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.	)	ORDER RULING ON
for Arbitration of Interconnection Agreement with	)	OBJECTIONS AND
Randolph Telephone Company	)	REQUIRING THE FILING
	)	OF A COMPOSITE
	)	AGREEMENT

BEFORE: Commissioner Sam J. Ervin, IV, Presiding, and Commissioner James Y. Kerr, II[1], and Commissioner William T. Culpepper, III, the Original Panel Members, and Chairman Edward S. Finley, Jr., Commissioner Robert V. Owens, Jr., Commissioner Lorinzo L. Joyner, and Commissioner Howard N. Lee

BY THE COMMISSION: On August 29, 2008, the Commission issued its *Recommended Arbitration Order* (*RAO*) in this docket[2]. The Commission Panel made 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).

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[1] Commissioner Kerr resigned from the Commission effective August 31, 2008.

[2] The *RAO* was issued by Commissioner Ervin, presiding, and Commissioners Kerr and Culpepper. Since Commissioner Kerr, an Original Commission Panel member, resigned from the Commission effective August 31, 2008, this decision has been made by the Full Commission.

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 an 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 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 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.

On September 29, 2008, Randolph Telephone Company (RTC) filed Objections to the *RAO*. Specifically, RTC objected to Findings of Fact Nos. 5, 6, and 7.

Also on September 29, 2008, comments were filed by Star Telephone Membership Cooperative (Star), an interested company not party to this proceeding. Star stated that the parties should have been permitted to negotiate and that the Commission's ruling may not promote competition for rural customers.

On September 30, 2008, the Commission issued an *Order* requesting comments and reply comments on the Objections and comments filed concerning the *RAO.*

On October 1, 2008, RTC filed revised copies of Randolph Projection Analysis 1 and Randolph Projection Analysis 2 and requested that the revised versions replace the versions included in Randolph's September 29, 2008 Objections.

On October 8, 2008, the Commission issued an *Order Suspending Composite Agreement Date* pending further order to be issued at such time as the proceeding to consider the objections and comments has been resolved.

On October 10, 2008, the National Telecommunications Cooperative Association (NTCA) filed a Motion to Accept Late Filed Objections to the *RAO*.

On October 22, 2008, Sprint filed its objections to the NTCA's Motion.

The Commission finds it appropriate to grant the NTCA's Motion and herein accepts the NTCA's comments as filed.

Initial comments were filed by Sprint on October 23, 2008 and by the Public Staff on October 24, 2008. Reply comments were filed by RTC on November 14, 2008.

On November 20, 2008, three members of the North Carolina General Assembly, specifically, Senator Tillman, Representative Brubaker, and Representative Hurley, filed a letter with the Commission expressing their concerns with the *RAO* issued by the Commission in this docket. The letter asked that the Commission consider three specific options in its final ruling in this matter and also urged the Commission to give careful consideration to the policy implications of the decisions embodied in the *RAO*.

Although a Commission Panel issued the original *RAO*, the Objections addressed in this Order have been decided by the Full Commission due to Commissioner Kerr's resignation from the Commission effective August 31, 2008.

Following is a discussion, by Finding of Fact, of the outstanding Objections to the *RAO*.

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

FINDING OF FACT NO. 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).

INITIAL COMMISSION DECISION

The Commission concluded that it is under no illusion that it is able to accurately predict the future. The Commission stated that it can merely make the best possible predictive judgment given the evidence in the record. Over the long term, RTC's survival and profitability will depend on the skill and insight of its management, as well as many other factors that cannot now be foreseen. The Commission noted that, in the immediate future, it does not believe that the interconnection requested by Sprint, and the resulting competition between RTC and Sprint and Time Warner Cable (TWC), will place an undue economic burden on RTC or significantly interfere with the availability of universal service to RTC's customers. Accordingly, the Commission concluded that Sprint's request for partial termination of RTC's exemption under Section 251(f)(1) of the Telecommunications Act of 1996 (Act) from the obligations of Sections 251(c)(1) and (2) should be granted.

MOTIONS FOR RECONSIDERATION

SPRINT: Sprint did not object to this Finding of Fact.

RTC: RTC objected to Finding of Fact No. 5, which concluded that it would not be "inappropriate" or "excessively" burdensome to expose RTC to the economic consequences of competition from the Sprint/TWC business model. According to RTC, the Commission failed to give adequate weight to the evidence and analysis that RTC presented, which illustrated the extent of Sprint's understatement of the line losses, which RTC would suffer from the competitive entry of Sprint/TWC in part of RTC's service area. RTC asserted that those line losses will determine the economic burden imposed on RTC and that the economic burden resulting from those line losses will adversely impact the continued attainment of universal service objectives in the majority of RTC's service area - an area where Sprint/TWC will not offer service.

NON-PARTY COMMENTS

STAR: Star did not file specific objections to Finding of Fact 5. It did note, however, that the Commission's decision may not promote competition for rural customers.

NTCA: NCTA stated in its comments that it objected to the *RAO's* Finding of Fact No. 5 to the effect that Sprint's request for a partial termination of RTC's rural telephone company exemption was not unduly economically burdensome and is consistent with

the universal service obligations established in Section 254 of the Act. According to NCTA, the *RAO* reached this conclusion based upon a perfunctory and incomplete analysis of the impact of the proposed competitive entry and the resulting impact upon the achievement of the universal service goals set out in Section 254. Instead of focusing on RTC management's response to the competition provided by Sprint and Time Warner, NCTA argues that the Commission should have focused its examination on the effects of competition on RTC. NCTA notes that the Commission should have given more consideration to "cream skimming" because the benefits of competition are diminished when a competitor is permitted to serve the easiest and most profitable customers. In that situation, NCTA argues that universal service principles are not advanced and that the incumbent's remaining customers are harmed due to the increased costs that result from that approach.

