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May 21, 2012

**E-FILED**

Honorable Jaclyn A. Brillling  
Secretary  
New York Public Service Commission  
Agency Building 3  
Three Empire State Plaza  
Albany, New York 12223-1350

**Re: Case 12-C-0138  
Petition of TVC Albany, Inc., D/B/A/ Tech Valley Communications,  
for Public Service Commission Arbitration of Interconnection  
Agreement with State Telephone Company**

Dear Secretary Brillling:

Pursuant to the "Ruling Establishing Initial Schedule" issued on April 27, 2012 by Administrative Law Judge Eleanor Stein, and on behalf of State Telephone Company, Inc., attached for electronic filing is the cover letter and "Initial Brief of State Telephone Company, Inc." that was submitted to Judge Stein this afternoon in the above-referenced proceeding.

Please direct any inquiries concerning this matter to the undersigned and to Mr. Wilson.

Sincerely,



Thomas J. Moorman  
Counsel to State Telephone Company, Inc.

Attachments

cc: Judge Eleanor Stein (via email)  
S. Wilson, Counsel for TVC Albany, Inc., D/B/A Tech Valley Communications (via email)  
Service List (via email)

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May 21, 2012

***VIA EMAIL***

The Honorable Eleanor Stein  
Administrative Law Judge  
New York Public Service Commission  
Three Empire State Plaza  
Albany, New York 12223

**Re: Case 12-C-0138  
Petition of TVC Albany, Inc., D/B/A/ Tech Valley Communications,  
for Public Service Commission Arbitration of Interconnection  
Agreement with State Telephone Company**

Dear Judge Stein:

Pursuant to the "Ruling Establishing Initial Schedule" issued on April 27, 2012, and on behalf of State Telephone Company, Inc. ("STC"), attached please find the "Initial Brief of State Telephone Company, Inc." A copy of the pleading portion of this submission is provided in "Word" format and, as indicated during the oral argument held on May 10, 2012, a copy of this Word document is provided to all parties, including Mr. Wilson, Counsel for TVC Albany, Inc., D/B/A Tech Valley Communications.

Please direct any inquiries concerning this matter to the undersigned.

Sincerely,



Thomas J. Moorman  
Counsel to State Telephone Company, Inc.

**Attachment**

cc: S. Wilson, Counsel for TVC Albany, Inc., D/B/A Tech Valley Communications (via email)  
Service List (via email)

**STATE OF NEW YORK  
PUBLIC SERVICE COMMISSION**

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<b>Petition of TVC Albany, Inc., D/B/A Tech Valley</b>	)	
<b>Communications, for Public Service Commission</b>	)	<b>Case 12-C-0138</b>
<b>Arbitration of Interconnection Agreement with</b>	)	
<b>State Telephone Company</b>	)	

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**INITIAL BRIEF OF STATE TELEPHONE COMPANY, INC.**

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Date: May 21, 2012

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**STATE OF NEW YORK  
PUBLIC SERVICE COMMISSION**

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<b>Petition of TVC Albany, Inc., D/B/A Tech Valley</b>	)	
<b>Communications, for Public Service Commission</b>	)	<b>Case 12-C-0138</b>
<b>Arbitration of Interconnection Agreement with</b>	)	
<b>State Telephone Company</b>	)	

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**INITIAL BRIEF OF STATE TELEPHONE COMPANY, INC.**

Pursuant to the “Ruling Establishing Initial Schedule” issued April 27, 2012 in the above-referenced proceeding, State Telephone Company, Inc. (“STC”) hereby files this Initial Brief. This brief addresses the issues list jointly submitted by STC and TVC Albany, Inc., D/B/A Tech Valley Communications (“TVC”) to Judge Stein on May 1, 2012. For the reasons stated herein, STC respectfully requests that the New York Public Service Commission (the “Commission”) resolve the outstanding issues in this proceeding in a manner consistent with the positions stated herein and in the “Response of State Telephone Company, Inc.”<sup>1</sup> STC has amply demonstrated that the unresolved issues arising from TVC’s request for interconnection submitted pursuant to Section 251(b) of the 1996 revisions to the Communications Act of 1934, as amended (the

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<sup>1</sup> See, Response of State Telephone Company, Inc., Case 12-C-0138, filed April 17, 2012 (the “Response”). STC filed its Response as a result of the March 23, 2012 Petition for Arbitration filed by TVC (the “Petition”). Many of the positions stated in the Response on the then outstanding issues are also reflected herein. The re-statement of the issues, as contained in the May 1, 2012 jointly submitted list, did not change the facts set forth in the Response or STC’s legal or public policy positions with respect thereto unless so stated in this Initial Brief. For convenience, STC incorporates the Response herein by reference. In addition, STC updates its positions and arguments in support of the resolution of the open issues in this brief.

“Act”), should be resolved in STC’s favor.<sup>2</sup> Accordingly, for the reasons stated herein, STC respectfully requests that the Commission resolve the outstanding issues in accordance with the positions advocated by STC herein.<sup>3</sup>

## **I. PRELIMINARY MATTER**

It is clear that TVC already operates within the greater Albany area in exchanges with which STC has Extended Area Service (“EAS”) calling with Verizon New York, Inc. (“Verizon”) exchanges, although it is not entirely clear when traffic exchange between TVC and STC began. Nevertheless, based on TVC’s response to STC’s discovery requests, TVC has acknowledged that over a recent six month period it has delivered traffic approximating 1,253,000 minutes of use (“MOUs”) for termination on the STC network. *See, Attachment A*, attached hereto (TVC Response to STC Information Request Nos. 3 and 4). TVC has also acknowledged that the former operations of a Mid-Hudson Communications were merged into TVC in 2002, thus expanding the numbering resources that formerly were assigned to Mid-Hudson Communications. *See, Attachment B*, attached hereto (TVC Response to STC Information Request No. 2). Moreover, TVC has tariffed significantly the same type of information within its PSC Tariff No. 2, Section 10, Original Pages 4-30 provided in response to STC’s Information Request No. 9. *See, Attachment C*, attached hereto (TVC Response to STC Information Request 9). This information reveals that some exchanges in which TVC provides

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<sup>2</sup> For purposes of this Initial Brief, STC and TVC will be referred to collectively as the “parties” and individually as a “party”.

<sup>3</sup> Also on May 1, 2012, the parties submitted a revised Attachment A and Attachment B that were originally included in the Response. *See*, Letter to the Honorable Jaclyn A. Brilling, Case 12-C-0138, filed May 1, 2012 (with Attachments A and B) (the “*May 1<sup>st</sup> Attachments Submission*”). The Attachment A reflected the changes to the agreed-to issue list also filed on that day. For purposes of this Initial Brief, STC notes that its references herein to the “Agreement” is that included in Attachment B.

local service have local calling (*i.e.*, EAS) to either the STC exchange of Coxsakie or Ravena, or to both. This data can be compared to comparable information regarding STC's EAS arrangements that STC provided in its Response. *See*, Response, Exhibit D (identification of the EAS exchanges related to STC's local service operations).

