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BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION
SUITE 350
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ST. PAUL, MINNESOTA 55101-2147

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David C. Boyd	Commissioner
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In the Matter of the Complaint by the Minnesota Department of Commerce Against the Charter Affiliates Regarding Transfer of Customers

DOCKET NO. P-6716, 5615/C-14-383

COMMENTS OF THE MINNESOTA DEPARTMENT OF COMMERCE

INTRODUCTION

One of the main responsibilities of the Commission is to preserve universal service. The Minnesota Legislature has established two state programs to help preserve universal service that are separately funded by surcharges paid by communications end-users and collected and remitted by local service providers to the Minnesota Department of Public Safety. These programs are the Telecommunications Access Minnesota (TAM) established in Minn. Stat. § 237.52, and the Telephone Assistance Plan (TAP) established in Minn. Stat. § 327.70.

TAM provides telecommunications relay service (TRS) and equipment assistance to qualified communication-impaired persons.[1] The TAP provides assistance to eligible low income customers through a discount on their telephone bills.[2]

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[1] Minn. Stat. § 237.52, subd. 3. requires, in pertinent part, that, "*Every* provider of services capable of originating a TRS call...in this state shall...collect the charges...and transfer amounts collected to the commissioner of public safety...." Charter provides TRS calls, as it has been required by federal law to provide since at least October 2011, and its Answer raises no fact issue to the contrary; 47 U.S.C. § 616 requires: Within one year after October 8, 2010, each
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TAM fees support the Minnesota Relay, which is Minnesota's part of the federally-mandated Telecommunications Relay Services (TRS) program that allows an individual who is deaf, hard of hearing, deaf-blind, or speech disabled to communicate over the telephone in a manner that is functionally equivalent to the ability of an individual who does not have hearing loss or a speech disability. A specially-trained communications assistant (CA) facilitates the telephone conversation between a person with a hearing or speech disability and other individuals. Calls can be made to anywhere in the world, 24 hours a day, 365 days a year. The TAM program is funded through a monthly surcharge on each wired and wireless telephone access line in the state. Minnesota Relay services are provided to the state under contract with Sprint. The Minnesota Relay call center is located in Moorhead, MN. Also supported by the monthly TAM fee is the Telephone Equipment Distribution (TED) Program, which provides free assistive telecommunications equipment to eligible Minnesotans who are having difficulties using the telephone due to a hearing, speech, vision, or physical disability. Available equipment includes captioned telephones, amplified telephones, TTYs, light flashing ring signaling devices,

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interconnected VoIP service provider...*shall participate in* and contribute to the [federal] Telecommunications Relay Services Fund established in section 64.604(c)(5)(iii) of title 47, Code of Federal Regulations, as in effect on October 8, 2010, in a manner prescribed by the Commission by regulation to provide for obligations of such providers that are consistent with and comparable to the obligations of other contributors to such Fund.

[2] Local service providers like Charter are required to participate: Minn. Stat. § 237.70 subd. 2 requires that "[t]he telephone assistance plan *must* be statewide and apply to local service providers that provide local exchange service in Minnesota"; further, Minn. Stat. § 237.70 subd. 6, which concerns funding, states that the Commission "*shall* provide for the funding of the telephone assistance plan by assessing a uniform recurring monthly surcharge, not to exceed ten cents per access line, *applicable to all classes and grades of access lines provided by each local service provider in* the state." Charter Fiberlink has long been an authorized telecommunications provider and Charter's Answer raises no material facts suggesting that Charter does not provide local service within the meaning of Minn. Stat. § 237.035 (e); its local service is therefore subject to Chapter 237.

loud ringers, hands-free speaker phones, and more. TAM is part of the effort to maintain universal service. A failure to collect and remit the TAM fee directly affects the program's ability to assist consumers (and often, low income) with disabilities.

The TAP provides for low income consumers to have a bill credit of $3.50 to make service more affordable, so that they have the ability to make telephone calls, including dialing 911 in the event of an emergency. To qualify for TAP, total household income may not exceed 135% of the Federal Poverty Guidelines or the consumer must participate in at least one of:

Medicaid (Medical Assistance)
Food support (Food Stamps)
Supplemental Security Income (SSI)
Federal Public Housing Assistance
Low-Income Home Energy Assistance Program (LIHEAP)
Temporary Assistance to Needy Families (TANF)
Minnesota Family Investment Program (MFIP)
National School Lunch Program's free lunch program (NSLP)
Bureau of Indian Affairs Program (Tribal TANF, Head Start Subsidy)

Not providing the TAP credit violates Minn. Stat. § 237.70, results in unreasonable discrimination against low income consumers, and diminishes universal service.[3]

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[3] Minn. Stat. § 237.011 enumerates some of the goals that are the Commission's core responsibilities to "be considered as the commission executes its regulatory duties with respect to telecommunication services":

(1) supporting universal service;
(2) maintaining just and reasonable rates;
(3) encouraging economically efficient deployment of infrastructure for higher speed telecommunication services and greater capacity for voice, video, and data transmission;
(4) encouraging fair and reasonable competition for local exchange telephone service in a competitively neutral regulatory manner;
(5) maintaining or improving quality of service;
(6) promoting customer choice;
(7) ensuring consumer protections are maintained in the transition to a competitive market for local telecommunications service; and
(8) encouraging voluntary resolution of issues between and among competing providers and discouraging litigation.

This docket concerns in large part, Charter's secret and ill-conceived actions in March of 2013 in which it attempted to transfer its residential customer base, and some portion of its business customer base, to what it apparently hoped might one day be found to be an "unregulated" subsidiary.[4] In doing so, Charter ceased paying for these TAM and TAP programs that serve disabled and low-income Minnesotans, and indeed ceased paying altogether for the Commission's regulatory oversight.[5] It shifted these costs to its competitors and their subscribers; in its advertising and other customer communications, Charter boasted of its non-payment of fees and taxes, unlike its wireline competitors. These communications to customers and prospective customers did not disclose that the "tax-and-fee-reductions" also reduced support for services of subscribers' disabled and low income neighbors.

The Minnesota Department of Commerce (the Department or DOC) respectfully submits to the Minnesota Public Utilities Commission (Commission) these Comments, pursuant to the Order of the Commission issued on November 18, 2014 allowing comment following the filing of an Answer on December 18, 2014 by Charter Fiberlink CCO, LLC, Charter Fiberlink CC VIII, LLC, Charter Advanced Services (MN), LLC and Charter Advanced Services VIII (MN), LLC (collectively, the "Charter Entities" or "Charter"), to the Complaint of the Department dated September 26, 2014 (Complaint).

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[4] At the time it "took the law into its own hands," Charter was a certified carrier subject to Chapter 237. It offers no facts or legal theory to support its apparent claim that Minn. Stat. Chapter 237 allows regulated carriers, not the Commission, to determine whether Charter's act of transferring customers became "deregulated" before the transfer occurred. The Department believes that it would set a poor precedent for the Commission to decline to assert its exclusive intrastate jurisdiction over a subject matter simply because that subject in the future might be withdrawn by FCC action from Commission's exclusive jurisdiction.

[5] Minn. Stat. § 237.295, subd. 2 requires revenues to be reported and the Commission's regulatory assessments to be paid.

In these Comments, the Department addresses some of the arguments of Charter in its Answer filed December 18, 2014 (Answer). The Department does not address every point made by Charter, which should not be interpreted that the DOC agrees with Charter. To the contrary, the Department has found nothing in the Answer by Charter to support a modification to any of the concerns alleged by the Department in its Complaint. Charter's Answer fails to raise fact issues as to the violations alleged in the Department's Complaint. [6]

COMMENTS

I. THE COMMISSION IS NOT PREEMPTED FROM REGULATING CHARTER IN A MANNER COMPARABLE TO OTHER MINNESOTA TELECOMMUNICATIONS CARRIERS.

Charter contends in its Answer that, "[e]very court to decide the question has held that interconnected VoIP is an information service, a conclusion following directly from the plain text of the Communications Act."[7] As the Commission correctly observed in its November 18, 2014 Order[8] however, both the Federal Communications Commission (FCC) and the highest jurisdictional court to consider the issue, the United States Court of Appeals for the Eighth Circuit, have concluded that the FCC has ***not*** preempted state regulation of fixed VoIP services.[9]

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[6] Charter's Answer asserts no material facts with which it could meet its burden, under Minn. Stat. § 237.74 subd 4(d), of proving it did not violate the laws alleged in the Complaint.

[7] Docket No. P-6716, 5615/C-14-383, Charter's Answer to Complaint (Answer) at 9.

[8] *ITMO the Complaint by the Minnesota Department of Commerce Against the Charter Affiliates Regarding Transfer of Customers*, Docket No. P-6716, 5615/C-14-383, ORDER REQUIRING ANSWER TO COMPLAINT AND SETTING TIME LINES, November 18, 2014 (Order).

[9] Order at 4 *citing Minnesota PUC v. FCC*, 483 F.3d 570 (8th Cir. 2007). *See also*, *Investigation into regulation of Voice over Internet Protocol (VoIP) Services*, 2013 WL 1700941 (Vt.P.S.B.) Docket No. 7316, Vermont Public Service Board, "Procedural Order on Remand," entered: April 12, 2013 (Attachment 8 hereto); *and In the Matter of the Petition of SPRINT SPECTRUM L.P. for Arbitration Pursuant to Section 252(b) of the Telecommunications Act of 1996 to Establish Interconnection Agreements with MICHIGAN BELL TELEPHONE COMPANY, d/b/a AT&T MICHIGAN*, Case No. U-17349, "Order," Issued December 6, 2013 at pages 5-7 (FCC did not request that state commissions refrain from deciding the issue [of applicability of 47 U.S.C. § 251 to VoIP traffic.])(Attachment 9 hereto).

Charter further contends that, "[a]lthough the FCC has not yet formally spoken as to the statutory classification of interconnected VoIP, the federal Communications Act requires a finding that [Charter's] interconnected VoIP service … is an 'information service' and that common carrier regulation thereof by state governments … is preempted." [10] Charter does not disclose, however, that the FCC has on its meeting agenda for February 26, 2015, a Notice of Proposed Rulemaking (NPRM) on this precise issue – of whether broadband internet access facilities and services such as Charter's should be classified as "telecommunications services" and therefore subject to Title II and State regulation[11] or as "information services" that may not be subject to certain Federal and State regulations. Charter's Answer fails to provide any compelling reason why the Commission should find preemption, just as the topic is being considered by the FCC. The Charter Answer's omission of any discussion of the pending FCC NPRM is particularly disingenuous where the FCC has been signaling the probability that it will rely on its Title II authority to classify broadband internet access services, such as Charter's, as telecommunications services.[12] Numerous parties—telecommunications providers, trade groups

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[10] Answer at 4.

[11] *See In the Matter of Protecting and Promoting the Open Internet*, GN Docket No. 14-28, (FCC, Rel. May 15, 2014), Notice of Proposed Rulemaking, FCC 14-61, at ¶ 148 published at: *http://hraunfoss.fcc.gov/edocs_public/attachmatch/FCC-14-61A1.docx* ("We seek comment on whether the Commission should rely on its authority **under Title II** of the Communications Act, including … whether we should revisit the Commission's classification of broadband Internet access service **as an information service**….")(emphasis added).

[12] Such an approach is consistent with the position of NARUC; NARUC's July 18, 2014 "Resolution to Ensure Jurisdictional Bases for Open Internet Rules," which indicates on its face that the FCC should rely on Section 706, supplemented by authority granted in Titles I, II and III or some combination of one or more of those authorities. *http://www.naruc.org/Filings/14%200718%20NARUC%20Open%20Internet%20Initial%20Comments.pdf*

and customers have recently strongly urged Title II classification of broadband internet access, not the least of which is Vonage Holdings Corp.[13]

If the Commission is inclined, however, to issue a decision at this point determining that Charter's VoIP phone service is subject to the state laws enumerated in the Complaint, the decision would not be preempted. This is because, in the absence of a contrary decision by the FCC – that is, in the absence of an FCC decision imposing obligations on Charter that are inconsistent with Minnesota's telecommunications laws -- the Commission may enforce Minnesota's laws in a competitively neutral fashion, and require the same conduct from Charter as it requires of other Minnesota telecommunications providers. It is accurate that, under the Telecommunications Act (Act), 47 U.S.C.§ 253, State statutes and rules may not prohibit a company (such as Charter's "Advanced Services" business) from providing intrastate telecommunications service. The Act, however, also does not impinge on "the ability of a State to impose, *on a competitively neutral basis* … requirements necessary to preserve and advance universal service,[14] protect the public safety and welfare, ensure the continued quality of

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[13] Attachment 1 hereto (FCC GN Docket No. 10-127 and GN Docket No. 14-28, Notice of Ex Parte Communication of Vonage Holdings Corp. meeting with Office of Commissioner Michael O'Rielly.)

[14] NARUC has argued that a failure to classify interconnected VoIP service as a Title II "telecommunications service" ***would*** jeopardize universal service: in *Michigan Bell v Quackenbush and Michigan PSC*, attached hereto as Attachment 2, at pages 2-3, NARUC argued, "There is nothing in the statute nor the legislative history that suggests that Congress intended a change in transmission technology to result in the evisceration of its legislative requirements to promote competition in local telecommunications markets. Moreover, if this Court finds merit in [the] argument that interconnected VoIP service is not a telecommunications service, it could also significantly impact universal service policy. To qualify for federal universal service subsidies, 47 U.S.C. §214(e) requires that a carriers provide a least one telecommunication service. As discussed, infra, based on a 2011 FCC order (upheld on review), States are ***relying on carrier provision of VoIP as a telecommunications service*** to qualify carriers under §214(e)." (emphasis in original).

telecommunications services, and safeguard the rights of consumers."[15] The Minnesota Commission should not remove its oversight and protections of customers for these services where there has been no federal preemption. These important functions of the Commission -- universal service, public welfare, quality of service, and safeguarding consumers -- are implicated in this docket by Charter's misconduct.

II. CHARTER'S CLAIMS THAT THE COMMISSION LACKS AUTHORITY OVER CHARTER UNDER STATE LAW IS INACCURATE.[16]

1. Charter offers local service subject to Minn. Stat. § 237.035.

For many years, Charter has been a telecommunications carrier duly authorized by the Commission to provide service; Charter now, however, denies that its residential and "some business" service is a "telephone service" under Minnesota law because Charter employs "interconnected VoIP" in its network.[17] Charter's argument is not well-founded because

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[15] 47 U.S.C.§ 253 (a) and (b)(emphasis added); *See also*, *Global Naps, Inc. v. Massachusetts Dept. of Telecommunications and Energy,* 427 F.3d 34, 46 (1st Cir. 2005)("The model under the TCA is to divide authority among the FCC and the state commissions in an unusual regime of `cooperative federalism,' with the intended effect of leaving state commissions free, where warranted, to reflect the policy choices made by their states.") *and Mich. Bell Tel. Co. v. MCIMetro Access Transmission Servs., Inc.,* 323 F.3d 348, 352 (6th Cir.2003) (quoting Philip J. Weiser, *Federal Common Law, Cooperative Federalism, and the Enforcement of the Telecom Act,* 76 N.Y.U.L. Rev. 1692, 1724 (2001)). (While "under cooperative federalism, federal and state agencies should endeavor to harmonize their efforts with one another" and "state commissions are directed by provisions of the Act and FCC regulations in making decisions," the TCA "gives the state commissions latitude to exercise their expertise in telecommunications and needs of the local market.").

[16] Answer at 17-19. See also Answer at 2, where Charter states, "Since the FCC's Vonage Order, this Commission has been presented with three explicit opportunities to assert jurisdiction over fixed VoIP services, and it has abstained from doing so." While Charter is correct that the Commission has had the opportunity to address fixed VoIP services in other dockets, it is incorrect to state that the Commission has abstained from doing so. To abstain is "to refrain deliberately". The Commission has not been deliberate in not addressing fixed VoIP services. To be deliberate the Commission would have held a hearing to determine that it intends to take no action. The Department does agree, however, that there have been opportunities for the Commission to assert jurisdiction but it has not done so thus far.

[17] Answer at 17-18.

Minnesota statutes make no distinction among technologies used to make ordinary local phone calls. Charter's service is simply "local service" and therefore regulated telephone service[18] subject to certain requirements of Chapter 237.[19]

2. The failure of the Minnesota legislature to adopt a new law granting the Commission jurisdiction over interconnected VoIP does not demonstrate that no such jurisdiction exists.

Charter argues that the failure of the state legislature to adopt a new law giving to the PUC explicit jurisdiction over interconnected VoIP demonstrates that no such jurisdiction exists.[20] This is not correct; no new law has been necessary. Until Charter's present violations, no action to compel compliance has been necessary. Until the present matter, Charter was a duly certified carrier that apparently complied with the laws at issue in this docket. Only now has enforcement been required. Further, the Commission has all the authority it needs to obtain compliance with Minnesota statutes applicable to local service providers that are at issue in this docket.[21]

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[18] Minn. Stat. § 237.035.

[19] As noted in the Complaint, Charter represented in an interconnection agreement arbitration before the Commission, the 08-952 Docket, that it is a facilities-based local service provider that provisions service over its own switch and transmission facilities, an, as a result, has the right to request that the Commission compel ILECs to interconnect with it at a single physical POI in Qwest territory in each LATA in which Charter, as a CLEC, has local end user customers, and to provide any related services and elements at cost-based rates. Charter has shown no facts to suggest that its local service has changed in any manner affecting its status as a local service provider in the intervening years since 2008. As a regulated entity, it is difficult to imagine it could have unaware of its lawful duties as a regulated local service provider at the time it engaged in the activities at issue in this docket.

[20] Answer at 8-19.

[21] It is incorrect to infer that the 2008 change in the Sales tax statute caused sales taxes to be imposed that had not previously been imposed on IP-based telecommunications services. Prior to the 2008 amendment, the Minnesota Department of Revenue's policy on telecommunications stated that "VoIP is a telecommunications service… that is subject to the Minnesota state sales and use tax." Department of Revenue, Revenue Notice No. 05-03 published at *http://www.revenue.state.mn.us/law_policy/revenue_notices/RN_05-03.pdf*. Minn. Stat. § 297A.61 subd. 24. (2007) ("Telecommunications services" means the "*transmission, conveyance, or*

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3. There are strong public interest reasons to enforce Minnesota's laws uniformly.

Charter argues that there is no government interest in treating VoIP phone service like other telephone services, because there have been no significant consumer complaints or issues that warrant state regulation.[22] Although the Department does not hold itself out to be an agency at which subscribers should register formal complaints, the Department recorded seventeen complaints against Comcast and Charter since July of 2013. The Commission's Consumer Affairs Office (CAO) has a more formal complaint process. After receiving Charter's Answer, the Department asked CAO what complaints[23] were received in 2014 concerning Charter and Comcast and received the below information, which CAO summarized as follows:

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routing of voice, data, audio, video, or any other information or signals to a point, or between or among points, by or through any electronic, satellite, optical, microwave, or other medium or method now in existence or hereafter devised, ***regardless of the protocol used for such transmission, conveyance, or routing"***). Indeed, 2008 Minnesota Laws, ch. 154, art, 12. § 9 merely caused the precise definition of "Telecommunications services" in Minn. Stat. § 297A.61 subd. 24 to contain language that was identical to the Multi-state "Streamline Sales and Use Tax Agreement" (SSUTA) to which Minnesota is a signatory. The SSUTA states: "Telecommunications services include transmission, conveyance, or routing in which computer processing applications are used to act on the form, code, or protocol of the content for purposes of transmission, conveyance, or routing, without regard to whether the service is referred to as voice over Internet protocol services or is classified by the Federal Communications Commission as enhanced or value added." This definition, enacted in 2008 Minnesota Laws, ch. 154, art, 12. § 9, was not substantively different from Minnesota's prior definition of "telecommunications services." *See* the text of the SSUTA at page 110, published at *http://www.streamlinedsalestax.org/uploads/downloads/Archive/SSUTA/SSUTA%20as%20Amended%20Through%20October%208,%202014.pdf*

[22] Answer at 2-3.

[23] Telecommunications carriers subject to the Commission's jurisdiction may include the contact information for the CAO on consumer bills. Minn. Rules 7811.1000 and 7812.1000 requires local service providers to provide customers with a notice, at the time service is initiated and at least annually thereafter, with a plain language summary of their rights and obligations as customers. The notice must describe the complaint procedures available through the local service provider and the commission, and must indicate that the customer can contact the commission if dissatisfied with the local service provider's resolution of the customer's complaint. The notice must specify the current address and the local and toll-free telephone
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TRADE SECRET DATA ENDS] These two agencies' records do not evidence a lack of complaints. The records of the Better Business Bureau also show very substantial numbers of complaints involving Charter's services.[24] Charter was also asked by the Department to provide

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numbers of the commission's Consumer Affairs Office. Because Charter has asserted that it is not subject to the Commission's jurisdiction, the Department believes it is unlikely that Charter provides consumers with the CAO contact information. Charter has refused to cooperate with the Department by providing a sample of a bill, as was requested in DOC IR 2(a). (Attachment 3) If consumers have not been provided with the contact information for the CAO, there is additional burden and effort required for consumers to learn about the existence of the CAO to register a complaint. Further, Charter has failed to demonstrate any fact showing it complies with Minn. Rule 7812.1000.

[24] The BBB Website states, as to Charter Communications Inc. (Headquarters) Phone: (636) 207-5100. **Customer Complaints Summary:** 4999 complaints closed with BBB in last 3 years | 2008 closed in last 12 months.

Complaint Type	**Total Closed Complaints**
Advertising / Sales Issues	507
Billing / Collection Issues	17026
Delivery Issues	30
Guarantee / Warranty Issues	8
Problems with Product / Service	2765
Total Closed Complaints	5036

Additional Complaint Information: All complaints for Charter Communications are processed by BBB St. Louis. Due to the volume of activity, 25% of complaints are not published for public viewing. *http://www.bbb.org/stlouis/business-reviews/television-cable-catv-and-satellite/charter-communications-in-saint-louis-mo-110075917/complaints* (viewed January 20, 2014).

information[25] on complaints it has received since March 2013, either directly or referred from a government agency, but Charter chose not to cooperate and has refused to share this information.[26]

Charter argues that it should not be regulated because it faces adequate competition from traditional telephone service, mobile phones, nomadic VoIP, and other Internet-based services, and it should not be forced "to comply with state government regulations merely for the sake of doing so."[27]

The problems that may occur when a fixed interconnected VoIP provider is subject to no requirements are set forth in the Complaint. Charter provides telephone service to a significant number of Minnesota consumers in Minnesota and the manner in which its conducts itself in the state will be even more significant if the Commission were to approve the Comcast/Time Warner merger, with the subsequent spin-off of Comcast's Minnesota properties to an entity that will be significantly influenced by Charter.[28] There is a significant government interest in protecting Charter's customers and in creating a competitive playing field. It is correct that Charter is being forced in this proceeding to comply with certain state requirements, but only to treat all telecommunications providers fairly. There is no reason, for example, that Charter should not support the Minnesota Relay, the TAP program, and provide low income assistance programs to qualifying customers like other telecommunications providers. As Charter demonstrated when it

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[25] Minn. Stat. § 237.11 requires local service providers to make their books and records available to regulators.

[26] Charter response to Department IR No. 3., Attachment 3.

[27] Answer at 19.

[28] Docket No. P6927/PA-14-513, Comments of the Department of Commerce, July 17, 2014, at page 7; Docket No. P6927/PA-14-513, Reply Comments of the Department of Commerce, September 26, 2014, at page 3; Dockets Nos. P6927/NA-14-507 and P6927/PA-14-513, Supplemental Reply Comments of the Department of Commerce, November 3, 2014, at page 6.

stopped collecting/remitting TAP and TAM fees, unless there is a regulatory requirement, it will unilaterally choose to do what is in its own best interest. In Charter's case, the Company's disregard of public interests even goes farther, in that Charter stopped complying with regulatory requirements and did not tell regulators, even though the regulatory requirements existed. Charter's lack of cooperation in responding to simple regulatory concerns, such as what Charter calls the TAP credit on its customer bills, requested by the Department in information request (IR) 2a, is the type of disregard for regulatory concerns that can be expected from Charter unless it is subject to the Commission's jurisdiction.

As to Charter's argument that it is not a "monopolist"[29] and Charter's conclusion that "There is no basis in the statutory history to impose regulations on Charter", does not reflect Minnesota's regulatory regime. Charter sought and received authority from the Commission to operate in Minnesota as a regulated entity, as a competitive local exchange carrier (CLEC) providing telephone service to residential customers, prior to March 1, 2013. The regulations imposed on CLECs create an equitable marketplace for all providers of wireline telecommunications services. A company as large as Charter has the potential to cause irreparable harm to other CLECs as well as to small and large incumbent telephone companies if it (unlike regulated companies) can choose to disregard the public interest and discriminate amongst customers or traffic, not serve low income customers, and not support state programs, like TAM and TAP. Wireline local service providers are subject to laws preventing anti-competitive conduct and Charter has shown no reason why it should be treated differently than all other wireline local service providers.

[29] Answer at 19.

As to mobile competition, it is simply false to assert that cell service is a substitute for wireline. Over eighty percent of cell users also have wired service to their homes to access internet, phone and/or other bundled services,[30] which strongly suggests that wireline and wireless services, for most users, complement, rather than substitute for, each other. Again, even if these services exert some competitive pressures on one another, that competitive pressure does not address other important public interests protected by Minnesota's telecommunications laws-- such as those that afford various protections for consumers, advance universal service, promote public welfare and safety, and the like -- which do not result from mild competitive pressure. While technological advances in telecommunications are encouraged, so long as Charter chooses to sell what is, essentially, a simple voice transportation service functionally indistinguishable from other ordinary wireline phone service[31] -- that uses Minnesota's public telecommunications network, Charter should abide by the same rules of the road as other carriers and subscribers who provide and pay for that network. The assertions in Charter's Answer fail to demonstrate any

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[30] Survey by KRC Research, March, 2008 reported at: *http://www.ecoustics.com/products/landlines-stay-verizon* and *http://www.prnewswire.com/news-releases/new-survey-shows-83-percent-of-consumers-continue-to-rely-on-landline-voice-service-for-its-quality-safety-features-57170592.html*

[31] Charter appears to contend (Answer at 6-7) that its use of IP-based routing of calls made from an ordinary telephone, and dialed in the traditional fashion constitute an information service. Charter's calling appears no different than the calling deemed a telecommunications service in ATT In the Matter of Petition for Declaratory Ruling that AT&T's Phone-to-Phone IP Telephony Services are Exempt from Access Charges, 19 FCC Rcd 7457, FCC 04-97, WC Docket No. 02-361, Order Adopted April 14, 2004; Released: April 21, 2004 at 1 ("The service at issue in AT&T's petition consists of an interexchange call that is initiated in the same manner as traditional interexchange calls – by an end user who dials 1 + the called number from a regular telephone. When the call reaches AT&T's network, AT&T converts it from its existing format into an IP format and transports it over AT&T's Internet backbone. AT&T then converts the call back from the IP format and delivers it to the called party through local exchange carrier (LEC) local business lines. We clarify that, under the current rules, the service that AT&T describes is a telecommunications service…). Charter appears to claim that customer online access to their account information and use of a voicemail system makes its service an information service rather than telecommunications. Account access and voice mail are not regulated services, however, and Charter offers no authority to suggest that these attributes constitute attributes used to distinguish information services from telecommunications services.

policy interest in Charter being exempt from Minnesota's telecommunications laws at issue in this docket.

III. MANY REPRESENTATIONS IN CHARTER'S ANSWER APPEAR INACCURATE OR MISLEADING.

1. Charter's Answer repeatedly, falsely, asserts to the Commission that it offers the TAP credit to qualifying customers.

The Department has been unable to substantiate the Charter Answer's repeated assertions[32] that Charter offers the TAP credit to qualifying customers. The Department's efforts to substantiate these statements in Charter's unverified Answer include the following: First, a Department representative, the Telecommunications Division Manager, Mr. Greg Doyle, resides in a service area served by Charter, and was a customer of Charter on March 1, 2013, when Charter claims to have transferred its customers to an affiliate. Mr. Doyle no longer subscribes to Charter's services. In October, 2014, Mr. Doyle contacted Charter at the telephone number on its marketing materials (1-844-273-2386) and asked, as a potential new customer, if there are any plans available in Minnesota to assist low income customers. The Charter customer service representative stated, "no."

Second, on December 22, 2014, Mr. Doyle used a second venue to determine whether Charter offers a low income assistance program to Minnesota customers, by contacting Charter via its website and engaging in an online chat with a Charter customer service representative.

[32] *See, e.g.,* Answer at 25 ("Charter is continuing to offer credits in accordance with the amounts called for by the TAP assistance program to new qualifying subscribers and past qualifying subscribers alike."); Answer at 20 ("Charter Advanced Services continues to provide TAP credits to both new and previously-qualified Charter voice subscribers. Despite this, over the past 19 months, Charter has received no reimbursement from the TAP fund for such discounts."); Answer at 26 ("Charter is continuing to offer credits in accordance with the amounts called for by the TAP assistance program to new qualifying subscribers and past qualifying subscribers alike through the Charter Advanced entities…"); and Answer at 4 ("Charter has … continu[ed] to offer TAP credits to qualifying customers.")

The Charter customer service representative there also stated that there is no low income assistance program in Minnesota. A screenshot of the Department's inquiry and the Charter representative's response is attached hereto as Attachment 4.

Third, on December 23, 2014, the Department sent information requests (IRs) to Charter asking Charter to substantiate the statements in its Answer as follows:

Information Request No. 2:

> In Charter's Answer to Complaint at page 26 it states: "Charter is continuing to offer credits in accordance with the amounts called for by the TAP assistance program to new qualifying subscribers and past qualifying subscribers alike through the Charter Advanced entities…"
> For the purpose of the questions below, the Minnesota credit provided by Charter will be referred to as "TAP".
>
> a) What does Charter call the TAP credit on the customer's bill? Please provide a sample bill that shows the TAP credit.
>
> b) Please provide the total number of Charter customers in Minnesota that have received the TAP credit in each month beginning with March, 2013, to present. If data is unavailable on a monthly basis since March, 2013, please provide whatever data is available.
>
> c) For each month beginning with March, 2013 to present, please provide the number of customers that received their first TAP credit from Charter in that month.
>
> d) Since a customer is unable to obtain the TAP credit by contacting Charter at the telephone number on its marketing materials (1-844-273-2386) or by its website (gocharter.com), please explain what process must be used by a qualifying customer to obtain the TAP credit from Charter?
>
> e) Please provide any scripts or other documents used to train customer service representatives about the TAP program.
>
> f) Please provide a copy of the application that Charter provides when a customer or potential customer inquiries about the TAP program and indicates that they wish to apply for the TAP credit.

Charter[33] refused to provide information to substantiate the statements in its Answer, on grounds that: the Commission and Department lack jurisdiction over the interconnected VoIP services, and because "Charter Fiberlink" does not provide retail interconnected VoIP services, and therefore "is not in possession of information" regarding TAP. Attachment 3 includes Charter's Response to IR No. 2.

It is not credible that Charter's Answer contains statements claiming the provision of TAP when Charter's IR Answers simultaneously claim that Charter "is not in possession of information" regarding the TAP service Charter purportedly offers to its customers. Charter's Answer appears to contain assertions thrown cavalierly before the Commission without regard to their truth or falsity.

Because Charter's Answer claims, however, that Charter continues to provide TAP credits to both new and previously-qualified Charter voice subscribers…." (despite the Department's findings to the contrary) Charter should have no objection to *actually* providing the TAP credit to present and future qualifying customers. Charter customer service personnel should be educated and knowledgeable about the company's service offerings and the low income assistance program, and customers and prospective customers should be able to find information on the TAP program on Charter's website.

2. Charter's Characterization of its Prior Commitment to Comply With TAP Obligations Is Disingenuous, and Demonstrates Charter's Lack of Trustworthiness.[34]

Charter's Answer takes the position that its prior verbal representations to regulators in 2008, regarding its intent to comply with its TAP obligations, should not be relied on to "settle"

[33] The respondents answering the IRs were Charter Fiberlink CCO, LLC and Charter Fiberlink CC VIII, LLC ("Charter Fiberlink"), Charter Advanced Services (MN), LLC and Charter Advanced Services VIII (MN), LLC ("Charter Advanced Services") (collectively "Charter").