INITIAL COMMENTS

SPRINT: In its comments, Sprint noted that RTC objected to the Commission's recommended Finding of Fact No. 5 to the effect that termination of RTC's rural exemption is not unduly burdensome. In response to RTC's contention, Sprint asserted that it is beyond dispute that RTC is a financially sound and profitable company and that it is undeniable that competition brings the potential for some economic burden in any industry. In a regulated industry in which government has required the incumbent to provide certain things to potential competitors, some economic burden is likely. Further, Sprint noted that the Commission analyzed the only evidence presented by either party to the proceeding, i.e., the testimony of Sprint witness Farrar, to determine, in light of the whole of the potential economic burden resulting from competitive entry by Sprint/TWC, whether Sprint could demonstrate that the burden is not undue. Despite having produced no direct evidence on the matter, Sprint argues that RTC dismissed the Commission's extensive analysis of the economic burden, in large measure, by challenging Sprint's evidence of projected line losses. Sprint maintained that the Commission correctly analyzed the economic data and reached the correct conclusion.

Finally, Sprint addressed RTC's contention that providing service only in the Town of Liberty would constitute "cream skimming." Sprint noted that it has consistently maintained that competitive service will be offered to ALL business and residential customers for whom TWC facilities are available, a number which currently includes persons or entities using nearly two thirds of Randolph's access lines. (revised RGF Exhibit 7). Sprint and TWC stated that they cannot be asked, expected or required to do any more than they are capable of doing, i.e., offer service to all customers within their collective footprint. Thus, the Commission should not be swayed by RTC's attempt to distract the Commission from the benefits gained by consumers, who finally may, over 12 years after the passage of the Telecommunications Act, have the opportunity to purchase services from a local service provider other than RTC.

PUBLIC STAFF: The Public Staff maintained that the Commission should not revise Finding of Fact No. 5, in which the Commission held that the proposed deployment of the Sprint/TWC business model in RTC's service area would not impose an undue economic burden on RTC or be inconsistent with Section 254 of the Act. The Public Staff stated that a review of the Commission's *RAO* reveals that the Commission carefully weighed the evidence and arguments supporting and opposing RTC's position and concluded, based upon Sprint witness Farrar's testimony, that, although Sprint's proposed interconnection would result in some small economic harm, any such harm would not constitute an undue economic burden on RTC. In doing so, the Commission noted that predicting the economic impact of competitive entry on RTC with any certainty was difficult. Nevertheless, the Commission found Sprint witness Farrar's testimony regarding the potential losses that RTC would suffer to be credible, even considering RTC's challenges to it. In support of its conclusion, the Commission further noted that RTC's effective management and loyal customers could mitigate the economic effects of the proposed competitive entry. According to the Public Staff, RTC has not offered any reason to depart from these conclusions. Therefore, the Public Staff opined that the Commission should not revise its decision in Finding of Fact No. 5 that Sprint's request for a partial termination of RTC'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).

REPLY COMMENTS

RTC: In its Reply Comments, RTC reiterated its argument that Sprint had failed to prove that RTC will not suffer an undue economic burden if RTC's exemption is terminated and if Sprint and TWC are allowed to compete for customers in RTC's service territory. Further, RTC reiterated that the Sprint/TWC business model, which will only provide a competitive choice to RTC's customers residing within reach of TWC's facilities, will not provide a competitive choice to those RTC customers who do not reside within the Town of Liberty (Liberty). As a result, RTC contends that the Sprint/TWC business model does not satisfy the goal of universal service required by the Act.

STAR: Star did not file Reply Comments.

DISCUSSION

In its comments, RTC objected to the Commission's finding that partially terminating RTC's rural exemption is not unduly economically burdensome. According to RTC, the Commission failed to give adequate weight to the evidence and analysis that Randolph presented that allegedly illustrated the extent of Sprint's understatement of the line loss which RTC would suffer from competitive entry by Sprint/TWC in part of its service area. RTC submitted that the evidence in the record requires the Commission to find that terminating RTC's rural exemption in order to allow the offering of TWC's Digital Phone service in the Liberty imposes an undue economic burden on

RTC because Sprint cannot forecast with any certainty RTC's line and revenue losses resulting from the provision of service by Sprint/TWC.

In addition, RTC again contended that Sprint has an obvious incentive to understate the revenue losses that RTC will sustain if Sprint is allowed to facilitate TWC's deployment of Digital Phone service in Liberty. Because of the significance of Sprint's projections in resolving this issue, RTC reiterated its discussion of the evidence and argument in its post-hearing brief on this point. RTC mainly contested Sprint witness Farrar's line loss estimates. According to RTC, witness Farrar's projected line losses for RTC are dramatically less than the line losses shown by Sprint/TWC's success in taking ILECs lines in North Carolina and dramatically less than the 3%, 8%, and 15% three year penetration rates that Sprint projected for itself in Ohio proceedings. If TWC were to achieve the penetration that Sprint projected in Ohio, RTC contends that it would be operating at a significant loss. RTC further explains that, based on its revenues for the 12-month period ending December 2006, as shown on Corrected Farrar Exhibit RGF-2, and applying Sprint's Ohio projections, RTC's revenues would be reduced in year one and reduced again by an additional factor in year two. In year three, RTC would have a significant revenue loss. In computing the above figures, RTC factored in the savings that it would realize from not having to pay taxes on the revenues it did not receive as a result of losing lines to Sprint/TWC. According to RTC, if the Commission had properly considered the aforementioned information and given the appropriate weight to the evidence and analysis presented by RTC, the Commission would have been precluded from allowing Sprint's request to terminate RTC's rural exemption. For the reasons advanced by RTC, Star and NCTA generally agree with RTC's position. Both the Public Staff and Sprint disagree.

