSUE NO. 1 - MATRIX ISSUE NO. 1: Is Randolph exempt from interconnecting with Sprint pursuant to the requirements of Sections 251(a) and (b)?

POSITIONS OF PARTIES

SPRINT: No. A rural carrier's exemption under Section 251(f)(1) of the Act from Section 251(c) obligations does not extend to interconnection requested pursuant to Sections 251(a) and (b). Further, pursuant to G.S. 62-110(f1) and (f2), Randolph is affirmatively subject to Rule R17-4, for which there is no exemption. Even if Randolph had an applicable exemption under Section 251(f)(1), by engaging in negotiations with

Sprint regarding the subject of interconnection, such exemption was waived by Randolph's actions. Nevertheless, if the Commission concludes that Randolph has any remaining exemption under Section 251(f)(1) that is applicable to Randolph's obligations under Section 251(a) or 251(b) or state law, then such exemption should be terminated.

RANDOLPH: Yes. As a rural telephone company, Randolph is exempt under Section 251(f)(1) of the Act from any obligations imposed on an incumbent local exchange company (ILEC) under Section 251(c)(1), including any duty to negotiate an ICA in good faith for provision of any of the arrangements described in Section 251(b) or (c), such as number portability, unless and until the Section 251(f)(1) exemption is terminated. The Commission's 2005 approval of Randolph's Price Regulation Plan pursuant to G.S. 62-133.5 did not terminate Randolph's exemption under Section 251(f)(1)(A). Randolph did not engage in negotiations with Sprint regarding the subject of interconnection. Randolph agreed to enter into an agreement with Sprint for the transport and termination of traffic and the compensation due for such traffic. An agreement setting forth the terms and conditions for exchanging traffic with a competing local provider (CLP) is necessary because CLPs may have different calling scopes and do not have Commission-approved intrastate access tariffs.

PUBLIC STAFF: No. As a rural telephone company, Randolph is exempt from complying with the requirements of Section 251(c), so long as the Commission has not terminated its exemption. Commission Rule R17-4 does not impose an independent duty on rural telephone companies to perform obligations from which they are exempt under Section 251(f)(1) of the Act. Randolph has not waived its Section 251(f)(1) exemption by proposing and obtaining approval of a Price Regulation Plan, or by negotiating with Sprint concerning a proposed agreement for the transport and termination of traffic. However, Sprint has made a bona fide request to terminate Randolph's exemption from the requirements of Sections 251(c)(1) and (2). Implementation of Sprint's request is technically feasible, is not unduly economically burdensome, and is consistent with Section 254; therefore, the Commission should grant the request.

DISCUSSION

Sprint witness Burt described the business model used by Sprint, in which Sprint joins with a variety of providers, especially cable television companies, to provide facilities-based telecommunications services in competition with ILECs. Sprint provides end office switching; Public Switched Telephone Network (PSTN) interconnectivity; numbering resources, administration and porting; domestic and international toll service; operator service and directory assistance; and numerous back-office functions. The cable company provides last-mile facilities to the end user's premises, sales, billing, customer service and installation. In this case, Sprint proposes to join with Time Warner Cable to provide VoIP service to customers in the Town of Liberty and certain adjacent areas located within the Liberty exchange served by Randolph.

Witness Burt acknowledged that, as a rural telephone company, Randolph is currently exempt from the obligations of Section 251(c) of the Act. However, he stated that Randolph affirmatively represented that it was voluntarily opening itself to competition, and thereby waived the protection from competition afforded by Section 251(f)(1) of the Act, when it sought Commission approval for its Price Regulation Plan in 2005.

In addition, witness Burt stated, Randolph waived its exemption under Section 251(f)(1) in the course of its negotiations with Sprint. According to witness Burt, when Sprint initially sent its proposed ICA to Randolph, Randolph indicated that, although it was unwilling to enter into an ICA, it was willing to negotiate a "transport and termination agreement," which in Sprint's view cannot be distinguished legally from an ICA. Randolph sent Sprint a redline markup of Sprint's draft ICA, and, despite the fact that the markup reflected numerous proposed changes to the agreement, Randolph did not strike the words "Interconnection Agreement" from the title of the draft. After sending Sprint the markup, Randolph continued to engage in negotiations with Sprint and reached agreement with Sprint on some of the proposed changes to the agreement. Witness Burt testified that, if Randolph wished to avoid waiving its Section 251(f)(1) exemption, it should have refused to discuss of the draft ICA altogether. It is inconsistent, witness Burt stated, for Randolph to assert that it is exempt from any obligation to negotiate an ICA while at the same time proceeding to negotiate an agreement that, regardless of the label Randolph may choose to place on it, is in fact an ICA.

Witness Burt further testified that, independent of any obligations under federal law, Randolph is required by Commission Rule R17-4 to engage in good faith negotiations to satisfy reasonable requests for interconnection. He stated that, if the Commission determines that Randolph is exempt as a rural telephone company from any obligation to enter into an ICA with Sprint, the Commission should terminate Randolph's exemption.

Sprint witness Fuller testified in detail concerning the parties' negotiations relating to the draft ICA that Sprint sent to Randolph. She stated that these negotiations included numerous e-mail exchanges, as well as a telephone discussion, and that agreement was reached on several issues, although Randolph continued to insist that it was exempt from any obligation to provide number portability to Sprint.

Sprint witness Farrar testified on the issue of whether Sprint has satisfied the statutory requirements for termination of Randolph's rural telephone company exemption under Section 251(f)(1)(A) of the Act. He stated that, in a letter dated September 7, 2006, Sprint made a bona fide request for interconnection with Randolph, and that no party has disputed that Sprint's requested interconnection is technically feasible. Witness Farrar asserted that Sprint's request is consistent with the universal service goals of Section 254 of the Act in that it will enable rural customers, such as those served by Randolph, to obtain advanced telecommunications services at affordable rates.

Witness Farrar devoted the largest portion of his testimony to a discussion of whether Sprint's proposed interconnection would create an undue economic burden for Randolph. For this purpose, he analyzed certain financial data for Randolph and for its parent corporation, Randolph Telephone Membership Corporation (RTMC), covering the most recent time periods available. He compared this information with corresponding industry average data for large and mid-sized ILECs, which he obtained from the Automated Reporting Management Information System (ARMIS) maintained by the Federal Communications Commission (FCC). Witness Farrar acknowledged that Randolph and RTMC are small ILECs as defined by ARMIS, rather than large or mid-sized companies, but he stated that comparable industry average statistics for small ILECs are not available. The data examined by witness Farrar included revenue per access line, return on net plant, dividend payout ratio, return on average equity, and equity ratio. Witness Farrar's analysis indicated that the revenue per access line and return on net plant for Randolph and RTMC, and the dividend payout ratio for Randolph, are roughly comparable to the industry average. The equity ratios for Randolph and RTMC are well above average, while the dividend payout ratio for RTMC is much below average. Randolph's return on average equity is somewhat above half the average for large ILECs, while RTMC's return is somewhat below half the large ILEC average; average returns on equity for mid-sized ILECs are not available from ARMIS.

Witness Farrar then testified that he had performed an analysis of the economic losses that Randolph and RTMC are likely to suffer as a result of facing competition from Sprint and Time Warner in the Town of Liberty and adjacent areas. His analysis indicated that, during the first three years after competitive service becomes available, Randolph is likely to lose only a relatively small number of customers to Sprint and Time Warner and that its earnings will decline only slightly. On a percentage basis, the loss of customers and reduction in earnings will be even smaller for RTMC, because RTMC provides service in a number of areas outside the Liberty exchange that will be unaffected by competition from Sprint and Time Warner. Based on this financial analysis, witness Farrar concluded that the economic effects on Randolph and RTMC resulting from the interconnection requested by Sprint will be small and not unduly burdensome.

Randolph witness Thaxton testified that Randolph did not waive its rural telephone exemption under Section 251(f)(1) of the Act by proposing and obtaining approval of a price regulation plan. Neither did Randolph waive its exemption by seeking to negotiate a transport and termination agreement with Sprint. According to witness Thaxton, CLPs do not have tariffs, and therefore Randolph finds it necessary to enter into transport and termination agreements with them in order to specify the rates, terms and conditions for exchanging local and toll traffic. Throughout its discussions with Sprint, Randolph made clear that, although it was willing to negotiate a transport and termination agreement, it was not willing to negotiate an ICA, was not willing to provide number portability to Sprint, and was not willing to waive its rural telephone company exemption from the obligations of Section 251(c) of the Act.

Witness Thaxton testified that Randolph did not dispute that Sprint had made a bona fide request for interconnection within the meaning of Section 251(f)(1) of the Act or that the request was technically feasible. Randolph did, however, contend that the request was unduly economically burdensome and was inconsistent with the universal service principles of Section 254 of the Act. Witness Thaxton took issue with Sprint witness Farrar's financial analysis on several grounds. In the first place, she stated that any discussion of RTMC's financial status was irrelevant, since Randolph, not RTMC, is the carrier whose rural exemption Sprint is seeking to terminate. She further testified that witness Farrar had erred in basing several of his comparisons on ratios involving operating income, when net income is a much better measure of a company's financial condition; that he had inappropriately compared Randolph's financial condition with that of much larger companies; and that he had incorrectly failed to exclude certain extraordinary accounting events from his analysis.

Witness Thaxton stated that at present, even without competition from Sprint and Time Warner, Randolph is already losing access lines, and its operating income and return on equity have been declining since 2004. In her judgment, Sprint and Time Warner are likely to attract many more customers away from Randolph than witness Farrar's analysis suggests. Moreover, Sprint and Time Warner will be offering service only in the Town of Liberty and adjacent areas, and not in the outlying areas of the Liberty exchange, where the cost of providing service is higher; consequently, the customers they attract are likely to be among Randolph's most profitable customers. Witness Thaxton testified that Randolph is an extremely small company, with fewer than 50,000 access lines. The majority of Randolph's operating costs are fixed costs, and as customers are lost to competitors, the number of remaining customers among whom the fixed costs can be spread will decline. The likely result is that Randolph's remaining customers, particularly those in outlying areas where Sprint and Time Warner will not be offering service, will have to pay substantially higher rates, or else Randolph will have to reduce its service to them. Such an outcome would be inconsistent with the universal service policies of Section 254 of the Act.

In this proceeding, Sprint seeks to establish at least three Section 251(b) arrangements with Randolph--Section 251(b)(2) number portability; Section 251(b)(3) dialing parity; and Section 251(b)(5) reciprocal compensation--pursuant to a negotiated agreement. Sprint initiated this arbitration proceeding to compel the provision of these arrangements. In response to the petition to arbitrate, Randolph asserted that, as a rural telephone company, it is exempt from any requirement to negotiate an interconnection agreement to provide the services enumerated in Section 251(b) by Section 251(f) of the Act. Randolph's status as a rural carrier is not at issue in this proceeding, so it is clearly entitled to the benefits of whatever protections Section 251(f) provides. As a general proposition, Section 251(f) exempts rural telephone companies from certain obligations otherwise imposed under the Act. More particularly, the relevant statutory language reads as follows:

(1) EXEMPTION FOR CERTAIN RURAL TELEPHONE COMPANIES.

> (A) EXEMPTION. Subsection (c) of this section shall not apply to a rural telephone company until (i) such company has received a bona fide request for interconnection, services, or network elements, and (ii) the State commission determines (under subparagraph (B)) that such request is not unduly economically burdensome, is technically feasible, and is consistent with section 254 of this title (other than subsections (b)(7) and (c)(1)(D) thereof).
>
> (B) STATE TERMINATION OF EXEMPTION AND IMPLEMENTATION SCHEDULE. The party making a bona fide request of a rural telephone company for interconnection, services, or network elements shall submit a notice of its request to the State commission. The State commission shall conduct an inquiry for the purpose of determining whether to terminate the exemption under subparagraph (A). Within 120 days after the State commission receives notice of the request, the State commission shall terminate the exemption if the request is not unduly economically burdensome, is technically feasible, and is consistent with section 254 of this title (other than subsections (b)(7) and (c)(1)(D) thereof). Upon termination of the exemption, a State commission shall establish an implementation schedule for compliance with the request that is consistent in time and manner with Commission regulations.

Thus, the principal issue before the Commission is the extent, if any, to which Randolph, as a rural carrier, is entitled to assert the Section 251(f)(1)(A) statutory rural carrier exemption in order to deny Sprint's to be provided with certain Section 251(b) services through the Section 252 negotiation and state commission arbitration process until such exemption is terminated by this Commission in accordance with Section 251(f)(1)(B).