[34] Answer at 20-26.

a complaint about its failure to offer TAP to qualifying subscribers. Charter's disparagement of its own prior commitment heightens the concern that the Commission investigate the extent of Charter's non-compliance and take appropriate formal action. Because, by its own admission, Charter's voluntary representations and prior promise to not stop providing TAP cannot be relied upon, a decision by the Commission will be needed to obtain compliance and a resumption of participation in the TAM and TAP programs. Again, should the Comcast merger/Charter spin-off be approved, Charter and its affiliates will become one of the two largest telecommunications provider in the State, and the need for immediate formal action would be even more urgent.

3. Charter claims that it provided subscribers with written notification of their transfer and obtained consent to the transfer; however, the manner in which notice was given and consent was obtained was not reasonable.

Charter's Answer states: "Charter provided its subscribers with written notification at least a month before the transfer, notifying them that their services would be provided by Charter Advanced Services in the future, that the terms of service would change as a result, and offering them the opportunity to accept the revised terms of service by continuing their subscriptions (as well as providing them with a contact number to call with any questions about the transfer)."[35] This characterization by Charter, of the notice to, and consent by subscribers is misleading.

First, effective notice was not provided to all Charter subscribers. For customers receiving bills electronically, the purported "written notice" consisted of the customers' regular monthly email billing notice; the email included a hyperlink to the customer's monthly bill. The

[35] Page 7. Charter's Response to Information Request No. 1.2 states in relevant part, "Charter subscribers who receive their monthly bills electronically in lieu of U.S. mail received via electronic means *(e.g., PDF file via email link)* the same transfer notification with their monthly bill as customers who received the transfer notice with their bill via U.S. mail."(emphasis added.) In Charter's Answer to DOC IR No. 1.4, Charter confirms that it did not make state or federal regulators aware of the transfer of subscribers between Charter affiliates. Charter's Response to Information Request No. 1 is Attachment 5 hereto.

email made *no mention* of any transfer. Mr. Doyle was a Charter customer at the time of the transfer and was unaware of the transfer. Mr. Doyle, like many Charter customers, received his monthly billings electronically, via an email stating the amount due. The email message he received provided *no information* concerning any customer transfer. If a customer's bill is unchanged from month to month, there is no reason for a customer to go to their online account to view the bill. Only customers that want to dive deeper into their bill (for reasons unrelated to any transfer) would choose to go to their online account, where the customer may have happened upon a notice. Because of these practices, the effectiveness of any notice by Charter was very weak, at best.

Further, Charter extrapolated its customers' "agreement" to the transfer from mere silence. A copy of Charter's claimed notice, entitled "Phone Customer Notice," is attached to Charter's Response to IR No. 1; that notice misleadingly states, in enlarged bold type **"your underlying service…for your Charter Phone will remain unchanged"** and customers who continued service for 30 days thereafter were deemed by Charter to have accepted terms of service with the new affiliated Charter entity. This is a good example of the type of tactics a company may employ if it has no regulatory oversight: the provision of an ineffective and misleading communication and then treating customers as though they made a choice if they don't disagree within 30 days. In contrast, a regulated telecommunications carrier--which Charter Fiberlink Companies admittedly are-- can only change its terms of service "upon notice to its customers" and must "give notice to its customers *by…reasonable means."* Minn. Stat. § 237.74 subd.6 (a)(2) and (b) (emphasis added).

It is also unclear what Charter means when it says in its Answer that it notified customers "that the terms of service would change as a result".[36] It is doubtful that customers can appreciate the significance of this change when customers are essentially unaware of whatever new conditions Charter is unilaterally attempting to impose.[37]

4. Charter's conduct is anti-competitive, where it advertises that it has "no added fees like the phone company charges you" and fails to collect and remit TAP and TAM fees.

The Department Complaint[38] alleges that Charter creates a competitive advantage for itself by evading the collection and remittance of the TAP and TAM fees while advertising, "No added fees like the phone company charges you." Charter's Answer claims that it enjoys no competitive advantage, however, because it provides TAP credits to qualifying subscribers.[39] As discussed above, Charter has presented nothing credible to demonstrate that it offers TAP to qualifying subscribers, and its assertions to the contrary appear to be false statements. By not collecting and remitting TAM and TAP fees, Charter's customers are not sharing in the funding of these programs. Further, due to Charter's self-determined exclusion from collecting and remitting TAP and TAM fees, revenue needed for those programs is spread across fewer access lines, resulting in the customers of the law-abiding companies paying not only their share, but also the portion of costs that should have been collected and remitted from Charter customers.

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[36] Answer at 7.
[37] A search of Charter's website finds a terms of service page that, (among other things, and in the midst of several pages of approximately 8-point type) states that Charter Phone Service is "AS IS," that Charter is not "liable for any failure or interruption of Service," and requires any complaint to be addressed only in commercial AAA arbitration or small claims court, rather than with the Commission or other federal or state telecommunications regulators. Attachment 6 (Charter General Terms and Conditions-Residential).
[38] Complaint, page 14, paragraph 12.
[39] Answer at 25.

Again, if the Commission permits the Comcast merger/Charter spin-off, this irreparable[40] anti-competitive injury will be further exacerbated.

Charter's Answer protests that state law does not prohibit its advertising, but, even if Charter's actions are anticompetitive, the Commission lacks jurisdiction over Charter.[41] As discussed above, Charter admits that the FCC has not classified its services as information services nor preempted States from regulating CLECs offering fixed VoIP services. Core responsibilities of the Commission as to local services such as those offered by Charter include prevention of anticompetitive actions, protection of consumers, and preservation of universal service. Charter's actions impinge on each of these areas.

Finally, Charter's Answer states that Charter's advertising is not anticompetitive, because potential subscribers may not view Charter's advertisement of "No added fees" as referring *specifically* to TAP or TAM fees, and, in any event, Charter's advertised pricing is all-inclusive, with no fees reflected in the advertised price, and Charter itemizes all applicable taxes, fees, and charges for customers on their monthly bills.[42] Charter's claim-- that ads boasting of "No added fees like the phone company charges you" does not give Charter a competitive advantage-- is belied by Charter's Response to DOC IR 1.3,[43] in which Charter indicates that it used the same pitch on existing customers. Charter's Response to DOC IR 1.3 states that the script used by Charter customer service representatives to subscribers concerned about transfer is that "The

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[40] *Qwest Corp. v. Minnesota Public Utilities Commission*, 427 F.3d 1061 (8th Cir. 2005) (holding that the Commission has neither express statutory authority nor implied authority to impose equitable relief such as restitution, to injured competitors.
[41] Answer at 25.
[42] Answer at 25.
[43] Attachment 5.

only difference you may notice is a *slight reduction in taxes and/or fees*…"[44] as a result of the transfer.

While customers and prospective customers may not know the omitted and reduced "taxes and/or fees" by name, Charter is clearly making a case to its customers and prospective customers that you pay less in taxes and/or fees with Charter as a result of the transfer and that this is better for you as the consumer than what "the phone company charges you." Charter's claim, that this should not be considered an attempt by Charter to create a competitive advantage for itself, is simply unbelievable.

5. Charter denies that it violated Minn. Stat.§ 237.295, subd. 2 by not filing an annual report reflecting intrastate revenues for service to customers.

The Department's Complaint stated that Charter had violated Minn. Stat. § 237.295, subd. 2 by not filing an annual report reflecting intrastate revenues for service to customers, and had thereby evaded the requirement to pay regulatory assessments to recover Commission and Department expenses associated with telecommunications regulatory activity, which shifted Charter's regulatory costs onto other carriers. Charter's Answer "denied" this statement and asserted: "Charter has in fact filed an annual report including its revenues from intrastate VoIP".[45]

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[44] *Id.* (Charter's Response to Information Request No. 1.3) states:

> "If any customers were to have called Charter's customer service line to inquire about the transfer, Charter had instructed its customer service representatives to provide the customer with the following explanation:
>
> > "This was an internal business decision to improve operational efficiencies and reduce operational costs. You shouldn't notice any change to your underlying service, your service rates, or Charter's customer service. ***The only difference you may notice is a slight reduction in taxes and/or fees starting with the March invoice."***
>
> (emphasis added).

[45] Answer at 27.

Charter's Answer is misleading and deceptive. All companies are required to file their annual report by May 1st, which is when Charter filed an annual report that failed to include any "intrastate VoIP revenues." When the Department filed its complaint on September 26, 2014, Charter's annual report did not include intrastate VoIP revenues. When the PUC issued its Order Requiring Answer To Complaint And Setting Time Lines, on November 18, 2014, Charter's annual report still failed to include intrastate VoIP revenues. It was not until December 4, 2014 that Charter submitted a revised 2013 annual report, amended to include intrastate VoIP revenues.[46]

For Charter to deny that Charter had excluded intrastate VoIP revenues from its annual report displays Charter's lack of candor toward this Commission. As indicated in the Complaint, Charter purposefully elected not to report substantial intrastate VoIP revenues for a 127-day-long period between May 1 and December 4, 2014. Charter not only improperly shifted onto its competitors the cost of maintaining public regulatory resources but, by engaging in the violations now before the Commission, has forced those public resources to be expended upon it.

6. Charter states: "In addition, Charter Fiberlink also continues to provide data WAN and private line services to business customers, and local origination and termination services to other carriers."[47]

It is unclear which customers and services remain with Charter Fiberlink and which customers and services were transferred to Charter Advanced Services. Customers know that they were and are continuing to be served by "Charter". To the extent the transfer was something more than a sham to attempt to avoid regulation, then it should be made clear to customers what entity is providing their service and the significance of their being served by that entity.

[46] See Attachment 7.
[47] Answer at 21.

7. Charter states that there is "no compelling public interest" reason to assert jurisdiction over Charter and its fixed VoIP services.[48]

This central argument of Charter is akin to an argument that speed limits are not needed on our highways because most drivers stay within or reasonably close to the speed limit; no regulatory protections are needed. Trust us. Charter wants the Commission to believe consumers do not need a venue for complaint resolution or other consumer protections, and Charter's conduct does not sufficiently injure competition or universal service goals to warrant law enforcement. In the Department's Complaint several reasons were provided why it is in the public interest for Charter's fixed interconnected voice services to be treated the same as other telecommunications carrier's voice services. As the Commission's Order Requiring Answer[49] observed:

> The Department's allegations of slamming and loading, for example, and the claims of customer transfers without notice or consent, raise serious consumer-protection issues. The claim that Charter is evading lawful TAP and TAM assessments—and advertising the resulting customer savings as a competitive advantage—implicates the Commission's responsibility to ensure fair and reasonable competition. And the claims that Charter is providing service without a certificate of authority, without meeting the basic service requirements in the rules applicable to Competitive Local Exchange Carriers (CLECs), and without filing annual reports and submitting regulatory assessments, implicate the Commission's ability to ensure high-quality service now and in the future.

Charter has not demonstrated in its Answer any basis for the Commission to not enforce Minnesota laws, rules and Commission orders in this docket.

IV. DEPARTMENT RECOMMENDATIONS.

The Department recommends that the Commission issue a decision that makes the following findings and orders:

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[48] Answer at 3.

[49] Docket No. P-6716, 5615/C-14-383, Order Requiring Answer to Complaint and Setting Time Lines, Issued: November 18, 2014.

1. **Injunctive Relief.**

Issue immediate injunctive relief[50] as to the following, to prevent further, irreparable injuries to subscribers and competitors:

A. TAM. Charter is required, but has failed, to comply with its obligations under the TAM program. Commencing with the first billing period after the date of issuance of a Commission Order, Charter shall collect, remit and report Telecommunications Access Minnesota ("TAM") charges, as described in Minn. Stat. § 237.52, with respect to telecommunications services provided by Charter, including its VoIP services.

B. TAP. Charter is required, but has failed, to comply with its obligations under the TAM program. Commencing with the first billing period after the date of issuance of a Commission Order, Charter shall collect, remit and report Telephone Assistance Plan ("TAP") charges, as described in Minn. Stat. § 237.70, with respect to telecommunications services provided by Charter, including its VoIP services.

C. Annual Report/Regulatory Fees. Charter is required, but has failed, to comply with its obligations of annual reporting/regulatory fee payments. Commencing on the date of issuance of a Commission Order, Charter shall submit reports described in Minn. Stat. § 237.295, subd. 2, to disclose the intrastate operating revenues of Charter as to telecommunications services, including its VoIP services.

D. Transaction Notice. Charter shall file advance notice with the Commission and the DOC describing any prospective sale or transfer of the interconnected Voice over Internet Protocol ("VoIP") customer base.

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[50] Minn. Stat. § 237.461 authorizes the Commission to take actions to compel performance and to issue injunctive relief.

E. Customer Complaints. Charter is required, and has failed, to comply with its obligation under Minn. Rule 7812.1000 to provide the Commission's CAO contact information to its customers. Charter shall make customers aware that complaints may be filed with the Commission and shall include the Commission's Consumer Affairs Office contact information in an annual notice.

F. Continuation of TAP Service. Charter shall continue provision of the TAP credit to existing qualifying customers currently receiving the TAP credit, and will offer the TAP credit to new qualifying customers of voice service. Charter will make Minnesota customers aware of the availability of the TAP credit on its website and customer service representatives will be trained to discuss the TAP credit with customers. An application will be available to download from the Charter website and will be mailed to customers upon request. To the extent that Charter is informed by the DOC, OAG-AUD or PUC staffs that Charter customer service representatives are not informed about the availability of the credit, Charter will take immediate steps to educate customer service representatives.

G. Payment to the State of Minnesota, Department of Public Safety. Charter has acted in an anticompetitive manner by failing to remit to the Department of Public Safety for deposit in the TAM and TAP funds the amount that it should have remitted if Charter had collected and remitted such funds from and after March 1, 2013. So that customers of other telecommunications providers do not bear the costs of Charter not collecting and remitting into the TAM and TAP funds, Charter shall prepare a compliance filing (subject to a comment period) identifying the amount of TAM and TAP funds that would have been remitted if Charter had collected and remitted such funds from March 1, 2013 to the date of issuance of a Commission Order or at such time that Charter begins to collect and remit the fees. If Charter

desires to collect these past owed fees from its customers, Charter should seek approval from the Commission and may do so with its compliance filing. Interested parties should have the opportunity to comment and the Commission should approve the surcharge prior to it being imposed on consumers. Upon approval of the compliance filing by the Commission, Charter shall remit to the Department of Public Safety for deposit in the TAM and TAP funds a payment for 100% of the amount that would have been remitted if Charter had collected and remitted such funds from March 1, 2013 to the date issuance of a Commission Order or when Charter begins to collect and remit the fees.

2. Determine violations.

The Commission should determine that Charter has engaged in activities that violated various Minnesota laws, rules, and Commission orders, including the following, to which no material facts are in dispute:

- The customers of the Charter Fiberlink Companies were transferred to the Charter Advanced Services Companies without reasonable notice to or prior consent of its customers, in violation of Minn. Stats. §§ 237.661 and 237.663.

- The Charter Fiberlink Companies violated Minn. Stat. § 237.74 subd. 6 (a)(2) and (b) by changing its terms of service without providing reasonable notice to its customers".

- Charter violated Minn. Stat. § 237.23 by transferring Charter Fiberlink Companies' assets to a non-certified company without either notice to the Commission or prior Commission approval.

- Charter violated Minn. Stats. §§ 237.16, subd. 1, 237.74, subd. 12 and Minn. Rules pt. 7812.0200, subp. 1, by transferring assets and services, and changing the operating company serving end-use customers without notice to the Commission or prior Commission approval. The transfer occurred on March 1, 2013, whereby the Charter Fiberlink Companies assigned the rights to serve their residential service customers to the Charter Advanced Services Companies, resulting in an uncertified company providing services to consumers that were formerly provided by a company authorized by the Commission.

- Charter violated Minn. Rules pt. 7812.0300 by providing service to customers through an uncertified company, that were formerly provided by a certified company, without fulfilling the filing requirements required of telecommunications service providers.

- Charter Fiberlink Companies violated Minn. Rules pt. 7812.0300 subp. 6 failing to file and obtain Commission approval of tariffs to reflect changes in terms and conditions of service or otherwise demonstrating that the change is consistent with the provider's certificate and applicable commission orders, rules, or laws.

- Charter violated Minn. Rules 7812.0600 by providing service to customers through an uncertified affiliate company, without meeting the basic service requirements for a local service provider to offer its customers within its service area.

- Charter violated Minn. Stat. § 237.52 subd. 3 by not collecting the TAM fee from customers that were transferred to an uncertified company, and not remitting the TAM fee as provided in Minn. Stat. Section 403.11, subd. 1(d).

- Charter violated Minn. Stat. § 237.70 pertaining to the collection and remittance of the TAP fee.

- Charter violated Minn. Stat. §237.70 by not providing the TAP assistance program to new qualifying subscribers.

- Charter advertises "No added fees like the phone company charges you" creating a competitive advantage for itself by evading the collection and remittance of the TAP and TAM fees.

- Charter discontinued offering the TAP to qualifying customers in violation of the Order of the Commission in the 08-1322 Docket dated January 28, 2009 adopting a complaint settlement in which had Charter agreed that prior Commission approval would be received before discontinuing the TAP.

- Charter violated Minn. Stat. §237.295, subd. 2 by not filing an annual report by May 1, 2014 reflecting 2013 intrastate revenues for service to customers.

3. <u>Contested Case Proceeding.</u>

The Commission should refer for a contested case proceeding: (1) whether the violations by Charter were knowing and intentional within the meaning of Minn. Stat. § 237.461; (2) the number of days of each knowing and intentional violation; and (3) recommendations on appropriate penalties or other relief.

If the Commission finds that any material issue of fact exists as to any of the alleged violations listed in the Complaint, in the Commission's November 18, 2014 Order Requiring Answer to Complaint, and/or in these Comments, then the Commission should also refer such issues for resolution in the contested case.

4. Commission Proceeding.

To the extent that the Commission believes that any regulations that apply to telecommunications providers should be re-examined in light of the evolution of technologies serving customers of local and long distance service, the Department would support the Commission opening a generic proceeding regarding the authority of the Commission and Department under state and/or federal law. Such a generic proceed should address and seek comment on, at minimum, the following, and could seek comment on other related issues for further investigation:

- The authority the Minnesota Commission and Department have under Minnesota law to forebear from enforcing any section of Minn. Stats. Chapter 237.
- Whether the Commission has been given direct authority from Congress under section 706 of the Telecommunications Act of 1996 (47 U.S.C. § 1302) to forebear from enforcing state statutes.
- Whether section 706 preempts inconsistent state laws that interfere with the exercise of the Commission's section 706 authority to enforce or forebear from enforcing state statutes.
- If section 706 grants the Commission authority to do things for the purpose of encouraging the deployment, on a reasonable and timely basis, of advanced telecommunications capability to all Americans, what actions, if any, are outside the scope of the authority granted to the Commission.
- Whether the scope of authority granted to the Commission by section 706 is limited to actions that are solely for the purpose of encouraging the deployment on a reasonable and timely basis of advanced telecommunications capability to all Americans, or extend to actions of the Commission that have both the purpose stated in section 706, as well as other purposes.

- Whether the Commission can, pursuant to section 706, forebear from enforcing authority it has been given by other federal laws (i.e. section 254 universal service-related tasks, section 251 interconnection tasks, etc.).

- If the Commission is authorized by section 706 to forbear from enforcing provisions of Chapter 237, as to which provisions should it exercise forbearance.

- If the Commission exercises forbearance with respect to any regulatory requirement, whether such forbearance should extend to all companies subject to the Commission's jurisdiction or should different market segments be regulated differently.

CONCLUSION

The Department recommends that the Commission issue findings and orders consistent with the above.

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January 14, 2015

Via ECFS

Marlene H. Dortch, Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Re: Notice of Ex Parte Communication, GN Docket No. 10-127; GN Docket No. 14-28

Dear Ms. Dortch:

On January 12, 2015, Brendan Kasper, Senior Regulatory Counsel of Vonage Holdings Corp. ("Vonage"), along with William B. Wilhelm and the undersigned of Morgan, Lewis & Bockius LLP, as outside counsel to Vonage, met with Amy Bender, Legal Advisor in the Office of Commissioner Michael O'Rielly.

Vonage discussed its positions advocated in its previous filings in the above referenced dockets. Specifically, Vonage emphasized its support for re-adoption of the Commission's 2010 Open Internet rules except grounded in the Commission's legal authority pursuant to Title II of the Communications Act. In addition, Vonage reiterated its view that there should be a presumption against paid prioritization, but that such a presumption could be overcome where a provider obtains the prior consent of the Commission by demonstrating that such conduct would be in the public interest. Vonage also stated that should the Commission undertake a reclassification under Title II that it should not forebear from Sections 201, 202 and 208. Vonage also supports the positions advanced by Google in its December 30, 2014 filing regarding the inappropriateness of forbearing from Section 224. Vonage also explained its view that there is sufficient factual and legal support for the Commission to apply similar network neutrality rules on both wireline and wireless providers.

Respectfully submitted,

/s/ Joshua M. Bobeck

Joshua M. Bobeck
Counsel to Vonage Holdings Corp.

cc: A. Bender
B. Kasper
W. Wilhelm

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN

MICHIGAN BELL TELEPHONE COMPANY, d/b/a AT&T MICHIGAN, *Plaintiff,* v. JOHN D. QUACKENBUSH, GREG R. WHITE, and SALLY A. TALBERG in Their Official Capacities as Commissioners of the Michigan Public Service Commission and Not as Individuals, and SPRINT SPECTRUM, L.P., *Defendants.*	Case No. 1:14-cv-00416 Hon. Paul L. Maloney Chief United States District Judge

MOTION OF THE
NATIONAL ASSOCIATION OF REGULATORY UTILITY COMMISSIONERS
TO FILE AMICUS CURIAE BRIEF IN SUPPORT OF THE
MICHIGAN PUBLIC SERVICE COMMISSION

The National Association of Regulatory Utility Commissioners, through it's General Counsel, James Bradford Ramsay, respectfully requests permission to file the attached "*Amicus Curiae* Brief of the National Association of Regulatory Utility Commissioners in Support of the Michigan Public Service Commission

In support of his motion, NARUC states:

1. Pursuant to L.R. 7.1, counsel for NARUC contacted, via e-mail, counsel for the Commissioners of the Michigan Public Service Commission, AT&T Michigan, and Sprint. The e-mail explained NARUC would be filing in support of the Commissioners and planned to file no later than August 19th.

2. The Commissioners consent to this motion.

3. Mr. Phil Schekenberg, representing Sprint Spectrum L.P., said that "*Sprint has no objection*" to NARUC filing in support of the Commissioners via an August 5, 2014 e-mail.

4. Mr. Jeffrey V. Stuckey, representing AT&T replied in an August 6, 2014 e-mail, saying "*AT&T Michigan anticipates opposing NARUC's motion to file an amicus brief.*" To see if there was a way to cure any objections, the undersigned sent Mr. Stuckey an e-mail thanking him for his rapid response – and asking if there was a specific reason why AT&T would oppose – particularly since AT&T did not oppose another amicus brief supporting the Commissioners set to be filed at about the same time.[1] Mr. Stuckey, in an August 15, 2014 email, indicated that AT&T Michigan's probable opposition was because, "[a]mong other things, we believe that the NARUC Brief will be largely duplicative of other briefs." *Even a cursory examination of the NARUC brief reveals that the first of the two arguments presented is not referenced in any other brief.* That argument provides statutory analysis and cites precedent not referenced in other briefs. It is based on specific NARUC concerns about the impact on universal service policy that would follow if this Court's accepts AT&T's facially flawed argument that IP-based voice (so-called Voice over Internet Protocol) services are NOT *telecommunications services*. If IP-based voice services can be used as the sole basis to qualify for federal universal service subsidies, as the FCC has mandated, the statute requires their classification as *telecommunications services*. If VoIP is, in fact, a *telecommunications service* – many of AT&T's arguments are moot. The

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[1] From: James Ramsay Sent: Thursday, August 07, 2014 9:21 AM To: Jeffery V. Stuckey Subject: RE: Request for statement of intent re: NARUC's motion to file an amicus in the proceeding captioned: Michigan Bell Telephone Co. v Sprint Spectrum L.P. et al.; U.S.D.C.-W.D.Mich.; Case No. 14-416 - *Mr. Stuckey, Thanks for the fast response Mr. Stuckey – appreciate it – but I am wondering if there is a specific reason why….I know you've already indicated you won't be opposing another group filing an amicus at about the same time. Thanks in advance for any insight you can provide. Have a great day. Brad*

second argument presented in NARUC's brief, provides a different perspective and new arguments albeit on classification issues and some cases raised in other briefs.

5. NARUC is a quasi-governmental non-profit corporation based in Washington, D.C. Our offices are located at 1101 Vermont Avenue, NW, Suite 200. NARUC's members include the government agencies in the fifty States, the District of Columbia, Puerto Rico, and the Virgin Islands charged with regulating the activities of telecommunications,[2] energy, and water utilities.

6. Congress and Courts[3] have consistently recognized NARUC as a proper entity to represent *the collective interests* of the State public utility commissions. In the 1996 Act, Congress references NARUC as "the national organization of the State commissions" responsible for economic and safety regulation of the intrastate operation of carriers and utilities.[4]

7. Whatever the outcome, the Court's rulings in this case will have a significant impact on the authority of State commissions throughout the country, under both State and federal law, to continue to protect both competition and competitors and assure universal phone service.

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[2] NARUC member commissions (i) have oversight over intrastate telecommunications services, including voice service supplied by incumbent and competing local exchange carriers (LECs); (ii) are obligated to ensure that incumbent services are provided universally at just and reasonable rates; (iii) encourage unfettered intrastate telecommunications competition as part of responsibilities to implement State law and 1996 Act provisions specifying LEC obligations to interconnect with competitors, e.g., 47 U.S.C. §252 (1996).

[3] See, *United States v. Southern Motor Carrier Rate Conference, Inc.*, 467 F. Supp. 471 (N.D. Ga. 1979), aff'd 672 F.2d 469 (5th Cir. 1982), aff'd en banc on reh'g, 702 F.2d 532 (5th Cir. 1983), rev'd on other grounds, 471 U.S. 48 (1985). See also *Indianapolis Power and Light Co. v. ICC*, 587 F.2d 1098 (7th Cir. 1982); *Washington Utilities and Transportation Commission v. FCC,* 513 F.2d 1142 (9th Cir. 1976).

[4] See, 47 U.S.C. § 410(c) (1971) (NARUC nominates members to FCC Joint Federal-State Boards which consider universal service, separations, and related concerns and provide formal recommendations that the FCC must act upon.); Cf. 47 U.S.C. § 254 (1996) Cf. *NARUC, et al. v. ICC,* 41 F.3d 721 (D.C. Cir 1994) (where the Court explains "…Carriers, to get the cards, applied to…(NARUC), an interstate umbrella organization that, as envisioned by Congress, played a role in drafting the regulations that the ICC issued to create the "bingo card" system.")

8. In this case, the MPSC correctly held that §251(c) of the Telecommunications Act of 1996[5] ("1996 Act" or "Act") requires incumbent local exchange carriers (ILECs) like Michigan Bell Telephone Company d/b/a AT&T Michigan (AT&T) to provide Internet Protocol (IP) interconnection to requesting telecommunications carriers. The alternative legal theory offered by AT&T – that §251(c) does not apply to AT&T's managed "Voice over Internet Protocol" services because they are not *telecommunications services*, eviscerates Congress's scheme to pry open local markets. Moreover, if this Court finds merit in AT&T's argument that interconnected VoIP service is not a *telecommunications service*, as referenced *supra*, it could also significantly impact universal service policy. To qualify for federal universal service subsidies, 47 U.S.C. §214(e) requires that a carriers provide a least one *telecommunication service*. As discussed, *infra*, based on a 2011 FCC order (upheld on review), States are relying on carrier provision of VoIP as a *telecommunications service* to qualify carriers under §214(e).

9. NARUC has been a integral player in a range of both federal court and Federal Communications Commission proceedings for over the last 10 years on related issues – including the so called *CAF Order* incorrectly relied upon by AT&T proponents."[6] As noted in specific references in the attached brief, we were a petitioner or amicus in many of the cases referenced in this proceeding.

10. Because of the broad impact of this Court's ruling, NARUC leadership unanimously voted for NARUC to seek permission to file in this proceeding. As a result, NARUC is seeking permission to file an Amicus Brief in support of the Michigan Commissioners to present information and legal argument in support of the propositions that [a] 47 U.S.C. §251 arbitration

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[5] *Communications Act of 1934*, as amended by the *Telecommunications Act of 1996*, 47 U.S.C. §151 *et seq*., Pub.L.No. 101-104, 110 Stat. 56 (1996) (West Supp. 1998).

[6] *Connect America Fund et al*., WC Docket No. 10-90 et al., Report and Order, FCC 11-161, 26 FCC Rcd 17663, 18045 at ¶1011 (2011) (rel. Nov. 18, 2011) (*CAF Order*

procedures continue to apply to all carrier-to-carrier interconnections - at least until the FCC forbears from its application under 47 U.S.C. §160 to AT&T's operations in Michigan and [b] based on the clear and unambiguous statutory text 47 U.S.C. §214 (e) and the definitions in 47 U.S.C. §153 of telecommunications, telecommunications services, common carrier, and information services, as well as the FCC's ruling in the *CAF Order* - it is impossible to construe the statute to classify IP based voice services (VoIP) is an information service.

WHEREFORE, NARUC respectfully requests this Court to grant its Motion to file the attached Amicus Brief.

Respectfully submitted,

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August 19, 2014

CERTIFICATE OF SERVICE

I hereby certify that on August 19, 2014, I electronically filed this motion and a separate Amicus Brief with the Clerk of the Court using the ECF System, which will provide electronic copies to counsel of record.

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August 19, 2014

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN

MICHIGAN BELL TELEPHONE COMPANY, d/b/a AT&T MICHIGAN, *Plaintiff,* v. JOHN D. QUACKENBUSH, GREG R. WHITE, and SALLY A. TALBERG in Their Official Capacities as Commissioners of the Michigan Public Service Commission and Not as Individuals, and SPRINT SPECTRUM, L.P., *Defendants.*	Case No. 1:14-cv-00416 Hon. Paul L. Maloney Chief United States District Judge

AMICUS CURIAE BRIEF OF THE NATIONAL ASSOCIATION OF REGULATORY UTILITY COMMISSIONERS IN SUPPORT OF THE MICHIGAN PUBLIC SERVICE COMMISSION

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August 19, 2014

TABLE OF CONTENTS

TABLE OF AUTHORITIES iii

I. AMICI CURAIE'S STATEMENT OF INTEREST 1

II. INTRODUCTION AND BACKGROUND 3

III. STANDARD OF REVIEW 8

IV. ARGUMENT 8

ILECs must Provide IP Interconnection under § 251(c)(2). (Count III) 8

A. By confirming VoIP services can be used to qualify for federal universal service subsidies, the FCC has necessarily conceded they are telecommunications services 8

B. The Act's functional approach requires fee based real time voice services to be classified as telecommunications services 13

V. CONCLUSION 21

TABLE OF AUTHORITIES

Cases

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IN RE: FCC11-161, 753 F.3d 1015 (10th Cir. 2014). 10, 11

Indianapolis Power and Light Co. v. ICC, 587 F.2d 1098 (7th Cir. 1982)....................................... 1

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Southern New England Tel. Co. v. Comcast Phone of Conn., 718 F.3d 53 (2d Cir. 2013). 6, 13

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Vonage Holdings Corp. v. Minnesota Public Utility Comission, 290 F. Supp. 2d 993 (D. Minn. 2003). 15

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47 U.S.C. §153(51) 9
47 U.S.C. §153(11). 10
47 U.S.C. §153(53). 15
47 U.S.C. §153(24). 20
47 U.S.C. §160. 4
47 U.S.C. §214(e) 3, 9, 10, 11

47 U.S.C. §251 .... 1, 2, 3, 4, 5, 6,7, 8, 13, 21
47 U.S.C. §252 .... 1, 18
47 U.S.C. §254 2
47 U.S.C. §410(c). 2
Communications Act of 1934, as amended by the *Telecommunications Act of 1996*, 47 U.S.C. §151 *et seq*., Pub.L.No. 101-104, 110 Stat. 56 (1996) (West Supp. 1998) .... ii, 1, 2, 4, 6, 7, 8, 9, 10, 11, 13, 14, 19

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Resolution Regarding the Interconnection of New Voice Telecommunications Services Networks (NARUC 2008) 7

S. Hrg. 112-480, Nominations of Jessica Rosenworcel and Ajit Pai to the FCC, at 78, (Nov. 30, 2012). 7

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Agency Decisions

Application of Cox Nevada Telcom, LLC For Designation As ETC in the State of Nevada, Docket 12-09907, Order (Nov. 15, 2012.)........ 12

In re Time Warner Cable Request for Declaratory Ruing that Competitive Local Exchange Carriers May Obtain Interconnection Under Section 251 to Provide Wholesale Telecommunications Services to VoIP Providers, Memorandum and Order, 22 F.C.C.R. 3513, ¶¶ 8-16 (March 1, 2007) 7

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In the Matter of Federal-State Joint Board on Universal Service, CC Docket 96-45, Report to Congress, 13 F.C.C.R. 11501 (rel. April 10, 1998)........ 19, 20

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I. *AMICI CURAIE'S* STATEMENT OF INTEREST

The National Association of Regulatory Utility Commissioners (NARUC) files supporting the Michigan Public Service Commission (MPSC). The MPSC correctly held that §251(c) of the Telecommunications Act of 1996[1] ("1996 Act" or "Act") requires incumbent local exchange carriers (ILECs) like Michigan Bell Telephone Company d/b/a AT&T Michigan (AT&T) to provide Internet Protocol (IP) interconnection to requesting telecommunications carriers. The alternative legal theory offered by AT&T – that §251(c) does not apply to AT&T's managed "Voice over Internet Protocol" (VoIP) facilities because fee-based voice services provided using a particular methodology are not *telecommunications services*, eviscerates Congress's scheme to pry open local markets. *See, e.g.*, AT&T Jun. 26, 2014 Brief (*AT&T Br*") at 14. Those arguments are inconsistent with both Federal Communications Commission (FCC) and Court precedent as well as the express text of the Act.