In reviewing the argument and analysis that RTC presented in support of its request that the Commission reconsider the decision partially terminating RTC's rural exemption, it is noteworthy that RTC did not dispute the Commission's conclusion that the essential question which must be resolved in determining the undue economic burden issue is the extent to which the Commission should accept or reject witness Farrar's testimony on the line and revenue loss issues. In its objections, as in its post-hearing brief, RTC assails Sprint witness Farrar's projections of RTC's line and revenue losses as understated. RTC contended that the Commission failed to adequately weigh the evidence showing the extent of the line losses that RTC would suffer from competitive entry in part of its service area. The Commission disagrees.

A review of the *RAO* reveals that the Commission carefully weighed and considered very similar arguments advanced in RTC's post-hearing brief, as well as the arguments presented in the post-hearing briefs and the proposed orders of Sprint and the Public Staff.[3] In particular, the Commission carefully reviewed witness Farrar's testimony in the *RAO* and noted that RTC challenged his credibility on a number of different grounds. In making the decision to permit the rural exemption to be partially terminated and to allow Sprint/TWC to compete in the RTC service territory, the

[3] *RAO*, at pp. 17-21.

Commission simply was not persuaded that witness Farrar's testimony contained the serious flaws that RTC alleged. For example, witness Farrar's line loss calculations were based on actual TWC penetration rates and Sprint's experience in other markets. The Commission continues to believe that these figures are more likely to reflect the impact of competitive entry in RTC's market using the Sprint/TWC business model than the penetration rates that Sprint projected in Ohio and the penetration rates that TWC achieved in more urban portions of North Carolina. The Commission stated that, "[d]espite 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 . . . ."[4]

In making this finding, the Commission acknowledged that the record did not allow it to precisely analyze the impact that the projected line losses would have on RTC's expenses, so that it could not determine the exact impact of this omission from RTC's analysis on the projected returns set forth in its post-hearing brief. The Commission also noted that RTC's projections did not address credible line loss data showing that Sprint's projected first year penetration rates were consistent with the first year penetration rates that Sprint actually experienced when providing local services in a sizable number of rural markets across the nation using the Sprint/cable business model. In sum, the Commission found that RTC's projections and other challenges to witness Farrar's testimony did not undermine the credibility of his analysis.[5] In fact, after considering the entire record, the Commission found witness Farrar's quantitative analysis of this and other issues sufficiently credible to conclude that RTC would not be unduly economically burdened and that the goal of preserving universal service would not be undermined by Sprint/TWC entry into RTC's market as a competitor.

The record also reflects that these conclusions were supported by other less quantifiable but equally persuasive factors. For instance, the Commission found it compelling that Sprint was only requesting a partial, instead of a total, waiver of RTC's exemption. In the Commission's opinion, this limitation on the scope of the request lessened the potential economic impact of Sprint's request to compete in RTC's market. Similarly, the evidence also included strong customer statements supportive of RTC's service. These statements, in addition to demonstrating that RTC is a well-managed company, indicate that its customers may be resistant to a competing supplier's efforts to woo them away from RTC. The Commission properly interpreted this evidence of customer loyalty as providing some protection to RTC from any economic losses resulting from a Commission decision allowing Sprint and TWC to compete with RTC. Furthermore, the record reflected that RTC had proposed and the Commission had approved a price regulation plan for RTC. Thus, RTC has the regulatory flexibility needed to respond quickly to competition as it develops. Lastly, the Commission reminds RTC that the ratchet clause of G.S. 62-133.5(c) allows it to petition to revise its price regulation plan without incurring any risk that the Commission will modify the plan

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[4] *RAO*, at p. 17.

[5] *See State ex rel. Utils. Comm'n. v. Duke Power Co.,* 305 N.C. 1, 21, 287 S.E.2d 786, 798 (1982) (explaining that the Commission may weigh the credibility of the witnesses before it).

in a manner that is unsatisfactory to RTC. This, too, has the potential to minimize any potential adverse impact resulting from Sprint's entry into RTC's market.

These quantitative and qualitative factors collectively suggested and suggest by the greater weight of the evidence that the economic burden suffered by RTC if the rural exemption is terminated and Sprint/TWC are allowed to compete for customers in RTC's service territory would not be undue. In the Commission's view, RTC has offered no compelling new evidence, argument or analysis which would require the Commission to revise Finding of Fact No. 5 in whole or in part. RTC's request that Finding of Fact No. 5 be revised in conformity to its objections should therefore be denied.

CONCLUSIONS

The Commission reaffirms its conclusion that 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).

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

FINDING OF FACT NO. 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.

INITIAL COMMISSION DECISION

The Commission concluded that it is under no illusion that it is able to accurately predict the future. The Commission stated that it can merely make the best possible predictive judgment given the evidence in the record. Over the long term, RTC's survival and profitability will depend on the skill and insight of its management, as well as many other factors that cannot now be foreseen. The Commission noted that, in the immediate future, it does not believe that the interconnection requested by Sprint, and the resulting competition between RTC and Sprint and Time Warner, will place an undue economic burden on RTC or significantly interfere with the availability of universal service to RTC's customers. Accordingly, the Commission concluded that Sprint's request for partial termination of RTC's exemption under Section 251(f)(1) of the Telecommunications Act of 1996 (Act) from the obligations of Sections 251(c)(1) and (2) should be granted.

MOTIONS FOR RECONSIDERATION

SPRINT: Sprint did not object to this Findings of Fact.