As an initial matter, Sprint contends: (1) that Randolph has waived its rural telephone company exemption by filing and obtaining Commission approval of a price regulation plan; (2) that Randolph has waived its rural telephone company exemption by negotiating with Sprint and editing Sprint's draft ICA; and (3) that Commission Rule R17-4 imposes an independent state law obligation on rural telephone companies to enter into interconnection agreements with CLPs. Randolph disputes each of those contentions. The Public Staff argued that Randolph had not waived its Section 251(f)(1)(A) exemption by proposing and obtaining approval of a Price Regulation Plan or by negotiating with Sprint concerning a proposed agreement for the transport and termination of traffic and that Commission Rule R17-4 does not impose an independent duty on rural telephone companies to perform obligations from which they are exempt under Section 251(f)(1)(A) of the Act. In the event that the Commission decided to accept any one of these three contentions, it would not be necessary for the Commission to determine whether Randolph is obligated to negotiate with Sprint concerning the provisions of the relevant Section 251(b) arrangements despite the presence of the Section 251(f)(1)(A) exemption. As a result, the Commission will address each of these contentions in turn.

First, the Commission agrees with witness Thaxton and the Public Staff that Randolph has not waived its rural telephone company exemption under Section 251(f)(1)(A) of the Act merely by filing and obtaining Commission approval of a price regulation plan. Although G.S. 62-110(f2) provides that a small ILEC seeking to operate pursuant to a price regulation plan or some other alternative form of regulation authorized by G.S. 62-133.5 has subjected itself to local telecommunications competition in accordance with North Carolina law, nothing in G.S. 62-110(f2) provides that the filing of a request for approval of a price regulation has any effect on a rural ILEC's rights or responsibilities under federal law. Admittedly, the Commission has approved price plans for several rural telephone companies containing provisions in which the company expressly waived the protections of Section 251(f)(1). The Commission's orders approving those price plans found, under the circumstances present in each case, that termination of the Section 251(f)(1)(A) exemption for each company upon the effective date of its price plan was not unduly economically burdensome, was technically feasible, and was consistent with Section 254 (other than subsections (b)(7) and (c)(1)(D) thereof) as required by Section 251(f)(1)(A)(ii). These findings, supported by the waiver provisions of the plans, would have been unnecessary if approval of a price plan, in and of itself, amounted to a waiver of the rural telephone company exemption. Thus, since the mere election by a small ILEC to be subject to price regulation does not terminate any Section 251(f) election available to that entity and since Randolph's Commission-approved price regulation plan does not contain an explicit termination of Randolph's Section 251(f) exemption, the fact that Randolph has elected to be subject to price regulation does not operate to terminate its Section 251(f) exemption.

The Commission also agrees with witness Thaxton and the Public Staff that Randolph did not waive its rural telephone company exemption as a result of its negotiations with Sprint and it's editing of Sprint's draft ICA. Throughout the negotiations between Randolph and Sprint, Randolph made it clear to Sprint that it claimed and intended to retain its Section 251(f)(1)(A) exemption; that it considered itself under no obligation to perform the duties set out in Section 251(c) of the Act, including negotiating with Sprint concerning number portability under Section 251(b)(2); and that it was not willing to enter into any agreement with Sprint other than an agreement that fell outside the scope of Sections 251 and 252 of the Act. It would be unreasonable for the Commission to hold, as witness Burt suggested, that after receiving a draft ICA from Sprint, the only way Randolph could avoid waiving its Section 251(f)(1)(A) exemption would to flatly refuse to engage in any discussion of the document at all. Such a decision would tend to promote litigation rather than facilitate meaningful attempts at compromise. Similarly, it would be unreasonable to hold that, even though Randolph clearly and consistently stated its intention to preserve its rights as a rural telephone company, it nevertheless waived those rights by failing to express this intention even more frequently and emphatically or in different language.

Finally, the Commission disagrees with Sprint's contention that Commission Rule R17-4 creates an independent state law obligation requiring rural telephone companies to enter into interconnection agreements with CLPs. The Commission has acknowledged in the past that there are potential conflicts between the provisions of the Act and the relevant provisions of North Carolina law applicable to the provisions of local telecommunications service. In the event that a conflict developed between the provisions of the Act and the provisions of North Carolina law, there is a risk that North Carolina law would be preempted. In order to avoid the risk of explicit preemption of North Carolina law, the Commission believes that, when there is uncertainty as to the proper interpretation of the Commission's rules on telecommunications, those rules should generally be read in such a way as to harmonize, rather than create inconsistencies, with federal law. Nothing in Commission Rule R17-4 in any way tends to suggest that it is intended to impose an independent obligation upon a small ILEC to negotiate and agree upon the terms and conditions of interconnection regardless of other provisions of federal or state law. When construed in this manner, Rule R17-4 does not require rural telephone companies to undertake any obligations from which they are exempt under Section 251(f)(1)(A) of the Act and avoids the federal constitutional concerns that inevitably would arise as a result of a contrary determination.

As a result, the Commission is required to address Sprint's second basic argument, which is that the Randolph-claimed Section 251(f)(1)(A) rural carrier exemption is not applicable to Sprint's request because Sprint has not asked Randolph to provide any services under Section 251(c)[1] so as to trigger application of the Section 251(f)(1)(A) exemption. Rather, Sprint contends that its request was made pursuant to Sections 251(a) and (b) rather than Section 251(c) and that Section 251(b) establishes obligations to which all ILECS are subject independent from those that exist in the aftermath of a Section 251(c) request. Sprint cites the federal district court decision in *Harrisonville Telephone Company v. Illinois Commerce Commission* (Memorandum and Order, Civil No. 06-73-GM(S.D. Ill., September 5, 2007) (*Harrisonville*), in support of its assertion that Randolph is obligated to negotiate concerning the provision of Section 251(a) and (b) arrangements and that the Commission has authority to arbitrate issues resulting from the resulting negotiations (or lack thereof) in the event that the parties are unable to agree with respect to the manner in which such arrangements should be provided.

In *Harrisonville*, ILECs sought to overturn orders by the Illinois Commerce Commission compelling ILECs to arbitrate an interconnection agreement with Sprint for

[1] The services that an ILEC is obligated to provide under Section 251(c) include Subsection (c)(2) interconnection "facilities and equipment", Subsection (c)(3) unbundled network elements (UNEs), Subsection (c)(4) resale at wholesale rates, Subsection (c)(5) public notice of affecting routing of services using the ILEC's facilities or affecting interoperability between networks, and Subsection (c)(6) collocation.

the provision of telecommunications services so that Sprint, as a wholesale provider of telecommunications service could, in conjunction with cable providers, compete with the ILECs. Sprint sought assistance in compelling the ILECs to negotiate an agreement to provide some of the same Section 251(b) services that are being requested in this proceeding. The ILECs, as did Randolph in this case, contended that the rural exemption under Section 251(f)(1) freed them from the duties imposed by Section 251(b) with respect to resale of telecommunications services, number portability, dialing parity, access to right of ways and reciprocal compensation. The ILECs argued that their duty to negotiate the obligations created under Section 251(b) arose from Section 251(c), so that if the latter subsection of the statute did not apply to them, neither did the former. In rejecting the ILECs' contention, the court reasoned that Sections 251(a) and 251(b) established obligations independent from those established by Section 251(c), that Sprint sought to interconnect under Section 251(a) and not 251(c) and that, as a result, Section 251(f)(1) provided no exemption from the obligations imposed by Section 251(b). In the Court's opinion, this interpretation of the statute was consistent with the statutory language and the FCC's treatment of the issue.

Randolph, on the other hand, relies on the decision in *Sprint Communications Company L.P. v. Public Utility Commission of Texas,* Slip Copy*,* 2006 WL 4872346, No. A-06-CA-065-SS. (W.D. Tex. 2006), (hereinafter *Brazos*), a Texas case involving a rural telephone company in which the federal district court reached a result to contrary to that reached in the *Harrisonville* decision. In the *Brazos* case, the District Court affirmed the Texas Public Utility Commission's ruling that, "[o]nly in the event that [the] rural exemption is terminated does [the rural telephone company] have an obligation to negotiate, and/or arbitrate, an interconnection agreement with Sprint pursuant to Sections 251 and 252. In reaching this decision, the Court reasoned:

> An ILEC is clearly free to refuse to negotiate any issues other than those it has a duty to negotiate under the Act when a CLEC [competitive local exchange company] requests negotiation pursuant to §§ 251 and 252." *Coserv Ltd. Liab. Corp. v. Southwestern Bell Tel. Co.,* 350 F.3d 482, 487 (5th Cir.2003). Here, because Brazos is a rural telephone company exempt from § 251(c)(1)'s duty to negotiate, Brazos is free to refuse to negotiate anything at all with Sprint unless and until the PUC lifts Brazos's rural exemption. The policy evinced in § 251(f) is that rural telephone companies should be shielded from burdensome interconnection requests until the PUC has screened such requests. This policy could be too easily thwarted if a CLEC, such as Sprint, could evade PUC screening by denominating its request for interconnection as one solely under § 251(a) and (b). In this situation, where Brazos has refused to negotiate with Sprint, there are no "open issues" for the PUC to arbitrate under § 252.
>
> *Sprint Communications Company L.P. v. Public Utility Commission of Texas,* Slip Copy.

In its Proposed Order, the Public Staff did not express an opinion as to the merits of either decision.

The Commission concludes that resolving the issues posed by Sprint's contention involves consideration of two distinct, albeit related, issues. First, acceptance of Sprint's conclusion requires a conclusion that the Section 251(f)(1)(A) exemption does not create a bar to the provision of Section 251(a) and (b) arrangements. Secondly, acceptance of Sprint's position assumes that the Commission has the authority to arbitrate disagreements between a rural telephone company that possesses an intact Section 251(f)(1)(A) exemption and a CLP arising from a request for the provision of arrangements under Sections 251(a) and (b). The Commission will address each of these issues in turn.

Resolution of the first of these two issues is relatively simple. The duties specified in Section 251(a) are applicable to "[e]ach telecommunications carrier." The duties specified in Section 251(b) are applicable to "[e]ach local exchange carrier." The duties specified in Section 251(c), including the duty to negotiate in good faith set out in Section 251(c)(1), are applicable to "each incumbent local exchange carrier." The exemption set out in Section 251(f)(1)(A) is only applicable to obligations imposed under "[s]ubsection (c) of this section." As a result, the literal language of Section 251(f)(1)(A) explicitly limits the exemption created by that statutory provision to duties imposed by Section 251(c). By necessary implication, the relevant statutory language indicates that the exemption for rural telephone companies set out in Section 251(f)(1)(A) does not apply to arrangements requested pursuant to Sections 251(a) and (b).

The FCC has read the relevant statutory language in exactly this manner. According to Paragraph 117 of the *Number Portability Order,* "[n]umber portability is an obligation imposed by Section 251(b)." Since "Section 251(f)(1)(A) does not exempt rural ILECs from the requirements of Section 251(b), there is no exemption from the necessity for rural ILECS to provide number portability obligations under Section 251(f)(1). Thus, both the literal language of the relevant statutory provisions and definitive pronouncements of the FCC establish that Randolph cannot rely on the exemption set out in Section 251(f)(1)(A) to avoid providing arrangements required by Section 251 (a) and (b). Instead, the only way for Randolph to avoid the obligation to provide those arrangements is to seek and obtain an exemption from obligations created by Section 251(a) and (b) pursuant to Section 251(f)(2), a step which Randolph has not yet taken.

The fact that Randolph is not exempt from the obligation to provide arrangements required by Sections 251(a) and (b) does not, however, mean that the Commission has jurisdiction to determine the nature of the arrangements under which the Section 251(a) and (b) services requested by Sprint will be provided in the event that negotiations between the parties fail to produce an agreement. The duty to negotiate in good faith applicable to incumbent local exchange companies is imposed by Section 251(c)(1). As the Commission has already noted, Section 251(f)(1)(A) exempts rural carriers from performance of the obligations specified in Section 251(c). In the event that the language of Section 251 is read literally, Randolph has an obligation to provide the arrangements described in Sections 251(a) and (b) but is not obligated to negotiate about the provision of those arrangements in good faith under Section 251(c). Thus, the Commission is faced with the issue of whether a duty to negotiate arrangements covered by Sections 251(a) and (b), subject to state commission arbitration in the absence of agreement between the parties, can and should be implied from the relevant statutory provisions or whether the absence of expression statutory authorization for Commission involvement in the provision of such arrangements precludes the Commission from requiring Randolph to provide such arrangements (a result which might force Sprint to go to the FCC in order to enforce its rights vis a vis Randolph under Sections 251(a) and (b)).