NARUC, a nonprofit organization founded in 1889, has members that include the government agencies in the fifty States, the District of Columbia, Puerto Rico, and the Virgin Islands charged with regulating the activities of telecommunications,[2] energy, and water utilities. Congress and Courts[3] have consistently recognized NARUC as a proper entity to represent *the*

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[1] *Communications Act of 1934*, as amended by the *Telecommunications Act of 1996*, 47 U.S.C. §151 *et seq*., Pub.L.No. 101-104, 110 Stat. 56 (1996) (West Supp. 1998).

[2] NARUC member commissions (i) have oversight over intrastate telecommunications services, including voice service supplied by incumbent and competing local exchange carriers (LECs); (ii) are obligated to ensure that incumbent services are provided universally at just and reasonable rates; (iii) encourage unfettered intrastate telecommunications competition as part of responsibilities to implement State law and 1996 Act provisions specifying LEC obligations to interconnect with competitors, e.g., 47 U.S.C. §252 (1996).

[3] See, *United States v. Southern Motor Carrier Rate Conference, Inc.,* 467 F. Supp. 471 (N.D. Ga. 1979), aff'd 672 F.2d 469 (5th Cir. 1982), aff'd en banc on reh'g, 702 F.2d 532 (5th Cir. 1983), rev'd on other grounds, 471 U.S. 48 (1985). See also *Indianapolis Power and Light Co. v. ICC*, 587 F.2d 1098 (7th Cir. 1982); *Washington Utilities and Transportation Commission v. FCC,* 513 F.2d 1142 (9th Cir. 1976).

collective interests of the State public utility commissions. In the 1996 Act, Congress references NARUC as "the national organization of the State commissions" responsible for economic and safety regulation of the intrastate operation of carriers and utilities.[4]

This case will have national impact.

Section 251(c) assures incumbents with significant market power continue to interconnect with competitors on reasonable terms. Whatever this Court decides, it will unquestionably impact State commissioners' ability to continue crucial backstop arbitrations assigned by Congress to protect competition. State commissions have open proceedings on IP-to-IP interconnections and the status of VoIP.[5]

Accepting AT&T's argument that its mass market voice telephony service is an "information service" rather than a "telecommunications service" simply because it is provided using the Internet protocol negates the entire statutory scheme enacted by Congress in 1996 to "accelerate rapidly private sector deployment of *advanced telecommunications and information technologies* and services to all Americans by opening *all telecommunications markets to competition.*"[6] The TDM technology to which AT&T claims the Congressional scheme is limited was well established at the time the 1996 Act was adopted, and certainly would not qualify as "advanced" telecommunications technology. AT&T cannot claim that there is a substantive difference *to the user* in a voice transmission using TDM as compared to IP -- in

[4] See, 47 U.S.C. § 410(c) (1971) (NARUC nominates members to FCC Joint Federal-State Boards which consider universal service, separations, and related concerns and provide formal recommendations that the FCC must act upon.); Cf. 47 U.S.C. § 254 (1996) Cf. *NARUC, et al. v. ICC,* 41 F.3d 721 (D.C. Cir 1994) (where the Court explains "…Carriers, to get the cards, applied to…(NARUC), an interstate umbrella organization that, as envisioned by Congress, played a role in drafting the regulations that the ICC issued to create the "bingo card" system.")

[5] See, e.g., August 8, 2014 filed *Commissioners of the Michigan Public Service Commission's Response Brief to AT&T Michigan on Appeal* (*MPSC Br.*) at p. 11.

[6] *Conference Report to Accompany S. 652*, House Report 104-458 (Jan. 31, 1996) at 1 (emphasis added).

both cases the voice conversation is conveyed in real time without change between the users.[7] There is nothing in the statute nor the legislative history that suggests that Congress intended a change in transmission technology to result in the evisceration of its legislative requirements to promote competition in local telecommunications markets.

Moreover, if this Court finds merit in AT&T's argument that interconnected VoIP service is not a *telecommunications service*, it could also significantly impact universal service policy. To qualify for federal universal service subsidies, 47 U.S.C. §214(e) requires that a carriers provide a least one *telecommunication service*. As discussed, *infra*, based on a 2011 FCC order (upheld on review), States are relying on carrier provision of VoIP as a telecommunications service to qualify carriers under §214(e).

Because of the broad impact of this Court's ruling, NARUC leadership unanimously voted for NARUC to seek permission to file in this proceeding.

II. INTRODUCTION AND BACKGROUND

NARUC adopts by reference the Statement of Facts in MPSC Br., at pages 1 to 5, with the following amplification:

The heart of the issue presented for decision is a very old problem. For each of the 125 years NARUC has been in existence, assuring interconnections *between actual and potential competitors* has been a source of concern for federal and State policymakers in industries with critical infrastructures. As Peter W. Huber, Michael K. Kellogg & John Thorne note in their treatise "Federal Telecommunications Law":

> [T]elephone companies are quite clearly "common carriers." They have long been expected to serve all comers and charge similar rates for similar services…viewed as paradigm "common carriers," so common, so ubiquitous . . . that one could scarcely imagine them operating any other way – except as it turned out, when a would-be "customer" happened to be another carrier. The problem had been faced

[7] See, 47 U.S.C. §153(50) (1996): "The term telecommunications means the transmission between or among points specified by the user, of information of the users choosing, without change in the form or content of the information as sent and received." The "information" referenced includes voice traffic.

> – and resolved correctly – half a century before the birth of telephony, in legislation for telegraphy. The Post Roads Act of 1866 required telegraph companies to interconnect and accept each other's traffic. If similar obligations had been imposed on telephone companies [then], local exchanges might have remained competitive……but legislators, regulators and the courts missed the opportunity and adopted instead a narrow understanding of a common carrier's obligations to carry its competitors' traffic … As a result, the Bell System continued its march toward monopoly unchecked. {emphasis added}.[8]

In 1996, Congress, following the examples set by *State experiments* in local exchange competition in the early 1990s, grasped this missed opportunity and imposed, in 47 U.S.C. §251(1996), a duty on all carriers to "interconnect and accept each other's traffic." As even the Supreme Court recognized, subsection (c) of §251, and the conditions it imposes on *incumbent local exchange carriers* (ILECs) like AT&T, was the crowbar Congress provided in the 1996 Act to pry open and maintain competition in the local telecommunications market.[9] Congress also added new definitions to the Act, including "telecommunications," "telecommunications service" and "information service." As discussed *infra* those definitions make clear that VoIP service is a local exchange service subject to section 251.

The FCC was also given specific authority to "forbear from applying…any provision of this chapter to a telecommunications service or provider" if it made three specific findings. 47 U.S.C. §160 (1996). However, Congress considered §251(c)'s *Additional Obligations of Incumbent Local Exchange Carriers*, and the backstop arbitration procedure, so important that it created an express limitation on that authority, in §160(d):

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[8] Reprinted in, Benjamin, Stuart Minor, Lichtman, Douglas Gary & Shelanski, Howard A, *Telecommunications Law and Policy*, Carolina Academic Press (2001), at page 608.

[9] *AT & T Corp. v. Iowa Utilities Bd.,* 525 U.S. 366, 371-73, 119 S.Ct. 721, 142 (1999) ("The 1996 Act "fundamentally restructures local telephone markets. . . incumbent LECs are subject to a host of duties intended to facilitate market entry. Foremost among these duties is the LEC's obligation under 47 U.S.C. § 251(c) to share its network with competitors . . . a requesting carrier can obtain access to an incumbent's network . . .[by interconnecting] its own facilities. . . either party can petition the state commission . . . to arbitrate open issues.")

> "[T]he Commission may *not* forbear from applying the requirements of section 251(c) …under subsection (a) until it *determines* that those requirements have been fully implemented." {emphasis added}

Significantly, the FCC has made no such determination.

AT&T recognized the efficiencies of IP-based voice services a while ago. It first rolled out its U-verse VoIP services in Michigan in 2008, and, in November 2012, announced plans to expand its wired IP network "to 75 percent of customer locations in AT&T's 22-state wireline service area by year-end 2015."[10] It also asked the FCC to set a deadline after which incumbent LECs will no longer be required to maintain TDM networks. JA68-70. Already, FCC "477 data indicates . . . 30% of all U.S. Voice traffic is being switched using IP-based SIP/IMS systems now, often over highly managed IP networks in order to maintain effective Quality of Service."[11]

And yet, according to AT&T, after eight years, "there is no ICA in Michigan – other than the one under review here – that provides for anything but TDM interconnection," *AT&T Br.* at 5 - or, on information and belief, with AT&T across its entire 22-State service territory. And it's not as if competitors have not been seeking such access for, quite literally, years.[12]

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[10] AT&T Press Releases accessed Aug. 16, 2014: *AT&T U-Verse Availability–MI*: http://www.att-services.net/att-u-verse/availability/uverse-michigan.html#.U_AQC2OHjtg; *AT&T to invest $14 Billion to Significantly Expand Wireless & Wireline Broadband Networks* at: http://www.att.com/gen/press-room?pid=23506&cdvn=news&newsarticleid=35661&mapcode=.

[11] See, July 19, 2013 *Reply Comments of Shockey Consulting*, filed in FCC WC Docket No. 13-97 et al., at 4, at: http://apps.fcc.gov/ecfs/document/view?id=7520931878. AT&T's February 25, 2012 Reply Comments, filed in FCC Docket GN Docket No. 12-353, at 21 n. 31, say only 21% of residential housing units in States where AT&T is an ILEC will still subscribe to ILEC POTS services by December 2013, at: http://apps.fcc.gov/ecfs/comment/view?id=6017165188. The comments fail to specify the number of residential "POTs" lines ILECs will continue to serve though VoIP services.

[12] See, e.g., the Sept. 22, 2009 *Letter of William H. Weber, Cbeyond*, *et al,* filed in FCC GN Docket 09-51, p. 1, at: http://apps.fcc.gov/ecfs/comment/view?id=6015190713a. Instead of agreeing to interconnect and exchange traffic on an IP-basis, major ILECs (like AT&T) require competing carriers to convert traffic to legacy time division multiplexing (TDM) format prior to delivering it, even where the ILEC has deployed facilities that could transport the traffic in IP

It would be difficult for anyone to construct a valid argument that such access to competitors will not directly benefit both competition and consumers[13] – *as Congress intended.* Wisely, AT&T does not even try. As the MPSC effectively recognizes in the order on review, this void in interconnection is not the result Congress was targeting when it passed §251. JA1596. AT&T suggests that the Court might wish to defer to "the FCC's unique expertise in this highly technical area." *AT&T Br.* at 14. And yet, that's not what Congress did. Congress sent the problems to the States. In §252, which details the "*Procedures for negotiation, arbitration and approval of agreements*," States commissions are referenced 55 times.[14] The FCC is referenced only 4 times in §252 in 2 sub-sections that specify it is to do the arbitration only if the State fails to act. As Congress expected, the State commission *has* acted here.

Moreover, divining Congressional intent from the plain text of the Act, a legal determination, requires only the specific expertise already possessed by this Court. The question

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form. *The result of this forced conversion is increased cost for unnecessary media gateways, and reduced voice quality for consumers because of unnecessary protocol conversions*.

[13] Competitive and incumbent carriers both recognize that using IP interconnection to exchange voice calls is much more efficient than interconnection using traditional TDM links. JA50-1, 82-3.

[14] See, Philip J. Weiser, *Chevron, Cooperative Federalism, and Telecommunications Reform*, 52 Vand. L. Rev. 1, 25-6 (1999). ("Congress also envisioned that the state agencies would have an independent role in implementing a number of the Act's provisions. Because the Telecom Act charges state agencies . . .with the responsibility of interpreting some of its ambiguous terms and gaps in the first instance, the federal courts should defer to them on those matters…") See also, *Comcast IP Phone of Mo., LLC v. Mo. Pub. Serv. Comm'n*, 2007 WL 172359, at 4 (W.D. Mo. Jan. 18, 2007) (holding that "unless preempted or faced with a contrary decision from a relevant federal agency, a state agency may interpret a federal statute and apply its dictates"); *S. New Eng. Tel. Co. v. Comcast Phone of Conn.*, 718 F.3d 53, 58 (2d Cir. 2013) (State commissions may apply §251 interconnection provisions as long as such application does "'not violate federal law and until the FCC rules otherwise'") (quoting *Iowa Network Servs., Inc. v. Qwest Corp.*, 466 F.3d 1091, 1097 (8th Cir. 2006)).

is: did Congress want to require incumbents that retain significant market power to interconnect with competitors to facilitate competition in Michigan?

The answer, *unless and until the FCC determines to forebear from applying §251(c) to AT&T in Michigan*, is obvious. Indeed, a broad spectrum of policy-makers at both the federal and State level agree - §251(c) interconnection provisions apply regardless of changes in technology underlying the voice services provided.[15] Even though, understandably, the FCC faces a lot of political pressure from well-funded advocates not to act on classification issues like this one, it still stated, in the recent 2011 *CAF Order*:

> [E]ven while our *F[urther]* NPRM is pending, *we expect all carriers to negotiate in good faith in response to requests for IP-to-IP interconnection for the exchange of voice traffic*. *The duty to negotiate in good faith has been a longstanding element of interconnection requirements under the Communications Act and does not depend upon the network technology underlying the interconnection, whether TDM, IP, or otherwise. Moreover, we expect such good faith negotiations to result in interconnection arrangements between IP networks for the purpose of exchanging voice traffic.* As we evaluate specific elements of the appropriate interconnection policy framework for voice IP-to-IP interconnection in our FNPRM, we will be monitoring marketplace developments, which will inform the Commission's actions.[16]

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[15] In 2008, when AT&T rolled out U-verse, NARUC passed a *Resolution Regarding the Interconnection of New Voice Telecommunications Services Networks*, urging carriers to continue to interconnect networks to exchange traffic in a technologically neutral manner, as per §§251-252, at: http://www.naruc.org/Resolutions/TCInterconnection.pdf. See also, *Statement of FCC Commissioner Pai*: "When discussing interconnection, [Section 251] neither mentions any particular technology that may be used . . . nor distinguishes between telecommunications carriers using different technologies." *S. Hrg. 112-480, Nominations of Jessica Rosenworcel and Ajit Pai to the FCC*, at 78, (Nov. 30, 2012), at http://www.gpo.gov/fdsys/pkg/CHRG-112shrg75046/content-detail.html; *In re Time Warner Cable Request for Declaratory Ruing that Competitive Local Exchange Carriers May Obtain Interconnection Under Section 251 to Provide Wholesale Telecommunications Services to VoIP Providers*, Memorandum and Order, 22 F.C.C.R. 3513, ¶¶ 8-16 (March 1, 2007) (A Bureau-level order finds the "statutory classification of a third party provider's VoIP service as an information service or a telecommunications service is irrelevant to the issue of whether a wholesale provider of telecommunications may seek interconnection under Section 251(a).")

[16] *Connect America Fund et al.*, WC Docket No. 10-90 et al., Report and Order, FCC 11-161, 26 FCC Rcd 17663, 18045 at ¶1011 (2011) (rel. Nov. 18, 2011) (*CAF Order)*. Compare, past FCC statements: "[S]ections 251(a) and 251(c)(2) apply to incumbents' packet-switched

III. STANDARD OF REVIEW

NARUC adopts the standard of review in the *MPSC Br.* at 5.

IV. ARGUMENT

ILECs must Provide IP Interconnection under § 251(c)(2). (Count III)

A. By confirming VoIP services can be used to qualify for federal universal service subsidies, the FCC has necessarily conceded they are *telecommunications services*.

The MPSC decision recognizes that the plain unambiguous text of §251(c)(2) is technology neutral and requires incumbent LECs to provide IP interconnection. JA1596. In response, AT&T argues that its managed *VoIP service* is not a *telecommunications service* and is therefore not subject to §251(c) procedures. AT&T is wrong.

It is true, as Centurylink states in its *amicus* supporting AT&T, that the FCC *claimed* "in the *CAF Order*, that it has not decided the regulatory classification of Voice-over-Internet Protocol (VoIP) services."[17] It is not, however, accurate to say that claim is true. The FCC's statement that it had not decided VoIP's classification is directly at odds with its simultaneous specification – in the same order - that *VoIP services* can be the sole basis for qualifying for federal universal service subsidies. *CAF Order* at 24, ¶80. The Act is crystal clear that only a provider of *telecommunications services* can qualify for subsidy.

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telecommunications networks and the telecommunications services offered over them. We reject BellSouth's argument that Congress intended that section 251(c) not apply to new technology not yet deployed in 1996. *Nothing in the statute or legislative history indicates that it was intended to apply only to existing technology. Moreover, Congress was well aware of the Internet and packet-switched services in 1996, and the statutory terms do not include any exemption for those services*." *In the Matters of Deployment of Wireline Servs. Offering Advanced Telecommunications Capability*, Memorandum Opinion and Order, 13 F.C.C. Rcd. 24012, 24035 ¶¶48-49 (1998). {emphasis added}

[17] *Centurylink's Amicus Curiae Brief in Support of AT&T Michigan*, at 5 (July 14, 2014.)

This conflict was one reason NARUC appealed the *CAF Order*. The *CAF Order* claims the FCC has not decided VoIP is a *telecommunications service*, while simultaneously specifying that VoIP can be used to as the *telecommunications service* required by 47 U.S.C. §214(e) for qualification.

Note the Act's functional definition of a telecommunications service either applies to VoIP offered to the public for a fee, or it does not. Carriers are either offering a service that matches the characteristics of the definitions or they are not.

Congress specifies in §214(e) that only *common carriers* designated as *eligible telecommunications carriers* can receive federal universal service support.[18] Congress also specified that States should, in the first instance, make such designations. Classification of the qualifying service – <u>which the FCC specifies in the *CAF Order* can be VoIP</u> – must be a *telecommunications service* – for two reasons. First, qualifying carriers, under §214, are designated eligible *telecommunications carriers*. The term *telecommunications carriers* is defined at 47 U.S.C. §153 (51) as "any provider of *telecommunications services*." {emphasis added} Second, 47 U.S.C. §153(51) specifies that a carrier "shall be treated as a common carrier under this chapter only to the extent it is engaged in providing telecommunications services." Section 214(e) is in "this chapter." Necessarily, therefore, common carriers can only be treated as having that status under §214(e) "to the extent they are engaged in providing telecommunications services."

Indeed, <u>even AT&T concedes</u>, *AT&T Br. at 15* that:

> For all relevant purposes, "telecommunications carrier" is synonymous with "common carrier" and is defined as "any provider of telecommunications

[18] <u>See</u>, 47 U.S.C. §214(e)(1): "A common carrier designated as an eligible telecommunications carrier…shall be eligible to receive universal service support…"

> services." The Act further specifies that any "telecommunications carrier shall be treated as a common carrier under this [Act] *only to the extent that it is engaged in providing telecommunications services."*[19]

In the *CAF Order,* the FCC specifies, in ¶80, *mimeo at 38,* that carriers are only required to provide one service to qualify to be designated to receive federal universal service support:

> As a condition of receiving support, we require ETCs to offer voice telephony as a standalone service throughout their designated service area. 117 As indicated above, ETCs may use *any technology* in the provision of voice telephony service. (Note 117 With respect to "standalone service," we mean that consumers must not be required to purchase any other services (*e.g.*, broadband) in order to purchase voice service.)" {emphasis added}[20]

IP/VoIP is "any technology." The Petitioners, including NARUC, pointed out in our reply in the 10th Circuit appeal of the *CAF Order*:

> Petitioners argued that by adding "voice telephony service" to the list of supported services under section 254(c)(1), without limiting the definition of that service to "telecommunications services," the *Order* violates §254(c)(1). USF Br. 17-18. Respondents denounce this argument as "wrong," FCC Br. 24, but then concede virtually all its premises. They agree that "only 'eligible telecommunications carriers' are eligible for subsidies under section 254," and that an ETC must be a "common carrier" that offers supported services. FCC Br. 26, *citing* 47 U.S.C. §214(e)(1)(A). They also agree that an entity can be designated as an ETC under the statute only if it "complies with appropriate federal and state requirements" applicable to telecommunications carriers under Title II of the Act. *Id.*, *quoting IP-Enabled Services*, 20 F.C.C.R. 10245, 10268 (2005) (subsequent history omitted). This concession was not apparent on the face of the *Order*, as the FCC specifically included VoIP in the definition of "voice telephony service" without classifying VoIP as a telecommunications service. *Order*, ¶63 (JA at 412); FCC Br. 26.[21]

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19 Indeed, even the Act's definition of *common carrier,* 47 U.S.C. §153(11) notes it does not apply, "where reference is made to common carriers not subject to this chapter" as per the language quoted by AT&T from the *telecommunications carrier* definition.

20 There is no requirement in the *CAF Order* to provide broadband as a *telecommunications service*, i.e. separate from internet access services (or any other *telecommunications service* to qualify. Indeed, ¶71 of the *CAF Order* concedes that FCC "determinations that broadband services may be offered as *information services* have had the effect of removing such services from the scope of the explicit reference to "universal service" in section 254(c)."

21 *Joint Universal Service Fund Reply Brief*, at 11-12, filed July 30, 2013, In Re: FCC11-161, 10th Circuit Case No. 11-9900.

In the resulting decision, the 10th Circuit confirmed that carriers must be designated as an eligible *telecommunications carrier* and have *common carrier* status to access funds. See, IN RE: FCC11-161, 753 F.3d 1015, at 1048-1049 (10th Cir. 2014):

> The fact remains, however, that in order to obtain USF funds, a provider must be designated by the FCC or a state commission as an "eligible telecommunications carrier" under 47 U.S.C. § 214(e). See 47 U.S.C. § 254(e) ("only an eligible telecommunications carrier designated under section 214(e) . . . shall be eligible to receive specific Federal universal service support."). And, under the existing statutory framework, only "common carriers," defined as "any person engaged as a common carrier for hire . . . in interstate or foreign communication by wire or radio or in interstate or foreign radio transmission of energy," 47 U.S.C. §153(10), are eligible to be designated as "eligible telecommunications carriers," 47 U.S.C. §214(e). Thus, under the current statutory regime, only ETCs can receive USF funds that could be used for VoIP support. Consequently, there is *no imminent possibility that broadband-only providers will receive USF support under the FCC's Order, since they cannot be designated as "eligible telecommunications carriers.*" {emphasis added}

Here, the 10th Circuit makes clear that there is "no imminent possibility that broadband-only providers" (or to the 10th Circuit – an entity that *ONLY provides an information service*) will receive USF support. This is true, because, according to the statute (and the 10th Circuit) "they CANNOT be designated as eligible *telecommunications carriers"* if they are only providing an information service. They must be providing a *telecommunications service*.

Translation: The FCC has required VoIP service to be classified as a *telecommunications service*. States and carriers have taken the FCC at its word. For example, New Mexico, based on record evidence, approved a VoIP-only provider as an eligible *telecommunications carrier* in February 2013, finding:

> Based upon its common carrier regulation as an interconnected-VoIP provider, TransWorld meets the requirement of being a common carrier for purposes of ETC designation.[22]

[22] *In The Matter of Transworld Network, Corp. Petition For Designation as an Eligible Telecommunications Carrier Pursuant to § 214(E)(2) of the Communications Act of 1934, as*

Similarly, the Georgia Commission, on March 20, 2014, found:

> Public Service Wireless asserts that it meets all the requirements of the . . .[FCC] for designation as an ETC. Federal regulations require ETCs to provide the following services. . . minutes of use for local service provided at no additional charge to end users; access to the emergency services provided by local government…such as 911.., and toll limitation services. . .. 47 C.F.R Section 54.101(a). Public Service Wireless's basic service offering is wireless Voice over the Internet Protocol, or VoIP service, which includes unlimited local and long-distance, starting at \$10.70, after application of the \$9.25 Lifeline Discount.[23]

There is no mention of any other service offering in the Georgia decision.[24] If the required voice telephony service in these and related State designations, which is provided using

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amended, 47 U.S.C. § 214(E)(2), and 17.11.10.24 NMAC, Before the New Mexico Public Regulation Commission, Case No. 11-00486-UT, FINAL ORDER (issued 20 February 2013) quote is from Exhibit 1, the ALJ's *Recommended Decision*, (issued 28 December 2012), upon which the Final Order is based, at 16.

[23] *In Re: Application of Public Service Wireless, Inc. for Designation as an Eligible Telecommunications Carrier in the State of Georgia, Docket No. 35999, Document #152453 Order on Application for Designation as an ETC (March 20, 2014) , at 1-3,:* http://www.psc.state.ga.us/factsv2/Document.aspx?documentNumber=152453.

[24] Compare, *In re: Application of Cox California Telcom, LLC (U5684C) for Designation as an ETC, Application 12-09-014*, Decision 12-10-002 (10/3/2013), Decision Approving Settlement (rel. 10/07/2013), at 8-9, 11, finding: "Cox does not distinguish between circuit-switched and packet-switched telephone services. The customer is merely ordering telephone service," and (ii) Cox asserts by offering a"service that utilize[s] VoIP to the public on a nondiscriminatory basis, Cox fulfills the role of common carrier," online at: http://docs.cpuc.ca.gov/SearchRes.aspx?DocFormat=ALL&DocID=78144856 {emphasis added}; See also: *Application of Cox Nevada Telcom, LLC For Designation As ETC in the State of Nevada*, Docket 12-09907, Order (Nov. 15, 2012.), approving an application, that notes, at 6-7(http://pucweb1.state.nv.us/PDF/AxImages/DOCKETS_2010_THRU_PRESENT/2012-9/19778.pdf),

> In the [CAF Order], the FCC adopted a new definition for supported services . . . it modified the definition of services supported by federal universal support as described in 47 C.F.R. §54.101 [which now states]. . . (b) An eligible telecommunications carrier must offer voice telephony service as set forth in paragraph (a) of this section in order to receive federal universal service support." In adopting its revised definition, the FCC noted that the revisions were intended to shift to a technologically neutral approach. Specifically, the FCC stated: "Rather, the modified definition simply shifts to a technologically neutral approach, allowing companies to provision voice service over any platform, including the PSTN and IP networks. This modification will benefit both

IP technology, is not a *telecommunications service*, then the FCC's 2011 ruling can only be viewed as allowing a carrier to illegally access funds Congress reserved to *common carriers*, i.e., §214's essential *telecommunications carriers* – which by definition are offering *telecommunications services*, and can be treated as *common carriers* under that section only to the extent they provide *telecommunications services*.

As the FCC has conceded that VoIP *eligible telecommunications carriers* are providing *telecommunications services*, even under AT&T's argument, the §§251-2 regime must apply to IP-based voice services.

B. The Act's functional approach requires fee based real time voice services to be classified as *telecommunications services*.

NARUC agrees that MPSC properly applied federal law when it approved IP interconnection language in the agreement. MPSC brief at 11- 17. AT&T's arguments claiming otherwise lack merit.

AT&T's first "argument" is that § 251(c) "does not require the ILEC to provide interconnection in any particular format." AT&T Br. at 14. *Exactly.* Note the discussion and notes, *supra*, at pages 5-7. *That's why Congress established arbitration procedures* – for when carriers cannot agree on the format or other conditions to facilitate interconnection.[25]

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providers (as they may invest in new infrastructure and services) and consumers (who reap the benefits of the new technology and service offerings)." First, while other states have already determined that the service . . . meets the requirements for support, this latest statement by the FCC further clarifies that Cox's VoiP-based, voice telephony service is eligible for support." {emphasis added}

[25] Of course, AT&T concedes in note 15 on the same page that the interconnection must be in a manner that is "at least in quality to that provided by the [ILEC] to itself…or any other party to which the [ILEC] provides interconnection." Query whether competitors are given the same interconnection that AT&T and its IP affiliate provide themselves. See also, *S. New England Tel. Co. v. Comcast Phone of Conn, Inc*, 718 F.3d 53, 58 (2nd Cir. 2013). (The 1996 Act "permits state commissions to regulate interconnection obligations so long as they do not violate federal law and until the FCC rules otherwise.")

Second, it devotes four plus pages arguing that VoIP is not a telecommunications service, promoting the novel suggestion that Congress is interested in promoting telecommunication voice competition *only* if a particular protocol is used to provide functionally equivalent and directly competing services. This exegesis of the Congressional intent finds no support in the history or text of the 1996 Act. As noted *supra*, the FCC has effectively conceded the status of VoIP as a *telecommunications service*.

But even without that *CAF Order* concession, whether or not any service is a "telecommunications service" is a factual inquiry based on parameters specified in the clear text of the statute. The FCC[26] is not free to choose a different classification if the specified service, in this case VoIP, meets the statutory definitions. And, as the prior discussion makes clear, the FCC has conceded that it does in the *CAF Order*.

However, any further examination of the FCC's view of VoIP's classification requires this Court to answer only two questions. Significantly, neither requires any examination of the technology used to provide the service.

First, are the IP-based voice services (VoIP) *telecommunications*?

The answer could not more clear. The statute defines "telecommunications" as the transmission, between or among points specified by the user, of information of the users choosing, without change in form or content of the information as sent and received." 47 U.S.C. 153(50). VoIP services, like voice services using older "legacy" packet technologies, transmit voice in real time to points specified by the user without change in form or content. Voice traffic

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[26] "An agency has no power to "tailor" legislation to bureaucratic policy goals by rewriting unambiguous statutory terms. Agencies exercise discretion only in the interstices created by statutory silence or ambiguity; they must always "'give effect to the unambiguously expressed intent of Congress.'" *Utility Air Regulatory Group v. EPA*, 134 S.Ct. 2427, 2445 (2014), slip op. at 16, http://www.supremecourt.gov/opinions/13pdf/12-1146_4g18.pdf.

has been multiplexed/packetized for years before the invention of the "IP" protocol. Indeed, VoIP services provided by Vonage, AT&T, Verizon, and others compete directly with and substitute for functionally equivalent "telecommunications services." A new arrangement of "zeroes and ones" in a packetized programming language does not change the nature of the service being offered to the public.

Second, are IP-based voice services (VoIP) offered to the public for a fee "telecommunications services"?

Again the answer is evident on the face of the statute. VOIP service, exactly like the current voice services it competes with and is replacing, is both "offered for a fee" and offered "directly to the public or to such classes of users as to be effectively available to the public" significantly "regardless of the facilities used."[27]

AT&T eschews any in-depth examination of the statute in favor of cites that are irrelevant, distinguishable, dicta, or superseded by other supervisory Court (or FCC) decisions.