RTC: RTC also objected to Finding of Fact No. 6, which finds that Sprint's request for a partial termination of RTC's rural telephone company exemption should be granted. In

this Finding of Fact, the Commission undertook to strike a balance between the risk of economic harm to RTC and "state and national policy favoring competitive telecommunications services." RTC asserts that the Commission did not strike the proper balance between the relevant interests, as the record established that less than half of RTC's customers would be able to elect to receive service through the Sprint/TWC business model, i.e., less than half of RTC's customers would have "customer competition and choice in telecommunications service" while the majority would have no competitive choice and will be left to bear the eventual and unavoidable consequences of RTC's line losses in Liberty. Further, RTC objects to the Commission's conclusion that, "in this case . . . 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 . . . ." (emphasis in original) (*RAO* p. 20). RTC believes that the Commission's statement that the policy favoring competition "must take precedence" suggests that the Commission failed to appreciate the latitude afforded to it by Section 251(f)(1) of the Act, which provides that rural telephone companies are to remain exempt from competition if an undue economic burden or adverse impact on universal service would result from competitive entry. Finally, RTC objected to the Commission's failure to even address the public interest that would be served if the Commission conditioned termination of Randolph's rural exemption on a requirement that Sprint/TWC be required to meet the requirements for designation as an eligible telecommunications carrier in all of RTC's service area, as provided for in Section 253(f).

NON-PARTY COMMENTS

STAR: Star asserted that the Commission's decision in this matter ignored Section 253(f) of the Act because it did not require Sprint to assume the same universal service obligations as RTC while allowing Sprint's request to interconnect. According to Star, because the Sprint/Time Warner business model focuses on providing service in the more attractive area of RTC's service territory, i.e., Liberty, the effect of the *RAO* is to deprive the customers in the more rural areas of RTC's service territory of the benefits of competition and doom those same customers to be second class telecommunications consumers. While Star recognized that most new entrants generally choose to serve the more densely populated and thus more attractive areas when entering the market, Star questions whether it is wise public policy to allow such an approach in a demonstrably rural market like RTC's.

INITIAL COMMENTS

SPRINT: Sprint commented that RTC objected to Finding of Fact No. 6 by arguing that the Commission gave inordinate weight to the policy goal of furthering customer competition and choice. Sprint maintains that the primary purpose of the Act was to bring competitive choice to consumers and that the Section 251(f)(1) exceptions to this goal enjoyed by the rural ILECs are secondary and temporary in nature. Therefore, according to Sprint, the Commission is in a much better position to weigh policy goals

than RTC, an interested party, and the Commission was correct in giving considerable weight to the public interest in affording consumers a choice, especially in rural areas.

PUBLIC STAFF: With regard to Finding of Fact No. 6, the Public Staff stated that the Commission should not revise this finding. The Public Staff noted that RTC specifically objected to this finding on the ground that it is not in the public interest for Sprint/TWC to be allowed to "cream skim" RTC's more profitable and easily-served customers in Liberty. RTC argues that, while these customers may have additional choice through this competition, the majority of RTC's customers will have no additional choice as a result of Sprint's request for interconnection. Moreover, RTC argues, these same customers must face the economic and service consequences of Sprint/TWC's competition with RTC in Liberty. Thus, RTC objects to the Commission's decision because the Commission did not condition termination of RTC's rural exemption on Sprint/TWC having to meet the requirements for designation as an eligible telecommunications carrier in all of RTC's service area, as provided for in Section 253(f) of the Act. In its comments, however, the Public Staff stated that RTC advanced those same essential arguments in its post-hearing brief and that RTC had offered no compelling reason for the Commission to revisit its decision. Therefore, the Public Staff maintains that the rationale behind Finding of Fact No. 6, which states that Sprint's request for a partial termination of RTC's rural telephone company exemption should be granted, is sound.

REPLY COMMENTS

RTC: In its Reply Comments, RTC reiterated its arguments that Sprint has failed to prove that RTC will not suffer an undue economic burden if RTC's exemption is terminated and Sprint and TWC are allowed to compete for customers in RTC's service territory. Further, RTC reiterated that the Sprint/TWC business model will only provide a competitive choice to RTC customers residing within reach of TWC's facilities and will not provide the same choice to those RTC customers who do not reside within Liberty and that this outcome is contrary to the universal service goals established by the Act.

STAR: Star did not file Reply Comments.

DISCUSSION

RTC contends that the Commission inappropriately found that the policy goal of favoring competition outweighed the evidence of undue economic burden to RTC in Finding of Fact No. 6. RTC's argument centers on the identity of the customers that would be offered service under Sprint/TWC's business model. According to RTC, the Commission's decision allows Sprint to "cream skim" by electing to offer service to RTC's most profitable and easily served customers in Liberty. It argues that the record established that fewer than half of RTC's customers would be offered that service. Consequently, RTC argues that the majority of its customers will not enjoy the benefits of competitive telecommunications services if Sprint/TWC entry is allowed. Additionally, those customers will be left to bear the consequences of the loss of customers that RTC

will sustain in Liberty. The Commission thus erred, according to RTC, in finding that the policy favoring customer competition requires resolving the issue for Sprint.

RTC further contends that the Commission failed to address the public interest and universal service goals that would be served if the Commission conditioned terminating RTC's rural exemption on a requirement that Sprint and TWC meet the requirements for designation as an eligible telecommunications carrier throughout RTC's service area, as provided for in Section 253(f). The imposition of this condition would allow all of RTC's customers an opportunity to choose between competitors, while foreclosing Sprint's "cream skimming."