By structuring the issue in the manner in which it has been presented in this proceeding, the parties have essentially requested the Commission to determine which of these two approaches to interpreting the relevant statutory language is correct.[2] Because of the unique facts and procedural posture present in this case, however, we do not believe that we are required to choose between these competing and conflicting interpretations of the Act in order to decide this case. Randolph concedes that the Commission has the authority to require the provision of arrangements required by Section 251(b) in the event that the Section 251(f)(1)(A) exemption is terminated. As a result, we resolve Sprint's request for an order requiring Randolph to provide number portability and the other requested Section 251(b) arrangements from Randolph by deciding Sprint's alternative request that we terminate Randolph's exemption from the obligations imposed by Section 251(c) pursuant to Section 251(f)(1). Since we conclude, as is set forth in more detail below, that Randolph's exemption should be partially terminated, we believe that the dispute over the extent to which the Commission has the authority to order Randolph to provide the Section 251(b) arrangements sought by Sprint through the interconnection agreement arbitration process has been rendered moot and does not need to be decided by the Commission.

According to Section 251(f)(1) of the Act, a rural ILEC's exemption from compliance with Section 251(c) shall be terminated if (1) the rural telephone company has received a bona fide request for interconnection, services, or network elements; (2) the request is not unduly economically burdensome; (3) the request is technically feasible; and (4) terminating the rural ILEC's exemption is consistent with the universal service principles of Section 254. All parties are in agreement that Sprint has filed a bona fide request for interconnection and that compliance with the request for interconnection is technically feasible. Thus, Sprint's request satisfies the first and third components of this four-part test. For that reason, the only remaining issues for the Commission to determine are: (1) whether the request is unduly economically burdensome and (2) whether the request is consistent with universal service principles.

[2] The Act has been roundly criticized for its lack of clarity. That the *Harrisonville* and *Brazos* courts could reach diametrically opposing conclusions with respect to this issue despite the fact that they were construing the same statutory provisions is merely one more example of the validity of this criticism.

Both Sprint witness Farrar and Randolph witness Thaxton indicated on cross-examination that the issues of undue burden and consistency with universal service principles are closely intertwined and, to a large extent, implicate the same practical considerations. In essence, the parties appear to agree that, in the event that terminating Randolph's existing Section 251(f)(1)(A) exemption is not unduly burdensome, Randolph's continued ability to provide universal service would not be impaired. The Commission agrees and will address the two issues jointly.

According to the Act, a request to terminate the rural carrier exemption may only be granted if, among other findings, the State commission determines that the request for interconnection is not "unduly economically burdensome" for the rural telephone company. Congress provided little guidance as to the manner in which this standard should be applied. The FCC attempted to clarify the phrase by promulgating a regulation requiring proof that the application of Section 251(c) to the affected rural ILEC "would be likely to cause undue economic burden beyond the economic burden that is typically associated with efficient competitive entry" in order to justify retention of the exemption. This clarification was rejected by the Eighth Circuit Court of Appeals. *Iowa Utilities Board v. FCC*, 219 F.3d 744 (8th Circuit 2000)(*Iowa Utilities Board II*), *rev. on other grounds*, 535 U.S. 467 (2002). In rejecting the FCC's regulation, the Eight Circuit explained:

> If Congress had wanted the state commission to consider only the economic burden which is in excess of the burden ordinarily imposed on a small or rural ILEC by a competitor's requested efficient entry, it could easily have said so. Instead, its chosen language looks to <u>the whole of the economic burden that the request imposes, not just a discrete part</u>. (Emphasis added).

Thus, the Commission must, in the words of the Eighth Circuit, look to the whole of the economic burden that Sprint's request for interconnection imposes on the ILEC in making its decision as to whether Sprint's request is unduly economically burdensome to Randolph. Given that the relevant statutory language refers to the economic burden on the ILEC, the Commission believes that its analysis must focus on the impact on Randolph alone rather than on RTMC as a consolidated entity. In other words, the Commission agrees with Randolph that the "undue burden" analysis must focus on the impact of competitive entry on Randolph rather than on RTMC. In so doing, however, the Commission must be mindful that "[t]here can be no doubt that it is an economic burden on an ILEC to provide what Congress has directed it to provide to new competitors" and that, "because small and rural ILECs, while they may be entrenched in their markets, have less of a financial capacity than larger and more urban ILECs to meet such a request," the small and rural ILECs must nevertheless yield to the forces of competition if the requesting party can demonstrate, in addition to the other 251(f)(1) requirements, that the economic burden imposed by the request is not undue[3], i.e., the

[3] According to the <u>American Heritage College Dictionary</u>, 3rd Edition, the adjective "undue" is defined as "[e]xceeding what is appropriate or normal; excessive; similarly, the adverb "unduly" is defined as "excessively."

burden does not exceed what is appropriate and is not excessive. *Iowa Utilities Board v. FCC*, 219 F.3d 744 (8^{th} Circuit 2000) (*Iowa Utilities Board II), rev. on other grounds*, 535 U.S. 467 (2002).

After carefully considering the evidence of record and the arguments advanced by the parties, the Commission concludes that the economic burden imposed by Randolph's compliance with Sprint's specific request for interconnection is not unduly burdensome or violative of the universal service principles of Section 254. In the Commission's opinion, Sprint's request will not damage Randolph economically to such an extent that its continued operation is endangered or that it will be forced to increase rates or reduce service in a way that is inconsistent with the state and national policy favoring the availability of basic telephone service to all citizens at affordable rates.

Sprint witness Farrar reviewed financial information produced by Randolph during discovery to determine: 1) both the financial health of Randolph and the financial health of Randolph when the condition of its corporate parent, RTMC, is also taken into consideration[4] and 2) the impact on Randolph's financial condition resulting from the offering of the Sprint – Time Warner Cable VoIP telephony service within Randolph's service territory. In an effort to determine the extent of any economic burden imposed upon Randolph by Sprint's request, witness Farrar analyzed Randolph's Revenue Per Access Line, Return on Net Plant, Dividend Payout Ratio, Return on Average Equity and Equity Ratio for four differing 12-month periods ending between June 30, 2004 and December 31, 2006. Based on his analysis, witness Farrar concluded that Randolph has been operating as a financially sound and profitable company over the past three-plus years[5] and that projected access line loss and associated revenue reduction attributable to the projected penetration of the competitive service to be offered by Sprint and Time Warner within Randolph's service territory will not result in the imposition of an undue economic burden upon Randolph.

Randolph did not perform a similar review to determine the impact, if any, that would result if Randolph were to lose its rural exemption and be subject to competition of the type proposed by Sprint. Instead, Randolph challenged the credibility of witness Farrar's projections on cross-examination and argued in its post-hearing brief that the loss of Randolph's exemption and the adoption of what it believed to be more realistic projections of line losses following competitive entry demonstrated that termination of the Section 251(f)(1)(A) exemption would impose an undue economic burden on

[4] The Commission notes, as stated above, that the financial health and well being of RTMC is not relevant and was not considered by the Commission in arriving at any conclusions that were reached in this decision.

[5] Although Randolph challenged many of the economic assumptions relied upon by Sprint, it did not and does not dispute that Randolph has been operating as a financially sound and profitable company over the past three-plus years.

Randolph.[6] Despite the inherent uncertainties that exist when projections are used instead of actual data, the Commission finds, after careful consideration of the evidence in the record, that witness Farrar's evidence on this point was persuasive and that termination of Randolph's Section 251(f)(1)(A) exemption would not, in the event that Randolph continued to be operated in a sound and efficient manner, impose an undue economic burden on Randolph.

In its Post-hearing Brief, Randolph challenged the conclusions reached by Sprint witness Farrar on a number of different grounds. First, Randolph contended that Sprint's analysis relied on unreasonably conservative estimates of future lines losses following competitive entry by Sprint and Time Warner. Secondly, Randolph argued that it was inappropriate for Sprint to compare its financial performance to that of large and mid-sized ILECs given the size disparities between Randolph and such companies. Thirdly, Randolph argued to insert, what it contended to be, more accurate line loss figures into witness Farrar's analysis.

As the Commission has previously indicated, the only direct evidence of the impact of competitive entry on Randolph's economic condition was provided by Sprint witness Farrar. On its face, witness Farrar's testimony provided credible evidence tending to show that, given the level of projected access line losses assumed in his analysis, terminating Randolph's Section 251(f)(1)(A) exemption would not result in the imposition of an undue economic burden on Randolph. As a result, the essential issue before the Commission in connection with the "undue economic burden" issue is the extent to which the Commission should accept or reject witness Farrar's analysis

During cross examination of witness Farrar and in its Post-hearing Brief, Randolph sought to show the presence of serious flaws in Sprint's analysis, such as the inclusion of the one time receipt of a significant amount of funds resulting from the federally mandated redemption of Randolph's stock in the Rural Utilities Service in order to unfairly skew the average return on equity that Randolph earned during the interval between June 30, 2004, and December 31, 2006, and the specific return that Randolph earned in 2006 in an upward direction.[7] In Randolph's view, when Sprint's figures are adjusted to remove this and other, less significant, one time receipts and to reflect a

[6] Randolph also argued that Sprint erroneously compared Randolph's recent financial performance to the financial performance of large and mid-sized ILECS and that Sprint's analysis inappropriately relied on operating income rather than net income information. However, the record clearly establishes that comparative information involving rural ILECs is simply not available. Furthermore, although the Commission understands that operating income and net income are not the same thing, the Commission believes that it can adequately decide the "undue burden" issue based on information contained in the existing record.

[7] Although the Commission tends to agree with Randolph that the portions of witness Farrar's analysis reviewing Randolph's historic financial performance should take the one-time nature of these receipts into account, the really important issue, at least in the Commission's opinion, is the accuracy of witness Farrar's projections of Randolph's future economic performance following entry by Sprint and Time Warner. As best the Commission has been able to determine, the one-time nature of these receipts tends to suggest that they would not affect Randolph's future financial performance following competitive entry.

more appropriate level of access line losses derived from publicly available data, the evidence clearly establishes that Randolph will experience significantly lower revenues and equity returns in the third year following competitive entry to such an extent that its financial viability will be imperiled. In order to illustrate the nature and extent of its perceived losses, Randolph provided a table on page 30 of its Post-hearing Brief that shows the results of utilizing what Randolph contends to be a more reasonable penetration rate and of removing these one time receipts from the calculation of its projected revenues and earned returns on equity.

The Commission is not persuaded by Randolph's argument for the following reasons. First, the Commission notes that Randolph utilized a first year penetration rate that was significantly greater than the penetration rate projected by Sprint and a three year penetration rate that was significantly greater than the penetration rate used by Sprint in performing its analysis. Although Randolph's Post-hearing Brief is not entirely clear on this point, it appears that Randolph developed the penetration rates used in its analysis by reviewing Time Warner data, the penetration rates achieved by Sprint elsewhere in North Carolina, and the penetration rates that Sprint has projected in other proceedings. Randolph's Post-hearing Brief, p. 29. Based on this analysis, Randolph derived a <u>first year penetration rate</u> that is considerably higher than the cumulative penetration rate used by Sprint for the combined three year period. After determining its first year penetration rate in the manner described above, Randolph, without further explanation, then applied a penetration rate to each of the remaining two years. Assuming that the Commission was to accept the results of this analysis, Randolph would have successfully demonstrated that its return on equity would be gravely affected if Sprint and Time Warner were allowed to compete with Randolph for subscribers. In order to reach such a conclusion, however, the Commission would have to accept Randolph's line loss projections in lieu of those proffered by Sprint.

After reviewing the evidence, the Commission concludes that Randolph's projections do not suffice to undermine the credibility of witness Farrar's analysis. In developing its forecasted line loss figures, Randolph did not address credible data showing that the first year penetration rates utilized in Sprint's projections were in line with the first year penetration rates that Sprint actually experienced in the two years during which Sprint has provided local services in a sizable number of rural markets across the nation using the Sprint/cable business model, Exhibit RGF 16, and Randolph relied upon North Carolina data that was derived primarily from penetration rates resulting from competitive entry into larger ILEC markets. To the extent that experience in larger ILEC markets is relevant, credible data showed that the cumulative penetration rate for a three year period was substantially less than the penetration rate utilized by Randolph in making its calculations. Exhibit RGF 8. Thus, the chart set out in Randolph's Post-Hearing Brief should be revised downwardly to reflect a lower overall penetration rate. Once the chart is revised to reflect these changes, the cumulative economic impact on Randolph's return on equity at the end of the three year projection would be roughly equivalent to Randolph's year one projections. While the Commission would not describe this return on equity as stellar, earning such a return would not impose an undue economic burden on a company operating under sound management.