For example, AT&T cites to the decision by the District court in *Vonage Holdings Corp. v. Minn. Pub. Utils. Comm'n,* 290 F. Supp. 2d 993, 999-1001 (D. Minn. 2003), that Vonage's "over the top" VoIP service was an information service provider. It references, with little discussion, the FCC Declaratory Ruling on the Vonage service. AT&T Br. at 16.

Neither provides support for AT&T's position.

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[27] 47 U.S.C. § 153(53): "The term 'telecommunications service' means the offering of telecommunications for a fee directly to the public, or to such classes of users as to be effectively available directly to the public, regardless of the facilities used." *Note –that "information services" by contrast, are a catch-all category that only includes "information services" that are not used to provide a telecommunications service.* See, 47 U.S.C. § 153(24), excluding from the definition of information services "any use of any such capability for the management, control, or operation of a telecommunication system or the management of a telecommunications service."

During the appeal of the cited district court decision finding Vonage's nomadic VoIP product to be an information service, the FCC issued a declaratory ruling preempting the State Commission, but on the basis of the alleged "inseverability" of the traffic – *not because the underlying service was in fact "an information service."* The 8th Circuit upheld the District Court's decision, but explicitly based on the FCC's Order, finding:

> Because we conclude that the FCC Order is binding on this Court and may not be challenged in this litigation, we now affirm the judgment of the district court on the basis of the FCC Order.[28]

AT&T cites to that FCC Declaratory Order without much discussion. In the Declaratory Order, the FCC never classified either "nomadic" interconnected VoIP services (like Vonage) or "fixed' VoIP services (like AT&T's). Indeed, in the subsequent appeal of the declaratory order, in which NARUC participated, we argued *unsuccessfully* that the FCC was *required* to decide the regulatory classification of Vonage before it could preempt general State oversight of the service. Since the decision does not decide on any classification for VoIP, it provides *no support* for AT&T's position. Moreover, dicta in the case undermines another AT&T argument. The basis for preemption – inseverability - that was ultimately upheld by the 8th Circuit had nothing to do with the traffic's classification – and zero applicability to fixed VoIP services like AT&T's managed service, which can be severed and does not touch the Internet.[29]

However, those discussions of "inseverability" are important. Why? Because AT&T continues to advance the idea that a VoIP offering that includes call management features is

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28 *Vonage Holdings Corp. v. Minnesota PUC*, 394 F.3d 568 (8th Cir. 2004).

29 "AT&T U-verse Voice service is provided over AT&T's world-class managed network and not the public Internet. Using *one* network to provide U-verse services enables AT&T to provide high quality service. Voice over IP providers who utilize the public Internet are less able to control the traffic and ensure voice quality."{emphasis added}- http://www.att.com/media/en_US/swf/uverse_center/uverse/downloads/att_home_alarm.pdf. (Accessed Aug. 14, 2014).

somehow inseverable and that such inseverability justifies a finding that the service is an "information service." AT&T has advanced the same argument before the FCC (with a notable lack of success) urging the FCC to find that such inseverability requires classification of VoIP as both exclusively interstate and an "information service." This argument is not consistent with the 8th Circuit decision. The 8th Circuit, points out that "the FCC has indicated (that) VOIP providers who *can track the geographic endpoints of their calls* do not qualify for the preemptive effects of the Vonage order."[30] Logically, that means the fact that VoIP service provides what AT&T characterizes as "a suite of integrated capabilities" is arguably irrelevant. *AT&T Br.* 16. Why? Assume that the geographic endpoints of a VoIP call provided by AT&T can be determined today[31] as the 8th Circuit suggests. If AT&T's theory about the "integrated suite of" services holds any validity at all, States should still be preempted. Instead, the reasoning presented by the 8th Circuit confirms the relevant service definition under the statute focuses on only the voice service. Just as before the network evolved to accommodate VoIP, ancillary services provided with a voice product are not relevant to a determination of its status as either a telecommunications or information service.

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[30] *Minnesota Public Utilities Commission v. FCC*, 483 F.3d 570, 580 (8th Cir. 2007). Citing the FCC clarification that a VoIP provider "with the capability to track the jurisdictional confines of customer calls *would no longer qualify for the preemptive effects of our Vonage Order and would be subject to state regulation*. This is because the central rationale justifying preemption set forth in the Vonage Order would no longer be applicable to such an interconnected VoIP provider." {emphasis added} See, *In the Matter of Universal Service Contribution Methodology*, WC Docket No. 06-122, Report and Order and Notice of Proposed Rulemaking, FCC 06-94, 21 FCC Rcd 7518, 7546, ¶ 56 (rel. June 27, 2006), aff'd in part, vacated in part, *Vonage Holdings Corp. v. FCC*, 489 F.3d 1232, 1244 (D.C. Cir. 2007).

[31] Actually we don't have to assume, the FCC's order, *Universal Serv. Contribution Methodology,* 21 F.C.C.R. 7518 at 7546 ¶ 56 n 189, make clear that at least "some" fixed VoIP providers already do just that. Carrier Form 499 filings, carrier provision to business of both call detail and functioning 911 service also indicate the traffic is severed. However, whether or not they actually do sever the traffic is not relevant to the issue before this court.

The second District Court case AT&T cites, at 16, is also focused on issues subsequently resolved by the FCC in the *CAF Order* in a manner that undermines that District Court's decision and rationale, i.e., whether access charges or reciprocal compensation should apply to "IP-PSTN" traffic.[32] But that decision does raise another problem for AT&T's case-in-chief. In this *Southwestern* case, while, the District Court in dicta, inter alia, specifies that the FCC "has not yet ruled on whether IP-PSTN is [an information service,]" the holding affirms a *State arbitration order* setting the compensation terms *for* the putative "information" service.[33] Curiously, the ILEC that sought arbitration under §252 in this case, went through several name changes before it basically "became" AT&T in 2005.[34] Apparently, arbitration under Section 252 over an admittedly unclassified service in the context of an interconnection agreement – a service that Court speculated in dicta might qualify as an information service – is ok if the case is brought by the incumbent LEC, but not if the issue is raised by a competitor seeking interconnection.

From a regulatory perspective, and to end-users, fixed VoIP traffic is indistinguishable in every way from competing voice services. Such traffic is never a part of the so-called public Internet. Such traffic is severable. Fixed VoIP providers interface with and ride over the very same network facilities as TDM calls. Moreover, a focus on the functional nature of particular

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32 The *CAF Order* applies access charges to VoIP calls. The third District Court case cited by AT&T contains no analysis and merely relies on the faulty analyses of the two cases already discussed - finding "[t]heir reasoning is persuasive." *PAETEC Commc'ns, Inc. v. CommPartners, LLC,* CIV.A.08-0397(JR), 2010 WL 1767193 (D.D.C. Feb. 18, 2010). This case also addresses the same issue resolved in the *CAF Order* – whether to apply access charges to VoIP calls.

33 See*, Southwestern Bell Tel., L.P. v. Missouri Pub. Serv. Comm'n*, (Southwestern), 461 F. Supp. 2d 1055, 1079, 1084 (E.D. Mo. 2006) aff'd, 530 F.3d 676 (8th Cir. 2008). ("The Court concludes that the *Arbitration Order* neither violates federal law nor constitutes an arbitrary and capricious determination of the facts with *respect to the issue of reciprocal compensation for IP–PSTN traffic*. Accordingly, the *Arbitration Order* should be affirmed.")

34 AT&T.COM, *Evolution of the SBC and AT&T Brands: A Pictorial Timeline*, http://www.att.com/Common/files/pdf/logo_evolution_factsheet.pdf (Accessed 8/17/14).

VoIP services *from the end user's standpoint* - which compels classification of such services as "telecommunications services" - is consistent with the FCC's April 1998 *Report to Congress.*[35] There, the FCC correctly observed, "Congress' direct[ed] that the classification of a provider should not depend on the type of facilities used … Its classification depends rather on the nature of the service being offered to customers." They also noted: ". . . a telecommunications service is a telecommunications service regardless of whether it is provided using wireline, wireless, cable satellite, or some other infrastructure." *Report* at ¶59. The nature of the service in turn "depends on the functional nature of the end-user offering." Id. at ¶86. "Congress intended the categories of 'telecommunications service' and 'information service' to parallel the [pre-1996] definitions of 'basic service' and 'enhanced service'" in the 1996 Act. 290 F. Supp. 2d at 999, note 7.[36] Like traditional voice communication service, "VoIP" services do not provide

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[35] *In the Matter of Federal-State Joint Board on Universal Service*, CC Docket 96-45, Report to Congress, 13 F.C.C.R. 11501 (rel. April 10, 1998). (*Report*)

[36] The ubiquitous protocol conversions that characterize voice traffic do not change the form or content of the input to the service (e.g., real time voice communications). Protocol conversions are the "management, control or operations of a telecommunications system or the management of a telecommunications service" Congress explicitly excludes in the definition of "information services." 47 U.S.C. §153(24). To begin a phone call, a sound wave is converted to an electronic wave. In most calls, the analog electronic waves are converted to digital signals (and packetized) as well as multiplexed with other traffic. Sometimes, the digital signals are converted to light signals and back to electronic signals. *These protocol conversions cannot change a telecommunications service into an information service.* The use of a newer protocol - IP - does not change that fact. The logic behind the AT&T IP-to-TDM "net protocol conversion" argument (a phrase nowhere in the 1996 Act) fractures with any cursory review. What happens when AT&T gets the FCC to phase out TDM by a date certain? Presumably shortly after that date – no one, except perhaps some wireless carriers, will be using anything but IP protocol. Of course, that means, there will be no "net protocol" conversion of voice. Does that mean suddenly all the VoIP calls that, according to AT&T are *information services*, must now be considered *telecommunications services*? The *1996 Act* defines *information services* based on the FCC's pre-act definition of *enhanced services,* which were: "services offered over common carrier transmission facilities used in interstate communications, which employ computer processing applications that act on the format, content, code, protocol or similar aspects of the subscriber's transmitted information; provide the subscriber addition, different or restructured information, or involved subscriber interaction with stored information." *In re Independent Data*

subscribers with additional, different, or restructured information. Nor does the real-time voice service they provide involve subscriber interaction with stored information, which is a characteristic of an "enhanced" or information service. The information transmitted—i.e., the voice communication – is of the subscriber's own design and choosing. The IP technology used to transmit the voice transmission is completely transparent to the calling and called parties and functionally equivalent to existing phone service. It is – in short – a telecommunications service.

Communications Manufacturers Ass'n, Inc., Memorandum Opinion and Order, 10 FCC Rcd 13717, ¶16 (1995), the FCC said (i) communications between the subscriber and the network for call setup or call routing, and (ii) protocol conversions necessitated by the introduction of new technology are not enhanced services. Id. at ¶¶14-15. The FCC classified frame relay service, a high-speed packet switching service, as a basic *telecommunications service* under Title II. Id. at ¶22. *There – exactly as it does in this proceeding* - AT&T argued that because protocol conversion was an integral part of its frame relay service offering, the entire offering should be classified as an enhanced service. The FCC disagreed. *Focusing on the data transmitted by the customer, the FCC said that regardless of changes made to the frame header, the customer's data contained within the frame are not modified as they travel through the network and arrive intact*. Id. at ¶30 Changes to the header information were responsible for the carriage of the customer's data to the proper termination point, and hence part of a basic transmission service. Id. *Most critically, the FCC found that, to the extent protocol conversion was performed, such conversion did not change the essential character of the frame relay service as a basic common carrier service.* Id. at ¶41 In particular, the FCC emphasized that the LECs treated functionally equivalent frame relay service as a basic transmission service, Id. at ¶40, rejecting the notion that the mere bundling of a protocol conversion service that might be classified as enhanced altered the fundamental character of the basic frame relay service as a telecommunications transmission service. Id. at ¶40. As the definition of *enhanced services* provided the basis for the 1996 Act's *information service* definition, the FCC's reasoning is applicable here. If a carrier's protocol conversion service used in conjunction with a basic transmission service is "enhanced", that is irrelevant. The enhanced protocol conversion service does not change the basic character of the voice service as a telecommunications service. Like AT&T's protocol conversion service, such a service simply facilitates "the overall transparency and efficiency" of the basic voice service. That is in fact WHY the definition of "information services" is a residual category. That is why the 1996 Act clearly specifies the definition simply "does not apply not include any use of any such capability for the management, control, or operation of a telecommunications system or the management of a *telecommunications service*." 47 U.S.C. §153(24) (1996) The capability referenced is "capability for generating, acquiring, storing, transforming, processing, retrieving, utilizing, or making available information via telecommunications, and includes electronic publishing…" Id.

CONCLUSION

For the foregoing reasons, NARUC respectfully requests that the Court reject AT&T's claims with respect to IP interconnection and affirm the MPSC's finding that Section 251(c)(2) requires incumbent LECs to provide IP interconnection.

Respectfully submitted,

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VIA ELECTRONIC MAIL

January 15, 2015

Mr. Alexius M. Hofschulte
Department of Commerce
85 7th Place East, Suite 500
St. Paul, MN 55101-2198

Re: In the Matter of the Complaint by the Minnesota Department of Commerce Against the Charter Affiliates Regarding Transfer of Customers; MPUC Docket No: P5615/C-14-383

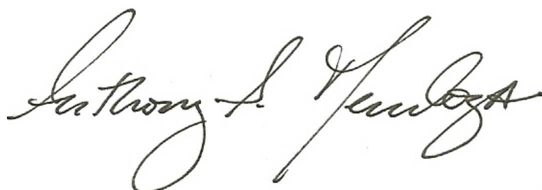
Dear Mr. Hofschulte:

Enclosed and served on the Minnesota Department of Commerce is the response of Charter Fiberlink CCO, LLC, and Charter Fiberlink CC VII, LLC (the Charter Fiberlink Affiliates) to the Department's second and third information requests.

Please contact me should you have any questions.

Very truly yours,

MENDOZA LAW OFFICE, LLC



Anthony S. Mendoza

Enc.

cc: Ms. Linda Jensen, Esq.
Mr. Luke Platzer, Esq.
Mr. Michael Moore, Charter
Ms. Betty Sanders, Charter

STATE OF MINNESOTA
PUBLIC UTILITIES COMMISSION

In the Matter of the Complaint By The Minnesota Department of Commerce (DOC) Against the Charter Affiliates Regarding Transfer of Customers	))))))	Docket No. P5615/C-14-383

RESPONSE OF CHARTER TO DEPARTMENT OF COMMERCE'S SECOND INFORMATION REQUEST

Charter Fiberlink CCO, LLC and Charter Fiberlink CC VIII, LLC (hereinafter "Charter Fiberlink"), Charter Advanced Services (MN), LLC and Charter Advanced Services VIII (MN), LLC (hereinafter "Charter Advanced Services") (collectively "Charter") hereby provide the following responses to the Department of Commerce's Second Information Request, dated December 23, 2014.[1]

GENERAL OBJECTIONS

1. Charter objects to the Second Information Request as premature insofar as Charter has an Answer on file with the Commission questioning the Commission's jurisdiction, and the Commission has not yet concluded that is has jurisdiction over the interconnected VoIP services at issue – it has tentatively asserted jurisdiction only for the purposes of requiring an Answer to the Department's Complaint, and not for purposes of permitting commencement of discovery.

2. Charter further objects to the Second Information Request as premature insofar as the question of whether the Commission's regulations pertaining to TAP Program – to which the

[1] The Requesting Analyst for Information Request No. 2 is Greg Doyle.

Second Information Request pertains – even apply to Interconnected VoIP service such as the service offered by Charter Advanced Services (and previously offered by Charter Fiberlink), either under Minnesota law or as a matter of federal preemption, remains undecided. Resolution of this legal issue by the Commission may moot any significance or relevance of the information sought, rendering discovery on the subject premature.

3. Charter further objects to the Second Information Request insofar as it requests information from Charter Advanced Services. The Department's jurisdiction does not extend to non-regulated services or entities under Minnesota law, or to services or entities as to which regulation under Minnesota law is preempted by federal law. Charter has challenged in its Answer in this proceeding the Commission's jurisdiction over such services and entities, and that challenge remains pending. Subject to the objections stated herein, Charter Fiberlink will respond to the Second Information Request insofar as it possesses responsive information pertaining to its regulated services; however, Charter Advanced Services objects to being subject to discovery by the Department until such time as the Department's jurisdiction has been established.

4. Charter reserves the right to supplement its responses as appropriate or as further investigation may merit.

RESPONDENT'S NAME AND TITLE

Subject to each general objection stated above, and those stated with particularity below, Charter's responses below are provided by Betty Sanders, Senior Director, Regulatory Affairs, Charter Communications.

RESPONSE TO INFORMATION REQUEST:

Subject to each general objection stated above, and those stated with particularity below, Charter provides the following responses.

Information Request No. 2:

In Charter's Answer to Complaint at page 26 it states: "Charter is continuing to offer credits in accordance with the amounts called for by the TAP assistance program to new qualifying subscribers and past qualifying subscribers alike through the Charter Advanced entities…" For the purpose of the questions below, the Minnesota credit provided by Charter will be referred to as "TAP".

Information Request No. 2(a):

What does Charter call the TAP credit on the customer's bill? Please provide a sample bill that shows the TAP credit.

Charter's Response to Information Request No. 2(a):

Subject to the objections stated above, Charter Fiberlink responds that it does not provide and has not provided during times relevant to the Complaint retail interconnected VoIP services, and therefore is not in possession of information responsive to this request. Charter Advanced Services otherwise objects to this request for the reasons stated above.

Information Request No. 2(b):

Please provide the total number of Charter customers in Minnesota that have received the TAP credit in each month beginning with March, 2013, to present. If data is unavailable on a monthly basis since March, 2013, please provide whatever data is available.

Charter's Response to Information Request No. 2(b):

Subject to the objections stated above, Charter Fiberlink responds that it does not provide and has not provided during times relevant to the Complaint retail interconnected VoIP services, and therefore is not in possession of information responsive to this request. Charter Advanced Services otherwise objects to this request for the reasons stated above.

Information Request No. 2(c):

For each month beginning with March, 2013 to present, please provide the number of customers that received their first TAP credit from Charter in that month.

Charter's Response to Information Request No. 2(c):

Subject to the objections stated above, Charter Fiberlink responds that it does not provide and has not provided during times relevant to the Complaint retail interconnected VoIP services, and therefore is not in possession of information responsive to this request. Charter Advanced Services otherwise objects to this request for the reasons stated above.

Information Request No. 2(d):

Since a customer is unable to obtain the TAP credit by contacting Charter at the telephone number on its marketing materials (1-844-273-2386) or by its website (gocharter.com), please explain what process must be used by a qualifying customer to obtain the TAP credit from Charter?

Charter's Response to Information Request No. 2(d):

Subject to the objections stated above, Charter Fiberlink responds that it does not provide and has not provided during times relevant to the Complaint retail interconnected VoIP services, and therefore is not in possession of information responsive to this request. Charter Advanced Services otherwise objects to this request for the reasons stated above.

Information Request No. 2(e):

Please provide any scripts or other documents used to train customer service representatives about the TAP program.

Charter's Response to Information Request No. 2(e):

Subject to the objections stated above, Charter Fiberlink responds that it does not provide and has not provided during times relevant to the Complaint retail interconnected VoIP services,

and therefore is not in possession of information responsive to this request. Charter Advanced Services otherwise objects to this request for the reasons stated above.

Information Request No. 2(f):

Please provide a copy of the application that Charter provides when a customer or potential customer inquiries about the TAP program and indicates that they wish to apply for the TAP credit.

Charter's Response to Information Request No. 2(f):

Subject to the objections stated above, Charter Fiberlink responds that it does not provide and has not provided during times relevant to the Complaint retail interconnected VoIP services, and therefore is not in possession of information responsive to this request. Charter Advanced Services otherwise objects to this request for the reasons stated above.

Dated: January 15, 2015

Respectfully submitted,

/s/Anthony Mendoza
Anthony Mendoza, Esq.
Mendoza Law Office, LLC
790 S. Cleveland Ave., Suite 206
St. Paul, MN 55116
(651) 340-8884
tony@mendozalawoffice.com

/s/ Samuel L. Feder
Samuel L. Feder
Luke C. Platzer
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1099 New York Ave., NW
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Washington, DC 20001
(202) 639-6000
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STATE OF MINNESOTA
PUBLIC UTILITIES COMMISSION

In the Matter of the Complaint By The Minnesota Department of Commerce (DOC) Against the Charter Affiliates Regarding Transfer of Customers	)))))	Docket No. P5615/C-14-383

RESPONSE OF CHARTER TO DEPARTMENT OF COMMERCE'S THIRD INFORMATION REQUEST

Charter Fiberlink CCO, LLC and Charter Fiberlink CC VIII, LLC (hereinafter "Charter Fiberlink"), Charter Advanced Services (MN), LLC and Charter Advanced Services VIII (MN), LLC (hereinafter "Charter Advanced Services") (collectively "Charter") hereby provide the following responses to the Department of Commerce's Third Information Request, dated December 23, 2014.[1]

GENERAL OBJECTIONS

1. Charter objects to the Third Information Request as premature insofar as Charter has an Answer on file with the Commission questioning the Commission's jurisdiction, and the Commission has not yet concluded that is has jurisdiction over the interconnected VoIP services at issue – it has tentatively asserted jurisdiction only for the purposes of requiring an Answer to the Department's Complaint, and not for purposes of permitting commencement of discovery.

2. Charter further objects to the Third Information Request as premature insofar as the question of whether the Commission's regulations pertaining to customer complaints – to which the Third Information Request pertains – even apply to Interconnected VoIP service such

[1] The Requesting Analyst for Information Request No. 3 is Greg Doyle.

as the service offered by Charter Advanced Services (and previously offered by Charter Fiberlink), either under Minnesota law or as a matter of federal preemption, remains undecided. Resolution of this legal issue by the Commission may moot any significance or relevance of the information sought, rendering discovery on the subject premature.

3. Charter further objects to the Third Information Request insofar as it requests information from Charter Advanced Services. The Department's jurisdiction does not extend to non-regulated services or entities under Minnesota law, or to services or entities as to which regulation under Minnesota law is preempted by federal law. Charter has challenged in its Answer in this proceeding the Commission's jurisdiction over such services and entities, and that challenge remains pending. Subject to the objections stated herein, Charter Fiberlink will respond to the Third Information Request insofar as it possesses responsive information pertaining to its regulated services; however, Charter Advanced Services objects to being subject to discovery by the Department until such time as the Department's jurisdiction has been established.

4. Charter further objects to the Third Information Request as not reasonably tailored to lead to the discovery of relevant information insofar as it asks for all "Minnesota customer complaints," "complaints [Charter] has received from Minnesota customers," and "complaints from Minnesota customers," without limiting the request to customer complaints pertaining to the services at issue in this proceeding, *i.e.* retail Interconnected VoIP services. Complaints pertaining to services provided by Charter other than retail interconnected VoIP services are not relevant to this proceeding.

5. Charter reserves the right to supplement its responses as appropriate or as further investigation may merit.

RESPONDENT'S NAME AND TITLE

Subject to each general objection stated above, and those stated with particularity below, Charter's responses below are provided by Betty Sanders, Senior Director, Regulatory Affairs, Charter Communications.

RESPONSE TO INFORMATION REQUEST:

Subject to each general objection stated above, and those stated with particularity below, Charter provides the following responses.

Information Request No. 3:

In Charter's Answer to Complaint at page 3 it states there has been "an absence of consumer complaints." At page 19 it states: "The DOC Complaint does not document a single customer complaint against Charter's interconnected VoIP service."

Information Request No. 3(a):

Please provide the number of Minnesota customer complaints Charter has received in each month beginning with March 2013 to present.

Charter's Response to Information Request No. 3(a):

Subject to the objections stated above, Charter Fiberlink responds that it has not provided interconnected VoIP services during the timeframe requested by this Request, and therefore is not in possession of information responsive to this request. Charter Advanced Services otherwise objects to this request for the reasons stated above.

Information Request No. 3(b):

Please provide any description that Charter has showing the nature of the complaints it has received from Minnesota customers.

Charter's Response to Information Request No. 3(b):

Subject to the objections stated above, Charter Fiberlink responds that it has not provided interconnected VoIP services during the timeframe requested by this Request, and therefore is

not in possession of information responsive to this request. Charter Advanced Services otherwise objects to this request for the reasons stated above.

Information Request No. 3(c):

For each month beginning with March 2013 to present, please provide an itemization of all complaints from Minnesota customers referred to Charter from a government entity. Provide any documentation that Charter has that pertains to such complaints.

Charter's Response to Information Request No. 3(c):

Subject to the objections stated above, Charter Fiberlink responds that it has not provided interconnected VoIP services during the timeframe requested by this Request, and therefore is not in possession of information responsive to this request. Charter Advanced Services otherwise objects to this request for the reasons stated above.

Dated: January 15, 2015

Respectfully submitted,

/s/Anthony Mendoza
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sfeder@jenner.com

Charter Communications Order Inquiries - Windows Interne...

https://c-rnr-cs21.instantservice.com/npclient/261117826/8B82745EDC

You have been connected to Tiarra S.

Tiarra S: Thanks for giving me the opportunity to help you today! My name is Tiarra S and I'll be taking care of you today. How can I help?

Greg Doyle: Hi, I have a question about telephone service.

Tiarra S: I can certainly find the answer to that question for you, Greg! It's important for me to get the best solution, so please allow me to ask you a few questions to make sure we are on the same page. Of course, if you have any other concerns that come up, feel free to stop me!

Greg Doyle: I am wondering if Charter has any plans in Minnesota that provide a discount to low income customers

Tiarra S: Let's get started, Greg! First, I would like to verify the services Charter has to offer in your area. In order to do so, may I please have your full address with zip code?

Greg Doyle: ####4 Jasmine Path, Lakeville, MN ####4

Tiarra S: Thank you very much, Greg! Please bear with me just a moment while I pull up some information for you.

Tiarra S: I do apologize but there are no discounts for low income customers.

Greg Doyle: There isn't something called the Telephone Assistance Plan (TAP) available?

Tiarra S: In our system it does not state that information, but if you wanted to verify you would need to go to your local Charter office.

Greg Doyle: Ok, thank you for your help. That is all that I wanted to know.

End Chat

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VIA ELECTRONIC MAIL

January 7, 2015

Mr. Alexius M. Hofschulte
Department of Commerce
85 7th Place East, Suite 500
St. Paul, MN 55101-2198

Re: In the Matter of the Complaint by the Minnesota Department of Commerce Against the Charter Affiliates Regarding Transfer of Customers; MPUC Docket No: P5615/C-14-383

Dear Mr. Hofschulte:

Enclosed and served on the Minnesota Department of Commerce is the response of Charter Fiberlink CCO, LLC, and Charter Fiberlink CC VII, LLC (the Charter Fiberlink Affiliates) to the Department's information request number 1.

Please contact me should you have any questions.

Very truly yours,

MENDOZA LAW OFFICE, LLC

Anthony S. Mendoza

Enc.

cc: Mr. Luke Platzer, Esq.
Mr. Michael Moore, Charter
Ms. Betty Sanders, Charter

STATE OF MINNESOTA
PUBLIC UTILITIES COMMISSION

In the Matter of the Complaint By The Minnesota Department of Commerce (DOC) Against the Charter Affiliates Regarding Transfer of Customers	)))))	Docket No. P5615/C-14-383

RESPONSE OF CHARTER FIBERLINK CCO, LLC AND CHARTER FIBERLINK CC VIII, LLC TO DEPARTMENT OF COMMERCE'S FIRST INFORMATION REQUEST

Charter Fiberlink CCO, LLC and Charter Fiberlink CC VIII, LLC (hereinafter "Charter Fiberlink") hereby provide the following responses to the Department of Commerce's First Information Request, dated December 11, 2014.[1]

GENERAL OBJECTIONS

1. Charter Fiberlink objects to the First Information Request as premature insofar as Charter Fiberlink, along with Charter Advanced Services (MN), LLC and Charter Advanced Services VIII (MN), LLC (collectively "Charter Advanced Services") has an Answer on file with the Commission questioning the Commission's jurisdiction, and the Commission has not yet concluded that is has jurisdiction over the interconnected VoIP services at issue – it has tentatively asserted jurisdiction only for the purposes of requiring an Answer to the Department's Complaint, and not for purposes of permitting commencement of discovery.

2. Charter Fiberlink further objects to the First Information Request as premature insofar as the question of whether the Commission's regulations pertaining to the transfer of customers – to which the First Information Request pertains – even apply to Interconnected VoIP

[1] The Requesting Analyst for Information Request No. 1 is Diane Dietz.

service such as the service offered by Charter Advanced Services (and previously offered by Charter Fiberlink), either under Minnesota law or as a matter of federal preemption, remains undecided. Resolution of this legal issue by the Commission may moot any significance or relevance of the information sought, rendering discovery on the subject premature.

3. Charter Fiberlink further objects to the Information Request insofar as it requests information from Charter Advanced Services (MN), LLC and Charter Advanced Services VIII (MN), LLC. Both entities have challenged in their Answer in this proceeding the Commission's jurisdiction over them and that challenge remains pending.

4. Charter Fiberlink reserves the right to supplement its responses as appropriate or as further investigation may merit.

RESPONDENT'S NAME AND TITLE

Subject to each general objection stated above, and those stated with particularity below, Charter Fiberlink's responses below are provided by Betty Sanders, Senior Director, Regulatory Affairs, Charter Communications.

RESPONSE TO INFORMATION REQUEST:

Subject to each general objection stated above, and those stated with particularity below, Charter Fiberlink provides the following responses.

Information Request No. 1:

On March 1, 2013, Charter Fiberlink CCO, LLC and Charter Fiberlink CC VIII, LLC (the Charter Fiberlink Affiliates) assigned the rights to serve their Minnesota residential customers to Charter Advanced Services (MN), LLC and Charter Advanced Services VIII (MN), LLC (the Charter Advanced Services Companies). Please fully explain how notice of the transaction was given to, and consent obtained from subscribers[.]

Charter's Response to Information Request No. 1:

Charter Fiberlink's business and residential interconnected VoIP subscribers who were transferred to the Charter Advanced Services entities on March 1, 2013 were notified of the

transfer 30 or more days before the transfer became effective. Notifications were sent to customers accompanying their monthly bills, either via U.S. mail or electronically. Samples of the notifications sent to the affected subscribers are attached in Charter Fiberlink's response to Information Request 1.1 below. As the notices indicate, Charter's interconnected VoIP subscribers were given the option of consenting to the transfer by continuing their subscriptions 30 days after receiving the notification, and were invited to call a Charter customer service number with any questions or complaints regarding the same. Charter Fiberlink has no records of any subscriber declining consent to the transfer.

Information Request No. 1.1:

Provide copies of all written notices issued by the Charter Fiberlink Affiliates and by the Charter Advanced Services Companies and sent to the Minnesota customers affected by this transfer that took place on or about March 1, 2013.

Charter's Response to Information Request No. 1.1:

Copies of the notices Charter Fiberlink provided to its residential and business interconnected VoIP subscribers affected by the transfer to the Charter Advanced Services entities are attached to this response.

Information Request No. 1.2:

For any customer notice provided online, explain how a customer would become aware of the notice and the steps a customer would be required to take to access the notice. Provide a sample of what customers received to become aware of the online notice and a copy of the notice.

Charter's Response to Information Request No. 1.2:

Charter subscribers who receive their monthly bills electronically in lieu of U.S. mail received via electronic means (*e.g.*, PDF file via email link) the same transfer notification with their monthly bill as customers who received the transfer notice with their bill via U.S. mail.

Customers receiving the notice electronically would become aware of the notice in the same manner as they are normally notified of their monthly bill (*e.g.*, receiving an email). Notifications provided electronically in this manner did not differ from notifications provided via mail, of which samples are provided in response to Information Request 1.1 above.

Information Request No. 1.3:

Provide copies of scripts relating to all verbal communications used by the Charter Fiberlink Affiliates and the Charter Advanced Services Companies for the Minnesota customers affected by this transfer that took place on or about March 1, 2013.

Charter's Response to Information Request No. 1.3:

If any customers were to have called Charter's customer service line to inquire about the transfer, Charter had instructed its customer service representatives to provide the customer with the following explanation:

> "This was an internal business decision to improve operational efficiencies and reduce operational costs. You shouldn't notice any change to your underlying service, your service rates, or Charter's customer service. The only difference you may notice is a slight reduction in taxes and/or fees starting with the March invoice."