As with its objection to Finding of Fact No. 5, RTC has presented no new compelling argument or evidence requiring the Commission to revise Finding of Fact No. 6. RTC made essentially the same arguments in its post-hearing brief regarding "cream skimming" and universal service that it advances now.[6] The Commission carefully considered each of those arguments in the *RAO*. After carefully weighing the evidence and the arguments advanced by all parties, the Commission found that the policy of fostering competition takes precedence over the risk that RTC may suffer some limited economic harm if Sprint/TWC is allowed to compete given the facts of this case. The Commission believes that this conclusion is consistent with the following FCC policy pronouncement articulated in Paragraph 1263 of the First Report and Order:

> Congress generally intended the requirements in Section 251 to apply to carriers across the country, but Congress recognized that in some cases, it might be unfair or inappropriate to apply all of the requirements to smaller or rural telephone companies. We believe that Congress intended exemption, suspension, or modification of Section 251 requirements to be the exception rather than the rule, and to apply only to the extent, and for the period of time, that policy considerations justify such exemptions, suspension, or modification. We believe that Congress did not intend to insulate smaller or rural LECs from competition, and thereby prevent subscribers in those communities from obtaining the benefits of competitive local exchange.

Moreover, the Commission notes that the Act was adopted in 1996, i.e., twelve years ago. Since that time, RTC, an admittedly small and rural carrier, has been exempt from the full impact of the competition that Congress clearly intended to introduce into the local telecommunications market. As evidenced by the preceding policy statement, RTC's exemption from the pro-competitive provisions of the Act was never intended to be permanent; instead, its exemption was always intended to be temporary. In this proceeding, Sprint presented evidence that RTC will not be unduly economically burdened by Sprint's entry into the market served by RTC which the Commission found to be persuasive. Despite the arguments that RTC has advanced in opposition to the *RAO*, the Commission is simply not persuaded that a different

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[6] *RTC's Post-Hearing Brief, pp. 32-42.*

conclusion is warranted based upon this "new evidence and projections." Thus, RTC's request to revise Finding of Fact No. 6 is hereby denied.

As an alternative, RTC also argued that the Commission should condition the termination of RTC's rural exemption upon a concomitant determination that Sprint/Time Warner should be required to pursue and receive designation as an eligible telecommunications carrier in all of RTC's service area as provided in Section 253(f) of the Act before it is permitted to compete for customers with RTC. According to RTC, the imposition of such a condition would further the state and national policy favoring customer competition in telecommunications service for all, not just a minority, of RTC's customers. This position is supported by Star and opposed by Sprint and the Public Staff. The *RAO* did not specifically address this contention.

Section 253(f) states that:

> It shall not be a violation of the section for a state to require a telecommunications carrier that seeks to provide telephone exchange service or exchange access in a service area served by a rural telephone company to meet the requirements in section 214(e)(1) for designation as an eligible telecommunications carrier for that area before being permitted to provide such service.

This provision of the Act permits, but does not require, the Commission to condition Sprint/TWC's ability to provide telephone access service in RTC's service area on Sprint/TWC's meeting the requirements set out in Section 214(e)(1) for designation as an eligible telecommunications carrier throughout RTC's entire service area if the Commission finds that such designation would be in the public interest. See 47 U.S.C. 214(e)(2). RTC argues that it is in the public interest to require such designation in this case because such action would further the state and national policy favoring customer competition in telecommunications service by ensuring that customers in all, not just a small part of, RTC's service territory have an opportunity to choose between competitors, while forcing Sprint/Time Warner to do more than to "cream skim" RTC's easiest to serve and most profitable customers. RTC's argument, however, is predicated upon this Commission's rejection of the analysis and testimony provided by witness Farrar that Sprint/TWC will offer competitive service to all business and residential customers for whom TWC facilities are available, a group of customers that use approximately two-thirds of Randolph's access lines. See Revised RGF Exhibit 7.

RTC again argues that Farrar's testimony in this regard simply is not credible for a number of reasons. Chief among these reasons is RTC's assertion that witness Farrar's evidence on this point is not credible because witness Farrar has no personal knowledge of the location of TWC facilities or the number of RTC customers that would be able to receive service from TWC. This is the same argument that RTC made at the hearing and its post trial brief. The Commission was not persuaded by this argument then and is not persuaded by it now. In the Commission's judgment, the testimony

provided by witness Farrar that customers using more than two thirds of RTC's access lines could potentially be provided a competitive choice is simply more credible than the evidence provided by RTC. Sprint will offer competitive service to all business and residential customers for whom TWC facilities are available. Generally speaking, a CLP, such as Sprint, cannot and should not be asked, expected or required to do any more than it is capable of doing, i.e., offer service to all within its collective serving footprint. This is consistent with the general policy articulated by Congress, which favors the removal of barriers to entry in the telecommunications market and permits a CLP to offer a competitive alternative to a limited portion of an ILEC's market. See 47 U.S.C. 253. This fosters competition and ultimately provides consumers with alternatives to the monopoly market that existed prior to the adoption of the Act.

RTC's proposal, though permitted by Section 253, is inconsistent with the pro-competitive focus of the Act and greatly expands a CLP's service obligation to include carrying out eligible telecommunications carrier responsibilities for a rural ILEC's entire service area. Such a condition should only be adopted if and when it is clear that such a requirement is in the public interest. RTC, as the proponent of this proposal, bears the burden of presenting detailed evidence to justify a Commission order that deviates from the general policy of permitting a CLP to define its service territory as it wishes. In the Commission's opinion, the scant (and previously rejected) evidence and lengthy argument presented by RTC in support of this position is insufficient for the Commission to conclude by the greater weight of the evidence that the public interest would be served by requiring Sprint/TWC to be designated an eligible telecommunications carrier for RTC's entire service area as a precondition for being allowed to make competitive entry. Thus, RTC's alternative request that Sprint/TWC be required to obtain designation as the eligible telecommunications carrier throughout RTC's service territory is hereby denied.

CONCLUSIONS

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

ISSUE NO. 2 – MATRIX ISSUE NO. 3: Is Sprint entitled to interconnect and exchange traffic with RTC pursuant to Section 251(a) and Section 251(b) of the Act as a wholesale telecommunications provider of services to other carriers, including providers of VoIP telephony service?

FINDING OF FACT NO. 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.