As a result of these facts and the fact that STC is not aware of either TVC or Mid-Hudson Communications having ever requested an EAS traffic exchange agreement with STC but yet numbering assignments have been made to TVC/Mid-Hudson Communications, no question exists that TVC has failed to enter into the fundamental network and service arrangements with STC that would properly address this EAS traffic exchange with TVC/Mid-Hudson Communications (which is the Competitive Local Exchange Carrier ("CLEC")). *See*, *Order Establishing Requirements for the Exchange of Local Traffic*, Case 00-C-0789, issued December 22, 2000 ("*CLEC EAS Order*") at 4-5 ("... CLECs will be required to enter into an agreement establishing fundamental network and service arrangements *prior* to activating a code that can be accessed on a local basis by an Independent's [non-Bell incumbent local exchange carrier such as STC] customer.") (emphasis in original).

Based on this non-compliance, STC respectfully requests that the Commission treat this non-compliance as a relevant factor as it reviews and resolves the issues in this proceeding. TVC has demonstrated that, with the most fundamental of obligations – network interconnection – TVC apparently considers the *CLEC EAS Order* pronouncements to be inapplicable to it or has simply ignored those requirements.<sup>4</sup> This long-standing disregard for proper compliance with

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<sup>4</sup> Moreover, STC notes that it is the CLEC, which in this case was either Mid-Hudson Communications or TVC, that is required by the *CLEC EAS Order* to seek interconnection from STC, not *vice versa*. Without undertaking the expense of what could be extraordinary investigative actions, small rural incumbent local exchange carriers ("ILECs") like STC cannot readily determine the identity of every new entrant carrier or the areas in which it operates.



Commission directives which have now been admitted by TVC should inform the Commission as it resolves the issues in this proceeding.<sup>5</sup>

Ultimately, the Agreement needs to be implemented properly, a concept akin to compliance with its terms. To the extent that TVC has already proven to have a penchant for non-compliance, the Commission's resolution of the issues in this proceeding in order to advance proper compliance and enforcement with the terms of the Agreement is appropriate.

Further, STC notes that TVC has also demonstrated a penchant for not being able to respond specifically to questions of fact. The various exhibits to the Petition, coupled with the attachments contained in the May 1, 2012 Record Submission in this proceeding by STC, confirm this fact. *See*, Record Submission, Case 12-C-0138, filed May 1, 2012 (the "*May 1<sup>st</sup> Record Submission*"). Moreover, as generally referenced during the pre-hearing conference, the parties had agreed to a course of action where TVC was to propose language in an effort to reduce the outstanding issues. This has not occurred.

STC respectfully submits, therefore, that this course of conduct should also inform the Commission as it resolves the issues in this proceeding. TVC's past and current conduct provides the relevant factual evidence and additional rationale for the types of contractual terms and conditions that STC seeks in this proceeding. STC's proposals are necessary to govern the

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Moreover, ILECs such as STC have no statutory right to seek interconnection with a CLEC. Therefore, as reflected in the *CLEC EAS Order*, the CLEC must make the initial request to all of the affected ILECs.

<sup>5</sup> TVC states that, for a recent six month period, TVC has terminated "STC traffic" approximating 900,000 MOUs on TVC's network. *See*, **Attachment A**, attached hereto (TVC Response to STC Information Request Nos. 3 and 4). The veracity of this figure is questionable since it may improperly include telephone toll traffic which is instead the traffic of the originating end-user's presubscribed toll provider (*i.e.*, its chosen interexchange carrier).

parties' compliance with the terms and conditions of the Agreement and to ensure enforceable requirements, recognizing each party's demonstrated conduct.

## **II. DISCUSSION OF THE ISSUES**

### **A. Issue 1: Whether Reciprocal Compensation Arrangements Pursuant To 47 U.S.C. § 251(b)(5) Apply To Traffic That Originates Or Terminates Outside Of The Local Calling Area(s) Included In STC's EAS Calling Areas?**

For all of the reasons stated herein and in the Response, STC respectfully requests that the Commission resolve Issue 1 in the manner requested by STC. In doing so, STC also respectfully requests that the Commission adopt STC's proposed language in the Agreement in Sections 1.1, 2.6, 2.11, 2.13, 2.14, and 8.1.

#### **1. Summary of Position.**

TVC's proposal to include all traffic that is originated and terminated within LATA 134 by the parties – the "LATA 134 Proposal" – must be rejected. *See, e.g.*, Petition at 13. The Commission must follow the requirements of Section 251(b) and must follow "regulations prescribed" by the Federal Communications Commission ("FCC") pursuant to Section 251 (*see* 47 U.S.C. §252(c)(1)) in this arbitration. The interconnection agreement between STC and TVC that is ultimately approved by the Commission as a result of this arbitration must also be in compliance with the standards set forth in Section 251 and the related FCC regulations. *See* 47 U.S.C. §252(e)(2)(B). These standards, and the application of prior rulings by the Commission with respect to non-access reciprocal compensation traffic and local calling areas, require that TVC's contentions relating to Issue 1 be rejected.

TVC seeks interconnection with the ILEC network operated by STC and it is the geographic scope of STC's ILEC network that governs the scope of traffic within the local

calling area (non-access) that is subject to the terms of this Agreement.<sup>6</sup> To be sure, for intercarrier compensation (“ICC”) purposes, there are two mutually exclusive and fundamental frameworks under which traffic may be classified: either local calling traffic (including Extended Area Service (“EAS”)) that is non-access traffic or access traffic. It is only the non-access traffic classification of local traffic that is addressed by the interconnection requirements under review in this Arbitration. *See*, Response at 8-9. The terms and conditions for intrastate access are governed by access tariffs separate and apart from the terms of interconnection agreements that are the subject of arbitrations pursuant to 47 U.S.C. § 252.

As STC previously noted, information provided by TVC demonstrates TVC’s non-

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<sup>6</sup> A fundamental principle embodied in the Act’s interconnection requirements is that an ILEC is only required to fulfill interconnection requests from competing carriers that would result in interconnection arrangements that are no more than equal to what the ILEC does with itself or with other carriers. For example, the 8<sup>th</sup> Circuit Court of Appeals that addressed the original appeal of the FCC’s *First Report and Order* establishing the rules for interconnection concluded that competitive carriers requesting interconnection with incumbent LECs should have access “only to an incumbent LEC’s *existing* network -- not to a yet unbuilt superior one.” *See, Iowa Utilities Bd. v. F.C.C.*, 120 F.3d 753, 813 (8th Cir. 1997) (“*IUB I*”) (emphasis in original). On remand from the United States Supreme Court, the 8th Circuit court issued its opinion in *Iowa Utilities Board v. Federal Communications Commission*, 219 F.3d 744 (8th Cir. 2000) (“*IUB II*”). That decision reaffirmed the previous conclusion (not affected by the Supreme Court’s remand) that it is a violation of the Act to require superior forms of interconnection. *Id.* at 758. In reviewing the meaning of the Act’s “at least equal in quality” requirement, the Eighth Circuit Court of Appeals concluded that the mandate “merely prevents an incumbent LEC from arbitrarily treating some of its competing carriers differently than others; *it does not mandate that incumbent LECs cater to every desire of every requesting carrier.*” *IUB I* at 813 (emphasis added). Therefore, even under the most strict subsection 251(c) of the interconnection requirements in the Act, the ILEC is not required to provision interconnection arrangements with a requesting competing carrier that are more complex or more costly than what the ILEC does for itself or with other carriers. Moreover, within the hierarchical set of interconnection requirements, where the subsection 251(c) requirements are the most burdensome, the requirements of subsections 251(a) and (b) cannot impose greater obligations on STC than would Section 251(c), even if Section 251(c) requirements applied to STC which they do not. *See, In the Matter of Total Telecommunications Services, Inc. and Atlas Telephone Company, Inc. v. AT&T Corporation, Memorandum Opinion and Order*, File No. E-97-003, FCC 01-84, released March 13, 2001 (“*Total Communications*”) at para. 25.

compliance with the Commission's decisions applicable to the exchange of EAS traffic,<sup>7</sup> STC is willing to utilize its existing local calling area(s) for interconnection with TVC such that traffic exchanged between TVC and STC that originates and terminates within the relevant STC local calling area shall be treated within the scope of local interconnection (*i.e.*, in this case, a bill-and-keep compensation approach).<sup>8</sup> All other traffic is not within the scope of local interconnection traffic (*i.e.*, defined under the term "Excluded Traffic" in the Agreement) and is subject to exchange access charges in accordance with the terms and conditions of applicable intrastate and interstate access tariffs.