Information Request No. 1.4:

Provide copies of all documents filed with the Federal Communications Commission or the Minnesota Public Utilities Commission by the Charter Fiberlink Affiliates and the Charter Advanced Services Companies that relate to the transfer of customers that took place on or about March 1, 2013.

Charter's Response to Information Request No. 1.4:

Charter Fiberlink objects that the term "relates to" is ambiguous in the context of the information request. Subject to that objection, and to the general objections stated above, Charter Fiberlink states that it has not filed documents with the Federal Communications Commission or the Minnesota Public Utilities Commission, and is not aware of such documents

filed by the Charter Advanced Services Companies, seeking regulatory approval for the transfer, as Charter Fiberlink believes that no such approval is required.

Dated: January 7, 2015

Respectfully submitted,

/s/Anthony Mendoza
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Exhibit A

IMPORTANT PHONE CUSTOMER NOTICE

This notice is to inform you of changes affecting your Charter Phone® service. On or after March 1, 2013, your Charter Phone service will be provided by Charter Advanced Services, an affiliated company owned and operated by Charter Communications.

At the time of this change, **your underlying service and rates for your Charter Phone will remain unchanged.** There will be changes to your terms and conditions of service, and to the descriptions on your monthly invoice, that are described in the “Service, Price & Terms Guide” for Charter Phone in your state, which may be accessed at www.charter.com, under “Terms of Service/Policies.” These terms will govern your Charter Phone service. **Your continued use of Charter Phone service 30 days after your receipt of this notice will indicate your agreement to these changed terms.**

If you have any questions regarding your Charter Phone service, please contact our Customer Service Representatives at 1-888-438-2427. Thank you and we look forward to continuing to serve you.

SA1DF0NH

Exhibit B

IMPORTANT PHONE CUSTOMER NOTICE

This notice is to inform you of changes affecting your Charter Business® Voice Trunk (T1-PRI & SIP) service. On or after March 1, 2013, these services will be provided by Charter Advanced Services, an affiliated company owned and operated by Charter Communications.

At the time of this change, **your underlying service and the rates for your Charter Business Voice Trunk service will remain unchanged.** In addition, the only changes to the applicable business terms for Charter Business Voice Trunk service will be to the underlying tariff or "Service Price & Terms Guide" for your state, which may be accessed at www.charter.com, under "Terms of Service/Policies." You will also notice some changes to the descriptions on your monthly invoice. These terms will govern your Charter Business Voice Trunk service. **Your continued use of the service 60 days after your receipt of this notice will indicate your agreement to these changed terms.**

If you have any questions regarding your Charter Business Voice Trunk service, please contact our Business Customer Service Representatives at 1-800-314-7195. Thank you and we look forward to continuing to serve you.

SA1DF0NK

Exhibit C

IMPORTANT PHONE CUSTOMER NOTICE

This notice is to inform you of changes affecting your Charter Business® Phone service. On or after March 1, 2013, this service will be provided by Charter Advanced Services, an affiliated company owned and operated by Charter Communications.

At the time of this change, **your underlying service and the rates for your Charter Business Phone will remain unchanged.** In addition, the only changes to the applicable business terms for Charter Business Phone service will be to the underlying tariff or "Service Price & Terms Guide" for your state, which may be accessed at www.charter.com, under "Terms of Service/ Policies." You will also notice some changes to the descriptions on your monthly invoice. These terms will govern your Charter Business Phone service. **Your continued use of the service 30 days after your receipt of this notice will indicate your agreement to these changed terms.**

If you have any questions regarding your Charter Business Phone service, please contact our Business Customer Service Representatives at 1-800-314-7195. Thank you and we look forward to continuing to serve you.

SA1DF0NJ

GENERAL TERMS AND CONDITIONS FOR CHARTER RESIDENTIAL SERVICES

In addition to these Residential General Terms and Conditions of Service (“General Terms”), You (“Subscriber”) agree to be bound by the terms of service applicable to the residential Charter service(s) to which You subscribe (hereafter, “Service” or “Services”), as well as the Charter Subscriber Privacy Notice which may each be found at www.charter.com, under “Terms of Service/Policies” and “Your Privacy Rights,” as such may be updated from time to time (collectively, the "Terms of Service"), which are incorporated herein by this reference. In the event of any conflict between these General Terms below and the Service-specific Terms of Service, the Service-specific Terms of Service shall control.

If Charter provides Charter Voice™ service (also, “Phone Service”) in Subscriber’s area, it will be provided through the Charter Phone affiliate servicing Subscriber’s area. For purposes of this Agreement, “affiliate” means any subsidiary of Charter Communications, Inc.

Subscriber’s signature on the work order presented upon installation of Services and/or Subscriber’s use of Services are evidence of Subscriber’s agreement to the Terms of Service. Charter may change its prices, fees, the Services, and/or the Terms of Service. Subscriber’s continued use of the Services after notice of the change, shall be considered Subscriber’s acknowledgement and acceptance of the changes. The current version of the Terms of Service may be found at “www.charter.com” under “Terms of Service/Policies.” Subscriber may not modify the General Terms below, the Service-specific Terms of Service, or the Charter Subscriber Privacy Notice by making any typed, handwritten, or any other changes to it for any purpose. This is a binding legal document.

These General Terms and the Terms of Service do not apply to services sold under the Charter Business® brand.

THIS AGREEMENT CONTAINS A BINDING ARBITRATION PROVISION IN SECTION 24, WHICH INCLUDES A WAIVER OF CLASS ACTIONS AND PROVISIONS FOR OPTING OUT OF ARBITRATION, WHICH AFFECTS SUBSCRIBER’S RIGHTS UNDER THIS AGREEMENT WITH RESPECT TO ALL SERVICES.

1. **Payment of Charges:** Subscriber will be billed monthly in advance for Services to be received, plus pro-rata charges, if any, for periods not previously billed. Subscriber will be billed monthly for Pay Per View, On Demand or other Services ordered where charges are based on actual usage or on orders placed during the previous month. Subscriber shall pay all monthly charges and all applicable fees and taxes as listed on the Charter monthly bill.

Subscriber shall notify Charter of disputed items within thirty (30) days of receipt, or longer as required by applicable law. Failure to pay charges billed (including checks returned for insufficient funds) may result in discontinuance of Service, the removal of all Charter Equipment (as defined below) and/or imposition of a late payment or service charge. If the Subscriber has more than one account (business and/or residential) served by Charter, all Charter-provided Services at all locations may be subject to suspension or discontinuance of Service in the event any one account remains unpaid, and Charter may apply any funds received from Subscriber first to such delinquent account(s). Should Subscriber wish to resume a Service after any suspension, Subscriber may be subject to a reconnection fee. Should Subscriber wish to resume a Service after termination of Service, Charter may charge an installation fee and/or service activation fee. These fees are in addition to all past due charges and other fees. In the event collection activities are required, an additional collection charge may be imposed.

Subscriber’s first bill may include prorated charges for Service received. If partial payment is made of any bill and without waiving its right to collect the full balance owed, Charter will apply that payment to any outstanding charges in the amounts and proportions that it determines.

2. **Payment by Check; Non-Sufficient Funds/Returned Items; Third Party Processing.** If Subscriber makes payment by check, Subscriber authorizes Charter to collect such payment electronically. Subscriber may not amend or modify this Agreement with any restrictive endorsements (such as “paid in full”), releases, or other statements on or accompanying checks or other payments accepted by Charter; any of which notations shall have no legal effect. If Subscriber’s card issuer or financial institution refuses payment for insufficient funds, closed or unauthorized accounts, or any other reason, Subscriber will be charged an insufficient fund charge (as set forth in the applicable Video Service rate card or Voice Service Price Guide for Subscriber’s area) for each instance in which such payment is refused. Subscriber hereby authorizes Charter to collect any declined amount and the insufficient funds charge(s) electronically from the subject account. In addition, Subscriber’s Service may be suspended and/or terminated. This fee is in addition to any charges Subscriber’s financial institution may assess. If initially rejected, Charter may make additional multiple attempts to execute the payment for up to thirty (30) days following the initial refusal.

Customer shall be responsible for any payment processing fees incurred when using a third party to process Customer’s payments to Charter.

3. **Charter Refund Policy/30-Day Guarantee**. New Subscribers (those who have not been Charter customers for 90 days prior to subscription) qualify to have all levels of subscription Service refunded/credited if not fully satisfied with the service. Current Subscribers adding a new level of subscription Service qualify to receive a refund/credit only on those newly added Services not received within the previous 90 days. Such refund is valid for customers who pay for their first month of new or upgraded monthly

recurring subscription Services. Pay-Per-View and other non-recurring subscription purchases are not refundable in addition to any installation fees that may apply. Subscriber is limited to one refund or credit per household for a maximum of 30 days of Service. Refunds/credits will be given only when request for cancellation of Service is received by Charter within 45 days of installation of Service (30 days subscribing to the Service, plus 15 day grace period for formal request of refund/credit). Any equipment associated with the new subscription must be returned prior to release of refund/credit. Any state taxes, franchise fees and other fees or charges that may apply are the responsibility of the Subscriber and will not be refunded or credited. Other restrictions per any offer apply.

4. **Charter Property:** All Charter-provided equipment distributed to and/or installed for use in the Subscriber's service location(s) by or on behalf of Charter ("Equipment") remains the property of Charter. None of the Equipment shall become a fixture. Charter Equipment is intended to service and reside at the specific Service location and is not to be used or relocated off premises without Charter authorization. Subscriber must return all Equipment upon substitution of use or termination of Service. Failure to do so will result in a charge to be determined in accordance with Charter's then current schedule of charges for non-returned Equipment, which amount shall be due immediately. Subscriber agrees to pay such charge whether the Equipment is lost (through theft or otherwise), damaged or destroyed.

5. **Disruption of Service:** All Charter Services are provided on an "AS IS" and "AS AVAILABLE" basis. In no event shall Charter be liable for any failure or interruption of Service, including without limitation those failures and interruptions resulting in part or entirely from circumstances beyond Charter's reasonable control. Subject to applicable law, Charter may give credit with respect to Subscriber's recurring monthly subscription fee for qualifying outages of Charter Services.

6. **Charter Equipment:** Charter will repair and/or replace defective Equipment, if any, as long as such damage was not caused by misuse or other improper operations or handling by Subscriber. Charter shall have the right to presume misuse or other improper operations or handling by Subscriber in the event Subscriber requests repair or replacement more than twice in any twelve (12) month period, or more than three times in any twenty-four (24) month period, and shall have no obligation to fulfill any such repair or replacement. Charter is not responsible for the maintenance or repair of Subscriber-provided equipment, including but not limited to telephones, computers, modems, televisions, or any other related Subscriber-provided equipment. A service charge may be imposed upon the dispatch of a technician if there is damage to Charter Equipment due to negligent use or abuse or if no fault is discovered in Charter’s system or Equipment. Charter makes no warranties, with respect to Equipment or Service provided by Charter or with respect to the compatibility of the Service or the Equipment with any Subscriber-provided equipment.

ALL EQUIPMENT IS PROVIDED “AS IS”, AND CHARTER HEREBY SPECIFICALLY DISCLAIMS ANY AND ALL EXPRESS AND IMPLIED WARRANTIES, INCLUDING WITHOUT LIMITATION ANY IMPLIED WARRANTIES OF MERCHANTIBILITY, NON-INFRINGEMENT, TITLE, AND FITNESS FOR A SPECIFIC PURPOSE.

CHARTER SHALL NOT BE LIABLE FOR ANY INDIRECT, CONSEQUENTIAL, EXEMPLARY, SPECIAL, INCIDENTAL OR PUNITIVE DAMAGES (INCLUDING WITHOUT LIMITATION, LOST BUSINESS, REVENUE, PROFITS, OR GOODWILL) ARISING FROM THE USE, DEPLOYMENT, AND/OR FUNCTIONALITY OF ITS EQUIPMENT.

Charter’s sole obligation and Subscriber’s sole remedy with respect to any liability or damage caused by Subscriber’s use or deployment of Charter Equipment, shall be a refund of fees paid by Subscriber for such Equipment for the previous billing month/cycle.

7. **Subscriber Property:** Charter assumes no responsibility and shall have no responsibility for the condition or repair of any Subscriber-provided equipment and/or software. Subscriber is responsible for the repair and maintenance of Subscriber-provided equipment and/or software. Charter is not responsible or liable for any loss or impairment of Charter's Service due in whole or in part to a malfunction, defect or otherwise caused by Subscriber-provided equipment and/or software.

Notwithstanding anything to the contrary, Subscriber agrees to allow Charter and our agents the right (A) to install hardware in, (B) send software downloads to, and (C) install, configure, maintain, inspect or upgrade Subscriber-provided equipment to the extent necessary to provide Service. Subscriber warrants that Subscriber is either the owner of such equipment or that Subscriber has the authority to give Charter access to it.

8. **Taxes/Fees:** Subscriber agrees to pay any local, state or federal taxes and fees imposed or levied on or with respect to the Services, the Equipment or installation or service charges incurred with respect to the same (including franchise fees).

With respect to applicable government imposed fees and taxes, including franchise fees. Charter will review on a quarterly and annual basis the amount it collects in franchise fees and taxes and start refunding to current subscribers franchise fees and taxes it may have collected in excess of sums due to governmental authorities within 15 months of the end of each calendar year. In some cases, Subscriber may be billed for franchise fees that relate to time periods before Subscriber began receiving service. Charter will not bill Subscriber for these past franchise fees more than 4 years after the year they are incurred by Charter. Franchise fees resulting from an audit by the applicable franchising authority are incurred at the time those fees are assessed.

9. **Care of Charter Property and Service:** Subscriber agrees that neither Subscriber nor any other person (except Charter's authorized personnel) will: (A) open, tamper with, service, or make any alterations to the Equipment; nor (B) remove or relocate any Equipment from the service address of initial installation. Any alteration, tampering, removal, or the use of Equipment which permits the receipt of Services without authorization or the receipt of Services to an unauthorized number of outlets, or to unauthorized locations, constitutes theft of service and is prohibited. Notwithstanding the foregoing, upon receipt of a request by Subscriber, Charter shall relocate the Charter Equipment for Subscriber within Subscriber's home at a time mutually agreed to by Charter and Subscriber. Subscriber may incur a charge for such relocation and should consult a current Charter schedule of rates and charges prior to requesting such relocation. If the Subscriber moves residences outside of Charter's service area, Subscriber shall notify Charter that this Agreement shall be terminated and the provisions of Section 13 shall apply to such termination.

10. **Access to Subscriber Premises:** Subscriber authorizes Charter and its employees, agents, contractors and representatives to access and otherwise enter the Subscriber's premises to install, inspect, maintain and/or repair the Equipment and, upon the termination of Service, to remove the same from the premises. Charter's failure to remove its Equipment shall not be deemed an abandonment thereof. If the installation and maintenance of Service are requested at Premises that, in Charter's sole discretion, are or may become hazardous or dangerous to our employees, the public or property, Charter may refuse to install and maintain such Service.

11. **Recording of Communications:** Customer acknowledges and agrees that all communications between Customer and Charter may be recorded or monitored by Charter for quality assurance or other purposes.

12. **Assignment or Transfer:** This Agreement and the Services and/or Equipment supplied by Charter are not assignable or otherwise transferable by Subscriber, without specific written authorization from Charter.

13. **Termination and Expiration:**

a. **Termination by Subscriber:** Unless otherwise terminated, this Agreement shall automatically renew on a month-to-month basis. Subscriber acknowledges that upon such renewal all pricing is subject to change. To terminate any recurring service, Subscribers must call 888-438-2427, or provide a hardcopy written notice of termination to Charter delivered to 2 Digital Place, Floor 4, Simpsonville, SC 29681.

b. **Termination for Bankruptcy:** Charter shall have the right to terminate this Agreement immediately in the event that Subscriber makes an assignment for the benefit of creditors, or a voluntary or involuntary petition is filed by or against Subscriber under any law having for its purpose the adjudication of Subscriber as a bankrupt or the reorganization of Subscriber.

c. **Termination for Breach:** In the event of any breach of this Agreement by Subscriber, the failure of Subscriber to abide by the rates, rules and regulations of Charter, the failure of Subscriber to provide and maintain accurate registration information, or any illegal activity by the Subscriber using any Charter Service, this Agreement may, at Charter's option, be terminated and Charter's Equipment removed. Failure of Charter to remove such Equipment shall not be deemed abandonment thereof. Subscriber shall pay reasonable collection and/or attorney's fees to Charter in the event that Charter shall, in its discretion, find it necessary to enforce collection or to preserve and protect its rights under this Agreement. Charter may terminate this Agreement or Charter may reject an application or block access to or use of any component of any Charter Service for any reason including, but not limited to, if:

i. Subscriber violated this Agreement as to this or another Charter account;

ii. the information required in the application process is or becomes incorrect, absent or incomplete;

iii. Subscriber threatened or harassed any Charter employee, agent, contractor or representative;

iv. Subscriber's credit card issuer refuses a charge or any other payment method fails to compensate Charter;

v. there is a violation of the Terms of Service or other agreements (such as Term Agreements) with respect to any Charter Service, as determined in the sole discretion of Charter; or

vi. the amount of technical support required to be provided to Subscriber is excessive as determined in the sole discretion of Charter.

Subscriber further agrees that in the event of termination pursuant to subsections (b) or (c), Charter shall have no liability to Subscriber.

d. **Obligations Upon Termination:** The Subscriber agrees that upon termination of this Agreement:

i. Subject to 13.a, Subscriber will pay Charter in full for Subscriber's use of the Equipment and the Services, as applicable, up to the later of the effective date of termination of this Agreement, the date on which the Charter Service has been disconnected, or the date on which the Equipment is returned to Charter. The Subscriber agrees to pay Charter on a pro-rated basis for any use by the Subscriber of any Charter Service for a part of a month;

ii. Subscriber will promptly return all Equipment to Charter. In the event that Subscriber fails to return any Equipment within ten (10) days of the termination of this Agreement in addition to Equipment charges contemplated in Section 13.d, Subscriber shall be liable to Charter in accordance with Charter's then current schedule of charges for non-returned Equipment.

e. Renewal after Cancellation or Termination: Subscriber acknowledges and agrees that in the event of renewal after cancellation or termination of a Charter Service, Subscriber shall be subject to the pricing, warranties, and Terms of Service as are effective at the time of such renewal.

14. **Security Deposit:** Any security deposit required of Subscriber for the Equipment or Charter's Service will be due and payable upon the first monthly billing. Such security deposits will be returned to Subscriber within sixty (60) days of termination of Charter's Service so long as payment has been made for all amounts due on Subscriber's account and Subscriber has returned the Charter Equipment undamaged.

15. **Advance Payment:** Subscribers who are unable or unwilling to provide information to establish credit worthiness or who have an unsatisfactory credit rating may be required to make an advance payment. The advance payment will be equal to the applicable installation charge and one month of recurring charges, excluding taxes, fees and surcharges. The advance payment will appear as a credit and be applied to the first monthly bill. Charter reserves the right to refuse service if the Subscriber fails to fulfill standard credit requirements. After service has been established, the Subscriber will be responsible for the payment of all applicable charges, including taxes, fees and surcharges to avoid discontinuance of service.

16. **Content and Services:** All services are subject to change in accordance with applicable law.

17. **Rates:** All rates are subject to change in accordance with applicable law.

18. **Late Fee:** If Subscriber’s account is 30 days past due, a reminder message will be included on Subscriber’s monthly bill. If Subscriber’s past due balance remains unpaid, Subscriber may be charged an applicable late fee in addition to Subscriber’s past due balance at Charter's then current rate. If Subscriber’s account remains unpaid Subscriber’s Services may be disconnected. Subscriber can avoid incurring late fees by paying Subscriber’s monthly bill promptly. Any late fees assessed are not considered interest credit service charges, finance charges or penalties. Charter expects that Subscriber will pay for Services on a timely basis, and Charter does not extend credit to customers.

19. **Disclaimer:** Charter assumes no liability for any program, services, content or information distributed on or through the Services and Charter expressly disclaims any responsibility or liability for Subscriber’s use thereof. Further, Charter shall not be responsible for any products, merchandise or prizes promoted or purchased through the use of the Services.

20. **Right to Make Credit Inquiries:** Subscriber authorizes Charter to make inquiries and to receive information about Subscriber’s credit experiences, including Subscriber’s credit report, from others, to enter this information in Subscriber’s file, and to disclose this information concerning Subscriber to appropriate third parties for reasonable business purposes.

21. **Charter’s Reservation of Rights:** Charter reserves the right to refuse, suspend or terminate Service to any person at any time for any reason not prohibited by law. When practical, Charter will provide notice that is reasonable under the circumstances before suspending or terminating Service to an existing Subscriber, and Charter will provide any prior notice of suspension or termination that is required by law.

22. **LIMITATION OF LIABILITY.** THE LIMITATION OF LIABILITY SET FORTH IN THIS SECTION APPLY TO ANY ACTS, OMISSIONS AND NEGLIGENCE OF CHARTER AND ITS THIRD-PARTY SERVICE PROVIDERS, AGENTS AND SUPPLIERS (AND EACH OF THEIR RESPECTIVE OFFICERS, EMPLOYEES, AGENTS, CONTRACTORS OR REPRESENTATIVES).

UNDER NO CIRCUMSTANCES SHALL CHARTER BE LIABLE TO CUSTOMER FOR INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL, PUNITIVE, OR EXEMPLARY DAMAGES ARISING OUT OF OR IN CONNECTION WITH THE SERVICE OR ANY ACTS OR OMISSIONS ASSOCIATED THEREWITH, INCLUDING ANY ACTS OR OMISSIONS BY THIRD-PARTY SERVICE PROVIDERS, AGENTS OR SUBCONTRACTORS OF CHARTER, OR RELATING TO ANY SERVICES FURNISHED, WHETHER SUCH CLAIM IS BASED ON BREACH OF WARRANTY, CONTRACT, TORT OR ANY OTHER LEGAL THEORY, AND REGARDLESS OF THE CAUSES OF SUCH LOSS OR DAMAGES OR WHETHER ANY OTHER REMEDY PROVIDED HEREIN FAILS. CHARTER’S ENTIRE LIABILITY AND CUSTOMER’S EXCLUSIVE REMEDY WITH RESPECT TO THE USE OF THE SERVICES OR ANY BREACH BY CHARTER OF ANY OBLIGATION CHARTER MAY HAVE UNDER THESE TERMS OF SERVICE OR APPLICABLE LAW, SHALL BE CUSTOMER’S ABILITY TO TERMINATE THE SERVICE OR TO OBTAIN THE REPLACEMENT OR REPAIR OF ANY DEFECTIVE EQUIPMENT PROVIDED BY CHARTER. IN NO EVENT SHALL CHARTER’S

LIABILITY TO CUSTOMER FOR ANY CLAIM ARISING OUT OF THIS AGREEMENT EXCEED THE AMOUNT PAID BY CUSTOMER DURING THE PRECEDING THIRTY (30) DAY PERIOD.

23. **Privacy Policy.** Charter will provide Subscriber with a copy of its customer privacy policy at the time Charter provides Service to Subscriber, and annually afterwards, or as otherwise required by law. Subscriber can view the most current version of our privacy notice by going to “www.charter.com, and then “Your Privacy Rights.” Subscriber assumes sole responsibility for all privacy, security and other risks associated with providing personally identifiable information to third parties via the Service. To the extent that Charter is expressly required to do so by applicable law, Charter will provide notice to Subscriber of a breach of the security of certain personally identifiable information about Subscriber. Subscriber agrees that Charter may collect and disclose information concerning Subscriber and Subscriber’s use of Service in the manner and for the purposes set forth herein and in Charter’s privacy policy. In order to protect the privacy of Subscriber’s account information, Charter may require that Subscriber use a security code or other method, in addition to the user name and password, to confirm Subscriber’s identity when requesting or otherwise accessing account information or making changes to Subscriber’s Service through Charter’s customer service representatives. Subscriber may also choose to designate an authorized user of Subscriber’s account (an “Authorized User”), who will be able to access Subscriber’s account information and make changes to Subscriber’s account. Once established, an Authorized User may be required to authenticate his/her identity in the same manner according to Charter’s policies.

24. **ARBITRATION.** The following provisions are important with respect to the Agreement between Subscriber and Charter regarding Charter’s Services.

PLEASE READ THEM CAREFULLY TO ENSURE THAT SUBSCRIBER UNDERSTANDS EACH PROVISION. This Agreement requires the use of arbitration to resolve disputes and otherwise limits the remedies available to Subscriber in the event of a dispute.

Subject to the “Exclusions” paragraph below, Charter and Subscriber agrees to arbitrate disputes and claims arising out of or relating to this Agreement, the Services or marketing of the Services Subscriber has received from Charter. Notwithstanding the foregoing, either party may bring an individual action on any matter or subject in small claims court.

THIS AGREEMENT MEMORIALIZES A TRANSACTION IN INTERSTATE COMMERCE.THE FEDERAL ARBITRATION ACT GOVERNS THE INTERPRETATION AND ENFORCEMENT OF THESE ARBITRATION PROVISIONS.

A party who intends to seek arbitration must first send to the other a written notice of intent to arbitrate, entitled “Notice of Intent to Arbitrate” (“Notice”). The Notice to Charter should be addressed to: VP and Associate General Counsel, Litigation, Charter Communications, 12405 Powerscourt Drive, St. Louis, MO 63131 (“Arbitration Notice Address”). The Notice must: (1) describe the nature and basis of the claim or dispute; and (ii) set forth the specific relief sought. If we do not reach an agreement to resolve the claim within 30 days after the Notice is received, Subscriber or Charter may commence an arbitration proceeding, in which all issues are for the arbitrator to decide (including the scope of the arbitration clause), but the arbitrator shall be bound by the terms of this Agreement.

The arbitration shall be governed by the Commercial Arbitration Rules and the Supplementary Procedures for Consumer Related Disputes (collectively, “AAA Rules”) of the American Arbitration Association (“AAA”), as modified by this Agreement, and the arbitration shall be administered by the AAA. The AAA Rules and fee information are available at “www.adr.org,” by calling the AAA at 1-800-778-7879, or by writing to the Arbitration Notice Address.

CHARTER SHALL BEAR THE COST OF ANY ARBITRATION FILING FEES AND ARBITRATOR’S FEES FOR CLAIMS OF UP TO $75,000. SUBSCRIBER IS RESPONSIBLE FOR ALL OTHER ADDITIONAL COSTS THAT SUBSCRIBER INCURS IN THE ARBITRATION INCLUDING, BUT NOT LIMITED TO, ATTORNEYS FEES OR EXPERT WITNESS COSTS UNLESS OTHERWISE REQUIRED OF CHARTER UNDER APPLICABLE LAW.

If the arbitrator’s award exceeds $75,000, either party may appeal such award to a three-arbitrator panel administered by the AAA and selected according to the AAA Rules, by filing a written notice of appeal within 30 days after the date of entry of the arbitration award. The appealing party must provide the other party with a copy of such appeal concurrently with its submission of the appeals notice to AAA. The three-arbitrator panel must issue its decision within 120 days of the date of the appealing party’s notice of appeal. The decision of the three-arbitrator panel shall be final and binding, except for any appellate right which may exist under the Federal Arbitration Act.

The parties may agree that arbitration will be conducted solely on the basis of the documents submitted to the arbitrator, via a telephonic hearing, or by an in-person hearing as established by AAA rules.

SUBSCRIBER AGREES THAT, BY ENTERING INTO THIS AGREEMENT, SUBSCRIBER AND CHARTER ARE WAIVING THE RIGHT TO A TRIAL BY JUDGE OR JURY

Unless Charter and Subscriber agree otherwise in writing, all hearings conducted as part of the arbitration shall take place in the county (or parish) of Subscriber’s billing address.

The arbitrator may award injunctive relief only in favor of the party seeking relief, only to the extent sought, and only to the extent necessary to provide the specific relief warranted by such individual's claim.

The parties agree that the arbitrator must give effect to the terms of this Agreement.

SUBSCRIBER AND CHARTER AGREE THAT CLAIMS MAY ONLY BE BROUGHT IN SUBSCRIBER'S INDIVIDUAL CAPACITY AND NOT ON BEHALF OF, OR AS PART OF, A CLASS ACTION OR REPRESENTATIVE PROCEEDING

Furthermore, unless both Subscriber and Charter agree otherwise in writing, the arbitrator may not consolidate proceedings or more than one person's claims and may not otherwise preside over any form of representative or class proceeding. If this specific paragraph is found to be unenforceable, then the entirety of these arbitration provisions shall be null and void and rendered of no further effect with respect to the specific claim at issue.

Right to Opt Out. If Subscriber does not wish to be bound by these arbitration provisions, Subscriber must notify Charter in writing within 30 days of (a) the date that this arbitration provision becomes effective, if Subscriber is an existing customer, or (b) the date that Subscriber first subscribes to the Service(s). Subscriber may opt out by mail to the Arbitration Notice Address. Subscriber's written notification to Charter must include Subscriber's name, address, and Charter account number as well as a clear statement that Subscriber does not wish to resolve disputes with Charter through arbitration. Subscriber's decision to opt out of this arbitration provision will have no adverse effect on Subscriber's relationship with Charter or the delivery of Services to Subscriber by Charter.

Severability. If any clause within these arbitration provisions is found to be illegal or unenforceable, that specific clause will be severed from these arbitration provisions, and the remainder of the arbitration provisions will be given full force and effect.

NOTWITHSTANDING ANYTHING TO THE CONTRARY, IN THE EVENT SOME OR ALL OF THESE ARBITRATION PROVISIONS IS DETERMINED TO BE UNENFORCEABLE FOR ANY REASON, OR IF A CLAIM IS BROUGHT THAT IS FOUND BY A COURT TO BE EXCLUDED FROM THE SCOPE OF THESE ARBITRATION PROVISIONS, BOTH PARTIES AGREE TO WAIVE, TO THE FULLEST EXTENT ALLOWED BY LAW, ANY TRIAL BY JURY.

For purposes of the foregoing sentence only, in the event such waiver is found to be unenforceable, it shall be severed from this Agreement, rendered null and void and of no further effect without affecting the rest of the arbitration provisions set forth herein.

EXCLUSIONS. SUBSCRIBER AND CHARTER AGREE THAT THE FOLLOWING CLAIMS OR DISPUTES SHALL NOT BE SUBJECT TO ARBITRATION:

(1) ANY INDIVIDUAL ACTION BROUGHT BY SUBSCRIBER OR BY CHARTER ON ANY MATTER OR SUBJECT THAT IS WITHIN THE JURISDICTION OF A COURT THAT IS LIMITED TO ADJUDICATING SMALL CLAIMS.

(2) ANY DISPUTE OVER THE VALIDITY OF ANY PARTY'S INTELLECTUAL PROPERTY RIGHTS.

(3) ANY DISPUTE RELATED TO OR ARISING FROM ALLEGATIONS ASSOCIATED WITH UNAUTHORIZED USE OR RECEIPT OF SERVICE.

For New York Video Customers. Subscriber may elect to resolve a Dispute through the New York Public Service Commission in accordance with NYCRR 16§890.709(a) and NYCRR 16§709(c).

The foregoing arbitration provisions shall survive the termination of this Agreement.

25. **Entire Agreement:** These Terms and Conditions (including the Terms of Service) constitutes the entire agreement between the Subscriber and Charter. No undertaking, representation or warranty made by an agent or representative of Charter in connection with the sale, installation, maintenance or removal of Charter's Services or Equipment shall be binding on Charter except as expressly included herein. Subscriber agrees that, if any portion of this Agreement is held invalid or unenforceable, that portion will be construed consistent with applicable law as nearly as possible, and if severed or rendered null and void thereby, the remaining portions will remain in full force and effect. If Charter fails to insist upon or enforce strict performance of any provision of this Agreement, it does not thereby waive any provision or right. Neither the course of conduct between the parties nor trade practice shall act to modify any provision of this Agreement.

: 14-3

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Investigation into regulation of Voice over Internet Protocol (VoIP) Services.
Docket No. 7316.

Vermont Public Service Board
Order entered: April 12, 2013.

PROCEDURAL ORDER ON REMAND AND NOTICE OF HEARING

PUBLIC SERVICE BOARD OF VERMONT

James Volz; David C. Coen; John D. Burke.