INITIAL COMMISSION DECISION

The Commission concluded that Sprint is entitled to interconnect and exchange traffic with RTC 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. The Commission noted that the proper resolution of this issue hinges on the appropriate interpretation of the FCC's recent Order in *Time Warner Cable*, WC Docket No. 06-55, DA 07-709 (released March 1, 2007) (*Time Warner Order).* The Commission noted that the *Time Warner Order*, issued by the FCC's Wireline Competition Bureau, addressed the very same business model that Sprint is proposing to use in the instant case. In the *Time Warner Order*, 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, and with Time Warner providing "last-mile" facilities, sales, billing, customer service and installation. The ILECs involved in that case argued that Sprint was acting in a wholesale capacity and could not be considered a telecommunications carrier. However, the FCC rejected the ILECs' position and held that Sprint, as a wholesale provider of telecommunications, was a "telecommunications carrier" entitled to interconnect with the ILECs regardless of whether the VoIP service being provided to end-users was considered to be a telecommunications service or an information service. The Commission concluded that the *Time Warner Order* was directly on point and conclusively established that Sprint was entitled to interconnect and exchange traffic with Randolph pursuant to the Act as a wholesale telecommunications provider of services to other carriers.

MOTIONS FOR RECONSIDERATION

SPRINT: Sprint did not object to this Finding of Fact.

RTC: RTC stated in its Objections to this Finding of Fact that, contrary to the Commission's conclusion that Sprint is a telecommunications carrier, many of the services cited on p. 23 of the *RAO* are not "telecommunications services" and thus do not support classifying Sprint as a "telecommunications carrier." Since TWC's retail service is not a telecommunications service, Sprint's provision of local number portability and other services does not constitute the provision of telecommunications services as defined in the Act. Randolph also maintained that, according to 47 CFR Section 51.100, which addressed the exchange of traffic between two carriers pursuant to an interconnection agreement, a carrier obtaining interconnection must be transmitting telecommunications traffic. Only after this initial criterion has been satisfied is a telecommunications carrier entitled to use excess capacity to exchange information traffic. The *Time Warner Order* recognized that parties such as Sprint may not obtain interconnection pursuant to Section 51.100 solely for the purpose of providing non-telecommunications purposes. Thus, Sprint must exchange local telecommunications service traffic over the requested trunks and facilities before it can

use the same interconnection agreement to exchange information service traffic generated by TWC.

RTC also asserted that the FCC had concluded that there are some services or functions that are "incidental and adjunct to common carrier transmission," including local number portability, central office space for collocation, and certain billing and collection services. These services, according to the FCC, "should be treated for regulatory purposes in the same manner as the transmission services underlying them...." *Bright House Networks v. Verizon California, Inc.,* FCC File No. EB-08-MD-002, Para. 31 (June 23, 2008) (*Bright House)*. The FCC indicated that these adjunct-to-basic services are vital to the provision of telecommunications services. RTC contended that it logically follows that, when the underlying retail service is *not* a telecommunications service, these adjunct-to-basic services supporting the provision of non-telecommunications services should be treated as non-telecommunications services. RTC asserted that "[t]here is no dispute" that TWC will be offering only a retail interconnected VoIP service, which it defines as a non-telecommunications service. Thus, on the basis of the representation that TWC's retail service is not a telecommunications service, Sprint's provision of local number portability and other services incidental to this transmission of such non-telecommunications traffic does not constitute telecommunications service.

NON-PARTY COMMENTS

STAR: Star did not discuss this Finding of Fact in its comments.

INITIAL COMMENTS

SPRINT: Sprint stated the Commission's interpretation of the *Time Warner Order* and the resulting conclusion that Sprint is a provider of telecommunications services entitled to interconnect and exchange traffic with Randolph pursuant to the Act was correct and

is consistent with the way in which many jurisdictions across the country have decided the same issue.[7]

PUBLIC STAFF: The Commission should not revise Finding of Fact No. 7. RTC's argument that the services that Sprint is providing—namely, end office switching, PSTN interconnectivity, numbering, domestic and internal toll, operator, and directory assistance services—are not telecommunications services is incorrect. RTC has characterized these services as incidental or adjunct to common carrier transmission. According to RTC, since TWC provides "non-telecommunications" services, the adjunct services do not support telecommunications services themselves, and thus cannot be considered telecommunications services.

The Commission correctly construed the *Time Warner Order* by finding that RTC could not refuse to interconnect with Sprint because Sprint was providing a wholesale service rather than a retail services. If Sprint offers the above-named services through its interconnection with RTC, it may then also offer information services, without limitation as to the relative amounts of the two types of services.

RTC's reliance on *Bright House* is also misplaced. RTC has argued that the above-named services are supporting the provision of VoIP service instead of telecommunications service. However, *Bright House* actually supports the Commission's decision. In *Bright House* the defendants were ILECs, while the complainants—including TWC—were providing facilities based voice services to retail customers *using VoIP.* As in the instant case, TWC and the other complainants