Second, even if one accepts the chart as is without making the previously suggested changes, the Commission concludes that the chart mixes revenues and net income in such a manner as to skew the return on equity results in a downward direction to at least some extent. Randolph used a revenue dollar figure per access line in its calculations as reflected on Exhibit RGF-2. Exhibit RGF-2 indicates that these numbers were derived from Randolph's audited financial statements. Randolph then multiplied the revenue loss per access line figure by the assumed number of access lines lost in year one, year two, and year three following Sprint and Time Warner's entry into Randolph's franchised service territory. In other words, Randolph simply removed the total revenue loss each year from the net income figure for the twelve months ended December, 2006. Net income consists of total revenues less total expenses. Randolph did not reflect any reduction in expenses relating to the corresponding reduction in revenues. Although the Commission recognizes that the provision of local exchange service involves the incurrence of relatively high capital costs, there are some variable costs incurred in providing such service as well. The lower variable costs that might result from line losses due to competitive entry are not reflected at any point in Randolph's analysis. The Commission notes that the record does not adequately allow for an effective analysis of the impact that projected lines losses would have on Randolph's expenses, so that the Commission is unable to determine the exact impact of this omission from Randolph's analysis on the projected returns set forth in Randolph's Post-Hearing Brief.

Third, Randolph's analysis assumes that Randolph will not make any response to competitive entry by Sprint and Time Warner. The Commission does not believe that this is a reasonable assumption. Businesses respond in a large variety of ways to competition, such as introducing new service offerings, improved customer service, and expense reductions, just to name a few typical examples. Randolph projects the net income impact of competitive entry without taking into account any possibility that the company would take action in response to a newly-arrived competitive threat. Even though the Commission expects Randolph to affirmatively react to the advent of competition from Sprint/Time Warner, Randolph's analysis does not take this possibility into account in any way.

The Commission believes that, based on the evidence in the record, a more appropriate analysis of the projected effect of entry by Sprint and Time Warner into Randolph's franchised service territory would be to examine the impact on the total revenue impact of any access line losses sustained by Randolph. Based on the evidence of record and Randolph's estimated access line losses, the Commission has determined that Randolph would lose less than 5% of its total revenues in year one, less than 7% of its total revenues (cumulatively) in year two, and approximately 10% of its total revenues (cumulatively) in year three. The Commission does not believe that a reduction in total revenues of approximately 10% during a three year period is an adequate showing of an undue economic burden on Randolph.

There can be no question that the introduction of telephone competition will result in some risk of economic harm to any ILEC. The risk of such harm may be higher for

Randolph than for many of the other ILECs under price plan regulation because of its small size. However, the Commission must balance this risk against the state and national policy favoring competition in the provision of telecommunications services. When these risks are balanced against this policy in this case, the Commission believes that, on balance, the state and national policy favoring customer competition and choice in telecommunications service must take precedence over the risk that Randolph may suffer some limited economic harm if Sprint and Time Warner are allowed to compete with Randolph in providing telecommunications services to customers now being served by Randolph. As a result, the Commission concludes that competitive entry by Sprint and Time Warner would not impose an undue economic burden on Randolph or impair Randolph's ability to provide universal service. The Commission's determination that it is appropriate on the basis of the present record to partially terminate Randolph's Section 251(f)(1)(A) in this proceeding is buttressed by the following factors.

First, the Commission notes that the economic burden imposed on Randolph by Sprint's request is reduced because of the fact that the services Sprint is seeking from Randolph require only a partial and not a complete waiver of Randolph's rural telephone company exemption. Sprint's request for interconnection affects Randolph's rural telephone company exemption only with respect to the obligations in Sections 251(c)(1) and (2) of the Act. These Sections concern the duty to negotiate and the obligation to interconnect for the transmission and routing of telephone exchange and exchange access services. Sprint is not asking that Randolph be subject to the full panoply of Section 251(c) obligations, including those set forth in Sections 251(c)(3)-(6), relating to unbundled network elements, resale, notice of changes, and collocation. Instead, Sprint has requested that Randolph provide a more limited set of arrangements.

Secondly, as the Commission has already noted, Randolph has an obligation to provide arrangements described under Sections 251(a) and (b) of the Act despite the continued existence of its Section 251(f)(1)(A) exemption. In other words, depending on the manner in which the issue that the Commission found that it did not need to resolve is decided, it is clear that either this Commission or the FCC has the authority to require Randolph to provide Section 251(a) and (b) arrangements even if its Section 251(f)(1)(A) exemption remained intact. As a result, the only practical effect of the Commission's decision with respect to the "undue economic burden" and universal service issues is to clarify the Commission's authority to determine the terms and conditions under which Sprint and Randolph will operate.

Thirdly, the Commission has taken note of the numerous customer statements of position letters it has received during the course of this proceeding. All of these letters have expressed appreciation for the high quality of service that Randolph has provided; none have indicated dissatisfaction with Randolph. When customers feel a strong sense of loyalty to their current service provider, the likelihood that they will turn to a competing supplier is substantially reduced. Randolph's solid reputation for providing good service at a reasonable cost, as evidenced by the customer statement of position letters, should provide Randolph with additional protection against major economic losses resulting from competitive entry by Sprint and Time Warner.

Fourth, and along the same lines, the Commission also takes note that, in response to Data Request No. 41 of the First Data Request by Sprint, Randolph responded that it has never received a porting request. The Commission interprets this response to mean that no Randolph customer has ever made a request to have its number ported to Vonage or to any number of wireless providers that currently provide service in Randolph's territory. The absence of such requests indicates that Randolph's customers have a strong sense of loyalty to the company and are less likely to abandon Randolph for a competitive offering than the customers of other ILECs.

Finally, an additional factor that should be taken into account is Randolph's adoption of a price regulation plan. As noted above, the Commission does not believe that the adoption of a price plan automatically serves to waive the exemption provided by Section 251(f)(1)(A) of the Act. However, the adoption of the plan does indicate that Randolph has the regulatory flexibility to plan for future competition and that it has placed itself in a position to respond to competition as it develops. With a price plan in effect, Randolph will be able to adjust its rates quickly, as competition dictates, without the necessity for filing a traditional general rate case or making a traditional tariff filing. If Randolph finds that it needs greater rate flexibility than its price plan currently provides, the "ratchet" clause of G.S. 62-133.5(c) allows it to petition for a revision to its plan without incurring any risk that the Commission will modify the plan in a way Randolph deems unsatisfactory.

CONCLUSIONS

The Commission is under no illusion that it is able to accurately predict the distant future. Instead, it can merely make the best possible predictive judgment given the evidence in the record. Over the long term, Randolph's survival and profitability will depend on the skill and judgment of its management, as well as many other factors that cannot now be foreseen. In the immediate future, however, it appears to the Commission that the interconnection requested by Sprint, and the resulting competition with Sprint and Time Warner, will not place an undue economic burden on Randolph or significantly interfere with the availability of universal service to Randolph's customers. Accordingly, the Commission concludes that Sprint's request for partial termination of Randolph's exemption, under Section 251(f)(1) of the Act, from the obligations of Sections 251(c)(1) and (2), should be granted.[8]

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 7

ISSUE NO. 2 - MATRIX ISSUE NO. 3: Is Sprint entitled to interconnect and exchange traffic with Randolph pursuant to Section 251(a) and Section 251(b) of the Act as a

[8] As the Commission has already stated, our conclusion that Randolph's exemption under Section 251(f)(1) of the Act from the obligations of Sections 251(c)(1) and (2) to negotiate in good faith should be partially terminated means that we do need not decide whether Sections 251(a) and (b) of the Act, standing alone, require Randolph to negotiate an ICA with Sprint to provide Section 251(b) number portability or whether the Commission has the authority to arbitrate any issues about which the parties are unable to agree.

wholesale telecommunications provider of services to other carriers, including providers of VoIP telephony service?

POSITIONS OF PARTIES

SPRINT: Yes. Sprint's proposed language is consistent with the FCC's recent Order in *Time Warner Cable*, WC Docket No. 06-55, DA 07-709 (released March 1, 2007) (*Time Warner Order).*

RANDOLPH: No. Sprint's ability to interconnect and exchange traffic as a wholesale telecommunications provider and its ability to exchange information services traffic with Randolph are contingent upon its also exchanging telecommunications services. This is consistent with the *Time Warner Order.*

PUBLIC STAFF: Yes. The services that Sprint is furnishing to Time Warner Cable on a wholesale basis are telecommunications services. The *Time Warner Order* supports Sprint's position that, as a wholesale telecommunications provider, it is entitled to interconnect and exchange traffic with Randolph pursuant to Sections 251(a) and (b) of the Act.

DISCUSSION

The proper resolutions of this issue hinges on the appropriate interpretation of the *Time Warner Order.* The *Time Warner Order*, which was issued by the FCC Wireline Competition Bureau, addressed the very same business model that Sprint is proposing to use in this case.

The *Time Warner Order* addressed a situation in which Sprint and Time Warner were combining to offer VoIP service to end-user customers, with Sprint providing end office switching, PSTN interconnectivity, functions relating to the numbering system, domestic and international toll service, operator service, directory assistance, and back-office functions. For its part, Time Warner was providing "last-mile" facilities, sales, billing, customer service and installation. The affected ILECs in the *Time Warner Order* argued that they were not required to interconnect with Sprint because Sprint was acting in a wholesale capacity and could not be considered a telecommunications carrier within the within the meaning of the Act. The FCC rejected the ILECs' position and held that Sprint, as a wholesale provider of telecommunications, was a "telecommunications carrier" and was entitled to interconnect with ILECs regardless of whether the VoIP service being provided to end-users was considered to be a telecommunications service or an interconnection service.

In this docket, Sprint argued that the service it is proposing to provide is identical to the service at issue in the *Time Warner Order.* Thus, Sprint argues, there is no legal basis for Randolph's proposed language stating that the interconnection was to be used "for purpose of providing mainly Telecommunications Services and that any provision of Information Service by Sprint will be incidental." Sprint also cited 47 C.F.R. 51.100(b), which provides that, if a telecommunications carrier interconnects with another entity and offers telecommunications services through the interconnection, it may offer also information services without being subject to any restriction on the relative proportions of the two types of service.

Randolph's construction of the *Time Warner Order* hinged on Paragraph 14, which states "that the right of telecommunications carriers to Section 251 interconnection [is] limited to those carriers that, at a minimum, do in fact provide telecommunications services to their customers, either on a wholesale or retail basis." The FCC further stated that it did not "address or express any opinion on any state commission's evidentiary assessment of the facts before it in an arbitration or other proceeding regarding whether a carrier offers a telecommunications service." Randolph's interpreted this provision to mean that it was entitled to require that its interconnection with Sprint be used primarily for the provision of telecommunications services and only incidentally, if at all, for the provision of information services. Randolph warned that, since Sprint and Time Warner do not intend to offer their customers any service other than VoIP service, then Sprint will not be able to comply with the language Randolph proposes to include in the agreement should VoIP ultimately be held to be an information service.

After careful consideration, the Commission concurs with Sprint's reading of the *Time Warner Order*. That Order makes clear that an ILEC cannot refuse to interconnect with a CLP on the ground that the CLP is providing a wholesale service rather than a retail service. Accordingly, if *some* of the services to be provided by Sprint are telecommunications services, Randolph is required to interconnect. Clearly, the end office switching, PSTN interconnectivity, numbering-related, domestic and international toll, operator, and directory assistance services that Sprint intends to provide through the interconnection are telecommunications services.[9] The Commission also agrees with Sprint that, under 47 C.F.R. 51.100(b), as long as Sprint is offering telecommunications services through its interconnection agreement with Randolph, it may also offer information services, *without any limitation as to the relative amounts of the two types of service.* Thus, Randolph's proposed language that the interconnection be used "mainly" for telecommunications services is inconsistent with applicable FCC rules, so that Sprint's proposed language should be used instead

CONCLUSIONS

Sprint is entitled to interconnect and exchange traffic with Randolph pursuant to Sections 251(a) and (b) of the Act as a wholesale telecommunications provider of services to other carriers, including entities providing VoIP telephony service.