Through its LATA 134 Proposal (*see, e.g.*, Petition at 13), however, TVC seeks the Commission's approval of TVC's attempt to convert exchange access traffic originating outside of STC's local calling area, but originating within LATA 134, to the traffic subject to the Agreement's "bill and keep" regime or, as the FCC now has termed it, "non-access reciprocal compensation traffic." *See*, 47 C.F.R. §51.701(b). For traffic terminating to an STC end user, if

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<sup>7</sup> *See*, Response at 8; *see also*, Section I, *supra*. Separate and apart from this compliance issue, STC notes that the Commission has already determined the terms and conditions for the treatment of EAS traffic between STC and TVC which is the same ICC regime to which the parties have already agreed for other local traffic that originates and terminates solely within STC's service area. *See, e.g.*, *CLEC EAS Order* at 8 (Intercarrier compensation at "bill and keep").

<sup>8</sup> Provided that the Commission addresses TVC's current noncompliance with the *CLEC EAS Order*, STC recognizes that those Verizon EAS exchanges with which an STC end user has extended area local calling should be addressed in the definition of "Local Traffic" within the Agreement. *See*, Agreement, Section 2.14. That definition, as proposed by STC, already includes calls between STC's service area and the Rate Center Areas that are defined as within the local calling area for the end users in STC's two exchanges ("to users in Rate Centers located within STC's local calling area as defined by STC's general subscriber tariff or like mechanism"). With this understanding of the proper scope of non-access traffic, STC also agrees that changes should be made to Sections 1.1 and 2.4 of the Agreement as well as other sections to properly recognize this scope of "local" traffic.

a call is originated by a TVC presubscribed end user using a telephone number associated with a service area outside of the local calling area of the STC end user, STC will apply terminating exchange access charges to TVC just as STC does to all other providers of telephone toll service.

Even though these time-honored ICC regimes are well established, TVC's position ignores governing FCC rules, existing Commission decisions, and rational ICC policies in a unilateral effort by TVC to alter the ICC treatment of traffic that has been and is subject to STC's intrastate terminating access charges. The net result of TVC's position is to allow TVC to avoid the time-honored exchange access ICC regime and escape the proper application of STC's approved intrastate exchange access tariff to TVC's access traffic.

As explained herein, the long-standing distinction between a scope of traffic subject to access charges and a scope of traffic not subject to access charges is further evidenced by the recent FCC regulatory actions. STC's position is that TVC should be subject to the transition framework established by the FCC in the same manner as all other carriers. Consequently, any traffic that is not originated and terminated within a STC local calling area is not local traffic, but rather is "Excluded Traffic" as that term should be properly defined in the Agreement, and will not be treated as "Local Traffic" under the terms of local interconnection. Rather, any traffic exchanged with STC that originates and/or terminates outside of the STC local calling area must be subject to the terms and conditions contained in exchange access tariffs as all other traffic that is not local traffic, which is the very same framework under which *all* other wireline carriers operate with respect to traffic originated or terminated on STC's network.<sup>9</sup>

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<sup>9</sup> Separate and distinct rules apply to wireless providers' traffic with respect to the geographic calling scope for reciprocal compensation purposes. *See*, 47 C.F.R. §51.701(b)(2). Therefore, the references herein to "carriers" refer to wireline carriers only unless otherwise noted.

**2. TVC's LATA 134 Proposal is not Consistent with the FCC Rules Regarding the Distinction Between Non-Access Reciprocal Compensation Traffic (Traffic that Originates and Terminates within the STC Local Calling Area) and Access Traffic (Traffic that Either Originates or Terminates Outside the STC Local Calling Area) and, Therefore, must be Rejected.**

The FCC has recently added a new series of clarifying definitions with respect to the existing framework and compensation mechanisms that apply to intrastate and interstate access charges versus local calling area traffic. The FCC's recent actions, however, did not alter the historical distinction between "exchange access" traffic and "local traffic." Rather, the latter is now defined as "non-access telecommunications traffic" (*see*, 47 C.F.R. §51.701(b)) and is subject to "non-access reciprocal compensation" requirements. *See*, 47 C.F.R. §51.701(e). The former is now addressed in a new subpart of Section 51 of the FCC's rules and is subject to access charge treatment under the FCC's transition plan. *See*, 47 C.F.R. § 51, Subpart J – Transitional Access Service Pricing.

While the scope of the two mutually exclusive forms of traffic did not change, the FCC took action in its November 18, 2011 decision to modify the compensation framework, subject to a transition plan.<sup>10</sup> All carriers, including TVC, will be affected as a result of the FCC's transitional changes. However, TVC has no legal right or basis for discriminatory or distinct treatment outside of that transition, and there is no justification for special terms for TVC outside of the existing ICC framework. TVC's position cannot be reconciled with FCC's Section 251-derived rules. Accordingly, the Commission must reject TVC's position on Issue 1 because the resolution of issues in this arbitration proceeding and the subsequent approval of the Agreement

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<sup>10</sup> *See, e.g., In the Matter of Connect America Fund, et al., Report and Order and Further Notice of Proposed Rulemaking*, WC Docket Nos. 10-90 *et al.*, FCC 11-161, released November 18, 2011 ("CAF/ICC Order") at paras. 33-42 (discussion regarding the ICC transition mechanisms).

must follow Section 251 and the FCC's prescribed rules. *See*, 47 U.S.C. §§252(c)(1) and 252(e)(2)(B).

**a. Non-access reciprocal compensation requirements must be followed.**

The FCC's Part 51 – Subpart H rules (and in particular 47 C.F.R. § 51.701 – Scope of transport and terminating pricing rules) define the scope of traffic between two competing local exchange carriers that is subject to the Act's interconnection requirements (under Section 251(b)(5) (the duty to establish reciprocal compensation arrangements for the transport and termination of telecommunications)). Section 51.701(a) and (b)(1) of the FCC's rules clarify the concept that has always been the case, *i.e.*, that traffic subject to 251(b)(5) specifically does not include traffic that is subject to intrastate or interstate exchange access terms and conditions.

Section 51.701(a) states as follows:

Effective December 29, 2011, compensation for telecommunications traffic exchanged between two telecommunications carriers that is interstate or intrastate exchange access, information access, or exchange services for such access, other than special access, is specified in subpart J of this part. The provisions of this subpart [H] apply to Non-Access Reciprocal Compensation for transport and termination of Non-Access Telecommunications Traffic between LECs and other telecommunications carriers.