I. INTRODUCTION

This docket is an investigation opened to clarify the rights and responsibilities under Vermont law of companies providing Voice Over Internet Protocol ("VoIP") services. On March 29, 2013, the Vermont Supreme Court ("Court") remanded the matter to the Vermont Public Service Board ("Board") to determine whether VoIP is an "information service" or a "telecommunication service" under federal law.[FN1] Accordingly, in this Order we reopen the docket for purposes of complying with the mandate of the Court and completing the investigation.

FN1.*In re Investigation into Regulation of Voice Over Internet Protocol (VoIP) Services*, 2013 VT 13 (March 29, 2013).

II. DISCUSSION

This investigation began in 2007 at the request of the Vermont Department of Public Service ("DPS"). Then, as now, there was uncertainty over the extent to which applicable federal and state law, originally adopted to regulate the public switched telephone network ("PSTN"), applies to voice calling that relies on different protocols for transferring data (i.e., the transmission of digitized packets of information) and alternative networks that transmit data via internet protocol ("IP") rather than analog signals. We completed the initial phase of our investigation in October 2010.[FN2]

FN2.*See Investigation into Regulation of Voice over Internet Protocol ("VoIP") Services* , Docket 7316, Order of 10/28/10 ("Phase I Order"). We subsequently denied a motion to alter the Phase I Order. *See Investigation into Regulation of Voice over Internet Protocol ("VoIP") Services* , Docket 7316, Order of 2/11/11. We entered an Order closing the docket in February 2012 for the express purpose of making our Phase I determinations final and appealable in light of the fact that settlement efforts among the parties had failed and the Vermont Supreme Court had dismissed an appeal by VoIP provider Comcast Phone of Vermont LLC ("Comcast Phone") as premature. *See Investigation into Regulation of Voice over Internet Protocol ("VoIP") Services* , Docket 7316, Order of 2/2/12.

In the interest of clarity, we note here that key elements of our Phase I Order remain undisturbed on appeal. In our Phase I Order, we concluded that "nomadic" VoIP services, in which a caller can originate a telephonic connection from any location with broadband access, is not subject to regulation under Ver-

mont law in light of the jurisdictional lines drawn by Congress and the Federal Communications Commission ("FCC"). This determination was affirmed on appeal, based on our finding that this service cannot be separated into its interstate and intrastate components.[FN3]We also concluded in Phase I that "fixed" VoIP service - i.e., a service that originates from a fixed geographic location, with calls routed over the provider's IP network rather than the public internet - *is* subject to our authority as a matter of Vermont law to the extent the calls are intrastate as opposed to interstate. The Court affirmed this aspect of our decision, agreeing with us that by offering fixed VoIP appellant Comcast Phone was "offering telecommunications service to the public on a common carrier basis" under the relevant provision of our enabling statute, 30 V.S.A. § 203(5).[FN4] The Court specifically found no error in our determination that the service can be separated into its intrastate and interstate components.[FN5]

FN3.*In re Investigation into Regulation of Voice Over Internet Protocol (VoIP) Services*, 2013 VT 13 at ¶ 22. We note that following the entry of our Phase I Order the FCC endorsed a methodology for such separation, at least for purposes of calculating universal service fund contributions without risking preemption. *See In the Matter of Universal Service Contribution Methodology*, 25 FCC Rcd. 15651, 15657-8 (2010).

FN4.*In re Investigation into Regulation of Voice Over Internet Protocol (VoIP) Services*, 2013 VT 13 at ¶ 22.

FN5.*Id.* at ¶ 22.

The Court likewise found no error in our "general approach" to the question of whether federal law preempts our authority to regulate fixed VoIP.[FN6]Under the Communications Act of 1934, as amended by the Telecommunications Act of 1996, providers of "telecommunications services" are subject to regulation by the FCC as common carriers under Title II of the Act while providers of "information services" are exempt from such regulation.[FN7]We concluded, and the Court agreed, that even if fixed VoIP were an information service for purposes of the Telecommunications Act, this would not preclude all state regulation of this service on grounds of either express or field preemption.[FN8] Rather, "if VoIP is an information service then the result is that the regulations in Title II of the Telecom Act do not apply."[FN9]As the Court noted, "[i]nformation services are not wholly exempt from regulation, and state regulations are preempted only to the extent they conflict with federal law or policy."

FN6.*Id.* at ¶ 23.

FN7.*Id.* at ¶ 6 (citing *Federal-State Joint Board on Universal Services*, 13 FCC Rcd. 11501, 11507 (1998)).

FN8.*Id.* at ¶ 24.

FN9.*Id.*

Thus, in light of the Court's remand, we must address whether fixed VoIP is an information service within the meaning of the Telecommunications Act. We note that the procedural posture of the case may require revisitation of an evidentiary determination made in the Phase I Order. In that decision, we adopted the Hearing Officer's denial of a motion made by Comcast Phone to reopen the record to admit supplemental testimony with what was then characterized as new information about how Comcast Phone routes fixed VoIP calls on its broadband network.[FN10]Comcast maintained that the supplemental testimony would have further demonstrated why its fixed VoIP service meets the definition of "information service" under federal law, which we deemed irrelevant because we

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declined to reach the legal question. Now that we must decide the question, it may be appropriate to revisit the issue of what additional evidence, if any, is needed to create a record that is sufficient for a full and fair determination.

FN10. Phase I Order at 30-33 and 39.

Accordingly, we are reopening this docket, appointing a staff attorney, Donald Kreis, as Hearing Officer to conduct further proceedings pursuant to 30 V.S.A. § 8, and scheduling a status conference. At the status conference, the parties will have an opportunity to state their views as to what further proceedings are necessary prior to the Board making the determination required by the mandate of the Vermont Supreme Court.

III. ORDER

IT IS HEREBY ORDERED, ADJUDGED AND DECREED by the Public Service Board of the State of Vermont that:

1. Pursuant to 30 V.S.A. § 209(a)(3), and consistent with the mandate of the Vermont Supreme Court entered on March 29, 2013, an investigation is reopened into state regulation of fixed VoIP services.

2. Pursuant to 30 V.S.A. § 8, Donald Ms. Kreis, Esq., Staff Attorney, is appointed to serve as Hearing Officer in this proceeding.

3. Pursuant to 30 V.A. § 10(c), a status conference will be held in this matter on Tuesday, April 30, 2013, commencing at 9:30 A.M., at the Public Service Board Hearing Room, located on the Third Floor of the People's United Bank Building, at 112 State Street, Montpelier, Vermont.

Dated at Montpelier, Vermont, this 12th day of April, 2013.

OFFICE OF THE CLERKFILED: April 12, 2013 ATTEST: Judith C. Whitney, Deputy Clerk of the Board

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S T A T E O F M I C H I G A N

BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

* * * * *

In the matter of the petition of **SPRINT SPECTRUM L.P.** for arbitration pursuant to Section 252(b) of the Telecommunications Act of 1996 to establish interconnection agreements with **MICHIGAN BELL TELEPHONE COMPANY, d/b/a AT&T MICHIGAN**.	Case No. U-17349

At the December 6, 2013 meeting of the Michigan Public Service Commission in Lansing, Michigan.

PRESENT: Hon. John D. Quackenbush, Chairman
Hon. Greg R. White, Commissioner
Hon. Sally A. Talberg, Commissioner

ORDER

On July 22, 2013, Sprint Spectrum L.P. (Sprint) filed a petition seeking arbitration of terms and conditions of an interconnection agreement with AT&T Michigan. The parties agree that, pursuant to Section 252(b)(1) of the federal Telecommunications Act (FTA), 47 USC 252(b)(1), the Commission has jurisdiction to resolve the issues set forth in Sprint's petition. Sprint initially identified 31 issues needing resolution.

In a letter dated August 7, 2013, Administrative Law Manager Peter L. Plummer identified the members of the arbitration panel to include Commission Staff members Paul D. Negin and Carisa Neu, and Administrative Law Judge Mark E. Cummins. That letter further instructed AT&T Michigan to file its response to the arbitration petition by August 16, 2013.

On August 16, 2013, AT&T Michigan filed a response to the petition. In its response,

AT&T Michigan noted that, as a result of negotiation, a few of the issues were resolved, and some of the contract language it proposed was modified as a result of the settled issues.

By letter dated August 9, 2013, the arbitration panel set a schedule for the parties to submit their respective proposed decisions of the arbitration panel (PDAP), a date for issuance of the arbitration panel's decision, and the interval thereafter for filing of objections. Pursuant to the requirements of 47 USC 251, the Commission must issue an order no later than December 9, 2013.

On October 28, 2013, the arbitration panel issued its decision (DAP). On November 7, 2013, Sprint and AT&T Michigan filed their respective objections to the DAP.

Applicable Law and Standards

The framework within which the arbitration panel and the Commission must resolve the issues presented is contained in 47 USC 251 and 252, and Federal Communications Commission (FCC) rules promulgated thereunder, the Michigan Telecommunications Act, MCL 484.2101 *et seq.*, the Commission's final orders in Case Nos. U-11134 and U-13774, and the Commission's Procedures for Telecommunications Arbitrations and Mediations, R 460.701 *et seq.*

Pursuant to the May 2, 2003 order in Case No. U-13774, the arbitration proceeding follows a "baseball style" approach in resolving issues, and is described as follows:

> The arbitration panel shall issue a decision on the merits of the parties' positions on each issue raised by the request for arbitration and the response. Unless the result would be clearly unreasonable or contrary to the public interest, the panel will limit its decision on each issue to selecting the position of one of the parties on that issue. The panel will issue a written decision, with a brief explanation of the reasons for the decision on each issue, and will serve that decision on the parties. The parties may file objections to the panel's decision within 10 days of the issuance of that decision. The Commission will then issue an order approving, modifying, or rejecting the resulting agreement.

Id., p. 3. *See also*, R 460.706.

Discussion

In the sections below, the Commission discusses and decides the issues subject to the parties' objections *seriatim*. Any issue not subject to objection is deemed settled and will not be discussed. Absent express agreement otherwise, the Commission presumes that issues resolved by the arbitration panel, and not subject to objection, are resolved as determined by the arbitration panel.

A. Purpose and Scope of the Agreement

Issue 1 – Parties' Rights and Obligations Under the Agreement

Sprint proposed language for Sections 3.11.2.2 through 3.11.2.2.2.3 of the interconnection agreement (ICA) that would require AT&T Michigan to provide Sprint with internet protocol (IP) interconnection. Specifically, Sprint asserted "that all of the traffic that Sprint delivers to AT&T in IP format will be accepted into an IP-based system…, that any AT&T affiliate that allows AT&T access to softswitch functionality must also make such IP-related service available to Sprint…, and that each such facility would be available for selection by Sprint as a POI for purposes of establishing IP interconnection with AT&T's system." DAP, pp. 5-6.

According to Sprint, Section 251(c)(2) of the FTA requires AT&T Michigan to provide IP-to-IP interconnection in the same manner as it requires the company to provide time division multiplexing (TDM)-to-TDM interconnection. Sprint noted that AT&T Michigan's corporate affiliate, AT&T Corp.,[1] owns at least one IP-compatible softswitch, which allows AT&T Michigan to provide IP and TDM-based telephone exchange service to its customers. Therefore, Sprint argued that AT&T Michigan should be required to provide Sprint with IP interconnection in the same manner as AT&T Michigan receives IP interconnection from SBCIS. Sprint cited the D.C.

[1] On October 17, 2013, AT&T Michigan filed a letter stating that it misidentified AT&T Corp. as the affiliate that owns the softswitch, when in fact it is SBC Internet Services (SBCIS).

Circuit Court case, *Ass'n of Communications Enterprises v FCC*, 235 F3d 662 (2001) (*ASCENT*), in support of its position.

AT&T Michigan responded that the Commission should not address this issue for two reasons. First, because a similar issue is under consideration by the FCC, AT&T Michigan recommended that the Commission withhold its decision until the FCC acts. Second, AT&T Michigan asserted that it does not own an IP network to which Sprint may interconnect.

The arbitration panel found in favor of AT&T Michigan. The panel recommended, as it did in Case No. U-16906, that the Commission reserve its decision until after the FCC acts. In addition, the panel found the *ASCENT* case upon which Sprint relies inapplicable to this case.

Sprint objects that the panel's recommendation will impose unnecessary increased interconnection costs upon Sprint, and more importantly, is contrary to the following federal cases: *ASCENT*; the FCC's July 20, 2001 order, *In the Matter of Application of Verizon New York Inc, Verizon Long Distance, Verizon Enter Solutions, Verizon Global Networks Inc, and Verizon Select Servs Inc, for Authorization to Provide In-Region, InterLATA Servs in Connecticut*, 16 FCC Rcd 14147 (FCC *Verizon 271* decision); and the FCC's November 18, 2011 order in *Connect America Fund et al.*, WC Docket No. 10-90 *et al.* (*CAF* order). Sprint reiterates the arguments made in its brief, stating that its proposed IP interconnection contract terms are specifically detailed, its IP interconnection proposal is technically feasible pursuant to Section 251(c), IP interconnection is efficient and economical, the Commission has jurisdiction to order IP interconnection, and Case No. U-16906 is not dispositive on this issue.

The Commission finds that the arbitration panel's determination on this issue must be reversed. IP interconnection has become an important and prevalent form of interconnection in the telecommunications industry. TDM-based switching is declining, and the FCC has requested

that incumbent local exchange carriers (ILECs) negotiate IP interconnection in good faith. AT&T Michigan argued that it is unable to provide Sprint with IP interconnection because the applicable equipment is owned by a separate, but affiliated, out-of-state company. Sprint disputed this, and asserted that without Commission intervention, it will be forced to use inefficient and expensive TDM technology to the financial detriment of the company. The Commission agrees with Sprint, and finds that pursuant to Commission precedent, federal rules and law, Sprint's position on this issue should be adopted.

AT&T Michigan alleged that the interconnection requirement of Section 251(c)(2) does not extend to IP-to-IP interconnection. This legal question is currently pending before the FCC in a rulemaking proceeding. However, in its recent further notice of proposed rulemaking, the FCC observed that, "section 251 of the Act is one of the key provisions specifying interconnection requirements, and that its interconnection requirements are *technology neutral – they do not vary based on whether one or both of the interconnecting providers is using TDM, IP, or another technology in their underlying networks*." *CAF* order, ¶ 1342 (emphasis added). Although the FCC has yet to determine whether IP-to-IP interconnection falls under an ILEC's Section 251(c) obligations, the Commission notes that in the interim, the FCC did not request that state commissions refrain from deciding the issue.

More importantly, pursuant to the Second Circuit Court's decision in *S New England Tel Co v Comcast Phone of Conn, Inc*, 718 F3d 53 (2d Cir 2013) (*SNET*), the Commission is not required to delay its decision until the FCC rules on this issue. In its opinion, the Second Circuit Court stated that the FTA, "permits state commissions to regulate interconnection obligations so long as they do 'not violate federal law and until the FCC rules otherwise.'" *SNET*, p. 58, citing *Iowa Network Servs., Inc. v. Qwest Corp.*, 466 F3d 1091, 1097 (8th Cir 2006). As discussed further below, the

Commission's decision regarding IP interconnection is one of first impression and does not violate federal law.

The arbitration panel stated that in the February 15, 2012 order in Case No. U-16906 (February 15 order), the Commission determined that it would defer deciding the IP-to-IP interconnection question until after the conclusion of the FCC's rulemaking proceeding. However, a review of the February 15 order reveals that this was a recommendation by the arbitration panel in the January 9, 2012 DAP, not a conclusion adopted by the Commission in the February 15 order. The January 9, 2012 DAP recommendation is not binding in this case, and the Commission finds it prudent to decide the IP-to-IP interconnection issue at this time.

As set forth above, and pursuant to the Michigan Telecommunications Act (MTA), MCL 484.2201 *et seq.*, and Section 252 of the FTA, the Commission has jurisdiction to determine whether IP-to-IP interconnection falls under an ILEC's Section 251(c) obligations. The relevant portions of Section 251(c) state,

> (2) Interconnection
>
> The duty to provide, for the facilities and equipment of any requesting telecommunications carrier, interconnection with the local exchange carrier's network—
>
> (A) for the transmission and routing of telephone exchange service and exchange access;
>
> (B) at any technically feasible point within the carrier's network;
>
> (C) that is at least equal in quality to that provided by the local exchange carrier to itself or to any subsidiary, affiliate, or any other party to which the carrier provides interconnection….

AT&T Michigan asserted that Voice over Internet Protocol (VoIP) "providers – as well as providers of other IP-based information services – are not 'telecommunications carriers,' and

therefore may not invoke interconnection rights under section 251(c)(2)." AT&T Michigan's brief, p. 24. The Commission disagrees.

In certain circumstances, the FCC has determined that telephone-to-telephone VoIP service is a telecommunications service and is subject to regulation under the FTA. *In re Petition for Declaratory Ruling that AT&T's Phone-to-Phone IP Telephony Services are Exempt from Access Charges*, 19 FCC Rcd 7457, 7465 (2004). The Commission concludes that this factual situation is similar to the FCC's decision excep for the fact that Sprint's traffic is wireless traffic in IP format in this case.

AT&T Michigan argued that even if VoIP providers are considered telecommunications carriers, "they would not be invoking [Section 251(c)(2)] in order to provide the local services identified in section 251(c)(2)(A): 'telephone exchange service and exchange access.'" AT&T Michigan's brief, p. 24. In support of its position, AT&T Michigan cited the FCC's *Vonage* order.[2] The Commission finds the *Vonage* order distinguishable because the FCC addressed a different set of facts and determined that computer-to-computer and computer-to-telephone/telephone-to-computer VoIP services are information services and therefore not subject to regulation under the FTA.

Accordingly, the Commission finds that pursuant to Section 251(c)(2)(A), an ILEC, such as AT&T Michigan, not only must provide, for the facilities and equipment of any requesting telecommunications carrier, interconnection, but also IP interconnection, with the local exchange carrier's network—for the transmission and routing of telephone exchange service and exchange access.

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[2] *Vonage Holdings Corporation Petition for a Declaratory Ruling Concerning an Order of the Minnesota Public Utilities Commission*, 19 FCC Rcd 22404, 22415-16, 22423-24 ¶¶ 20, 31 (2004) (*Vonage* order), *aff'd*, *Minn PUC v FCC*, 483 F3d 570 (8th Cir 2007).

The Commission next finds that AT&T Michigan failed to provide a reasonable explanation as to why Sprint's proposed IP interconnection is not technically feasible pursuant to Section 251(c)(2)(B). Instead, AT&T Michigan alleged that the softswitch used to provide IP service to its customers is owned by its out-of-state affiliate, SBCIS, and is not a part of AT&T Michigan's network. The Commission rejects this argument for three reasons. First, AT&T Michigan and SBCIS together operate a network that allows AT&T Michigan to provide its customers with IP and TDM-based telephone exchange service. Second, even if the Commission accepted AT&T Michigan's argument that it operates a network separate of SBCIS, AT&T Michigan is still required by Section 251(c)(2)(C) to provide Sprint with IP interconnection. And third, pursuant to the *ASCENT* decision, AT&T Michigan cannot use the location of its IP softswitch as a reason to deny Sprint access to IP interconnection.

In its witness' testimony, AT&T Michigan acknowledged that it has retail U-verse customers whose calls originate and terminate in IP format. These calls are carried over equipment owned by AT&T Michigan, delivered to SBCIS's equipment, and then carried to SBCIS's IP softswitch. Testimony of Bill Anglin, pp. 11-12. The following additional facts are not disputed by AT&T Michigan:

1. When AT&T Michigan's U-verse customers' IP calls are to be directed to another IP carrier interconnected with SBCIS, the softswitch sends it to that IP provider.

2. If AT&T Michigan's U-verse IP calls are to be delivered "to a carrier connected with AT&T Michigan in TDM (or to an AT&T Michigan TDM customer), the softswitch converts the call to TDM for delivery back to AT&T Michigan to be delivered over TDM facilities." Testimony of James R. Burt, p. 49.

3. "[I]f a call is made by either an AT&T Michigan or third-party TDM customer *that is destined to an AT&T IP U-verse customer,* the same process occurs, only in reverse." *Id.*

Based on these facts, the Commission finds that AT&T Michigan and its affiliate, SBCIS, operate an integrated IP-TDM network that provides TDM-based service to TDM subscribers, IP-based services to U-verse subscribers, as well as the IP-TDM conversion services necessary to enable calls not only to and from U-verse customers, but also between AT&T Michigan's own U-verse and TDM customers. AT&T Michigan has created a situation where it is now unable to provide telephone exchange service between its IP U-verse customers and TDM customers without the use of SBCIS's equipment and softswitch. As a result, the Commission finds that AT&T Michigan has an integrated network with SBCIS and IP-capable equipment with which Sprint may interconnect.

Even supposing AT&T Michigan and SBCIS do not operate an integrated TDM-IP network, the Commission, nevertheless, finds that AT&T Michigan is obligated to provide Sprint with IP interconnection pursuant to Section 251(c) and the federal rules. Specifically, under Section 251(c)(2)(C), AT&T Michigan must provide Sprint with interconnection "that is at least equal in quality to that provided by the local exchange carrier to itself or to any subsidiary, affiliate, or any other party to which the carrier provides interconnection." Pursuant to AT&T Michigan's witness' testimony[3] and 47 CFR 51.5, there is an interconnection between AT&T Michigan's and SBCIS's separate networks. And, as previously discussed, AT&T Michigan is using SBCIS's softswitch to provide IP service to its U-verse customers. Because AT&T Michigan is providing IP service to its own customers, it must also provide Sprint with interconnection that is "at least equal in quality to that provided by the local exchange carrier to itself."

In reference to AT&T Michigan's Section 251(c) obligations, the arbitration panel found the *ASCENT* decision inapplicable in this case. The Commission disagrees. In *ASCENT*, the FCC

[3]Testimony of Mr. Anglin, p. 12.

approved a merger between two ILECs, Ameritech and SBC, which made Ameritech a subsidiary of SBC. The FCC permitted SBC to avoid the resale provisions of Section 251(c) by allowing SBC to provide, through its new affiliate, "advanced services," defined as "high-speed, switched, broadband telecommunications capability that enables users to originate and receive high-quality voice, data, graphics, and video telecommunications using any technology." *ASCENT*, 235 F3d at 664. The FCC determined that the market-opening obligations of Section 251(c) applied to ILECs and their successors and assigns, but not to affiliates. The D.C. Circuit Court reversed, finding that "to allow an ILEC to sideslip § 251(c)'s requirements by simply offering telecommunications services through a wholly-owned affiliate seems to us a circumvention of the statutory scheme." *ASCENT*, 235 F3d at 666. The Court added, "We do not think in the absence of the successor and assign limitation an ILEC would be permitted to circumvent § 251(c)'s obligations merely by setting up an affiliate to offer telecommunications services." *Id.*, p. 667. And because Congress did not include an affiliate structure for advanced services in the statute, it may be inferred that "Congress did not intend for § 251(c)'s obligations to be avoided by the use of such an affiliate." *Id.*, p. 668.

A short time later, the FCC mentioned *ASCENT* in its FCC *Verizon 271* decision. Although the decision did not directly address IP interconnection, the FCC cited *ASCENT*, contending that "data affiliates of incumbent LECs are subject to all obligations of section 251(c) of the Act." FCC *Verizon 271* Decision, ¶ 28. In addition, the FCC stated that "pursuant to *ASCENT*, Verizon is required to allow a competitive LEC to re-sell DSL service (a Section 251(c) obligation) over lines on which the competitive LEC re-sells Verizon's voice service 'even though the DSL service is provided exclusively by Verizon's advanced services affiliate.'" Sprint's brief, p. 32, quoting the FCC *Verizon 271* Decision, ¶ 28.

More recently, in its IP-to-IP interconnection rulemaking proceeding, the FCC noted that,

> [T]he record reveals that today, some incumbent LECs are offering IP services through affiliates. Some commenters contend that incumbent LECs are doing so simply in an effort to evade the application of incumbent LEC-specific legal requirements on those facilities and services, and we would be concerned if that were the case. We note that the D.C. Circuit has held that "the Commission may not permit an ILEC to avoid § 251(c) obligations as applied to advanced services by setting up a wholly owned affiliate to offer those services." In reaching that conclusion, the court relied on the fact that the affiliate at issue was providing "services with equipment originally owned by its ILEC parent, to customers previously served by its ILEC parent, marketed under the name of its ILEC parent." That holding remains applicable here….

CAF order, ¶1388, quoting *ASCENT*.

The Commission acknowledges that the facts of *ASCENT* differ from the immediate case. The arbitration panel found it inapplicable because it "dealt solely with the issue of resale." DAP, p. 8. However, the Commission finds the facts and legal issues sufficiently analogous and the holding broadly applicable to Section 251(c) so that *ASCENT* appropriately serves as persuasive authority in this case.

Based on the Commission's view of the facts in this case, it appears AT&T Michigan is feigning inability to provide IP interconnection in order to avoid its Section 251(c) obligations. As discussed in *ASCENT* and the FCC *Verizon 271* decision, adopting AT&T Michigan's position on this issue would permit the company to avoid its Section 251(c) obligations by allowing the company to sequester its assets within an affiliate, contrary to Congressional intent and the statutory scheme.

The Commission also finds it significant that in its *CAF* order, the FCC cited *ASCENT* in direct response to allegations that ILECs are using affiliates to avoid Section 251(c) obligations. As noted above, the *CAF* order stems from a federal IP-to-IP interconnection rulemaking proceeding. By referencing *ASCENT*, the FCC affirms that the holding of the case applies broadly

to Section 251(c) obligations, and that it prohibits ILECs from using an affiliate to evade IP interconnection obligations.

The arbitration panel also attempted to distinguish *ASCENT* on the basis that AT&T Michigan never owned the IP softswitch and that there was no proof that AT&T Michigan created the affiliate relationship with SBCIS in order to avoid its Section 251(c) obligations. Although it may be true that AT&T Michigan never owned the IP softswitch, in its discussion above, the Commission found that AT&T Michigan has IP capable equipment via its integrated network with SBCIS. The Commission also disagrees that the holding of *ASCENT* requires proof of intent that an ILEC created an affiliate for the purpose of evading Section 251(c) obligations; the court simply stated that an ILEC cannot use the affiliate structure to avoid its Section 251(c) obligations.

The fact that SBCIS's softswitch is not located in Michigan does not affect the Commission's determination. As argued by Sprint, "the Commission is arbitrating many terms in this interconnection agreement that impact [out-of-state] locations," including bill-and-keep compensation for intraMTA calls, which extends to Ohio; interconnection of calls that originate or terminate outside of Michigan; and one of Sprint's out-of-state switches, serving Michigan, that exchanges TDM traffic with AT&T Michigan. Sprint's brief, p. 22. AT&T Michigan does not allege that it cannot interconnect with Sprint because one of its switches is located outside of Michigan; the switch may be out-of-state, but it is still used to provide service in Michigan. Consequently, AT&T Michigan should not be permitted to deny Sprint IP interconnection because SBCIS's IP softswitch is located in Pennsylvania.

Pursuant to the above discussion and determinations, the Commission finds Sprint's proposed contract language reasonable and prudent, and adopts Sprint's position on this issue.

Issue 2 – Service and Traffic Related Definitions

According to AT&T Michigan, the definition of "Intra-Major Trading Area (intraMTA) Traffic" is traffic exchanged between Sprint's end users and AT&T Michigan's end users. Sprint disagreed, asserting that the definition should track FCC Rule 51.701(b)(2): "traffic exchanged between AT&T and Sprint that, at the beginning of the call, originates and terminates within the same MTA." Sprint's brief, p. 48.

The arbitration panel noted that the parties agreed that the definition should "include all IntraMTA calls subject to reciprocal compensation obligations." DAP, p. 10, *citing* AT&T Michigan's PDAP, p. 12. The arbitration panel found in favor of Sprint, stating that Sprint's definition tracks the FCC's rules, which includes all intraMTA calls subject to reciprocal compensation.

No objections were filed. The Commission adopts the recommendation of the arbitration panel and finds in favor of Sprint.

Issue 3 – Service and Traffic Related Definitions

Sprint proposed that the definition of "InterMTA Traffic" include separate definitions of "Non-toll InterMTA Traffic" and "Toll InterMTA Traffic," arguing that only toll traffic is subject to access charges. Sprint asserted that AT&T Michigan's proposed definition could lead to double recovery. In response, AT&T Michigan stated that its definition corresponds with the language in the current ICA and the FCC's rules, and argued that Sprint's definition excludes interMTA traffic to or from an inter-exchange carrier (IXC) and is contrary to the FCC's intercarrier compensation rules.

As in Issues 20 and 21, the arbitration panel found in favor of AT&T Michigan on this issue. The arbitration panel was not persuaded by Sprint's arguments to include separate definitions for

toll and non-toll interMTA traffic, and found that the FCC distinctly ordered in its *CAF* order that interMTA traffic is subject to access charges. In addition, the arbitration panel stated that Sprint did not cite any language in AT&T Michigan's proposed ICA that would allow double recovery.

Sprint objects to the arbitration panel's finding that there is no compensation distinction between toll and non-toll interMTA traffic. DAP, p. 9. Citing two cases, Sprint asserts that, "the Commission has long recognized that whether a call is subject to local compensation depends on whether a separate charge is assessed to subscribers." Sprint's objections, p. 17.

The Commission agrees and adopts the recommendation of the arbitration panel. Consistent with its decisions in Issues 20 and 21, the Commission finds that the *CAF* order clearly intended that interMTA traffic be subject to access charges and should not be classified as either toll or non-toll. The Commission rejects Sprint's proposed definition of "InterMTA Traffic."

Issue 4 – Service and Traffic Related Definitions

AT&T Michigan's proposed definition of "Switched Access Service" is "an offering of access to AT&T Michigan's network for the purpose of the origination or the termination of traffic, from or to End Users in a given area, pursuant to a Switched Access Services tariff." AT&T Michigan's brief, p. 33. Although Sprint's proposed definition is similar, it is limited to service provided to an IXC.

The arbitration panel recommended adopting AT&T Michigan's position on this issue. According to the panel, "Sprint's definition would limit the service to that provided to an IXC, excluding 'Switched Access Service' from applying to either AT&T or Sprint." DAP, p. 13. In addition, as in Issues 20 and 21, the panel found that the *CAF* order did not limit access charges to toll traffic.

Sprint objects that by accepting AT&T Michigan's definition, the arbitration panel effectively designated Sprint an IXC, despite the agreed-upon language in the ICA that Sprint, as a wireless service provider, is not an IXC. Sprint's objections, p. 18. In addition, Sprint argues that AT&T Michigan's definition of "Switched Access Service" is vague and overly broad under federal law.

The Commission agrees with the arbitration panel and, consistent with its decisions in Issues 20 and 21, finds in favor of AT&T Michigan. The Commission finds Sprint's definition too limiting and adopts AT&T Michigan's definition.

B. Issues Regarding How the Parties Interconnect

Issue 5 – Interconnection Methods

AT&T Michigan proposed a definition for "Interconnection" that refers only to Rule 51.5 of the FCC's rules, and a separate definition for "interconnection" that "refers to connections for the exchange of all Authorized Services traffic." AT&T Michigan's brief, p. 16. AT&T Michigan asserted that there is a relevant distinction between the two definitions, because "only those existing facilities used for Interconnection as defined in section 251(c)(2) and 47 C.F.R. § 51.5 (*i.e.*, "Interconnection Facilities") are subject to TELRIC-based pricing."[4] *Id.*

Sprint's proposed definition of "Interconnection" references the definitions in Parts 51 and 20 of the FCC rules. Sprint argued that Part 20 should apply to interconnection between AT&T Michigan as a local exchange carrier, and Sprint as a commercial mobile radio service (CMRS) provider, because it grants Sprint the interconnection rights to which it is entitled under Parts 51 and 20.

Contrary to Sprint's recommendation, the arbitration panel found it unnecessary to reference Parts 51 and 20 in the definition of "Interconnection," because the definitions in the rules are not

[4]"TELRIC" is an acronym for total element long run incremental cost.

materially different, it would add complexity to the ICA, and AT&T Michigan's simpler definition will suffice. DAP, p. 15. However, the panel disagreed with AT&T Michigan that Part 51 does not include indirect interconnection and found, consistent with its decisions in Issues 10 and 11, that AT&T Michigan's interpretation of Rule 51.5 is too narrow. *Id.* The arbitration panel asserted that, "this definition will have to be interpreted in the broader context of the ICA as a whole, including the language adopted for Issues 10 and 11." *Id.* Regarding AT&T Michigan's request for two separate definitions for "Interconnection" and "interconnection," the arbitration panel found the request unreasonable, asserting it would add unnecessary ambiguity to the ICA.