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[9] Although the *Time Warner Order* did not explicitly hold that Sprint was providing telecommunications services, it implied as much in Paragraph 17 by stating that, "[i]n the particular wholesale/retail provider relationship described by Time Warner in the instant petition, the *wholesale telecommunications* carriers have assumed responsibility for compensating the incumbent LEC for the termination of traffic under a Section 251 arrangement between those two parties." [Emphasis added]. Also, Paragraph 2 states: "TWC purchases *wholesale telecommunications services*...to connect TWC's VoIP customers with the public switched telephone network." [Emphasis added].

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 8

ISSUE NO. 3 – MATRIX ISSUE NOS. 4(l) AND 4(q): Should the agreement between the parties include Sprint's proposed definition of "Telecommunications Traffic", or should it instead include Randolph's proposed definition of "Local Traffic?"

POSITIONS OF PARTIES

SPRINT: The ICA should define and use the term "Telecommunications Traffic," because that is the term used by the FCC in its rules to define the interconnection traffic that is subject to reciprocal compensation as opposed to access charges.

RANDOLPH: The ICA should include Randolph's proposed definition of "Local Traffic," which specifically identifies the types and locations of traffic that will be treated as local.

PUBLIC STAFF: There is no need to choose between these two terms.

DISCUSSION

Sprint commented that the ultimate substantive defect in Randolph's proposed definition of "Local Traffic" is that Randolph's definition is intended to exclude from the scope of the agreement the very Sprint-Time Warner Cable VoIP telephony traffic that Sprint is entitled to exchange with Randolph. Randolph witness Thaxton indicated, when questioned under cross-examination about whether IP-based calling was local traffic, that "Voice ISP traffic is bill and keep. It's information service."

Sprint stated that it is not apparent to what extent, if any, Randolph may be drawing a distinction between "IP-based" voice or VoIP as the term has been used by Sprint, and traditional Time Division Multiplexing circuit-based voice services. Sprint commented that the voice services of a Sprint wholesale cable provider/End User are "Telecommunications Traffic" (or, as Randolph would call it, "Local Traffic") when the Sprint End User is located in an exchange that has local calling (7 or 10 digit local dialing, as opposed to 1+ dialing) between the traditional landline carrier in that exchange and the Randolph exchange to or from which the call is being made. Sprint argued that any definition sanctioned by the Commission must recognize and permit exchange of Sprint's Time Warner Cable VoIP end-user traffic without regard to whether Sprint exchanges any non-VoIP end-user traffic with Randolph.

Randolph argued that this issue addresses whether Sprint would be handling telecommunications traffic, and expressed concern that Sprint should use a term which would moot the question of whether it would be providing telecommunications services. Randolph has a defined local calling scope and believes that the interconnection agreement should specifically identify the types of traffic are subject to being treated as "local traffic." Randolph defined local traffic, in part, as "traffic (excluding Commercial Mobile Radio Services, e.g., paging, cellular, PCS) that is originated and terminated between an end user of RTC and an end user of CLEC physically located within one of

Randolph's local calling areas…." Randolph stated that it has used this same language in agreements with other telecommunications carriers and believes that it would be appropriate to use such language here. Randolph suggested that the proposed language protects both parties from any misunderstanding as to how particular traffic will be treated, and protects Randolph from potential abuses. According to Randolph, "it is imperative to define the traffic to be exchanged by the parties succinctly to ensure that each party understands the proper classification of traffic for both compensation and routing purposes."

Sprint witness Burt testified that the language proposed by Randolph should be rejected primarily because it is an attempt to prevent Sprint from providing wholesale services to Time Warner and places inappropriate restrictions on interconnection trunks between Randolph and Sprint. The Public Staff observed that witness Burt further stated that the term "Telecommunications Traffic" is used by the FCC in its rules to define the interconnection traffic that is subject to reciprocal compensation.

The Public Staff also pointed out that witness Burt testified that the proposed language suggested by Randolph excludes wireless traffic, as well as traffic generated to an Enhanced Service Provider or Internet Service Provider, and would also prohibit 900/976 calls from the interconnection trunks. Furthermore, traffic would be limited under the interconnection agreement to end users physically located within one of Randolph's local calling areas or mandatory EAS areas. In addition, witness Burt testified that Randolph is proposing to exclude VoIP traffic involving either voice or fax communications from the scope of the agreement and that Randolph's definition would negate the value of the interconnection agreement through its proposal to exclude voice traffic between Time Warner Cable subscribers and Randolph subscribers.

The Public Staff noted that Randolph witness Thaxton testified that the problem with Sprint's proposed definition is that it does not fully define the "Local Traffic" that would be subject to reciprocal compensation. The Public Staff stated that witness Thaxton argued that it is imperative that the traffic to be exchanged between the parties be defined to ensure that each party understands the proper classification of traffic for both compensation and routing purposes.

The Public Staff stated that, while the Commission should agree with Randolph that the ICA should clearly spell out what traffic is subject to reciprocal compensation, the Public Staff believes that Randolph's proposed language is too constraining and, in some instances, is at odds with previous Commission decisions. The Public Staff suggested that the Commission take judicial notice of the *Recommended Arbitration Order* issued on November 27, 2002, in Docket No. P-1141, Sub 1 (*Verizon/GNAPs RAO*), which concluded that Global NAPs North Carolina, Inc. (GNAPs) would be allowed to assign its customers NPA-NXX codes that are homed in a central office switch outside of the local calling area in which the customer physically resided. The Public Staff pointed out that GNAPs customers physically residing outside a particular exchange could be assigned numbering resources that are associated with the exchange.

Furthermore, the Public Staff noted that, in the *Verizon/GNAPs RAO,* calls between Verizon South, Inc. end-users and GNAPs customers using this virtual NXX service would be treated as local calls subject to reciprocal compensation. Thus, calls to and from customers who reside outside of the exchange to which their numbering resources are assigned would be treated similarly to calls from customers who did reside within the exchange. Thus, Randolph's proposed language relying on the physical location of customers is inconsistent with the Commission's conclusions in this Order.

The Public Staff also observed that Randolph's position is also inconsistent with the 2003 ICA signed with Sprint. The Public Staff stated that, in that agreement, the definition of local traffic speaks to NPA-NXX numbering resources with rating and routing points associated with particular exchanges. Thus, in that ICA, the definition of "Local Traffic" does not depend upon the physical location of the customer. Instead, the exchange to which the NPA-NXX is assigned determines the treatment.

However, the Public Staff also noted that Sprint itself provided adequate support for adopting Randolph's position that wireless traffic be excluded from the definition of "Local Traffic." The Public Staff observed that Sprint has not proposed modifying language regarding compensation that would apply to the transport and termination of wireless traffic. Since there is no current plan to transport wireless traffic over the interconnection trunks, the Commission should conclude that there is no basis for requiring language to permit the transmission and termination of wireless traffic in the proposed interconnection agreement. Should Sprint desire to transport wireless traffic over the interconnection trunks at some point in the future, it is free to negotiate an amendment with Randolph that permits the delivery of wireless traffic.

On the VoIP issue, the Public Staff recommended that the Commission agree with Sprint that Randolph's proposed exclusion of VoIP traffic from its definition of "Local Traffic" would render the interconnection agreement meaningless. The Public Staff stated that not defining traffic exchanged between the Sprint and Time Warner Cable VoIP end users and Randolph customers as local traffic would be at odds with the FCC's recent LNP Rulemaking Order finding that customers of interconnected VoIP services should receive the benefits of local number portability. The Public Staff stated that the definition of "Local Traffic" should include calls to and from interconnected VoIP end users.

The Public Staff stated that the Commission should conclude that the interconnection agreement ought to to include the definition of "Telecommunication Traffic" as proposed by Sprint, and it should also include a definition of "Local Traffic" based on the definition proposed by Randolph, but with the modifications described in this Order.

After careful consideration, the Commission concludes that the interconnection agreement should include a definition of the traffic to be exchanged between the parties subject to the agreement to be negotiated between Sprint and Randolph, subject to the determinations set out in this Order. The Commission agrees with Randolph that the ICA should clearly spell out what traffic is subject to reciprocal compensation. The Commission concurs with the Public Staff that Randolph's exclusion of VoIP traffic from its definition of "Local Traffic" would render the interconnection agreement meaningless. However, the Commission believes that Sprint should be agreeable to the exclusion of any handling of wireless traffic from the definition of "Local Traffic" since it has not proposed modifying language regarding compensation applicable to the transport and termination of such traffic. For the reasons enunciated in the *Verizon/GNAPs RAO*, the Commission agrees with the Public Staff that Randolph's proposed language that relies on the physical location of customers is inconsistent with the Commission's conclusions in this Order.

The Commission is not convinced that the ICA between the parties should include both a definition of "Local Traffic" and a definition of "Telecommunications Traffic," since the record suggests that the Randolph used the term "Local Traffic" and Sprint used the term "Telecommunications Traffic" for the same essential purpose. In the event that this conclusion is correct, the Commission is concerned that attempting to draft an ICA that uses both terms would only lead to further confusion. As a result, the Commission concludes that the parties should be required to engage in further negotiations for the purpose of developing appropriate definitions for use in describing the traffic to be exchanged pursuant to the terms and conditions set out in the parties' ICA.

CONCLUSIONS

The Commission concludes that the parties should negotiate an appropriate definition of "Local Traffic" or "Telecommunications Traffic" that incorporates the modifications required in this Order for use in the ICA. The Commission requests that the Public Staff use its good offices to assist the parties to reach an appropriate agreement.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 9

ISSUE NO. 4 - MATRIX ISSUE NO. 16: Is Randolph required to provide number portability to Sprint?

POSITIONS OF PARTIES

SPRINT: Yes. Section 251(f)(1) of the Act provides no exemption from the duty to port under Section 251(b)(2). Exemptions from Section 251(b)(2) are available pursuant to a sustainable Section 251(f)(2) petition, which Randolph has not filed. Additionally, pursuant to G.S. 62-110 (f1) and (f2), Randolph is affirmatively subject to Commission Rule R17-5, from which there is no exemption. Randolph has previously been granted a limited suspension of its Local Number Portability obligations; this suspension expired long ago, and Randolph has not demonstrated any basis for its renewal. If, however, the Commission concludes that Randolph has any exemption from providing number portability under Section 251(b)(2) or its state law obligations, then such exemption should be terminated.

RANDOLPH: No. As a rural telephone company, Sprint is exempt under Section 251(f)(1) from any obligation imposed on an ILEC under Section 251(c)(1), including any duty to negotiate an arrangement for provision of number portability under Section 251(b)(2). The Commission's approval of Randolph's Price Regulation Plan did not terminate Randolph's exemption under Section 251(f)(1)(A).

PUBLIC STAFF: Yes. Commission Rule R17-5 does not impose an independent duty on rural telephone companies to perform obligations from which they are exempt under Section 251(f)(1) of the Act. However, the FCC has held in its *Number Portability Order*[10] that Section 251(f)(1) does not exempt rural telephone companies from the obligation to provide number portability under Section 251(b)(2). In addition, the Commission should grant Sprint's request for partial termination of Randolph's Section 251(f)(1) exemption, which will make Randolph's duty to provide number portability indisputable.

DISCUSSION

Sprint witness Burt testified that Randolph's obligation to provide number portability to other carriers is derived from Section 251(b) of the Act, not Section 251(c). As a rural telephone company, Randolph is exempt from the obligations imposed by Section 251(c), and from the obligation to negotiate the terms of agreements to perform the obligations imposed by subsection (b). However, such a rural telephone company is not exempt from the obligations of subsection (b). Thus, even if Randolph is not required to negotiate about porting numbers, it is still required to port. It is entirely possible, according to witness Burt, for a telephone company to port a number without having in place an ICA that addresses porting, so long as the carrier requesting that a number be ported provides the necessary information to the carrier to which the request is directed. If, in a situation of this type, the requested carrier refuses to port the number, its obligation can be enforced through a complaint proceeding.

Witness Burt further testified, as discussed previously in this order, that the Commission should hold that Randolph is not entitled to a rural company exemption under Section 251(f)(1) of the Act because it has either waived the exemption or because the criteria for termination of the exemption are satisfied. If the Commission adopts this position, the issue of whether an obligation to port exists in the absence of an ICA will be moot. Finally, witness Burt asserted that, under Commission Rule R17-5, Randolph is subject to a state law obligation to provide number portability, independent of any obligation imposed by Section 251 of the Act.