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[7] Specifically, Sprint cited to *Sprint Communications Company LP v. Nebraska Public Service Commission et. al.,* Memorandum and Order, Case No. 4:05CF3260 (D.C. NE, September 7, 2007); *Consolidated Communications of Fort Bend Company et al. v. The Public Utility Commission of Texas, et al.,* Memorandum Opinion and Order, Cause No. A-06-CA-825-LY (W.D. TX., July 24, 2007); *Berkshire Tel. Corp. v. Sprint, No. 05-CV-6502, 2006 WL 3095665 (*W.D.N.Y., October 30, 2006*); Iowa Telecommunications Services, Inc. d/b/a Iowa Telecom v. Iowa Utilities Board, Utilities Division, Department of Commerce; John Norris, Diane Munns, and Curtis Stamp, in their Official Capacities as Members of the Iowa Utilities Board and not as individuals, and Sprint Communications LP, d/b/a Sprint Communications Company, LP* 4:06cv0291 JAJ, Order (April 15, 2008)(*Iowa Telecom)*; *Application of Sprint Communications Company LP to Expand Certification as an Alternative Telecommunications Utility,* Final Decision, Pub. Serv. Comm'n of Wisc. Docket No. 6055-NC-103 (May 9, 2008); *Application of Sprint Communications Company LP for Approval of the Right to Offer, Render, Furnish or Supply Telecommunications as a Competitive Local Exchange Carrier to the Public in the Service Territories of Alltel Pennsylvania, Inc, Commonwealth Telephone Company, and Palmerton Telephone Company,* Penn. Pub. Util. Comm'n, A310183F0002AMA, A-310183F0002AMB, A-310183F0002AMC, Opinion and Order (December 1, 2006); *In the Matter of the Application and Petition in Accordance with Section II.A.2.b of the Local Service Guidelines Filed by Buckland Telephone Company, Minford Telephone Company, The Glandorf Telephone Company, Inc., and Sycamore Telephone Company,* Finding and Order, Pub. Util. of Ohio Case Nos. 06-884-TP-UNC, 06-885-TP-UNC, 06-886-TP-UNC and 08-884-TP-UNC (Nov. 21, 2006; *Harrisonville Telephone Company et al. v. Illinois Commerce Commission et al.,* Memorandum and Order, Civil No. 06-73-GPM (S.D. Ill., September 5, 2007); and *In the Matter of Bright House Networks, LLC, et al. v. Verizon California, Inc. et al.,* Memorandum Opinion and Order, File No. EB-08-MD-002 (released June 23, 2008).

provided VoIP services by relying on wholesale CLECs to interconnect with ILECs and to provide transmission services, local number portability, and other functionalities. As in the instant case, TWC relied upon Sprint for this service. Thus, in very similar circumstance, the FCC found that "adjunct-to-basic" services were telecommunication services.[8]

Even setting aside *Bright House*, the unresolved regulatory status of VoIP service should not change the Commission's decision. In the *Time Warner Order*, at para. 15, the FCC stated that "[t]he regulatory classification of the service provided to the ultimate end user has no bearing on the wholesale provider's rights as a telecommunications carrier to interconnect under section 251. As such, we clarify that the statutory classification of a third-party provider's VoIP service *is irrelevant to the issue of whether a wholesale provider of telecommunication service may seek interconnection under section 251(a) and (b)."* (Emphasis added). Furthermore, several federal courts have reviewed the Sprint/cable company business model and have found that Sprint was providing telecommunications services under the *Time Warner Order,* most recently in the *Iowa Telecom* case cited in the footnote above. Evolving case law bolsters the Commission's conclusion in the *RAO* on this issue.

REPLY COMMENTS

RTC: RTC filed no Reply Comments as to this issue.

DISCUSSION

In the Commission's original decision on this issue, it relied on the *Time Warner Order* and concluded that Sprint was indeed providing certain telecommunications services to support the VoIP services offered by TWC. A plain reading of the *Time Warner Order* establishes that only a bare minimum of telecommunications services need to be offered by Sprint or a similarly situated carrier in order for the arrangement to support a request for interconnection. As noted by the Public Staff and Sprint, evolving case law bolsters the Commission's conclusion concerning the manner in which the *Time Warner Order* should be construed, most recently and notably the *Iowa Telecom* case.

RTC attempted to salvage its position by advancing a new line of argument. RTC cited to the *Bright House* case for the proposition that the Sprint services were supporting VoIP services rather than telecommunications services. However, as the

[8] See, *Bright House* at Paras. 31-32. "Number portability, however, is a wholesale input that is a necessary component of a retail telecommunications service. We have previously found that services or functions that are 'incidental or adjunct to common carrier transmission service'—i.e., they are 'an integral part of, or inseparable from, transmission of communications'—should be classified as telecommunications services." (Para. 31). Also, since "LNP [local number portability] similarly constitutes such an [please check the quote to see if this change is appropriate] 'adjunct to basic' service. Verizon's provision of LNP is a vital part of the telecommunications services that it provides to the Competitive Carriers.... Moreover, implementing LNP requires Verizon to be involved in properly switching and transmitting calls to the new carrier—these are unquestionably 'telecommunications' functions."

Public Staff pointed out, the opposite is more nearly the case. In a factual situation similar to the instant case, the FCC found that the "adjunct-to-basic" services were telecommunications services.

Accordingly, the Commission reaffirms its original decision on this issue for the reasons generally set forth by Sprint and the Public Staff above.

CONCLUSIONS

The Commission reaffirms its conclusion that Sprint is entitled to interconnect and exchange traffic with RTC pursuant to Section 251(a) and (b) of the Act as a wholesale telecommunications provider of services to other carriers, including entities providing VoIP telephony service.

FINAL ISSUE - PROCEDURAL OBJECTION REGARDING IMPLEMENTATION SCHEDULE:

At the end of its Objections to the *RAO* in this case, **RTC** moved beyond the numbered issues and objected to the alleged failure of the Commission to establish a timeline for negotiations as required by Section 251(f)(1)(B). Section 251(f)(1)(B) provides, in pertinent part, that, "[u]pon 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."

RTC noted that the Commission had addressed certain issues by directing the parties, with the assistance of the Public Staff, to negotiate various matters with respect to Findings of Fact 8, 12, and 13. RTC stated that the parties have had only limited negotiations because of the outstanding issue of the termination of the rural exemption. RTC contended that, to the extent the Commission now directs the parties to negotiate further, the parties are entitled to an implementation schedule that is "consistent in time and manner" with FCC regulations, yet the Commission has failed to establish such a schedule.