47 C.F.R. §51.701(a). Section 51.701(b)(1) states:

*Non-Access Telecommunications Traffic.* For purposes of this subpart, Non-Access Telecommunications Traffic means:

(1) Telecommunications traffic exchanged between a LEC and a telecommunications carrier other than a CMRS provider, except for telecommunications traffic that is interstate or intrastate exchange access, information access, or exchange services for such access (*see* FCC 01–131, paragraphs 34, 36, 39, 42–43).

47 C.F.R. §§51.701(b) and (b)(1). Section 51.701(b)(1) remains the same as it was originally implemented by the FCC in 1996.

As noted by the FCC in its decision 01-131 referenced in Section 51.701(b)(1),

Accordingly, unless and until the Commission by regulation should determine otherwise, Congress preserved the pre-Act regulatory treatment of all the access services enumerated under section 251(g). These services thus remain subject to Commission jurisdiction under section 201 (or, to the extent they are *intrastate* services, they remain subject to the jurisdiction of state commissions), whether those obligations implicate pricing policies as in *CompTel* or reciprocal compensation.

*In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, Intercarrier Compensation for ISP-Bound Traffic, Order on Remand and Report and Order*, CC Docket Nos. 96-98 and 99-68, FCC 01-131, released April 27, 2001 at para. 39 (emphasis in original; footnote omitted). While the scope of Section 251(g) may be subject to legal wrangling in light of the FCC’s *CAF/ICC Order* outside of this proceeding, the Commission has already determined what is and is not exchange access traffic in the context of local interconnection as discussed *infra* in Section II.A.2.

As such, it is beyond any rational dispute that traffic that is originated in the LATA outside of the local calling area of STC<sup>11</sup> and that terminates on the network of STC is exchange access traffic subject to the terms of intrastate access tariffs pursuant to long-standing and still existing decisions in the State of New York, and, as such, by these rules, this non-local calling areas traffic is not within the scope of local interconnection subject to the terms of reciprocal compensation (in this case, bill-and-keep).<sup>12</sup> This non-local calling area traffic is now and has

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<sup>11</sup> As discussed herein, STC’s reference to “local calling area” includes both the STC certificated service area and the EAS calling area of a STC end user.

<sup>12</sup> Commission decisions acknowledge the existence of the intrastate exchange access market for the smaller ILECs such as STC, and the Commission has asserted jurisdiction over such market. *See, e.g., Order Adopting Comprehensive Plan*, Case 02-C-0595, issued and effective December 23, 2003. Moreover, STC has in place an intrastate exchange access tariff that establishes the rates, terms and conditions for STC’s provision of intrastate exchange access service. *See*, New



been subject to the terms and conditions of intrastate access tariffs and the compensation terms and conditions contained in those tariffs.<sup>13</sup>

With the recent policy decisions by the FCC with respect to ongoing ICC issues, the terms and conditions (including compensation) for exchange access are now subject to transitional changes. However, the FCC's recent rule changes do not alter the scope of traffic treated under Subpart H (local, non-access traffic) versus traffic treated under exchange access (exclusive of Subpart H, and now treated under the new Subpart J of Part 51 of the FCC's rules). STC's proposed interconnection terms and conditions are fully consistent with these definitions and rules. As demonstrated herein, TVC's proposal for the scope of "Local Traffic" is inconsistent with applicable FCC rules and must be rejected in its entirety.<sup>14</sup>

- b. TVC's LATA 134 Proposal cannot be reconciled with the scope of non-access reciprocal compensation traffic already established by the Commission for other similarly situated small rural ILECs like STC.**

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York Intrastate Access Settlement Pool, Inc., P.S.C. No. 1 – Telephone and New York Intrastate Access Settlement Pool, Inc., P.S.C. No. 3 – Telephone.

<sup>13</sup> The same is true for all intrastate, interLATA traffic and interstate traffic with the minor exception of instances in which some carriers may have limited local calling areas that cross state lines or LATA boundaries.

<sup>14</sup> While the interconnection requirements of the Act allow negotiating carriers to enter into terms and conditions that may not be consistent with the Act's requirements and rules, an ILEC is not required to agree to negotiate provisions that are without regard to the standards set forth in Section 251(b). *See*, 47 U.S.C. §252(a)(1) ("An incumbent local exchange carrier *may* negotiate and enter into a binding agreement . . . *without regard to the standards set forth in subsections (b) and (c) of section 251.*") (emphasis added). STC has made clear to TVC that STC will not engage in negotiations with TVC that are without regard to the stated standards under Section 251(b) (*see, e.g.*, TVC Petition, Exhibits 1, 15) and, in particular, never engaged in negotiations that would alter the existing ICC framework associated with local traffic versus that afforded exchange access traffic. *See, id.* Exhibit 4 at 3-4.

TVC fails to recognize the fact that the Commission has already confirmed the “local calling area” with respect to the exchanges served by the smaller rural ILECs like STC. These determinations address local calling within the service area of STC as well as the local calling arrangements (*i.e.*, EAS) between Verizon exchanges and STC’s exchanges. Where STC and Verizon have local calling in the Albany area, STC proposes that the terms of the Agreement would use these same local calling areas for TVC. Alternatively, for those Verizon exchanges in the Albany area for which there is no local calling to and from an STC exchange, calls to and from such areas are subject to originating and terminating access charges. STC applies access charges to Verizon for this same latter classification of calls. Again, pursuant to the Agreement, STC will extend equivalent treatment to TVC traffic from these non-local calling areas.

As demonstrated in the Response, the Commission has already determined what is and is not local traffic versus that which is or is not exchange access traffic. *See*, Response at 11-12. To be sure, the Commission has acknowledged that the FCC left to the state commissions the determination of local calling areas with respect to the scope of reciprocal compensation. “The FCC also determined that reciprocal compensation arrangements apply only to local traffic, and that long-distance traffic remains subject to the carrier access charge regime. It allowed the states to determine the areas to be considered local for these purposes.”<sup>15</sup> And, in the context of smaller rural ILECs like STC, the Commission determined that:

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<sup>15</sup> *Opinion and Order Concerning Reciprocal Compensation*, Case 99-C-05239, issued and effective August 26, 1999 at 6 *citing In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, Interconnection between Local Exchange Carriers and Commercial Mobile Radio Service Providers, First Report and Order*, CC Docket Nos. 96-98 and 95-185, 11 FCC Rcd 15499 (1996) (“*First Report and Order*”) at paras. 1034-1035. The Commission’s authority to establish local calling areas must, at the very least, avoid the imposition of superior forms of interconnection. *See*, footnote 6, *supra*.

Our regulations and orders (in 16 NYCRR §602.1 and Cases 00-C-0789 and 01-C-0181) define local exchange service and provide the requirements for the exchange of local traffic. To comply with our regulations and requirements, the interconnection and the traffic exchange agreements provided by incumbent and competitive local exchange carriers have defined the local service exchange areas and the local calling areas. Thus, the applicable regulations establish the definition of local traffic that we are requiring here. We find that Sprint's definition of local traffic should be used in the interconnection agreement as it conforms best to the stated requirements.

*Order Resolving Arbitration Issues*, Cases 05-C-0170 and 05-C-0183, issued and effective May 24, 2005 (“*Local Calling Area Order*”) at 8.<sup>16</sup> These Commission determinations from the *Local Calling Area Order* were affirmed by the Commission and by the federal district court.<sup>17</sup>

Based on these decisions, the “local calling area” includes those exchanges within STC’s certificated service area and those exchanges with which EAS calling has been established by the Commission. TVC has failed to explain in the Petition how its position can be reconciled with these directives,<sup>18</sup> which are fully consistent with the applicable FCC rules. Accordingly, TVC’s LATA 134 Proposal should be rejected, and STC’s definition of Local Traffic should be adopted in its entirety consistent with the Commission’s previous determinations made in the *Local Calling Area Order*.