No objections were filed. The Commission adopts the recommendation of the arbitration panel.

Issue 6 – Points of Interconnection

Although the parties agreed that the point of interconnection (POI) is the physical demarcation point between the parties' two networks, AT&T Michigan argued that agreed upon language in the ICA states that the POI is also the financial demarcation point. Sprint disagreed, citing Commission orders, federal rules, and federal court cases that support its position.

The arbitration panel found in favor of Sprint on this issue. The panel stated, "There is clear Commission precedent from multiple cases that the POI does not always represent the financial demarcation between networks." DAP, p. 18. In support, the arbitration panel cited the August 18, 2003 order in Case No. U-13758; subsequent affirming orders in Case Nos. U-13931, U-15534, and U-16906; FCC orders; and federal court cases. The arbitration panel asserted that the language, "Unless otherwise specified in this Attachment…" preceding the ICA's clause about financial responsibility and the POI, indicates that an exception may exist. According to the

arbitration panel, "Sprint's proposal on Issue 24, if adopted, would create such an exception." *Id.*, p. 19.

AT&T Michigan filed several objections on this issue. First, AT&T Michigan states that the DAP failed to address what language should be adopted to express the linking of the two networks. AT&T Michigan recommends that the Commission approve its language "'where the Parties' networks meet' for the purpose of establishing Interconnection. This language should be adopted because it succinctly and accurately tracks what Sprint acknowledges to be the parties' agreement: 'The parties agree that the POI will serve as the physical demarcation point between their networks.'" AT&T Michigan's objections, p. 2. AT&T Michigan states that an opinion from the Fourth Circuit Court of Appeals [5] supports its position and that Sprint's language is less precise.

Second, AT&T Michigan argues that Sprint agreed to the following language: "Unless otherwise specified in this Attachment, each party is *financially* responsible for the provisioning of facilities on its side of the POI(s)." AT&T Michigan's objections, p. 2. Although the DAP states that Sprint's cost sharing proposal in Issue 24, if adopted, would create such an exception, AT&T Michigan urges the Commission, in Issue 24(a) below, to reject Sprint's sharing proposal and adopt the language on which the parties agreed, which includes the word "financially." *Id.*

Third, AT&T Michigan proposes that if the Commission finds that the word "financially" should not be included in the language, the Commission may adopt, in the alternative, AT&T Michigan's language with the word "financially" deleted.

Pursuant to R 484.706(2) of the Commission's Procedures for Telecommunications Arbitrations and Mediations, the arbitration panel must limit its decision to the position of one of

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[5] *See, New Cingular Wireless PSC, LLC d/b/a AT&T Mobility and Alltel Communications, LLC v North Carolina Utility Commission*, 674 F2d 225 (CA 4 2012).

the parties, unless it is clearly unreasonable or contrary to the public interest. Because the arbitration panel found in favor of Sprint on this issue, it rejected, by default, AT&T Michigan's proposed language and was not required to address each detail of AT&T Michigan's proposal.

The Commission agrees with the arbitration panel that there is abundant Commission and federal precedent in support of Sprint's proposed language, and adopts the conclusion of the arbitration panel. The Commission is not persuaded by AT&T Michigan's arguments that its language regarding the linking of the two networks is more specific and accurate than Sprint's. In addition, the Commission finds that AT&T Michigan's alternative proposal to adopt its language, but deleting the word "financially," was raised for the first time in its objections, is untimely, and is, therefore, rejected by the Commission. Finally, in Issue 24(a), the Commission adopted Sprint's proposal that the parties share the costs of two-way interconnection facilities, which, as noted by the panel, creates the exception to which Sprint agreed in the ICA.

Issue 7 – Points of Interconnection

The parties agreed that Sprint may establish a POI at any technically feasible point, however Sprint proposed language permitting it to unilaterally remove any previously established POI and interconnect at only one POI per local access and transport area (LATA). AT&T Michigan disagreed, arguing among other things, that unilateral decommissioning could reduce reliability and security, waste money invested by AT&T Michigan in the POIs, and may exhaust facilities and cause call blocking.

Finding in favor of Sprint, the arbitration panel cited the following language in Paragraph 1316 of the *CAF* order:

> Currently, under section 251(c)(2)(B), an incumbent LEC must allow a requesting telecommunications carrier to interconnect at any technically feasible point. The Commission has interpreted this provision to mean that competitive LECs have the option to interconnect at a single point of interconnection (POI) per LATA.

Although AT&T Michigan alleged that the above language applies only to establishing POIs, the arbitration panel found that it failed to cite any federal rules stating that this language does *not* apply to decommissioning. DAP, p. 20. The panel noted there are no Commission cases directly on point. However, the panel found that Sprint cited previous Commission decisions that provide relevant guidance on this issue. *Id.* The panel also found that AT&T Michigan did not meet the FCC's requirements for limiting interconnection, the cases cited in support of its position were not directly on point, and that, based on previous Commission decisions, Sprint "has the right to design its network as best suited for its business." *Id.*, p. 22.

In its objections, AT&T Michigan acknowledges that Sprint should have flexibility to manage its own network, but asserts that the arbitration panel erred by extending it to the "unbridled right to dismantle network connections that the parties agreed upon and established together." AT&T Michigan's objections, p. 3. AT&T Michigan argues that the panel's conclusion was incorrect for five reasons: (1) the cases cited by Sprint, and accepted by the panel, do not extend the right to establish a single POI per LATA to the right to decommission a POI; (2) the panel overemphasizes AT&T Michigan's authority under its proposal; (3) the panel erred in applying to Sprint's proposal the "clear and convincing evidence" standard of the March 3, 2000 order in Case No. U-12198; (4) the panel failed to consider the economic inefficiency AT&T Michigan will suffer; and (5) under Section 251(c)(2)(D), the Commission has authority to "adopt reasonable terms and conditions for the decommissioning of POIs." *Id.*, p. 7.

The Commission adopts the recommendation of the arbitration panel on this issue. The Illinois Commerce Commission cases cited by AT&T Michigan are not binding on this Commission, and its cited Commission cases are not relevant to this set of facts. Although the Commission has not previously addressed this issue, the cases cited by Sprint, specifically

Case No. U-12198, provide guidance, and the Commission finds that Sprint may unilaterally decommission POIs.

The Commission also notes that in Case No. U-16906, it found "no reason to enforce efficiency, as efficiency has its own incentive to lower costs for the provider," and that competitive local exchange carriers (CLECs) should have flexibility to manage their own networks. DAP, p. 22, *citing* the February 15, 2012 order in Case No. U-16906, p. 13. The Commission concurs with the arbitration panel that Sprint "has the right to design its network as best suited for its business, and not as dictated by AT&T" and finds it unlikely that Sprint would purposefully operate its network in an inefficient manner. *Id.* Finally, the Commission agrees that AT&T Michigan's arguments about stranded costs are an economic concern, and the FCC rules state that economic concerns are not valid reasons for restricting interconnection.

Issue 8 – Points of Interconnection

AT&T Michigan proposed "language that would require Sprint to establish additional POIs if traffic to an area served by an AT&T tandem exceeds the level of one DS3 for over three consecutive months." DAP, p. 24. Sprint disagreed, asserting that AT&T Michigan's position is not supported by Commission precedent.

The arbitration panel found in favor of Sprint, stating that this is another attempt by AT&T Michigan to dictate how Sprint must manage its network. The panel agreed with Sprint that the Commission "has consistently rejected ordering a threshold requiring a competitor to establish a new POI, including specifically declining to adopt the decision reached in Texas that AT&T cites as supporting its position." DAP, p. 25. Citing Case No. U-12198, the panel found that the Commission addressed this same issue, finding that it would rather require that the ILEC make needed investment in its network, than restrict the CLEC's choice of interconnection location.

Although AT&T Michigan argued that the DS1 threshold in Case No. U-12198 is different than the DS3 threshold in the immediate case, the panel disagreed, asserting that the Commission's decision and reasoning are still applicable, no matter the size of the threshold. *Id.*, pp. 25-26.

No objections were filed. The Commission adopts the recommendation of the arbitration panel and finds in favor of Sprint.

Issue 9 – Facilities and Trunking Provisions (Non-Compensation)

The parties agreed to the definition of "Interconnection Facilities," with the exception of two points. According to Sprint, the resolution of this issue is tied to its pro rata pricing proposal in Issue 22. AT&T Michigan proposed to omit Sprint's reference to Section 3.8.2 and instead cite Rule 51.5 in the definition, asserting that its position is supported by the FCC's rules and the United States Supreme Court's decision in *Talk America Inc v Michigan Bell Tel Co*, 131 S Ct 2254 (2011) (*Talk America*). In addition, AT&T Michigan recommended that the Commission reject Sprint's proposal because it permits Sprint to use interconnection facilities for both interconnection and backhaul traffic in direct contravention of the *Talk America* decision. AT&T Michigan's brief, p. 58.

Because the arbitration panel rejected Sprint's pro rata pricing proposal in Issue 22 (as discussed more fully *infra*), it found that Section 3.8.2 should not be included in the definition for "Interconnection Facilities." As a result, the arbitration panel found there was no need to address Sprint's claim that AT&T Michigan's proposed definition, if accepted, would prejudice Sprint's proposal in Issue 22. The arbitration panel contended that without the inclusion of Section 3.8.2, the parties' definitions are "functionally equivalent" and, therefore, selected AT&T Michigan's definition because it appeared to be more reasonable as a whole. DAP, p. 27.

No objections were filed. The Commission adopts the recommendation of the arbitration panel and finds in favor of AT&T Michigan.

Issue 10 – Facilities and Trunking Provisions (Non-Compensation)

The parties dispute the definition of "Backhaul." Sprint asserted that all calls "between the parties' switches are mutually exchanged between their networks" and are subject to TELRIC pricing. Sprint's brief, p. 71. Accordingly, Sprint's proposed definition of "Backhaul" is the "use of a transmission facility for the purpose of transmitting traffic that is not, at either end of such facility, switched by an AT&T Michigan Central Office Switch or Selective Router." *Id.*

AT&T Michigan disagreed, asserting that TELRIC pricing applies only to "calls originating between the parties' end users [that] are mutually exchanged between their networks." *Id.* AT&T Michigan argued that Sprint's position conflicts with the federal rules and the state, federal, and Commission cases cited by Sprint, and should be rejected by the Commission.

Contrary to AT&T Michigan's argument, the arbitration panel found that Sprint's proposed definition is supported by the *SNET* case, and does not conflict with the Supreme Court's opinion in *Talk America*. Although the Court did not specifically define "backhauling" in *Talk America*, the panel felt the Court's opinion more strongly supports Sprint's position. The panel also contended that there is ambiguity in the FCC amicus briefs cited by AT&T Michigan, and instead found that the briefs imply that the exchange of traffic between end users is one purpose of interconnection, not the *only* purpose. The panel noted that the other cited federal cases are not controlling in Michigan and the Commission orders do not support AT&T Michigan's proposal. Therefore, the panel found that Sprint's language is more reasonable and consistent with past Commission precedent, and should be adopted. DAP, pp. 31-32.

In its objections, AT&T Michigan claims that the arbitration panel erred by failing to consider Rule 51.5, which defines "Interconnection" as, "the linking of two networks for the mutual exchange of traffic." 47 CFR 51.5. According to AT&T Michigan, Sprint proposes to use interconnection facilities to transport its traffic to and from third-party IXCs or to 911 answering points, and not to mutually exchange traffic with AT&T Michigan's end-users. AT&T Michigan's objections, p. 9. AT&T Michigan argues that the cases on which the panel relied do not support Sprint's position.

The Commission adopts the analysis and conclusion of the arbitration panel, finding in favor of Sprint. The Supreme Court did not precisely define "backhaul" in the *Talk America* decision. However, the Court provided guidance, stating that backhauling "occurs when a competitive LEC uses an entrance facility to transport traffic from a leased portion of an incumbent network to the competitor's own facilities." *Talk America*, 131 SCt at 2259, n. 2. The Court stated that backhauling differs from interconnection, which "involves the linking of two networks for the mutual exchange of traffic," but does not specify that it *must* be between *end users*. *Id.*

As stated by the arbitration panel, the Commission finds that there is ambiguity in the amicus briefs cited by AT&T Michigan, and they are therefore, not persuasive. In addition, the Circuit Court decisions cited by AT&T Michigan are not persuasive or controlling law in Michigan. Although the Second Circuit Court's *SNET* decision is not controlling law, the Commission notes that the Court rejected AT&T Michigan's argument for the same reasons:

> [N]othing in the language of [Section] 251 suggests that the interconnection duty relates only to the transmission and routing of traffic between a CLEC and the ILEC's end-users. The FCC has ruled that carriers have the right to interconnect to exchange traffic that does not originate or terminate on their own networks…Therefore, the obligations associated with interconnection are not limited to situations where AT&T terminates the traffic.

SNET, p. 16. As such, the Commission finds that the *SNET* decision more closely supports Sprint's position.

The Commission also agrees with the arbitration panel that Case No. U-16906 may be distinguished from this case. In that case, the panel found that 911, operator services, and directory assistance were ancillary services that could "fall under the broad definition of interconnection," however, in the ICA, the parties had already agreed that entrance facilities "are for the mutual exchange of traffic and these ancillary services are for the benefit of the CLECs' customers." January 9, 2012 DAP in Case No. U-16906, p. 16. But for the parties' previous agreement, the panel in Case No. U-16906 would have found that interconnection has a more broad definition than asserted by AT&T Michigan.

Considering the above federal and Commission precedent, the Commission finds that Sprint's proposal is more persuasive, reasonable, and consistent, and adopts its proposed language.

Issue 11(a) – Facilities and Trunking Provisions (Non-Compensation)

Sprint proposed that the definition of "Interconnection Facilities" be subject to Attachment 2, Section 3.8.2, and would allow the use of interconnection facilities "'for the transmission and routing of Telephone Exchange Service and/or Exchange Access service ***and other AT&T switched traffic***' (Sprint's proposed language in bold italics)." DAP, p. 32. Sprint asserts that AT&T Michigan's definition is too narrow, violates federal law, and is contrary to good policy. AT&T Michigan disagreed, stating that for the same reasons argued in Issue 9, "Interconnection Facilities" may only be used for "Interconnection." AT&T Michigan's brief, p. 72.

The arbitration panel found in favor of Sprint. Reiterating its analysis from Issue 10, the panel asserted that interconnection is not limited to the exchange of traffic between the parties' end users. The panel also found the Commission decisions and federal rules and cases cited by AT&T

Michigan do not support its position. As stated in Issue 10, "the Panel believes that Sprint's position is more in line with the pro-competitive intent of the FTA and of the past policies of this Commission." DAP, p. 33. However, to be consistent with Issue 22, the panel recommended that Sprint's language be modified to remove "subject to Attachment 2, Section 3.8.2." *Id.*

AT&T Michigan objects, asserting that the arbitration panel's recommendation should be rejected for the same reasons stated under Issue 10.

For the reasons set forth by the arbitration panel and consistent with the Commission's decisions in Issues 9 and 10 above, the Commission adopts the recommendation of the panel and finds in favor of Sprint.

Issue 11(b) – Facilities and Trunking Provisions (Non-Compensation)

According to Sprint, it should be permitted to use Interconnection Facilities to deliver 911 calls because they are calls between the parties' switches, and Sprint either provides telephone exchange service on these calls, or they are "other" traffic that may use Interconnection Facilities. Sprint's brief, p. 81. Citing the February 15 order, AT&T Michigan argued that 911 calls are not traffic between the parties' end users, and are, thus, not interconnection traffic. In addition, AT&T Michigan asserted that Sprint agreed to be "solely responsible for 911 facilities and therefore should not be able to purchase them at TELRIC rates." DAP, p. 34.

The arbitration panel found in favor of Sprint, stating again that Case No. U-16906 is distinguishable from this case. Like Issue 10, the panel determined that 911 is an ancillary service that falls under the broad definition of "Interconnection." As a result of adopting Sprint's definition of "Backhaul" in Issue 10, along with its recommendation in Issue 11(a), the panel believed that a finding for Sprint on this issue must also follow. DAP, p. 34. Although Sprint

agreed to be solely responsible for 911 facilities, the panel interpreted it to mean the costs of the facilities, and that it "does not limit the facilities that it may use for 911 traffic." DAP, pp. 34-35.

AT&T Michigan objects, asserting that Sprint's proposal should be rejected for the reasons stated in Issue 11(a) and because it is contrary to ICA provisions to which Sprint agreed. According to AT&T Michigan, the parties agreed that "911 facilities are not connected to a POI (which is the physical and financial demarcation point between the parties' networks for the mutual exchange of traffic) the way Interconnection Facilities are." AT&T Michigan's objections, p. 13. AT&T Michigan argued that Sprint is wholly "responsible for the transport facilities that carry one-way 911 trunks all the way from Sprint to AT&T Michigan's Selective Router, which is the equipment used to provide the 911 functionality and switching necessary to handle 9-1-1 calls." *Id.* In addition, AT&T Michigan contends that "because 911 calls are routed directly to the Selective Router over trunks specially equipped for 911 traffic, they cannot be carried on Interconnection trunks used for the mutual exchange of telephone exchange service traffic (which ride over Interconnection Facilities that connect at the POI, not the Selective Router)." *Id.*, p. 14. Therefore, in AT&T Michigan's opinion, the parties agreed that 911 traffic is an ancillary service, not telephone exchange service. *Id.*

In its objections, AT&T Michigan misconstrues Sprint's proposed contract language, and the Commission finds that the language is not contrary to the ICA provisions to which Sprint agreed. In accordance with the Commission's decisions in Issues 10 and 11(a), Sprint's proposed language is adopted.

Issue 11(c) – Facilities and Trunking Provisions (Non-Compensation)

Sprint proposed contract language that would allow it to use interconnection facilities for equal access trunks. Sprint asserted that these calls are exchanged between Sprint's and AT&T

Michigan's switches, and therefore are properly within the scope of Section 251(c)(2). In response, AT&T Michigan argued that there is a third carrier (*i.e.,* an IXC) involved; thus, equal access trunks are not for the mutual exchange of traffic between end users and may not be considered within the scope of interconnection.

The arbitration panel adopted Sprint's position on this issue. As in Issue 10, the panel found the *SNET* decision supports Sprint's position that interconnection is not limited to calls that are terminated with the parties' end users, and that the facts of Case No. U-16906 may be distinguished from the immediate case. As noted in Issues 10 and 11(a), the panel stated that its recommendation is more consistent with the pro-competitive goals of the FTA and of the policies of this Commission.

Similar to its Issue 10 objections, AT&T Michigan argues that Sprint is not providing it with exchange access pursuant to Section 251(c)(2)(A). AT&T Michigan also disagrees that it and Sprint are jointly providing exchange access to an IXC. AT&T Michigan asserts that none of its exchange customers are involved, so AT&T Michigan is not providing access ("joint" or otherwise) to its exchange customers in any sense of the word. AT&T Michigan's objections, p. 15.

For the same reasons stated in Issues 10 and 11(a), the Commission agrees with the arbitration panel that Sprint's position on this issue should be adopted.

Issue 12 – Facilities and Trunking Provisions (Non-Compensation)

Issue 12 actually contains two sub-issues: whether Sprint should be solely responsible for the facilities that carry 911 trunks, and whether Sprint should be solely responsible for the facilities that carry equal access trunks. Sprint proposed that these facilities should be subject to cost sharing, because these types of calls benefit both parties. AT&T Michigan argued that because

neither of these types of traffic terminate with an AT&T Michigan end user, they are not eligible to be carried over interconnection facilities.

Consistent with its findings on Issues 6, 11, and 24, the arbitration panel found in favor of Sprint. Noting that it had thoroughly rejected AT&T Michigan's end user argument, the panel found that AT&T Michigan offered no reason to reach a different conclusion on this issue.

AT&T Michigan objects, arguing that the real dispute is whether Sprint should be solely responsible for the cost of the facilities used for equal access trunks. AT&T Michigan contends that Sprint's proposed 50% sharing factor improperly assigns to AT&T Michigan part of the cost of interconnection facilities that solely benefit Sprint and the originating IXC carrier, and is confiscatory. AT&T Michigan further argues that the panel's rejection of its end user argument does not actually answer this issue, because AT&T Michigan is entitled to full reimbursement from Sprint for the cost of these facilities.

For the same reasons set forth by the panel, and consistent with the Commission's decision in Issue 11, the Commission adopts the recommendation of the panel and finds in favor of Sprint.

Issue 13(a) – Facilities and Trunking Provisions (Non-Compensation)

AT&T Michigan proposed the inclusion of language that would allow it to request an independent audit of Sprint's use of interconnection facilities up to once per year. Sprint argued that the audit provisions were overly burdensome and unnecessary.

The arbitration panel found in favor of AT&T Michigan. The panel states that regardless of its findings on Issue 11, there will still be uses of interconnection facilities that will be prohibited under the ICA, and that audit provisions are common in ICAs, including the ICA resulting from Case No. U-16906.

There were no objections filed. The Commission adopts the recommendation of the arbitration panel and finds in favor of AT&T Michigan.

Issue 13(b) – Facilities and Trunking Provisions (Non-Compensation)

In conjunction with the audit provisions, AT&T Michigan proposed language that addresses the remedy if Sprint is found, as a result of an audit, to be non-compliant with the ICA's permitted uses of interconnection facilities. That language requires payment to AT&T Michigan of the difference between TELRIC and access rates for the period of non-compliance, and requires changing the non-compliant facilities to access facilities. Sprint argued that the latter provision was overly punitive.

The arbitration panel found in favor of AT&T Michigan, primarily because Sprint offered no alternative language. The panel noted that in any case, Sprint will have the option to dispute any findings of non-compliance and, if necessary, bring that dispute before the Commission.

There were no objections filed. The Commission adopts the recommendation of the arbitration panel and finds in favor of AT&T Michigan.

Issue 13(c) – Facilities and Trunking Provisions (Non-Compensation)

Addressing the cost of audits, AT&T Michigan proposed that if 10% or more of the facilities audited are non-compliant, Sprint would reimburse AT&T Michigan for 100% of the auditor's costs, and, if fewer than 10% of facilities are non-compliant, Sprint would be liable for an amount proportional to the number of non-compliant circuits. Sprint again argued that this was overly punitive.

The arbitration panel found in favor of AT&T Michigan, noting again that the proposed provisions are similar to those adopted in Case No. U-16906.

There were no objections filed. The Commission adopts the recommendation of the arbitration panel and finds in favor of AT&T Michigan.

Issue 14 – Facilities and Trunking Provisions (Non-Compensation)

Sprint proposed language that would allow it to use TELRIC-priced interconnection facilities to carry combined trunk groups. AT&T Michigan argued that combined trunk groups that carry both interMTA and intraMTA traffic are not eligible for TELRIC pricing.

The arbitration panel found in favor of Sprint, noting that Sprint is providing exchange access when exchanging interMTA traffic with AT&T Michigan, and finding that this type of traffic can reasonably be considered to fall within the definition of interconnection traffic. Again, the panel noted its rejection of AT&T Michigan's end user argument.

AT&T Michigan objects on grounds that Sprint is not using the interconnection facilities for the mutual exchange of traffic between Sprint and AT&T Michigan, and that AT&T Michigan is not providing exchange access services to Sprint in this situation but is simply an intermediate carrier for traffic that flows between Sprint and IXCs.

The Commission adopts the recommendation of the arbitration panel and finds in favor of Sprint. The Commission agrees with the panel that this type of traffic is interconnection traffic, and there is no requirement that traffic over TELRIC-priced interconnection facilities must be to or from an AT&T Michigan end user.

Issue 15 – Facilities and Trunking Provisions (Non-Compensation)

Whenever the transit traffic between Sprint and a single third party exceeds the level of one DS3, AT&T Michigan proposed that Sprint be required to establish direct interconnection or other alternate transit arrangements with that third party. Sprint disagreed, arguing that Commission precedent does not support AT&T Michigan's position; pursuant to federal law, Sprint has the

right to choose indirect interconnection; it has the right to manage its own network; and other CLECs are not obligated to directly interconnect, leaving Sprint without interconnection with these carriers.

The arbitration panel found in favor of Sprint on this issue. The panel asserted that the DAP and order in Case No. U-14152 do not support AT&T Michigan's position. In addition, the panel found that the precedent from Case No. U-13758 is more applicable and corresponds with its findings on other issues. And finally, the panel contended that its recommendation is consistent with the *SNET* decision and Commission policy.

AT&T Michigan objects and reiterates the same arguments set forth in its brief. In addition, AT&T Michigan asserts that the panel "overlook[ed] the Commission's policy to encourage carriers to directly interconnect 'when the traffic warrants it, rather than utilizing the less efficient method of paying for transit across a third party's network,'" and that *SNET* dealt with the rates an ILEC may charge for transit service, and not with establishing direct connections for transit traffic. AT&T Michigan's objections, pp. 20-21. Finally, AT&T Michigan contends that Sprint should not be allowed to independently engineer its network without any regard for the impact on AT&T Michigan's network.

For the same reasons cited by the arbitration panel, the Commission adopts Sprint's position on this issue. The Commission disagrees that the panel overlooked Commission policy – Sprint should be permitted to engineer its network in the most efficient manner, which is consistent with Commission policy and the *SNET* decision the Commission relied upon in deciding Issue 10.

C. Rating and Routing Issues

Issue 16 – Transmission and Routing of Traffic to or from an Inter-exchange Carrier

AT&T Michigan proposed that traffic between Sprint and IXCs be routed over equal access facilities because this IXC traffic does not qualify as interconnection traffic, and nothing in the *CAF* order changed how this traffic is routed. Sprint proposed language that would allow it to use interconnection facilities for the receipt and delivery of exchange access traffic.

Consistent with its resolution of Issue 11, the arbitration panel found in favor of Sprint. The panel rejected AT&T Michigan's narrow interpretation of interconnection, and found that interconnection facilities could be used for equal access trunks. The panel found that Sprint's proposed language adequately addresses the potential problem of arbitrage schemes by making clear that wireline originated traffic from an IXC will not be routed over interconnection facilities.

AT&T Michigan objects to this result, as it objects to Issues 10 and 11. AT&T Michigan argues that Sprint may not use interconnection facilities to send traffic to and from IXCs because it is not using them for the mutual exchange of traffic between Sprint and AT&T Michigan, and AT&T Michigan is not providing exchange access services to Sprint in this situation. AT&T Michigan further contends that the traffic at issue is traditional switched access traffic and should be routed over equal access trunk groups. In addition, Sprint's proposed language does not address the Halo traffic arbitrage scheme because it only states that Sprint will not route wireline originated traffic from an IXC over interconnection facilities and does not address the fact that Sprint could simply declare the traffic to be non-wireline.

As with Issue 11, the Commission adopts the recommendation of the panel and finds in favor of Sprint. This is consistent with the Commission's finding that interconnection facilities can be used for equal access trunks. Additionally, the Commission believes that Sprint's proposed

language regarding wireline originated traffic will address any potential problem with arbitrage schemes similar to the Halo scheme.

Issue 17 – Routing InterMTA Traffic Over Interconnection Facilities

AT&T Michigan proposed that mobile-to-land interMTA traffic should be routed over equal access facilities, and that land-to-mobile interMTA traffic that appears to be intraMTA traffic may be routed over either interconnection or equal access facilities. AT&T Michigan argued that historically, interMTA mobile calls have been exchanged this way, and that the *CAF* order preserved existing access arrangements. Sprint proposed that interconnection facilities may be used to route interMTA traffic. Sprint argued that it is appropriate to deliver interMTA mobile-to-land calls over interconnection facilities because Sprint is providing telephone exchange service, these calls can be delivered as "other" traffic on combined trunk groups, and routing through switched access facilities is not practical.

Again, consistent with Issue 11 (and Issue 20), the arbitration panel found in favor of Sprint, based on its finding that interconnection facilities may be used for equal access trunks and other AT&T Michigan-switched traffic. The panel states that AT&T Michigan never adequately explains why traffic that is subject to switched access charges must be carried over switched access facilities. The panel finds that the results of Issue 17 and Issue 20 must be consistent.

Though it agrees that Issues 17 and 20 must be consistent, AT&T Michigan objects to the fundamental finding that Sprint is authorized to route interMTA traffic over interconnection facilities rather than switched access facilities, even where there is no question that it is switched access traffic (interMTA traffic). AT&T Michigan simply argues that its tariff for switched access services (per minute and monthly) applies to switched access traffic. AT&T Michigan further

contends that the DAP does not address the issue of land-to-mobile calls that appear to be intraMTA but are really interMTA, stating,

> AT&T Michigan's proposed section 4.10.5 is therefore needed to address land-to-mobile calls that appear to be IntraMTA based on the calling and called parties' telephone numbers, but are in fact InterMTA because the called party has roamed out of the MTA associated with his/her telephone number. In this situation, AT&T Michigan does not know that the Sprint end user is located outside of the MTA and that the call is actually an InterMTA call. Accordingly, AT&T Michigan routes the call over the Interconnection Facilities as though it were a normal IntraMTA call. Pellerin at 135. This involves only a small amount of traffic, and AT&T Michigan and Sprint have been routing incidental land-to-mobile InterMTA traffic in this way for years. There is no reason to change this practice now.

AT&T Michigan's objections, pp. 25-26.

Based on the resolution of Issues 11 and 20, and in agreement with the reasoning of the panel, the Commission finds in favor of Sprint. In response to AT&T Michigan's argument that the panel failed to address the issue of land-to-mobile calls that appear to be intraMTA, the Commission finds that Sprint's proposed Section 4.10.4 language, which allows *all* interMTA Traffic to be routed over Interconnection Facilities, includes land-to-mobile calls that appear to be intraMTA, but are really interMTA. Because Sprint's proposed Section 4.10.4 language is adopted by the Commission, AT&T Michigan's proposed Section 4.10.5 language is unnecessary.

<u>Issue 18 – Jurisdictional Information Parameter</u>

This issue addresses whether the ICA should state that the parties will abide by the Ordering Billing Forum's (OBF) guidelines regarding the Jurisdictional Information Parameter (JIP). AT&T Michigan proposed that the parties be required to populate the JIP in accordance with the 2004 resolution of the OBF Issue 2308, because only by doing so will the JIP data be reliable. AT&T Michigan argues that the JIP data can be used in conjunction with the Calling Party Number to validate Sprint's cell site data. Sprint also proposed that the parties populate the JIP, but state specifically in the ICA that the JIP cannot accurately establish jurisdiction.

The arbitration panel found in favor of AT&T Michigan, because, unless Sprint agrees to comply with the OBF guidelines, the JIP data will not be useful. The panel found that, consistent with Issue 20, the JIP can provide useful data for validating cell site information.

There were no objections filed. The Commission adopts the recommendation of the arbitration panel and finds in favor of AT&T Michigan.

D. Compensation Issues

Issue 19 – Traffic Compensation and Related Terms and Conditions

AT&T asserted that it accurately identified types of traffic not subject to bill-and-keep, and that its proposed language eliminates ambiguity and minimizes disputes. Sprint disagreed, arguing that the parties' agreed-upon language appropriately implements FCC Rules 51.701(b) and 51.705(a), and that AT&T Michigan's proposed list of exclusions is unnecessary, vague, and confusing.

The arbitration panel recommended that the Commission adopt Sprint's proposed contract language. The panel found that "the agreed upon language tracks the FCC's rule regarding reciprocal compensation for telecommunications traffic, and AT&T['s]…proposed exclusions are not clearly defined, and as the exclusions are addressed elsewhere in the ICA, the Panel is persuaded that Sprint's language is sufficient." DAP, p. 48.

No objections were filed. The Commission adopts the recommendation of the arbitration panel and finds in favor of Sprint.

Issue 20 – Traffic Compensation and Related Terms and Conditions

The parties disputed the terms governing compensation for terminating interMTA traffic. AT&T Michigan proposed to assess access charges on all interMTA traffic, which in its opinion,

maintains the industry standard and is consistent with the terms of the parties' current ICA. AT&T Michigan also argued that it should not be assessed access charges when it delivers a call to Sprint for further transportation to a Sprint customer in a different MTA because Sprint, not AT&T Michigan, is serving as the interexchange carrier. To determine the percentage of interMTA traffic routed over non-access trunks for billing purposes, AT&T Michigan proposed using cell studies or the best data reasonably available. For the interMTA factor, AT&T Michigan requested using JIP data.