RTC further reiterated its view that it had no duty to negotiate with Sprint prior to the termination of the rural exemption or even to submit to arbitration. According to RTC, there have been no voluntary negotiations between the parties and, thus, there are no "open issues" for arbitration. These contentions, RTC said, were supported by *Sprint Communications Company L.P. v. Public Utility Commission of Texas,* Slip Copy 2006, WL 4872346, No. A-05-CA-065-SS (W.D. Tex. 2006) and *Coserve LLC v. Southwestern BellTel. Co.,* 350 F. 3d 482, 487 (5th Circ. 2003).

Star and **NTCA** echoed RTC's arguments.

In Response, **Sprint** disagreed with RTC's claim that the Commission had failed to establish an implementation schedule in the *RAO*. While in some situations it may be necessary for the Commission to establish a more detailed implementation schedule

that builds in a substantial time period for the parties to conduct negotiations, such is not the case in this proceeding. There have already been considerable negotiations between the parties both before and after the filing of Sprint's arbitration petition, and most of the necessary contract language has either been resolved through negotiation or through arbitration. For example, Sprint noted that RTC had raised thirty-seven additional issues for negotiation in its April 10, 2007 Preliminary Response. All of these issues were either negotiated to resolution or incorporated into the Revised Joint Arbitration Issues Matrix filed by the parties on January 23, 2008, pursuant to the Commission's July 23, 2007, Order Scheduling Hearing and Establishing Procedures. Thus, the only remaining "implementation" that is necessary in this docket is the parties' execution of and subsequent compliance with the Composite Agreement. The Commission provided for this in its *RAO* by setting a deadline for the filing of the parties' Composite Agreement—which was thereafter suspended pending a ruling on RTC's objections. A new deadline will go into effect after these objections have been resolved. Such an order will presumably allot a limited amount of time for the parties and Public Staff to resolve the remaining issues. At that point, all of the "implementation" issues will have been addressed.

The Public Staff argued that, based on all of the circumstances in this case, the establishment of a more detailed schedule to implement the approved interconnection is unnecessary. The Commission has allowed only a partial termination of RTC's exemption and has also suspended the deadline for the filing of the Composite Agreement. The Commission has not erred in its decision.

In Reply to the Responses, **RTC** asserted that the circumstances were such that RTC was forced to attempt to defend its rural exemption and, at the same time, to arbitrate the rates, terms and conditions for interconnection. Because of this dual track procedure, RTC was not able to fully consider all the potential implications of the proposed interconnection agreement. It is RTC's view that, in accordance with the procedure established by Section 251(f)(1)(B), the Commission must first terminate the rural exemption, and, if it chooses to do so, it may then direct the parties to negotiate upon a schedule that is "consistent in time and manner with the [FCC] regulations." The *RAO*'s proposed Findings of Fact 8 through 13 determine the content of the agreement and provide the Public Staff with a role in resolving open issues.

DISCUSSION

RTC has objected that the Commission has not complied with the implementation scheduling requirement of Section 251(f)(1)(B), which provides, in pertinent part, that "[u]pon 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." RTC makes particular reference in its September 29, 2008, Objections and in its November 14, 2008, Reply Comments, to Findings of Fact 8 through 13, as those in which the Commission mandated further negotiations.

The Commission would first note that Section 251(f)(1)(B) simply requires the state commission to "establish an implementation schedule for compliance with the request that is *consistent in time and manner with Commission regulations*." (Emphasis added). However, nowhere in its filings does RTC actually cite to any pertinent FCC regulation that sets out a "time and manner" for implementation in the way that RTC asserts is required. Instead, RTC laments that the dual track procedure by which this arbitration has been conducted—i.e., consideration of lifting the exemption and consideration of the substantive matters at issue between the parties in the same proceeding—left it without time to consider all the implications of the proposed interconnection agreement. RTC implies that this procedural choice by the Commission was illegitimate. RTC's apparent view is that the exemption question must, temporally and procedurally, be examined and ruled upon first, and *then* the parties are to negotiate. It is unclear what timelines that RTC has in mind, but the thrust of RTC's arguments would seem to imply use of the timelines *and procedures* set forth in Section 252(a) and (b) of the Act. The Commission does not believe that Section 251(f)(1)(B)'s language determines whether it is appropriate to consolidate proceeding or requires adherence to Section 252(a) and (b) timelines after the arbitration has already been conducted.

The Commission notes that, in fact, the parties have negotiated, and will negotiate on certain issues pursuant to the *RAO*. Based upon the record before us, it is clear that the parties have already engaged in substantive negotiations prior to the hearing pursuant to Section 252. The only question this objection raises is whether the Commission has complied with the implementation schedule requirement of Section 251(f)(1)(B). The Commission has prescribed the implementation schedule relative to the lifting of the exemption at various places within the body of the *RAO* and will provide a further modification of the implementation schedule in this order ruling on objections. The Commission has thus complied with that requirement, and RTC has made no showing, by citation to relevant FCC rules or otherwise, that the Commission has not.

CONCLUSIONS

The Commission has provided by this Order an implementation schedule compliant with the law.

IT IS, THEREFORE, ORDERED as follows:

1. That, in accordance with the Commission's January 24, 2001 and November 3, 2000 Orders issued in Docket No. P-100, Sub 133, Sprint and Randolph shall jointly file the required Composite Agreement by no later than Friday, January 30, 2009.

2. That the Commission will entertain no further comments, objections, or unresolved issues with respect to issues previously addressed in this arbitration proceeding.

3. That the Commission denies all objections to Findings of Fact Nos. 5, 6, and 7, thereby upholding and affirming its original decisions regarding these issues.

ISSUED BY ORDER OF THE COMMISSION.

This the 31st day of December, 2008.

NORTH CAROLINA UTILITIES COMMISSION

Gail L. Mount

Gail L. Mount, Deputy Clerk

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