### **3. TVC’s Position Also Cannot be Reconciled with Rational Public Policy.**

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<sup>16</sup>Sprint’s definition of “local traffic,” in turn, was explained by the Commission with respect to a smaller ILEC’s service area as including “calls between telephone numbers in the same rate centers and calls between telephone numbers in different rate centers that have an established local calling area approved by the Commission.” *Id.* at 7.

<sup>17</sup> See, *Order Denying Rehearing*, Cases 05-C-0170 and 05-C-0183, issued and effective August 24, 2005 at 10-12; see also, *Berkshire Telephone Corporation, et. al. v. Sprint Communications Company, L.P., New York Public Service Commission*, No. 05-CV-6502 CJS, *slip op* (Western District of New York, October 27, 2006) at 17-18.

<sup>18</sup> As reflected in Attachment D to STC’s Response, TVC cannot demonstrate that STC has EAS calling throughout LATA 134. See, Response, Attachment D.

Even if TVC could leap over the unlawfulness of its LATA 134 Proposal under the governing FCC Section 251/Part 51 regulations and the Commission's decision in the *Local Calling Area Order*, TVC's position is still contrary to rational public policy. First, it is abundantly clear that TVC is attempting to avoid the existing, long-standing, and distinct treatment of local interconnection traffic from exchange access traffic. Through an expansive and improper definition of traffic that is subject to reciprocal compensation to include all traffic within "LATA 134," TVC seeks to avoid assessment of access charges for the non-local calling area traffic that TVC originates and then terminates on STC's network. If approved by the Commission, TVC's position would allow TVC to operate under terms and conditions different from those under which all other carriers operate with respect to traffic originated or terminated on STC's network. No such distinct treatment is required, allowed, or justified. TVC's approach is self-serving and would greatly enlarge the scope of local traffic *solely for TVC* with an arbitrary definition of local calling area traffic based on TVC's unilateral choice.

Second, TVC's approach is inconsistent with the requirements of the Act, existing rules and regulations, and existing tariffs. If TVC's approach were adopted, *i.e.*, allowing competitive carriers to define local calling area traffic unilaterally for ICC purposes, it would be tantamount to the Commission endorsing chaos. This chaos would arise at the whim of each CLEC designing its own ICC framework that it believes to be in its sole overall business interest. And, in doing so, TVC seeks to have the Commission place in jeopardy the significant intrastate access revenue stream that STC relies upon for its regulated cost recovery and the maintenance and advancement of universal service within the entirety of STC's service area.<sup>19</sup> Such a policy

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<sup>19</sup> STC requests that the Commission take administrative notice of the annual report that STC filed in March of 2012, covering end of year 2011. *See*, Telephone Corporations Annual Report of State Telephone Company for the Year Ended December 31, 2011, filed March 30, 2012 (the

result is nonsensical and would subjugate STC's universal service commitments to the economic advantages that TVC seeks.

Third, notwithstanding the fact that STC and TVC agree that nothing in the Agreement directly affects either party's retail offerings to their respective end users (*see, May 1<sup>st</sup> Attachment Submission*, Attachment B, Agreement, Section 38), TVC's apparent position is that Local Traffic is to be defined by how TVC provides end user services and the rate designs it has chosen. The framework under which carriers operate for ICC purposes (with respect to traffic that is local and traffic that is exchange access) does not dictate or determine the decisions of carriers as to which or how many different types of services may be bundled, for retail service purposes, into a single, flat-rate, potentially unlimited calling service. Yet, other carriers who have bundled services in their offerings pay STC intrastate access for intraLATA toll calls.<sup>20</sup> If carriers' choices regarding types of calling to include in bundled basic service offerings also affected the basic ICC framework, there would be chaos; carried to its logical end, and if TVC's view were correct (and it is not), then carriers could unilaterally declare the entire country to be

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"STC PSC 2011 Annual Report"). In the STC PSC 2012 Annual Report, intrastate switched access revenues for STC were \$284,409, which was approximately 16% of its intrastate regulated revenues from operations, and intraLATA intrastate access charges were approximately 56% of the intrastate switched access revenues for STC or approximately 9% of STC's total intrastate regulated revenues from operations. *See id.*, Schedule 42.

<sup>20</sup> Verizon, for example, may offer a single basic service that bundles local calling with long distance calling into a single charge and unlimited use service. Verizon nevertheless pays access charges to STC for intraLATA, non-local calls Verizon terminates on STC's network, despite the appearance to end users that those calls appear to be part of the basic service offering. STC's position in this arbitration would treat TVC's non-local intraLATA calls identically.

their local calling area, and there would cease to be any exchange access traffic.<sup>21</sup> No such unilateral option exists and, if it did, it would chaotically disrupt the entire industry.<sup>22</sup>

Fourth, through its LATA 134 Proposal and the resulting TVC-provided definition of Local Traffic, TVC attempts to eviscerate long-standing toll dialing parity regimes,<sup>23</sup> as well as the proper ICC regimes and structures associated with toll dialing party. Plainly stated, if TVC is correct in its view, which it is not, there would be no distinction between local calling area calls

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<sup>21</sup> International calls are excluded for purposes of this point.

<sup>22</sup> The FCC has acknowledged that interconnection requirements, including compensation pursuant to Section 251(b)(5), are separate and apart from a carrier's retail rate design decisions. *See, e.g., In the Matter of TSR Wireless, LLC, et al. v. US West Communications, Inc., et al., Memorandum Opinion and Order*, File Nos. E-98-13, *et al.*, FCC 00-194, released June 21, 2000 at para. 31 ("Section 51.703(b) concerns how carriers must compensate each other for the transport and termination of calls. It does not address the charges that carriers may impose upon their end users."). Notwithstanding the fact that a carrier's choice of retail offering is not relevant here and does not disrupt the access and non-access framework under which all carriers interact, TVC nevertheless defines, in its local service tariffs, the local calling areas apparently with respect to each location in which it provides local service. *See, Attachment C*, attached hereto (TVC's local calling areas). This information shows that TVC has not defined local calling areas in its tariff to be the entire LATA. Some, but clearly not all, of those local calling areas outlined in TVC's tariff appear to be the same as those for ILECs. *Compare id.* and Response, Attachment D.