Randolph witness Thaxton testified that, as a rural telephone company, Randolph is exempt under Section 251(f)(1) of the Act from the obligations imposed by

[10] *Telephone Number Portability*, CC Docket No. 95-116, FCC No. 97-74 (released Mar. 11, 1997).

Section 251(c). One of the subsection (c) obligations from which Randolph is exempt is "[t]he duty to negotiate in good faith . . . the particular terms and conditions of agreements to fulfill the duties described in . . . subsection (b)." In turn, one of the duties described in subsection (b) is the duty to provide number portability. According to witness Thaxton, the effect of these interrelated subsections is to relieve Randolph from any obligation to provide number portability.

CONCLUSIONS

Although, as has previously been discussed, the Commission believes that Randolph has a duty to provide number portability regardless of whether Randolph's Section 251(f)(1)(A) exemption remains in effect, this issue has been fully resolved by the decision to terminate Randolph's rural company exemption from the obligations of Section 251(c)(1) and (2) of the Act. Now that Randolph is subject to Section 251(c)(1), it is clearly obligated not only to provide number portability to Sprint but also to negotiate the terms and conditions for porting and to be subject to this Commission's interconnection arbitration jurisdiction. Thus, Randolph is obligated to provide number portability to Sprint.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 10

ISSUE NO. 5 – MATRIX ISSUE NO. 17: Should the interconnection agreement limit the number of port requests allowed per business day?

POSITIONS OF PARTIES

SPRINT: No. Sprint argued that a unilateral cap on porting requests is inconsistent with industry standards regarding the time frame in which porting requests are to be processed.

RANDOLPH: Yes. Randolph asserted that, since it is recommending that the Commission find that Randolph has not waived its rural telephone company exemption under Section 251(f)(1) of the Act, it believes that this issue is moot. However, if the Commission does not agree with Randolph on the exemption issue, Randolph recommends that the Commission order that the interconnection agreement limit the number of port requests allowed per business day to 10.

PUBLIC STAFF: Yes. The Public Staff stated that the interconnection agreement should limit the number of ports processed per business day, but the specific numerical limit on port requests to be submitted to Randolph should be determined by agreement between the parties.

DISCUSSION

Counsel for Sprint remarked during opening statements that the gist of this issue is that Sprint does not want to be contractually limited in the interconnection agreement to having Randolph process a maximum of 10 number porting requests per business day. Sprint witness Burt stated in his prefiled supplemental direct testimony that Sprint's position on this issue is that an ILEC cannot artificially control the volume of ports and must utilize historical volumes and forecasts to ensure that it has sufficient resources or processes in place to accommodate the demand.

Witness Burt maintained that limiting the number of port orders is anti-competitive and a barrier to competitive entry. He stated that Randolph admitted in its Response to Sprint's Data Request No. 41 that Randolph has never received a porting request and has no way of knowing whether it currently employs staff adequate to meet whatever volume of number porting requests that Sprint anticipates. Witness Burt asserted that, if Randolph is entitled to simply establish an arbitrary limit on the volume of orders it will process, there is nothing that prevents Randolph from deciding to arbitrarily reduce the level of resources devoted to porting at a later date in order to further thwart Sprint's market entry attempts. Witness Burt argued that the FCC did not intend for any carrier to have this type of control over its competitors. Witness Burt maintained that, to his knowledge, there is nothing that allows an ILEC to self-determine how many number porting orders it will process. Finally, witness Burt noted that Sprint operates as a CLEC in over 36 states, that it processes port requests from dozens of ILECs and other CLECs, and that Sprint adjusts its resources to accommodate the demand for local number porting.

Randolph witness Thaxton stated in her prefiled direct testimony that Randolph is a small company with limited staff resources and no experience in interconnecting with CLPs or in porting numbers. Witness Thaxton maintained that, as a result, Randolph is proposing to limit the number of port requests allowed per business day to 10. Witness Thaxton explained that Randolph has only one billing cycle and, as a result, certain times of the month are very busy for the Company. Witness Thaxton noted that, if port requests are limited in an agreed-upon fashion, it would alleviate potential disputes between the parties if ports are not accomplished in a timely manner. Witness Thaxton argued that, contrary to Sprint's assertion, Randolph is not aware that it is under any legal obligation to add staff for the sole purpose of meeting Sprint's port requests.

In his prefiled rebuttal testimony, witness Burt maintained that witness Thaxton's assertion in her direct testimony that port requests should be limited for Randolph because it is a small company with limited staff is not a valid reason for specifying the maximum number of port requests that must be processed per day. Witness Burt asserted that any service provider wishing to slow down the effects of competition would like to argue that it does not have the resources to process its competitors' orders. He stated that, fortunately for the sake of end users who wish to establish service with a competitive carrier, such a limitation is contrary to sound policy and the applicable rules.

Witness Burt also stated that he does not agree with witness Thaxton that there is no legal obligation for Randolph to add staff for the sole purpose of meeting Sprint's porting requests. Witness Burt argued that the FCC stated very specifically that the Act established a pro-competitive framework that was intended to promote competition and encourage the rapid deployment of new technologies. He noted that the Act also imposed obligations and responsibilities on telecommunications carriers, particularly ILECs, to open up monopoly markets and to promote competition in markets that are already open to competition. Witness Burt asserted that to allow an ILEC such as Randolph to throttle competitors' market entry is contrary to the Act and FCC policy. Witness Burt argued that any arbitrary, unilaterally imposed limitation is wrong and contrary to the intent of the Act and FCC orders on local number portability.

Witness Burt noted that the FCC has adopted a set of processes that carriers are to follow to ensure the orderly and timely processing of subscriber port requests. Witness Burt noted that the task of establishing the rules for the industry was given to the North American Numbering Council's (NANC's) Local Number Portability Administration Selection Working Group (Working Group). Witness Burt stated that one aspect of this complex process states that the minimum expectation is for a carrier to provide a Firm Order Confirmation (or FOC) in response to a Local Service Request (LSR) within 24 hours. Witness Burt maintained that this statement is found in Step 7 of the NANC document introduced into evidence in this proceeding as Sprint Exhibit JRB-5. Witness Burt noted that the process established by the Working Group has been codified at 47 C.F.R. §52.26(a), and he argued that Randolph has the obligation to comply with the industry guidelines like other carriers and must commit adequate resources to do so.

Witness Burt also argued that, if the Commission allowed Randolph to limit the number of porting requests processed per business day, it would be setting a precedent for other carriers in North Carolina. Witness Burt stated that other carriers could use such a Commission decision as a basis for limiting resources devoted to porting numbers, thus slowing down the loss of customers. Witness Burt argued that this would be a significant step backwards for competition and have the effect of limiting subscriber choice.

Witness Burt stated that, if Randolph is allowed to limit the resources devoted to porting numbers and does not process the quantity of local number portability orders placed by Sprint or any other carrier in a timely manner, subscriber installation intervals could be impacted. He also maintained that limiting of Sprint's orders as proposed by Randolph could be discriminatory. First, he noted that, to the extent Randolph does not limit its own retail order processing, it would be discriminatory if Randolph limited Sprint's porting requests to 10 per day. Further, witness Burt stated that, to the extent Randolph does not limit port orders for other carriers, it would be discriminatory to limit Sprint's port orders.

Witness Burt finally stated that, based on Sprint's estimated penetration rates, it is unnecessary for the Commission to even consider establishing, much less actually establishing, a precedent that provides an ILEC the very means to control competitive losses by limiting the number of resources it applies to the porting process and, as a result, thereby hindering its current subscribers' ability to select another service provider.

During confidential cross examination, witness Burt was asked about the projections Sprint has made in this proceeding concerning the number of customers Sprint expects to serve during the first few years of market entry into Randolph's territory. Witness Burt was asked whether Randolph's proposed limit of 10 porting requests per business day would impose any operational constraint on Sprint. He stated that he did not know but that Sprint has two concerns with the proposal: one, it may actually result in a limitation of orders and Sprint cannot live with that and two, the precedent such a decision may set for other carriers.

Witness Thaxton stated in her rebuttal testimony that Randolph's agreement to process up to 10 number porting requests per day would seem to be particularly reasonable given Sprint's testimony that it only believes it will attract 34 customers in its first year of operating the Sprint/Time Warner business model in part of Randolph's service territory. Witness Thaxton maintained that, unless Sprint is expecting to secure all 34 customers on one day, it does not appear unreasonable to allow Randolph to limit port requests to 10 per day so that Randolph has the ability to handle its other regulatory obligations, including compliance with Commission-established business office answertime and service order completion requirements, while accommodating Sprint's port requests. Witness Thaxton asserted that, if Randolph looses a large number of its most profitable customers, it will not have the resources needed to handle large numbers of port requests.

Sprint stated in its Post-Hearing Brief that Randolph has not shown that actual harm will result if it is required to port more than ten numbers in any one day, or that it is economically unable to supplement its staff to the extent necessary to process more than 10 port requests per day to comply with applicable industry standards. Sprint asserted that applicable industry standards ensure that competitive service providers have the same opportunity to provide the same level of service, in this case installation intervals driven by the initiation of a customer request for new service. Sprint stated that, if Randolph can place a unilateral cap on the number of orders it processes and thereby determine how quickly it will satisfy its 24 hour FOC commitments, then Randolph has effectively slowed the ability of Sprint and its wholesale customer Time Warner Cable to promptly service new potential subscribers. Sprint argued that a carrier should not be either advantaged or disadvantaged relative to the ILEC or another carrier because of the volume of orders it places with an ILEC.

Sprint argued that imposing an artificial limit of 10 port requests per day based on the mere assertion of limited staff resource concerns is inconsistent with providing customers timely and efficient transfer of service between providers and simply constitutes another variation of anti-competitive behavior by Randolph intended to limit its potential loss of customers. Sprint maintained that if, for any reason, a legitimate port-processing problem arises in the future, it should be addressed in the first instance by communication between the parties and, if necessary, following the dispute resolution provisions set out in the agreement, which could lead to either voluntary resolution or Commission involvement.

Randolph stated in its Post-hearing Brief that, as a small company with limited staff resources, it proposes to limit the maximum number of port requests Randolph would have to process per business day to 10. Randolph argued that Sprint's wholesale service agreement with Time Warner likewise limits Sprint's obligation to process or implement various types of orders. Randolph argued that, contrary to Sprint's assertion, Randolph is aware of no applicable legal obligation that would require Randolph to add staff for the sole purpose of processing Sprint's number porting requests.

Randolph maintained that the Amended and Restated Wholesale Voice Service Agreement between Sprint and Time Warner Cable contains provisions establishing limitations on Sprint's obligation to process Time Warner service orders and to implement number porting.[11] Randolph asserted that, while Sprint redacted much specific information from this document before it was produced to Randolph, it is clear that Sprint has structured its arrangements with Time Warner so that there are limits on Sprint's obligations to process Time Warner's orders and implement number porting[12]. Randolph stated that it considers such provisions to be a reasonable and appropriate mechanism for allowing parties to manage work flow and that Randolph sought such an arrangement in the proposed interconnection agreement. Randolph argued that it is hypocritical for Sprint to deny Randolph's request for such a provision in the proposed interconnection agreement when Sprint incorporated the very same kind of arrangement in its wholesale service agreement with Time Warner.

Randolph maintained that, given its significant concerns about the extent of the economic burden threatened by Sprint/Time Warner's competitive entry, it is important to note that Sprint is not willing to pay Randolph for processing Sprint's service orders. Randolph asserted that this is the case even though the Eighth Circuit voiced its expectation in *Iowa II*[13] that "the state commission will undoubtedly take into their judgment the fact that the ILEC will be paid for the cost of meeting the request." Randolph maintained that, in fact, Sprint's position on this issue is that, if it is necessary for Randolph to do so, it should hire additional personnel to process Sprint's port requests even though Sprint does not plan to pay Randolph for providing that service. Randolph argued that Sprint's position on this issue is unreasonable and must be rejected by the Commission.

The Public Staff stated in its Proposed Order that Sprint's expectation that Randolph be prepared to handle any volume of port requests is unreasonable. The Public Staff asserted that, with no reasonable limitation on the number of port requests, Sprint's demand could possibly create a situation where its interconnection request places an undue economic burden on Randolph. The Public Staff maintained that it is

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[11] See Randolph Burt Confidential Cross Examination Exhibit No. 3.

[12] See Sections 3.1.10; 4; 4.1; 4.1.3; 4.3; and 4.5-4.8.