In contrast, Sprint suggested that both toll and non-toll interMTA traffic should be bill-and-keep pursuant to Commission precedent and FCC rules. Acknowledging that its preferred proposed language is a significant departure from industry practice, Sprint alternatively proposed that access rates be charged on 1% of terminating traffic, applicable to both companies.

In finding for AT&T Michigan, the arbitration panel was not persuaded to depart from current business practices. The panel found that the Commission orders cited by Sprint do not support the company's position. Furthermore, these orders are distinguishable because they apply to locally-dialed *wireline* calls, whereas the issue in this case involves non-local and locally dialed *wireless* calls. In addition, the panel found Sprint's reliance on FCC Rule 51.901(b) is misplaced because "the FCC has clearly determined in its Intercarrier compensation rules that interMTA traffic is switched access traffic." DAP, p. 51.

Regarding Sprint's proposal that access rates be charged on 1% of terminating traffic, the panel stated that Sprint's method is unreasonable. Sprint's adjustment to the interMTA factor is based on an actual cell site location specific traffic study, which only Sprint has the necessary information to complete. The panel also was not persuaded that the interMTA factor should apply to both parties.

In Issue 18, the panel found that the JIP can provide useful data for validating cell site information. Although Sprint is concerned with the accuracy of JIP, the panel felt that any inaccuracies in the data may be cured with the cell-site studies. If the parties are unable to agree on a factor, they may invoke the ICA's dispute resolution process.

The panel noted that "while this issue deals specifically with compensation for terminating interMTA Traffic, AT&T's proposed language also addresses routing, which is the focus of Issue 17." DAP, p. 52. The panel found in favor of Sprint in Issue 17 and in favor of AT&T Michigan in Issue 20, creating an inconsistency in subsections 6.5.1.1 and 6.5.1.2 regarding routing. To remedy the inconsistency, the panel recommended that the parties submit new language making the sections consistent.

In its objections, Sprint argues that the arbitration panel failed to "address the statutory terms and new FCC Rule that drive Sprint's argument." Sprint's objections, p. 21. Sprint disputes the panel's finding that the FCC clearly determined in its rules that interMTA traffic is switched access traffic. According to Sprint, the panel neglected to cite an FCC rule, and instead cited a section of the *CAF* order, which in Sprint's opinion, does not support the panel's analysis. Regarding the panel's finding that the cited Commission orders are distinguishable from the immediate case because they apply to locally-dialed wireline calls, Sprint asserts that such a distinction is of no consequence. Sprint argues that, "[t]he definitions of "access" and "Telephone Toll Service" do not distinguish between landline and wireless calls." *Id.*, p. 22. And from a policy perspective, because wireless customers demand nationwide calling plans, wireless carriers must base their local calling areas on this demand, and Sprint argues that the Commission should support these consumer preferences.

The Commission agrees with the arbitration panel and adopts AT&T Michigan's position on this issue. Like the panel, the Commission finds that the cases cited by Sprint in support of its position addressed different issues, namely locally-dialed wireline calls, and therefore, may be distinguished from the immediate case. The Commission also agrees that the *Universal Service Declaratory* order[6], the *CAF* order, and FCC Rule 51.901(b) do not support Sprint's proposal for a toll/non-toll distinction. In addition, consistent with its finding in Issue 18, the Commission finds JIP can provide useful data for validating cell site information and therefore, adopts AT&T Michigan's proposal.

The Commission found in favor of Sprint in Issue 17 and in favor of AT&T Michigan in Issue 20, creating an inconsistency in subsections 6.5.1.1 and 6.5.1.2 regarding routing. In response to the panel's request to submit new language, in its objections, Sprint proposed changes to AT&T Michigan's subsections 6.5.1.1 and 6.5.1.2 to make them consistent with the panel's recommendation. AT&T Michigan did not file a response, and therefore, the Commission finds that Sprint's proposed changes are accepted by AT&T Michigan and should be adopted.

Issue 21 – Traffic Compensation and Related Terms and Conditions

The parties disagreed as to what terms should govern compensation for originating interMTA traffic. AT&T Michigan asserted that the FCC rules support its proposal to assess access charges to Sprint for land-to-mobile interMTA traffic originated by AT&T Michigan and routed over interconnection trunks to Sprint for delivery to a Sprint customer that is "roaming" outside the MTA. In Sprint's opinion, access charges should not be assessed to either party for the locally-dialed interMTA calls it originates. Although both parties proposed language that would estimate

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[6]*In the Matter of Universal Service Contribution Methodology*, 23 FCC Rcd 1411, Declaratory Order, at ¶ 8, n 29.

the volume of originating land-to-mobile interMTA traffic, AT&T Michigan proposed a factor of 5%, while Sprint proposed a factor of 1%.

The arbitration panel recommended adopting AT&T Michigan's proposal on this issue. The panel accepted AT&T Michigan's argument that the 1996 Local Competition order preserved the current procedure where most traffic between LECs and CMRS providers is not subject to interstate access charges, unless it is carried by an IXC, with the exception of certain interstate interexchange service provided by CMRS carriers, such as some roaming traffic that is carried over ILECs' switching facilities, which is subject to interstate access charges. DAP, pp. 53-54, *citing* 1996 Local Competition order, ¶ 1043. The FCC noted that "[i]n this case, the cellular carrier is providing not local exchange service but interstate, interexchange service." *Id.*, n. 2485. Accordingly, the panel found that locally-dialed "roaming" calls should be subject to access charges. Additionally, for the reasons discussed in Issue 20, the panel does not support a toll/non-toll distinction. DAP, p. 54. Finally, consistent with its findings in Issue 20, the panel found that Sprint's proposed factor of 1% to be unreasonable and recommended adopting AT&T Michigan's proposed language.

Sprint objects that the panel's recommendation effectively converts Sprint to an IXC. Citing Case Nos. U-11340 and U-12952 , Sprint argues that AT&T Michigan is not providing exchange service when it transfers these calls, and Sprint should not be assessed access charges. Sprint also contended that the 1996 Local Competition order "does not apply because the InterMTA land-to-mobile at issue in this case does not 'transit' AT&T's switch…," and "in 1996, wireless carriers did impose extra charges on InterMTA calls…." Sprint's objections, pp. 24-25.

The Commission adopts the recommendation of the arbitration panel. The Commission agrees that pursuant to the 1996 Local Competition order, the FCC intended for these locally-dialed

"roaming" calls to be subject to access charges. Again, as discussed by the Commission in Issue 20, there is no toll/non-toll distinction. And, for the reasons stated by the panel, the Commission finds Sprint's factor of 1% to be unreasonable. The Commission adopts AT&T Michigan's proposed language and factor of 5%.

Issue 22 – Interconnection Facilities Pricing and Cost Sharing

Sprint requested that it be permitted to purchase DS3 entrance facilities from AT&T Michigan on a pro-rata basis, as is commonly done in the industry, in order to operate a more efficient network. Sprint argued that its position is supported by *Talk America* and the FCC's definition of "facilities" in its rules. AT&T Michigan responded that Sprint's proposal improperly permits it to pay less than the TELRIC rate for a DS1 entrance facility, that *Talk America* actually supports AT&T Michigan's proposal, and that Sprint's proposal is too vague, resulting in extensive changes to AT&T Michigan's billing system.

Consistent with the decision in *Talk America* and the FCC's definitions, the arbitration panel found that a DS3 is a single facility, while each DS1 channel is not. Thus, under Sprint's proposal, it would pay less than the TELRIC rate for entrance facilities, which is contrary to federal regulations. In response to Sprint's argument that its proposal will improve network efficiency, the panel asserted that historically, the Commission has declined to order efficiency, and in any event, AT&T Michigan offered several efficient alternatives. Finally, the panel agreed that Sprint's proposed language is too vague. Therefore, the panel recommended adopting AT&T Michigan's position on this issue.

Sprint objects to the arbitration panel's conclusion that its proposed contract language is too vague, arguing that "it allows combined trunks, while ensuring pro-rata pricing based on state-wide circuit counts." Sprint's objections, p. 25. In addition, Sprint disputes that it would pay less

than the TELRIC rate. Sprint asserts that under its proposal, AT&T Michigan would be paid a TELRIC rate for the portion used for interconnection, and special access for the portion used for backhaul. *Id.*, pp. 25-26.

The Commission agrees with the arbitration panel and adopts AT&T Michigan's proposal on this issue. *Talk America* and the FCC's definition of "facility" support AT&T Michigan's position that a DS3 is a single facility. In addition, Sprint's proposal is too vague and allows it to pay less than the TELRIC rate, which is contrary to federal regulations. As discussed by the panel, the Commission has declined to order efficiency, and notes that AT&T Michigan has offered Sprint several efficient alternatives.

<u>Issue 23 – Interconnection Facilities Pricing and Cost Sharing</u>

Sprint proposed adding language that states if the Commission approves a new forward-looking cost study for AT&T Michigan, those rates will become immediately available without an amendment to the ICA. AT&T Michigan disagreed, and asserted that neither party should be entitled to rates not included in the ICA.

The arbitration panel found in favor of AT&T Michigan, stating that when the Commission approves a cost study, it typically orders the carriers to amend the ICA to include the new costs and sets a date upon which these rates are effective.

No objections were filed. The Commission adopts the recommendation of the arbitration panel and finds in favor of AT&T Michigan.

<u>Issue 24(a) – Interconnection Facilities Pricing and Cost Sharing</u>

Sprint argued that because the facilities benefit both parties, AT&T Michigan should be required to share the cost of interconnection facilities on Sprint's side of the POI. Sprint asserted that its position is consistent with Commission precedent and is supported by federal regulations.

AT&T Michigan disagreed, contending that the orders on which Sprint relies are obsolete, and that *Talk America* and FCC rules support its position.

The arbitration panel recommended adopting Sprint's position on this issue, noting that the Commission has a long history of "requiring interconnecting carriers to share the costs of two way facilities used to directly interconnect their networks." DAP, p. 58. The panel cited several Commission orders requiring cost sharing for interconnection facilities, disputed AT&T Michigan's interpretation of *Talk America* and the *CAF* and *TSR Wireless*[7] orders, and found that cost sharing is consistent with public policy.

In its objections, AT&T Michigan argues that *Talk America* does not promote cost sharing, but instead requires an ILEC to lease its interconnection facilities at cost-based rates, which according to AT&T Michigan, supports its position. AT&T Michigan asserts that the arbitration panel failed to provide specifi reasons why prior Commission orders support the panel's recommendation. In addition, because *Talk America* supports its position, AT&T Michigan argues that the panel's public policy arguments cannot trump a Supreme Court opinion. In any event, AT&T Michigan believes that public policy supports *its* proposal. Finally, AT&T Michigan reiterates that the panel's recommendation is contrary to the *CAF* order, which in AT&T Michigan's opinion, changed how FCC Rule 51.709(b) applies to this case.

The Commission adopts the analysis and conclusion of the arbitration panel on this issue. As discussed by the panel, the Commission has long standing precedent of requiring carriers to share the costs of two way interconnection facilities, including Case Nos. U-13758, U-13931, and U-16906. The Commission finds that *Talk America* supports Sprint's position, disagrees with

[7] *TSR Wireless, LLC v. U S West Communications, Inc.*, FCC 00-194 (rel. Jun. 21, 2000).

AT&T Michigan's interpretation of the *CAF* and *TSR Wireless* orders, and finds that cost sharing is consistent with the Commission's policy of encouraging direct interconnection.

Issue 24(b) – Interconnection Facilities Pricing and Cost Sharing

Sprint proposed that each carrier be responsible for half of the cost of two way interconnection facilities, asserting that this is a fair and administratively simple proposal to implement, it closely represents the volume of traffic for each carrier exchanged over interconnection facilities, and it is consistent with the FCC's requirement that both parties benefit from a call when it adopted bill-and-keep in the *CAF* order.

In the event the arbitration panel adopted Sprint's proposal in Issue 24(a), AT&T Michigan proposed alternative language that would limit its share of the cost for the interconnection facilities to 20%, or 15% if the panel found for Sprint in Issue 11(c).

The arbitration panel found in favor of Sprint. The panel stated that because it rejected AT&T Michigan's end user argument in other issues, the panel is not persuaded by AT&T Michigan's assertion that IXC and transit traffic should be Sprint's sole responsibility. In the panel's opinion, "when AT&T delivers this traffic to Sprint on behalf of another carrier, it bills that carrier and is not left unable to recover its costs." DAP, p. 61. The panel also found it unreasonable, as proposed by AT&T Michigan, to delay the sharing of interconnection facilities' costs until Sprint has transitioned all facilities from its current pricing to TELRIC. *Id.*

AT&T Michigan objects that the arbitration panel inappropriately recommended that it pay for the cost of interconnection facilities used to carry transit traffic and traffic Sprint exchanges with IXCs. AT&T Michigan's objections, p. 33. AT&T Michigan disputes the panel's finding that it "is not left unable to recover its costs," because "[t]he IXCs do *not*, and have no obligation to, compensate AT&T Michigan for the costs of the facilities that run between AT&T Michigan and

Sprint." *Id.*, pp. 34-35. In addition, AT&T Michigan cites FCC orders that purportedly support its position, asserts that the panel improperly rejected its end-user argument, and requests that the Commission adopt no more than a 20% sharing factor, or 15%, in the event that the Commission affirms the DAP's decision on Issue 11(c).

The Commission adopts the recommendation of the arbitration panel and finds in favor of Sprint. Although AT&T Michigan argued that the panel's rejection of the end-user argument in previous issues was in a completely different legal context, the Commission finds that the same rationale applies. Pursuant to the *CAF* order, the Commission agrees that Sprint should not be solely responsible for IXC and transit traffic. The FCC determined that both parties benefit from a call, and therefore, a 50/50 division of the costs of two-way interconnection facilities is appropriate. Finally, the Commission declines to adopt AT&T Michigan's proposal to delay the sharing of interconnection facilities' costs.

Issue 24(c) – Interconnection Facilities Pricing and Cost Sharing

Sprint proposed that it should share the nonrecurring costs that AT&T Michigan charges for interconnection orders and, as such, should be reduced by 50%. In response, AT&T Michigan argued that when placing an interconnection order, Sprint creates the cost. AT&T Michigan also argues that Sprint's proposed language is unclear and would likely lead to disputes.

The arbitration panel found in favor of AT&T Michigan, stating that "[w]hen Sprint places an order for interconnection facilities with AT&T, Sprint should be responsible for the nonrecurring costs that result from that order." DAP, pp. 61-62. The panel also found Sprint's proposed contract language to be unclear and confusing.

In its objections, Sprint reiterates arguments that both parties benefit from the facilities, and asserts that its language is necessary to remedy an inconsistency between the panel's recommendation and AT&T Michigan's proposed language.

The Commission rejects Sprint's arguments, and finds that because Sprint is the cost causer, it should be solely responsible for the nonrecurring costs in interconnection orders because AT&T Michigan incurs costs for work it performs. The Commission agrees that Sprint's proposed language is unclear and may lead to disputes, and therefore, adopts AT&T Michigan's language.

Issue 25 – Interconnection Facilities Pricing and Cost Sharing

This issue concerns transitioning Sprint's existing tariffed rate interconnection facilities to TELRIC rate facilities. Sprint's proposed language allows it to transition a facility by identifying that facility and submitting an Access Service Request (ASR) to AT&T Michigan. Sprint agreed to the ASR charge, but contested any disconnection, reconnection, or re-arrangement charges. According to Sprint, all that will be required to transition a facility will be an adjustment in AT&T Michigan's billing system. Sprint argued that its proposal is supported by the FCC's rules, and that it best allows Sprint to manage its own network.

AT&T Michigan argued in response that "its proposed language is necessary to both ensure an orderly transition and to maintain the current interconnection arrangements while a transition plan is developed." DAP, p. 62. Because the current interconnection facilities may be carrying both interconnection traffic and other traffic not eligible to be carried over TELRIC-priced facilities, AT&T Michigan alleged that new facilities will be needed. AT&T Michigan also argued that Sprint's proposed language is unclear and permits Sprint to alternate between tariffed or TELRIC-priced interconnection facilities at will.

The arbitration panel found Sprint's position more reasonable. In the panel's opinion, regardless of the type of pricing applied, the facilities Sprint seeks to transition to TELRIC pricing are physically the same. The panel believed that a long transition plan as proposed by AT&T Michigan is unnecessary, would delay Sprint receiving the pricing to which it is entitled under *Talk America*, and could also result in disputes, thereby delaying the transition even further.

AT&T Michigan objects that the arbitration panel assumes that the transition will be simple and easy. AT&T Michigan asserts that a transition plan is imperative because it must timely manage Sprint's conversion orders and accurately implement all the billing permutations. AT&T Michigan's objections, p. 39. In addition, AT&T Michigan contends that Sprint currently uses the same access facilities to carry both interconnection and backhaul traffic, and therefore, contrary to the panel's recommendation, Sprint will, in fact, "need to provision new facilities." *Id.*, p. 40, *citing* DAP, p. 63.

The Commission adopts the analysis and conclusion of the arbitration panel on this issue. The panel correctly found that the facilities Sprint seeks to transition to TELRIC pricing are physically the same regardless of what type of pricing is applied, and development of new facilities and disconnection of current ones is unnecessary. As mentioned by the panel, the Commission expects that Sprint will relocate any traffic that is not eligible to be carried over these facilities before they are transitioned, and AT&T Michigan may invoke the audit provisions approved in Issue 13 if Sprint fails to comply. The Commission also agrees that a long transition plan is unnecessary, burdensome, and will cause delays. Because Sprint has agreed to the appropriate ASR charges, and as provisioning new facilities is unnecessary, the Commission finds that AT&T Michigan will be appropriately compensated for the work it performs in transitioning facilities.

E. Bill and Payment Issues

Issue 26(a) – Deposits

AT&T Michigan proposed language that does not limit the amount of time a billed party is subject to providing information regarding its credit and financial condition. In contrast, Sprint argued that five years is sufficient time for the billing company to assess the credit worthiness of a company.

The arbitration panel found in favor of Sprint. The panel asserted that AT&T Michigan's reasoning is insufficient to require the billed company to provide its credit information to AT&T Michigan for an indefinite period of time.

No objections were filed. The Commission adopts the recommendation of the arbitration panel and finds in favor of Sprint.

Issue 26(b) – Deposits

Sprint and AT&T Michigan agreed to two circumstances in which a deposit may be required, but disagreed regarding subsections 9.2.2 and 9.2.3. According to AT&T Michigan, a low credit rating by Standard & Poor's (S&P) should be a deposit trigger. In addition, AT&T Michigan proposed language requiring a deposit for missing the payment due date three times in a 12-month period. For subsection 9.2.2, Sprint disagreed that the company's S&P's credit rating should be a trigger because deposit requests should be based on payment experience and not the opinion of a third party. Sprint did not propose any additional language beyond the agreed upon language for subsection 9.2.3.

For subsection 9.2.2, the arbitration panel found in favor of AT&T Michigan, stating that it was not persuaded by Sprint's arguments and that the "Commission supported a trigger based on S&P's credit ratings in Case No. U-13758." DAP, pp. 66-67. Although billing history

demonstrates willingness to pay, the panel determined that S&P's credit rating is a better indicator of the billed party's ability to pay. However, the panel found Sprint's proposed language more reasonable in subsection 9.2.3. The panel rejected AT&T Michigan's deposit language, because the late payment provisions of the ICA are adequate to address its concerns.

Sprint objects to the arbitration panel's recommendation to adopt AT&T Michigan's trigger based on S&P's credit ratings in subsection 9.2.2. Sprint reiterates its arguments contained in its brief, arguing that requiring a deposit based on the opinion of a third party "is not commercially reasonable and is at odds with Commission policy on deposits as set forth in Case Nos. U-13758 and U-124670." Sprint's objections, p. 27.

The Commission adopts the recommendation of the arbitration panel. A trigger based on S&P's credit ratings is supported by the Commission's decision in Case No. U-13758, and it will best assist AT&T Michigan in assessing the billed party's capacity of paying. For subsection 9.2.3, the Commission finds the language to which AT&T Michigan and Sprint agreed more reasonable because, in light of the late payment provisions of the ICA, AT&T Michigan's additional deposit language is unnecessary.

Issue 26(c) – Deposits

The parties have resolved this issue.

Issue 26(d) – Deposits

Because the ICA requires it to provide service for three months after the billed party stops payment, AT&T Michigan proposed that the maximum deposit amount be three months of anticipated charges. Sprint responded that the deposit should be the lesser of either the undisputed unpaid amount, or two months charges.

The arbitration panel found in favor of AT&T Michigan, determining that when a carrier stops paying, AT&T Michigan must continue providing services for approximately three months, exposing the company to losses for that period of time. The panel stated that AT&T Michigan's proposed deposit amount should be sufficient to cover these losses and is supported by Case No. U-13758.

Sprint objects, arguing that its "proposed language imposes a reasonable restriction on the amount of a required deposit (*e.g.*, makes a Billing Party seriously consider whether a deposit should even be requested for a non-material failure to pay)." Sprint's objections, p. 27.

The Commission agrees with the arbitration panel and finds in favor of AT&T Michigan. The Commission finds AT&T Michigan's proposal to require a deposit of three months of anticipated charges is reasonable and that its position is supported by Case No. U-13758.

Issue 26(e) – Deposits

Although the parties agreed that the billing party shall pay interest to the billed party on any cash deposits that are returned, the parties disagreed on the rate. AT&T Michigan proposed using the prime lending rate, while Sprint suggested setting the interest rate at 6%, consistent with Case No. U-16906.

The arbitration panel agreed with AT&T Michigan. In response to Sprint's argument that a higher interest rate is necessary to discourage needless deposit requests, the panel found it inappropriate to set an artificially high interest rate on deposits, and that "[t]he ICA's dispute resolution terms are sufficient to address deposit issues that may arise." DAP, p. 69. The panel also distinguished Case No. U-16906 by stating that, unlike the immediate case, the parties agreed to the 6% interest rate. Finally, in response to Sprint's concern that the prime rate was not clearly defined, the panel recommended adopting AT&T Michigan's additional language that defines the

prime rate as the rate "published in the Eastern print edition of the Wall Street Journal®." Testimony of William E. Greenlaw, p. 26.

No objections were filed. The Commission adopts the recommendation of the arbitration panel and finds in favor of AT&T Michigan.

Issue 26(f) – Deposits

The parties disputed the remedies to be included in the ICA in the event the billed party fails to comply with a deposit request. AT&T Michigan proposed "several remedies (1) depending on whether the billed party is a new entrant or not, and (2) if not a new entrant, depending on which deposit trigger prompted the deposit request." DAP, p. 70. Sprint argued that its proposed language reasonably limits disconnection for failure to pay, whereas AT&T Michigan's remedies are overly broad and permit disconnection of services even if the billed party is making payments. *Id.*

The arbitration panel found that it is appropriate for the deposit triggers to have a remedy for a failure to pay, and therefore, finds AT&T Michigan's proposed language more reasonable.

In its objections, Sprint asserts that its language reasonably limits disconnection, AT&T Michigan's proposal is too broad, and the recommendation of the panel is not commercially reasonable.

The Commission adopts the analysis and conclusion of the arbitration panel, finding in favor of AT&T Michigan.

Issue 26(g) – Deposits

The parties have resolved this issue.

Issue 27 – Escrow

The parties agreed on the definition of "Unpaid Charges," however, they disagreed as to whether the word "undisputed" should be inserted before "charges" in the definition. According to AT&T Michigan, the word "undisputed" should not be included because it makes Section 11.3 nonsensical. Citing AT&T Michigan's poor billing accuracy, Sprint argued that the word should be included because disputed bills should not be portrayed as unpaid, and AT&T Michigan's proposed language may diminish Sprint's right to dispute charges. DAP, p. 71.

Finding in favor of AT&T Michigan, the arbitration panel stated that by including the word "undisputed," Section 11.3 does not make sense. In addition, the panel found that Sprint failed to cite any specific sections of the ICA that would be negatively affected if the word is included.

No objections were filed. The Commission adopts the recommendation of the arbitration panel and finds in favor of AT&T Michigan.

Issue 28 – Escrow

The parties have resolved this issue.

Issue 29 – Disconnection for Non-Payment

Regarding the circumstances and terms under which a party may disconnect the other party for nonpayment, AT&T Michigan divided Issue 29 into several parts: (a) whether AT&T Michigan's proposed GT&C Section 10.14 should be included in the ICA; (b) how the ICA should describe a failure to pay charges that is a ground for disconnection; (c) when the ICA allows the billing party to discontinue services due to non-payment, should the billing party be required to petition the Commission for an order authorizing the discontinuation of service; (d) (this issue was resolved); and (e) whether the ICA should provide the billing party with the remedies proposed by AT&T

Michigan for GT&C sections 11.5 through 11.8.3 for failures of the billed party to fulfill its contractual duties. DAP, p. 72.

With regard to Issue 29(a), AT&T Michigan argued that non-payment of undisputed charges should result in termination of all services under the ICA. AT&T Michigan contended in Issue 29(b) that it is appropriate to specifically spell out the charges that, if not paid, may result in termination of services. In Issue 29(c), AT&T Michigan asserted that pursuant to Case No. U-13758, the billing party should not be required to petition the Commission for an order authorizing the termination of services. Finally, AT&T Michigan stated in Issue 29(e) that its proposed remedies benefit both the billing and billed parties by providing alternative remedies to disconnection. *Id.*, pp. 72-73.

According to Sprint, disconnection is a severe remedy, disruptive to customers, and should only be carried out with prior approval of the Commission. With regard to Issue 29(a), Sprint argued that disconnection should result from non-payment of undisputed charges and should only include those services for which payment was not made. In addition, Sprint asserted that the non-paying party should have 45 days to pay undisputed charges before the billing party may request a disconnection order from the Commission.

Regarding Sections 10.14 and 11.1, the arbitration panel found that Case Nos. U-13758 and U-12460 support AT&T Michigan's position that non-payment of undisputed charges may result in termination of all services under the ICA without the need for prior Commission authorization. Therefore, the panel recommended adopting AT&T Michigan's proposal for Sections 10.14, 11.1, and 11.2. The panel noted that the period of time preceding a discontinuance notice is addressed in Issue 30.

The arbitration panel asserted that in Sections 11.5 through 11.8.3 (not including Section 11.5.2, which the parties resolved), there were alternatives to the more severe remedy of disconnection and found in favor of AT&T Michigan, with the exception of subsections 11.5.4.1 and 11.5.4.2. "Consistent with Case No. U-13758, which authorizes remedies only after the billed party was provided 60-days' notice," the panel adopted Sprint's proposal for subsections 11.5.4.1 and 11.5.4.2. DAP, p. 74.

Sprint objects that AT&T Michigan's language allows disconnection of services for which payment has been received. In addition, Sprint argues that AT&T Michigan's proposal is anti-competitive, adversely impacts consumers, and is contrary to Commission precedent.

The Commission adopts the recommendation of the arbitration panel. In Case No. U-13758, the Commission found that a billing party may cease providing new service, or may discontinue service, to the non-paying party without prior Commission authorization, provided the billing party gives 60 days' notice from the bill's due date. The Commission's decision in Case No. U-12460 was similar. Therefore, the Commission agrees with the panel that precedent supports adopting AT&T Michigan's position on Sections 10.14, 11.1, and 11.2. The Commission also agrees that AT&T Michigan's remedies for failure to pay in Sections 11.5 through 11.8.3 (excepting subsections 11.5.2, 11.5.4.1, and 11.5.4.2) are preferable to the strict remedy of disconnection, and adopts that company's position. Finally, the Commission finds that consistent with Case No. U-13758, Sprint's proposal for subsections 11.5.4.1 and 11.5.4.2 should be adopted.

Issue 30 – Disconnection for Non-Payment

The parties disagree whether the period of time in which the billed party must remit payment in response to a discontinuance notice should be 45 or 15 days. AT&T Michigan argued that 15 days is sufficient because the billed party had 30 days to provide payment and has an additional 10

business days prior to disconnection. Because disconnection is a drastic remedy, Sprint proposed 45 days from the receipt of a discontinuance notice so that the billed party may investigate and cure the breach.

The arbitration panel found that consistent with the decisions in Case Nos. U-13758 and U-12460, Sprint's proposal is more reasonable.

In its objections, AT&T Michigan argues that its proposal is better supported by Commission precedent and that it is unclear from the panel's recommendation when the discontinuance notice must be given.

The Commission agrees with the arbitration panel and finds in favor of Sprint. The Commission notes that this same issue was decided in Case Nos. U-12460 and U-13758, and consistent with those decisions, finds Sprint's proposal reasonable. In response to AT&T Michigan's allegation that the DAP is unclear as to when the notice must be given, the Commission finds that Case No. U-12460 provides guidance. In that case, the Commission determined that the billing party would present the non-paying party with written notice immediately after the bill due date, and the non-paying party would have 60 days from the bill due date to remedy the breach. October 24, 2000 order in Case No. U-12460, pp. 18-19.

Issue 31 – Billing Disputes

The parties have resolved this issue.

THEREFORE, IT IS ORDERED that the decision of the arbitration panel, as modified by this order, is adopted. The parties shall submit conforming interconnection agreements for Commission approval within 30 days of the date of this order, unless further Commission action is required to resolve remaining differences. Thereafter, the Commission will resolve any remaining dispute and set a new deadline for submission of conforming interconnection agreements.

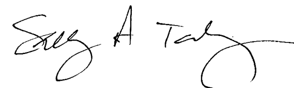
The Commission reserves jurisdiction and may issue further orders as necessary.

Any party aggrieved by this order may file an action in the appropriate federal District Court pursuant to 47 USC 252(e)(6).

MICHIGAN PUBLIC SERVICE COMMISSION

John D. Quackenbush, Chairman

Greg R. White, Commissioner



Sally A. Talberg, Commissioner

By its action of December 6, 2013.

Mary Jo Kunkle, Executive Secretary

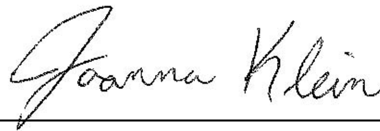
P R O O F   O F   S E R V I C E

STATE OF MICHIGAN)

Case No. U-17349

County of Ingham)

Joanna Klein being duly sworn, deposes and says that on December 6, 2013 A.D. she served a copy of the attached Commission order by first class mail, postage prepaid, or by inter-departmental mail, to the persons as shown on the attached service list.



Joanna Klein

Subscribed and sworn to before me
This 6th day of December 2013

Gloria Pearl Jones
Notary Public, Ingham County, MI
My Commission Expires June 5, 2016
Acting in Eaton County

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January 20, 2015

Daniel Wolf, Executive Secretary
Minnesota Public Utilities Commission
Suite 350
121 7th Place East
St. Paul, MN 55102-2147

Re: In the Matter of the Complaint by the Minnesota Department of Commerce (DOC) against the Charter Affiliates regarding Transfer of Customers
Docket No. P-6716, 5615/C-14-383

Dear Mr. Wolf:

Enclosed for filing in the above matter, please find the Comments of the Minnesota Department of Commerce, both Public and Trade Secret versions.

Very truly yours,

/s/ **Linda S. Jensen**
Linda S. Jensen

(651) 757-1472 (Voice)
(651) 297-1235 (Fax)

Attorney for Minnesota Department of Commerce

Enclosures

cc: Service List

AFFIDAVIT OF SERVICE

Re: In the Matter of the Complaint by the Minnesota Department of Commerce (DOC) against the Charter Affiliates regarding Transfer of Customers
Docket No. P-6716, 5615/C-14-383

STATE OF MINNESOTA)
) ss.
COUNTY OF RAMSEY)

I, Ann Kirlin, hereby state that on the 20th day of January, 2015, I efiled the attached **Comments of the Minnesota Department of Commerce**, both Public and Trade Secret versions and/or served the same by United States Mail, upon all parties on the attached service list, postage prepaid, by depositing the same at St. Paul, Minnesota.

See attached service list

/s/ **Ann Kirlin**
ANN KIRLIN

Subscribed and sworn to before me on
this 20th day of January, 2015.

/s/ Linda J. Krolick
Notary Public - Minnesota
My Commission Expires January 31, 2015

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