<sup>23</sup> As discussed in the Response at 16-17, the telecommunications industry has been operating under the equal access rules and framework that dates back to the early 1980s. Long distance calling was generally provided between areas that are not within a local calling area by interexchange carriers ("IXCs"). End users are provided the right to choose their preferred long distance provider for specific types of long distance calls. *See generally*, 47 C.F.R. Subpart K – Changes in Preferred Telecommunications Services Providers; *see also*, 47 C.F.R. § 64.1120(b) (explicit recognition of separate distinctions for local exchange, intraLATA toll, and interLATA toll telecommunications services). Arising from the 1996 establishment of Section 251(b)(3) of the Act and the Commission's directives to engage in intraLATA presubscription arising from Opinion No. 94-11 issued April 4, 1994 in Case 28425, STC (as well as all other ILECs) undertook 1+ intraLATA toll presubscription for participating IXCs related to the intraLATA toll traffic of end user customers located in the STC service area. Before that time, non-local calls within a LATA were automatically routed to the legacy, incumbent long distance carrier (most often the Bell operating company). However, under the rules set forth in the FCC's 47 C.F.R. §§ 51.209 and 51.213, all local exchange carriers eventually were required to implement intraLATA presubscription for intraLATA toll (non-local) calls. These same arrangements remain in place today and apply to ILECs and CLECs.

within a LATA and non-local calling area traffic within a LATA. Of course, just the opposite is true as confirmed by the Commission's decisions, the existence of the STC intrastate access tariff, and the applicable FCC rules. TVC would therefore have the Commission believe that there is no reason for the FCC's requirements or for the Commission to have implemented intraLATA presubscription or a "designated carrier" plan for non-local calling within a LATA, and believe that there is little relevance to local dialing and toll dialing parity rules with respect to intraLATA calling.<sup>24</sup> These beliefs are without basis. The facts show that non-local traffic originated within the LATA that terminates on the network of STC is subject to intraLATA toll dialing parity, presubscription requirements, and the application of access charges by local exchange carriers. TVC's position cannot be reconciled with these requirements.

Finally, and both from a legal and public policy perspective, TVC's apparent attempt to rely on three voluntary interconnection agreements that the Commission has approved that apparently address all intraLATA traffic between Verizon and some other CLEC with terms and conditions for compensation (*see*, Petition at 20 and n. 4) has no relevance in this proceeding. This proceeding addresses the terms and conditions that STC believes are necessary to properly respond to the "request" for interconnection that TVC made. *See, e.g.*, 47 U.S.C. §252(b)(1). Because STC was not a party to any of the cited proceedings, any approval of a bilateral CLEC-Verizon agreement that may address terms and conditions that were agreed without regard to the standards of Section 251(b) (*see* 47 U.S.C. §252(a)(1)) does not determine the fundamental interconnection requirements for STC, does not alter the general requirements of the Act, does not address the specific scope of traffic subject to Section 251(b)(5) of the Act, and does not

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<sup>24</sup> Moreover, toll dialing parity requirements mean, with some exceptions, that non-local toll calls must be dialed with prefixes different from local calling area calls. *See, e.g.*, 47 C.F.R. §§ 51.205 and 51.207.

provide a basis for ignoring the FCC's implementing rules which define the scope of reciprocal compensation traffic. Moreover, a Verizon-CLEC agreement does not prejudice STC's right to interconnection terms and conditions consistent with the standards arising under Section 251(b)(5) of the Act and the FCC's implementing rules.<sup>25</sup>

It may be a fact that Verizon and other competitive carriers have mutually agreed to treat local calling area traffic and other intraLATA access traffic (between points beyond the local calling area) *on a combined basis* where both of the contracting entities exchange those types of traffic,<sup>26</sup> but that fact does not create new standards with respect to the Act's interconnection requirements for other carriers nor alter the underlying framework under which all other carriers (including Verizon) operate.<sup>27</sup> As explained above, the controlling rules are those provided by

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<sup>25</sup> As noted above in Section II.A.1, *supra*, an ILEC and a requesting competitive carrier may enter into terms and conditions without regard to the actual requirements of Section 251(b) and (c) of the Act, but they cannot be required to do so. *See also*, 47 U.S.C. §252(a)(1).

<sup>26</sup> As explained in the Response, in contrast to Verizon, STC has no traffic beyond local calling area traffic to exchange with other carriers. *See*, Response at 25-26.

<sup>27</sup> TVC has confirmed that it interconnects with Verizon pursuant to the terms and conditions of Verizon's generally available Interconnection Tariff. *See*, **Attachment D**, attached hereto; *see, e.g.*, PSC NY No. 8 – Network Interconnection Services available online at: [www22.verizon.com/tariffs/Sections.aspx?docnum=NYIEA8&type=T&sch=N&se=Y&att=N&typename=IT&tims\\_Status=E&entity=I\\*](http://www22.verizon.com/tariffs/Sections.aspx?docnum=NYIEA8&type=T&sch=N&se=Y&att=N&typename=IT&tims_Status=E&entity=I*)

As explained above, regardless of its irrelevance here, it is informative to note that Verizon's interconnection tariff defines "Local Traffic" in the same manner as STC has proposed in its Agreement. *See, id.*, Section 2, Original page 15 definition of "Local Traffic" which is confined to traffic within the "home region," intrastate interLATA area calls where Verizon provides extended area service across LATA boundaries, and traffic within "the same flat rate primary calling area" as defined in Verizon's local service tariffs. The tariff goes on to coin a novel term, POTS Traffic, that is defined as the combination of local calls, toll/interregion calls, and 800 dialed calls that are within a LATA. *See, id.* at Section 2, First Revised Page 17. The terms and conditions elsewhere in the tariff address the combined POTS Traffic. This "POTS Traffic" is comparable to the intraLATA calling services, both local and interexchange, that Verizon provided within LATAs following the break-up of the Bell system in 1984, and thereafter. However, neither the Act nor the FCC's rules recognize this novel term. There is no suggestion that the scope of reciprocal compensation traffic pursuant to Section 251(b)(5) of the Act is to be



the FCC and the *Local Calling Area Order* rendered by the Commission addressing similarly situated smaller rural ILECS like STC. *See*, Sections II A.2.b, *supra*. To the extent that a CLEC and Verizon have a scope of intraLATA access traffic that they wish to terminate on the other's network, in combination with local calling area traffic, and to the extent that they have mutually decided to address the terms and conditions of that non-local interconnection traffic within the terms and conditions of an interconnection agreement, those agreed-to relationships do not change the application of the Act for other carriers.

Moreover, Verizon's and CLECs' operating characteristics are distinct from those under which STC operates. These distinctions may explain why these contracting entities find it in their interest to agree to novel terms and conditions. For example, Verizon and other CLECs provide services as both a local exchange carrier and an IXC.<sup>28</sup> These distinct characteristics mean that both parties are terminating both forms of traffic on the network of the other party.

Even if such an arrangement (whereby Verizon and a CLEC agree to different treatment of access traffic) were not considered discriminatory vis-à-vis treatment of other standalone IXCs for the same traffic, that factual context does not apply to STC. STC only operates as a local calling area service carrier and only within a very small portion of the overall Albany LATA. STC has no non-local intraLATA traffic to "exchange" with TVC. The parties agree

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defined as "POTS Traffic" in the manner in which Verizon uses this combined traffic term in its interconnection tariff.

<sup>28</sup> That is, Verizon originates traffic for its own end users under its own service offerings and some of this traffic terminates within the same local calling area and some terminates outside of the local calling area. Some of both types of Verizon customer-originated traffic terminate to TVC within the LATA. And TVC has both of the same types of traffic in the reverse direction. Verizon and several CLECs have apparently agreed that the reciprocal exchange of both types of traffic can be treated the same on a reciprocal basis.

that STC is not an IXC. *See, May 1<sup>st</sup> Attachments Submission*, Attachment B, Agreement at 5 (Section 1.9).

Ultimately, however, the Commission may not in this arbitration proceeding act to arbitrarily alter that framework based on the unilateral interests of one carrier. To the extent that intraLATA traffic subject to access were to be modified (*i.e.*, that there would no longer be intraLATA access for any traffic), a full regulatory proceeding, with proper notice and comment, and an evaluation of the consequences would be required.<sup>29</sup> This arbitration proceeding does not and cannot prejudice the larger policy issue considerations. TVC's misguided scheme is nothing more than an attempt to relieve itself of the payment of tariffed access charges for the intraLATA, non-local traffic that it terminates on the network of STC. TVC has not, and cannot, provide any justification as to why it should not operate under the same framework as other carriers.