[13] *Iowa Utilities Board, et al. v. Federal Communications Commission*, 219 F.3d744, 761 (8th Cir. 2000), *rev'd in part on other grounds*, 533 U.S. 67 (2002) (*Iowa II*).

uncertain as to whether the daily limit of 10 number ports proposed by Randolph will hamper Sprint in its competitive efforts. The Public Staff noted that, as the steps shown in Sprint Exhibit JRB-5 indicate, Randolph has some leeway in processing requests even if on one day Sprint does submit more than 10 number porting requests.

The Public Staff stated that, due to the uncertainty surrounding the appropriate limit to place on processing number ports, the Commission should direct the parties to conduct further negotiations to reach a mutually agreeable limit for processing port requests. The Public Staff opined that Sprint's knowledge of processing requests can provide Randolph with information enabling the parties to more accurately ascertain the number of ports that Randolph's limited resources should be able to handle during any one day while reasonably meeting Sprint's needs. The Public Staff offered to make itself available to the parties to assist in the resolution of this issue.

The Commission is not persuaded by the evidence presented in this proceeding that it is appropriate to limit the number of port requests per business day that Randolph should be contractually obligated to process. The Public Staff maintained that not imposing a reasonable limit on the number of port requests "could possibly push its (Sprint's) interconnection request into the realm of placing an undue economic burden on Randolph." However, the fact of the matter is that there was no evidence presented in this proceeding concerning the amount of resources it would take for Randolph to port even one number or the costs that would be imposed on Randolph given different levels of porting requests. As a result, in the absence of such evidence, the Commission cannot conclude that the existing record, which consists of mere general statements, suffices to support a limit on the number of porting requests that Randolph should be expected to handle in a single day.

Further, the Commission notes that, as stated by the Public Staff, Sprint Exhibit JRB-5, which describes the NANC's Inter-Service Provider LNP Operations Flows, allows for leeway in Randolph's processing of number porting requests. The Commission also agrees with Sprint that if, for any reason, a legitimate port-processing problem arises in the future, it should be addressed in the first instance by communication between the parties and, if necessary, through use of the dispute resolution provisions in the agreement, which could lead to either voluntary resolution or Commission involvement. Finally, in the event that the number of porting requests that Randolph receives becomes unduly burdensome, Randolph to seek an exemption from a particular daily level of porting requests pursuant to Section 251(f)(2). As a result, the Commission does not see the need to specifically limit in the interconnection agreement the number of porting requests Randolph must process per business day.

As a final note, although no party discussed this issue at all, the FCC allows a local number portability line charge in certain circumstances. The FCC states on its website at www.fcc.gov:

> Local Number Portability (Charge) - Fixed, monthly charge assessed by local telephone companies to recover certain costs for providing telephone

number portability. Telephone number portability allows residential and business customers to retain, at the same location, their existing local telephone numbers when switching from one telephone service provider to another. This charge is not a tax.

Further, FCC Rule 47 C.F.R. §52.33(a) states:

Incumbent local exchange carriers may recover their carrier-specific costs directly related to providing long-term number portability by establishing in tariffs filed with the Federal Communications Commission a monthly number-portability charge, as specified in paragraph (a)(1) of this section, a number portability query-service charge, as specified in paragraph (a)(2) of this section, and a monthly number-portability query/administration charge, as specified in paragraph (a)(3) of this section.

Randolph should explore any potential means allowed to recover its costs for local number portability.

CONCLUSIONS

The Commission concludes that the interconnection agreement between Sprint and Randolph should not limit the number of port requests allowed per business day at this time.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 11

ISSUE NO. 6 – MATRIX ISSUE NO. 18: Should the language proposed by Randolph imposing indemnity obligations on Sprint and limiting Randolph's liability to Sprint be included in the interconnection agreement?

POSITIONS OF PARTIES

SPRINT: No. These provisions all seek some type of release or indemnity from Sprint that Sprint is not required to provide.

RANDOLPH: Yes. These provisions are appropriate in light of the fact that Randolph has contracted with a new directory publisher and now maintains its own directory data base but does not handle telephone book distribution.

PUBLIC STAFF: No. The Commission should not approve Randolph's proposed language in its present form unless Sprint is willing to accept it. The parties should negotiate further on this issue and seek to reach an agreement, taking into account the Commission's holding in *Petition for Arbitration of Time Warner Cable Information Services (North Carolina), LLC for Arbitration with LEXCOM Telephone Company,* Docket No. P-1262, Sub 2, Recommended Arbitration Order, Finding of Fact No. 2, November 26, 2007 (*LEXCOM-Time Warner RAO).*

DISCUSSION

This issue deals with liability and indemnity issues related to the inclusion of Sprint's customers in Randolph's directory listing. Unfortunately, there is a lack of clarity regarding Randolph's proposed language, to which Sprint objects. Sprint witness Burt's prefiled testimony quotes proposed language from Randolph on this issue that differs from the language set forth by Randolph in the January 28, 2008, Joint Issues Matrix. Randolph witness Thaxton did not discuss this issue in her testimony.

As a result, the Commission lacks sufficient evidence to render a decision on this issue. The Commission therefore cannot conclude that the directory-related indemnity and limitation of liability provisions proposed by Randolph should be included in the ICA. However, the Commission has addressed a similar issue in the past. The Commission directs the parties to examine the decision embodied in Finding of Fact No. 2 in the *LEXCOM-Time Warner RAO* and to adopt language which is consistent with the conclusions rendered therein. The Commission also requests that the Public Staff use its good offices to assist in the resolution of this issue.

CONCLUSIONS

The Commission concludes that the directory-related indemnity and liability provisions proposed by Randolph should not be included on the ICA in their present form and that the parties should determine, in a manner consistent with the *LEXCOM-Time Warner RAO*, what indemnity and limitation of liability provisions, if any, should be included in the ICA.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 12

ISSUE NO. 7 – MATRIX ISSUE NO. 20: Should the interconnection agreement contain deposit and advance payment requirements?

POSITIONS OF PARTIES

SPRINT: Sprint argued that the interconnection agreement should not contain a deposit and advance payment requirement.

RANDOLPH: Randolph asserted that, since it is recommending that the Commission find that Randolph has not waived its rural telephone company exemption under Section 251(f)(1) of the Act, it believes that this issue is moot. However, if the Commission does not agree with Randolph on the exemption issue, Randolph recommends that the Commission require the parties to include a provision in the interconnection agreement that would allow Randolph to safeguard its interests by requiring Sprint to make a security deposit unless satisfactory credit has already been established with Randolph. Randolph proposed that the amount of such a deposit not exceed two months of estimated billing, which is what is provided for by Commission Rule R12-4.

PUBLIC STAFF: The Public Staff recommended that the Commission direct the parties to negotiate further on this issue and seek to reach agreement. The Public Staff stated that the Commission should not approve Randolph's proposed language in its present form. The Public Staff further noted that, in their negotiations, the parties should determine, in a manner consistent with the Commission's *ITC/BellSouth RAO*[14] and Commission Rules R12 and R21, what deposit and advance payment provisions, if any, should be included in the interconnection agreement.

DISCUSSION

Sprint witness Burt stated in his prefiled supplemental direct testimony that Randolph has proposed language for the interconnection agreement under which Sprint would provide a deposit equal to two months of billing for services. Witness Burt noted that Randolph's proposed language is as follows:

> Randolph may, in order to safeguard its interest, require Sprint to make a deposit to be held by Randolph as an assurance of the payment of rates and charges, unless satisfactory credit has already been established with Randolph. Any such deposit may be held during the continuance of the service as security for the payment of any and all amounts accruing for the service.
>
> Such deposit may not exceed two (2) months estimated billing.
>
> The fact that a deposit has been made in no way relieves Sprint from complying with Randolph regulations as to advance payments and the prompt payment of bills on presentation nor does it constitute a waiver or modification of the regular practices of Randolph providing for the discontinuance of service for non-payment of any sums due Randolph.
>
> Subject to compliance with Commission rules and regulations, Randolph reserves the right to increase the deposit requirements when, in its sole judgment, the conditions justify such action; such conditions include but are not limited to: current deposit does not cover two (2) months billing, history of late payment, or reconnection after disconnection for non-payment.
>
> In the event that Sprint defaults on its account, upon ten (10) days written notice service to Sprint will be terminated and any deposits held will be applied to its account.[15]

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[14] The Commission issued its *RAO* concerning the ITC/BellSouth arbitration proceeding in Docket No. P-500, Sub 18 on March 2, 2004. Specifically, see Finding of Fact No. 21.

[15] See Page 8 of the Joint Issues Matrix filed on January 23, 2008.

Witness Burt stated that Sprint strongly opposes the language proposed by Randolph. Witness Burt explained that the interconnection agreement contemplates a Meet Point Interconnection, which results in no anticipated facility payments, and Bill and Keep, which results in no anticipated usage payments. Witness Burt maintained that Randolph has no legitimate concern regarding creditworthiness in this case since Sprint has been in the telecommunications business for over 100 years and has a well-established history of providing quality service and of paying its creditors. Witness Burt noted that Randolph provides service to other carriers, including Sprint affiliated entities, without requiring a deposit. Witness Burt argued that, given all of these circumstances, imposition of a deposit requirement is unwarranted and discriminatory.

Randolph witness Thaxton asserted in her prefiled direct testimony that the interconnection agreement between the parties should contain deposit and advance payment requirements. Witness Thaxton maintained that Sprint claims that Randolph provides service to other carriers, including Sprint affiliated entities, without requiring a deposit; she stated that, in fact, Randolph provides services to many carriers pursuant to tariffs which contain deposit and advance payment requirements. Witness Thaxton argued that there is nothing discriminatory about including a deposit provision in an interconnection agreement with a CLP. Witness Thaxton further asserted that Sprint agreed to a deposit requirement in interconnecting with another North Carolina ILEC when it adopted the interconnection agreement between North State Communications and MCImetro Access Services in Docket No. P-42, Sub 149.

Witness Burt maintained in his rebuttal testimony that Randolph witness Thaxton's reasoning for requiring a deposit from Sprint seems to be simply that, since Randolph can demand a deposit from others, it is appropriate to also demand a deposit from Sprint. Witness Burt asserted that what witness Thaxton fails to mention is that the circumstances involving Randolph's interactions with Sprint are different from those present in the other instances upon which Randolph relies. Witness Burt stated that the deposits witness Thaxton alludes to in the Randolph tariffs are undoubtedly related to services provided in the tariff, e.g., access charges or end user charges where there is a one-way flow of money to Randolph. Witness Burt noted that that is not the case with the interactions between Sprint and Randolph under this interconnection agreement. Witness Burt maintained that the interconnection agreement contemplates Bill and Keep and Meet Point interconnection which translate to little or no money changing hands on a monthly basis. Witness Burt argued that, therefore, there is no basis for requiring a two-month deposit or more if Randolph, in its sole judgment, determines that a greater deposit is required.

Witness Burt further asserted that, since the agreement between Sprint and Randolph is a two-way agreement, it would be just as reasonable for Sprint to request a deposit from Randolph. Witness Burt maintained that, had the parties not agreed to Bill and Keep, it is possible that the flow of traffic between the parties would result in a net payment to Sprint from Randolph. Witness Burt noted that, in that instance, using Randolph's rationale, Randolph should provide a deposit to Sprint. Witness Burt maintained that, in other words, if the Commission agrees with Randolph on this issue, the language should be mutual so that Randolph would be obligated to provide a deposit to Sprint.

During cross examination, witness Burt was asked whether ". . . Sprint has lost significant money in connection with the failures of other carriers, such as WorldCom, Global Crossing and other CLECs," and he indicated that he did not know if Sprint had lost money by being connected with other CLECs. Witness Burt further testified that he was not aware of the Commission's previous ruling in an arbitration proceeding that this kind of deposit provision language was appropriately included in interconnection agreements with BellSouth and other competing carriers.

Sprint argued in its Post-Hearing Brief that the interconnection agreement should not contain a deposit and advance payment requirement for two very objective reasons. First, Sprint asserted that, given the agreed-to meet-point point of interconnection arrangement at Randolph's exchange boundary, under which each side would pay for its own facilities to reach the point of interconnection, and the parties' agreement to use a bill-and-keep arrangement with respect to per minute of use charges, any anticipated facility or usage charges are likely to be nonexistent or, at worst, insignificant. Second, Sprint stated that a review of the various interconnection/traffic exchange or transport/termination agreements Randolph produced during discovery reveals that Randolph has apparently not required a deposit from another carrier. Sprint maintained that, under the foregoing circumstances, imposition of a deposit requirement would be both unwarranted and discriminatory.