#### **4. TVC's Position Cannot be Reconciled with its Own Voluntary Interconnection Agreements and Intrastate Access Tariffs.**

TVC's own tariffs and agreements with other carriers recognize the distinction between local calls and access calls. Thus, it is difficult, at best, to see how TVC's LATA 134 Proposal

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<sup>29</sup> If no intraLATA calls were subject to access, it would mean that STC's tariffed service offerings would be altered dramatically to include local calling to the entire LATA. There would also be an immediate and disruptive loss of access revenue with further ratemaking implications. An arbitration proceeding, based on the individual desires of one carrier, cannot and does not address these global and expansive issues. The future of intrastate access charges are already under review and are under transition in the larger industry sense. *See, e.g., Order Adopting Terms of Phase I Joint Proposal*, Case 09-M-0527, issued July 16, 2010; *see also*, Letter to the Honorable Jaclyn A. Brillling, Case 09-M-0527, filed May 11, 2012, Attachment – Joint Proposal and Settlement Agreement at 8 (paragraph 11). This proceeding provides further evidence of the existing framework and established scope of access traffic within New York. In any event, it is this ongoing Commission proceeding that is the proper forum to address any required access charge changes. An industry-wide applicable decision cannot take place in an arbitration, even if one could look past the chaotic consequences of such action and the potential prejudging of issues that the Commission will otherwise be examining in Case 09-M-0527.

can be reconciled with its own voluntarily-entered interconnection agreements and its own voluntarily filed intrastate access tariffs (applicable to IXC's, which STC is not). The short answer to this issue is simple –TVC's position cannot be reconciled with the actions that it has undertaken and thus the TVC LATA 134 Proposal must be rejected.

As a result of STC's discovery, TVC provided copies of its *voluntary* interconnection agreements that it has with Berkshire Telephone Corporation (the "TVC/Berkshire Agreement") and Taconic Telephone Corporation (the "TVC/Taconic Agreement"). *See, Attachment E*, attached hereto (copies the TVC/Berkshire Agreement and the TVC/Taconic Agreement); *see also, Attachment D*, attached hereto (TVC Response to STC Information Request No. 8). These agreements were among those arbitrated by the Commission, a proceeding resulting in the Commission issuing the *Local Calling Area Order*. The essence of these TVC voluntarily-adopted agreements is in many ways identical to STC's proposals in this proceeding. These TVC agreements clearly define the scope of traffic within the subject matter of the interconnection agreement and traffic exchange to be "Local Traffic" and define Local Traffic to be calls where the originating and terminating users' telephone numbers are related to service areas within the local calling area as defined by the incumbent carrier's local service tariff. *See, e.g., Attachment E*, attached hereto (TVC/Berkshire Agreement at 3 (Section 1.1), 6 (Section 2.15 – Definition of "Local Traffic)), 8 (Section 4) and 29 (Schedule III)); TVC/Taconic Agreement at 3 (Section 1.1), 6 (Section 2.15 – Definition of "Local Traffic)), 8 (Section 4) and 28 (Schedule III)). Moreover, if traffic is not "Local Traffic," then it is subject to terms other than the terms of the interconnection agreement. And, of course, if traffic is not Local Traffic, it is access traffic and is subject to the terms and conditions of access tariffs, not the interconnection agreement. *See, TVC/Berkshire Agreement at 3 (Section 1.10); TVC/Taconic*

Agreement at 3 (Section 1.10). As explained in STC's Response, the same treatment is being proposed by STC in a manner fully consistent with the Act, the controlling rules, and the definition of the scope of traffic subject to the requirements of Section 251(b)(5) of the Act, *i.e.*, non-access reciprocal compensation traffic and access reciprocal compensation traffic. *See, e.g.*, Response at 9.

As discussed above, regardless of the voluntary arrangements Verizon enters into with CLECs without regard to the actual standards of Section 251(b) of the Act, TVC's own access tariff nevertheless recognizes that non-local "Intra-LATA Toll Traffic" is subject to intercarrier compensation related to access charges and access tariffs. *See, Attachment F*, attached hereto (TVC's PSC Access Tariff No. 3 at Section 17, First Revised Page 15 (definitions of "Intra-LATA Toll Traffic and Intra-LATA Toll Calls")). This TVC tariff applies access charges to traffic based on the manner in which traffic is carried for customers by Verizon New York. *See id.* In other words, if a call terminated by Verizon New York to STC is subject to access, then the same call terminated by TVC to STC is subject to access. Of course, as explained herein and in STC's Response, the proposed STC terms would merely treat TVC's terminating traffic identically to the treatment afforded Verizon's terminating traffic. Therefore, if a Verizon-provided call from some point in the Albany LATA terminated to STC is subject to STC's terminating access, the same call originated by TVC from the same originating area and terminating to STC is also subject to the same access charges; thereby mirroring the same treatment and local calling areas that Verizon and STC use. STC has not agreed to deviate from the standard and established approach to access and non-access traffic and compensation, and is not required to do so in the context of TVC's request and arbitration.

Moreover, also contrary to its apparent position that all intraLATA traffic should be treated as local traffic, TVC's local service tariff recognizes that end users can pick their primary IXC for both interLATA and intraLATA calling. *See, Attachment C*, attached hereto (excerpts from TVC's PSC Tariff No. 2, Section 3, Original Page 5). If TVC is correct that there were only local calls within the LATA as TVC's position suggests, there would be no need to recognize an intraLATA PIC. Yet, TVC's tariff, in fact, does. *See, id.*

Also in conflict with its position in this arbitration, TVC's local service tariff recognizes that toll service (*i.e.*, non-local calls) is furnished between local calling areas. *See, e.g., Attachment C*, attached hereto (excerpts from TVC's PSC Tariff No. 2, Section 4, Original Pages 2, and Section 11, Original Pages 8 and 9). As discussed above, while TVC may have chosen to design its end user service offerings in a manner not consistent with those of the incumbents, TVC nevertheless recognizes intraLATA toll service calls as those between different local calling areas. *See, id.* (Original Page 2). While the TVC local calling areas may deviate from the Commission recognized local calling areas, TVC's own terminology is inconsistent with TVC's view taken on this Issue 1 as stated in the Petition that *all* calls within a LATA are local.

**5. TVC's Remaining "Concerns" within the Petition Regarding the Application of the Proper ICC Regimes to Resolve Issue 1 are Baseless.**

TVC expresses a number of concerns within its Petition that simply have no basis and are addressed immediately below. Accordingly, for the reasons stated herein and in the Response, STC respectfully requests that these concerns be rejected.

First, TVC incorrectly claims that STC's proposed agreement terms would restrict TVC's ability to determine its own local calling area for services provided to its customers. *See,*

Petition at 19. As STC has indicated at page 19 of its Response, TVC is free to bundle (or rate design) whatever different scopes of traffic into retail service offerings to its end users, and for purposes of retail service offerings and marketing to its calling customers, TVC may call the bundled set of services “local.” There is absolutely no restriction on the services (local, intraLATA long distance, interLATA long distance, interstate, or international) TVC may offer or provide to calling end users as a basic service offering. Whatever choice TVC makes for its retail service offerings is preserved by the Agreement and is *separate and apart* from the proper application of the ICC regimes to the distinctly different traffic types – in this case non-access (*i.e.*, local) traffic and access traffic.