Randolph stated in its Post-Hearing Brief that it provides services to many carriers pursuant to tariffs that contain deposit and advance payment requirements. Randolph noted that, as a result, there is nothing discriminatory in including a deposit provision in an interconnection agreement with a CLP such as Sprint. Randolph argued that, in fact, Sprint agreed to a security deposit requirement in its interconnection with another North Carolina ILEC when it adopted the interconnection agreement between North State Communications and MCIMetro Access Services in Docket No. P-42, Sub 149. Randolph also noted that the Commission has arbitrated this very issue in proceedings between BellSouth and other CLPs and concluded that this kind of deposit provision was appropriately included in interconnection agreements between BellSouth and other CLPs[16].

The Public Staff stated in its Proposed Order that the Commission should take judicial notice of Commission Rules R12 and R21 and its *ITC/BellSouth RAO*, in which the Commission concluded that its regulations set forth in Commission Rule R12 regarding creditworthiness, deposit requirements, and interest payments for retail customers were appropriate for use by wholesale customers as well as end-user customers. The Public Staff noted that the Commission further concluded that the deposit requirements should be reciprocal between the parties and that, when required,

[16] See, ITC/BellSouth *RAO*, Finding of Fact No. 21 and NewSouth et al./BellSouth arbitration proceeding in Docket No. P-772, Sub 8, *Order on Objections* issued on February 8, 2006, Finding of Fact No. 22.

deposits should be collected and held in the manner established by Rule R12-4, except that interest should accrue at a rate of 8 percent per annum to be credited quarterly (without request) to the payor's next bill for service. The Public Staff further noted that the Commission held that deposits should be refunded, provided that the payor maintains a good payment history for two consecutive months and is creditworthy at the close of the 12-month period of review.

The Public Staff maintained that, since the issuance of the *ITC/BellSouth RAO*, the Commission has established rules, codified in Rule R21, for the termination and discontinuance of service by competitive providers to underlying carriers. The Public Staff asserted that the intent of the rules was to minimize the adverse impact of service termination for end users by providing for a specific process to be followed and to ensure that end users received notification enabling them to take appropriate action. The Public Staff opined that, to the extent that service termination is permitted as part of the deposit and advance payment requirements, the parties should ensure that it is consistent with the requirements of Rule R21.

The Public Staff recommended that the Commission conclude that the deposit and advance payment provisions proposed by Randolph should not be included in the interconnection agreement in their present form. The Public Staff proposed, instead, that the Commission should order the parties to determine, in a manner consistent with the *ITC/BellSouth RAO* and Commission Rules R12 and R21, what deposit and advance payment provisions, if any, should be included in the interconnection agreement.

The Commission notes first and foremost that neither Randolph nor the Public Staff addressed Sprint's assertion that the interconnection agreement between Sprint and Randolph contemplates a Meet Point Interconnection, which results in no anticipated facility payments, and a Bill and Keep arrangement, which results in no anticipated usage payments. Sprint has maintained in this docket that, since "zero or minimal money" will be changing hands on a monthly basis, the deposit language requested by Randolph is unnecessary. There was no response to this assertion from the other parties. Therefore, the Commission finds that it is reasonable to instruct the parties, including the Public Staff, to engage in discussions concerning Sprint's assertion in this regard given that the impact of this contention was not adequately discussed in the evidentiary record developed in this proceeding.

Next, the Commission notes that, apparently, Sprint was not aware of previous Commission decisions on this **exact** issue in the context of previous arbitration proceedings. In fact, Sprint witness Burt testified during the evidentiary hearing that he was not aware of the Commission's previous ruling in an arbitration proceeding that a deposit provision is appropriately included in an interconnection agreement between BellSouth and ITC.

The Commission concluded in the *BellSouth/ITC RAO*, Finding of Fact No. 21, that:

> . . . the creditworthiness of both BellSouth and ITC should be determined according to the principle set forth in Commission Rule R12-2(a)(2) for the establishment of credit for retail consumers; deposit language shall be reciprocal between the Parties; when required, deposits shall be collected and held by BellSouth and ITC in the same manner established by Commission Rule R12-4 for retail consumers, except that interest should accrue at a rate of eight percent per annum to be credited quarterly (without request) to the payor's next bill for service; and, deposits shall be refunded provided that the payor maintains a good payment history for twelve consecutive months and is creditworthy at the close of the twelve-month period of review in accordance with the foregoing discussion. BellSouth's proposed language should be modified accordingly. [Emphasis added]

The Commission has ruled, therefore, that although Rules R12-2(a)(2) and R12-4 apply to retail customers, it is appropriate to generally apply the same rules to wholesale customers as well.

Further, the Commission found in its *NewSouth et al./BellSouth RAO* issued on July 26, 2005, that the language proposed by NewSouth et at. was appropriate. That language read as follows:

> The Parties will work together to determine the need for or amount of a reasonable deposit. If the Parties are unable to agree, either party may file a petition for resolution of the dispute and both parties shall cooperatively seek expedited resolution of such dispute.

The Commission concludes that, if the parties determine that a deposit and an advance payment requirement are appropriate, then the parties should mutually develop appropriate deposit and advance payment language based on the Commission's previous decisions on the issue. The Commission notes that continued regulatory litigation on issues that have been previously resolved is wasteful and nonproductive for everyone involved.

CONCLUSIONS

The Commission concludes that it is appropriate to order Sprint and Randolph to further negotiate the issue of deposits and advance payment requirements. First and foremost, the parties, including the Public Staff, should discuss whether a deposit and an advance payment requirement is necessary given Sprint's contention that zero or minimal money will be changing hands monthly between Sprint and Randolph. If the parties determine that a deposit and an advance payment requirement are necessary, then the parties, with the assistance of the Public Staff, should mutually develop appropriate language based on the Commission's previous decisions on deposits and advance payment requirements.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 13

ISSUE NO. 8 – MATRIX ISSUE NO. 22: Should "Attachment I" to the interconnection agreement be deleted as unnecessary?

POSITIONS OF PARTIES

SPRINT: Yes. If Randolph believes any particular rates for services remain to be identified in Attachment I, Randolph needs to identify such items for Sprint's review.

RANDOLPH: No. Attachment I is necessary to specify Sprint's access charges for interexchange traffic and the $5 directory delivery price and other fees for services Randolph typically sees in interconnection agreements.

PUBLIC STAFF: No. The attachment should be included in the interconnection agreement, but the parties have not yet reached agreement as to the rates to be included, except for directory delivery fees and access charges, and Randolph has not provided support for its other proposed charges.

DISCUSSION

Sprint contended that Randolph did not identify or propose any specific items and rates for Sprint's consideration during negotiations or in response to data requests. Also, Sprint stated that Randolph waited until a week prior to the scheduled January 29, 2007, hearing, well after all testimony was filed and discovery closed, to submit a list of proposed changes for which it did not provide any cost support. While Sprint agreed to a directory distribution charge listing and a statement providing that Sprint will charge Randolph for any interexchange traffic using access charges which mirror Randolph's access charges, Sprint objected to all other charges as untimely and without cost justification.

Randolph stated that CLPs such as Sprint are not required to file tariffs or price lists. Randolph commented that the proposed interconnection agreement needs to include Attachment I because any agreement between the parties should specify the charges that they will assess against each other in connection with services to be provided. As stated by Randolph, the proposed charges, which are based on Randolph's tariff, include a service order charge, a service order cancellation charge, a charge for providing expedited service, an order change charge, and testing charges. Randolph stated that it is abundantly clear that Sprint seeks to port numbers from Randolph to Time Warner and, therefore, Attachment I is needed to address the basic service order charge, the order change charge, and testing charges. Also, Attachment I would address any extraordinary charges by Randolph to Sprint, as appropriate.

The Public Staff observed that even though the parties appear to be in agreement with respect to including the rates for interexchange access and charges for directories, neither of these charges was included in the pricing attachment Randolph provided to Sprint just one week before the start of the hearing. Nor does there appear to be any information from Randolph as to the manner in which its proposed rates would be applied.

The Public Staff stated that the reciprocal access rates agreed upon for interexchange traffic and the fees for providing directories should be included in the attachment. With respect to any other charges proposed for inclusion, the issue should be remanded to Sprint and Randolph for further negotiation. The Public Staff commented further that, to the extent Randolph believes a service and its associated rates should be included in Attachment I, appropriate support for the rate should be provided to Sprint upon request. The Public Staff stated that it would make itself available to the parties to assist in resolution of this issue.

The Public Staff stated that Attachment I proposed by Randolph and subject to the modifications specified above should be included in the interconnection agreement. Furthermore, Randolph and Sprint should seek to reach an agreement on any other charges to be included in the attachment.

CONCLUSIONS

The Commission concludes that Attachment I proposed by Randolph, subject to the modifications specified below, should be included in the interconnection agreement. The Commission agrees with the Public Staff that, to the extent Randolph believes a service and its associated rates should be included in Attachment I, appropriate support for the rate should be provided to Sprint upon request. The Commission notes that the Public Staff has offered to make itself available to the parties to assist in resolution of this issue. In the event that any dispute over the appropriateness of a proposed rate remains after the parties' additional negotiations, the parties may seek resolution of their dispute from the Commission.

IT IS, THEREFORE, ORDERED as follows:

1. That Sprint and Randolph shall prepare and file a Composite Agreement in conformity with the conclusions of this *Order* no later than Monday, October 13, 2008. Such Composite Agreement shall be in the form specified in paragraph 4 of Appendix A in the Commission's August 19, 1996 *Order* in Docket Nos. P-140, Sub 50, and P-100, Sub 133, concerning arbitration procedure (*Arbitration Procedure Order*), as amended by the Commission's *Order Modifying Composite Agreement Filing Requirements* dated November 3, 2000.

2. That, not later than Monday, September 29, 2008, a party to the arbitration may file objections to this *Order* consistent with paragraph 3 of the *Arbitration Procedure Order*.

3. That, not later than Monday, September 29, 2008, any interested person not a party to this proceeding may file comments concerning this *Order* consistent with paragraphs 5 and 6, as applicable, of the *Arbitration Procedure Order*.

4. That, with respect to objections or comments filed pursuant to decretal paragraphs 2 or 3 above, the party or interested person shall provide with its objections or comments an executive summary of no greater than one and one-half pages single-spaced or three pages double-spaced containing a clear and concise statement of all material objections or comments. The Commission will not consider the objections or comments of any party or person who has not submitted such executive summary or whose executive summary is not in substantial compliance with the requirements above.

5. That parties or interested persons submitting Composite Agreements, objections, or comments shall also file those Composite Agreements, objections, or comments, including the executive summary required in decretal paragraph 4 above, on an MS-DOS formatted 3.5-inch computer diskette containing noncompressed files created or saved in Microsoft Word.

ISSUED BY ORDER OF THE COMMISSION.

This the 29th day of August, 2008.

NORTH CAROLINA UTILITIES COMMISSION

Patricia Swenson

Patricia Swenson, Deputy Clerk

Lh082908.01

Appendix A

Sprint/Randolph Arbitration Proceeding
Docket No. P-294, Sub 30

Act	Telecommunications Act of 1996
ARMIS	Automated Reporting Management Information System
AT&T	AT&T Communications of the Southern States, Inc.
BellSouth	BellSouth Telecommunications, Inc. (now AT&T)
CLEC	Competitive Local Exchange Company (Carrier)
CLP	Competing Local Provider
Commission	North Carolina Utilities Commission
FCC	Federal Communications Commission
FOC	Firm Order Confirmation
GNAPs	Global NAPs North Carolina, Inc.
ICA	Interconnection Agreement
ITC	ITC^DeltaCom Communications, Inc.
ILEC	Incumbent Local Exchange Company (Carrier)
LSR	Local Service Request
NANC	North American Numbering Council
NewSouth et al.	NewSouth Communications Corp., NuVox Communications, Inc., and Xspedius Communications LLC on behalf of its operating subsidiary, Xspedius Management Co. Switched Services, LLC
POI	Point of Interconnection
PSTN	Public Switched Telephone Network
Public Staff	Public Staff – North Carolina Utilities Commission
Randolph	Randolph Telephone Company
RAO	Recommended Arbitration Order
RTMC	Randolph Telephone Membership Corporation
Sprint	Sprint Communications Company L.P.
UNE	Unbundled Network Element
Verizon	Verizon South, Inc.
VoIP	Voice over Internet Protocol
Working Group	Local Number Portability Administration Selection Working Group