Second, TVC’s concern also stated on page 19 of the Petition that it is somehow not being allowed “the freedom to offer the widest possible range of competitive communications choices” is equally misplaced. In conjunction with Section 3.8 of the Agreement, TVC is allowed under STC’s proposals to offer the same retail bundled services as any other carrier under the same ICC and traffic definition terms and conditions with STC as STC has with all other carriers. *See*, Response at 19-20.

Third, the Commission should reject TVC’s concern on page 19 of the Petition that STC is “seeking to limit [STC’s] obligations to interconnect and exchange traffic on any call that originates and terminates outside of [STC’s] franchise area.” No basis exists within the Agreement for such a claim and the rhetoric is, not surprisingly, entirely misplaced. STC will treat all traffic that is properly subject to non-access reciprocal compensation – originating or terminating to end users physically located within the STC local calling area – the same for all wireline carriers, and this scope includes significant calling routes to and from EAS locations (within the incumbent areas of Verizon) throughout various exchanges in the Albany, New York

area, not just calling within STC's franchise area as TVC's statement suggests. *See*, Response at 20.

Fourth, TVC's concern stated at page 19 of the Petition that "STC seeks to limit TVC's ability to act, per TVC's Commission-granted authority as an *inter-exchange carrier*" (emphasis added) is equally without basis. Although TVC properly acknowledges in making this statement that its service offerings include calling provided on an *IXC* basis, regardless of how services are bundled or offered on a retail basis to end users, STC is not limiting TVC's right to provide interexchange services in its bundled service offering. Rather, STC's position is that TVC's interexchange traffic must be treated the same as any other carrier's interexchange traffic, *i.e.*, that the traffic must be subject to the STC's intrastate access tariff's rates, terms and conditions (if intrastate traffic) and be subject to similar interstate rates, terms and conditions in STC's interstate access tariff. *See*, Response at 20-21. While TVC may terminate both local calling area traffic (*i.e.*, non-access reciprocal compensation traffic) subject to the requirements of Section 251(b)(5) of the Act and non-local exchange access traffic to STC, these mutually exclusive, different types of traffic are subject to different ICC terms and conditions.

To avoid any doubt, STC intends that the Agreement's terms include a bill-and-keep approach that applies to local calling area traffic as STC has defined Local Traffic under the Agreement, and the terms and conditions of intrastate and interstate access tariffs including access charges are applicable to non-Local Traffic. *See, id.* at 21. Accordingly, the use of the term "Excluded Traffic" in STC's proposed agreement does not mean that such traffic cannot exist or is not allowed, but only that such traffic is not included within the scope of local calling area traffic that is subject to the terms of the local interconnection that would be established under the Agreement. The "Excluded Traffic" is subject to the terms of exchange access tariffs

or some other agreement's terms that are separate and apart from the scope of this arbitration, and, as reflected in both the opt-in letters to the TVC/Berkshire Agreement and the TVC/Taconic Agreement, TVC has already voluntarily agreed to exclude Internet Service Provider traffic. *See, Attachment E*, attached hereto (Opt-In Cover Letter to TVC/Berkshire Agreement at 3 (paragraph 5); Opt-In Cover Letter to TVC/Taconic Agreement at 3 (paragraph 5); *see also id.*, TVC/Berkshire Agreement at 3 (Section 1.1 – recognizing concept of “Excluded Traffic”); TVC/Taconic Agreement at 3 (Section 1.1 – recognizing concept of “Excluded Traffic”).

Fifth, any TVC concern with respect to so-called virtual assignment of telephone numbers (*see*, Petition at 18) is not relevant in this case. *See*, Response at 21-22. The terms of STC's Agreement accept the rate center area associated with the assigned telephone number as the location of the end user, despite any plans that TVC may have to assign telephone numbers associated with a different rate center area than the rate center area in which the end user is actually located. *See*, Agreement at 6 (Section 2.14). Therefore, under these terms, TVC would be free to assign on a “virtual” basis a telephone number associated with one rate center area even though the actual end user is located in a different rate center area.<sup>30</sup> Accordingly, so-called virtual NXX service issues are not relevant to this proceeding. Moreover, STC notes that this is the same treatment as contained in the interconnection agreements that TVC has with Taconic and Berkshire and consistent with STC's proposed interconnection agreement terms. *Compare* TVC/Berkshire Agreement at 6 (Section 2.15 (“between telephone numbers”)), TVC/Taconic Agreement at 6 (Section 2.15 (“between telephone numbers”)), and Agreement at 9 (Section 2.14).

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<sup>30</sup> Of course, however, TVC is required to abide by number assignment methods and limits set forth in the *CLEC EAS Order* and any other numbering resources requirements of the Commission. *See, e.g.*, Agreement, Section 3.7.



**6. TVC is apparently confused with regard to intraLATA non-local traffic it terminates from other carriers and its opportunity to bill and collect intraLATA access charges.**

Finally, TVC apparently is confused when it erroneously suggests that, under STC's proposed terms and conditions, TVC is not allowed to impose access charges for non-local traffic originated by an STC end user that terminates on the network of TVC within the LATA. *See*, Petition at 19. STC believes that TVC's confusion is based on a fundamental mistake of fact. In response to information requests, TVC has provided a copy of its intrastate access tariff. *See, Attachment F*, attached hereto (excerpts from TVC PSC Access Tariff No. 3). When the discovery response is considered, TVC's claim in its original Petition filed in this proceeding is simply wrong. TVC's access tariff utilizes the same definition of local and intraLATA toll as applies to Verizon. *See, e.g., id.*, Section 17, First Revised Page 15, defining intra-LATA toll Traffic the same as if carried by Verizon, and in turn, applies access tariff charges to "all toll calls. Thus, for any calls originated by STC's end users that are terminated to TVC by a carrier providing intraLATA non-local calling to that end user, TVC may bill terminating access charges pursuant to its access tariff. TVC's confusion about its inability to do so arises because STC does not have any such traffic; all intra-LATA non-local traffic originated by an end user in STC's service area is carried by separate IXC's. *See*, Response at 25. However, for TVC and Verizon, those carriers operate as both local service providers and interexchange service providers and thus have mutual exchange of traffic interests that are distinct from those related to STC.

Calling services for non-local calls (both non-local intraLATA and non-local interLATA) originated by STC end users *are provided to those end users by IXC's* selected by those end users and are subject to presubscription as noted above in Section II.A.3, *supra*. STC "hands-off"

these calls to the presubscribed IXC of the end user's choice pursuant to the terms of the STC exchange access service tariffs, and *that IXC completes the call and terminates the call on TVC's network*. It is the terminating IXC in this call pattern that obtains exchange access service for the call termination from TVC; TVC provides no such terminating service to STC. *See*, Response at 26. As such, it is this IXC from which TVC may seek terminating access, not STC, and it is not STC that is seeking any form of termination under TVC's PSC Tariff No. 4 since STC does not have any authority to carry traffic outside STC's certificated area.

Accordingly, as indicated by STC on page 26 of its Response, contrary to the implications of TVC's discussion (*see, e.g.,* Petition at 19-20), *STC does not offer services to its end users that originate any non-local intraLATA traffic that terminates on TVC's network in the LATA*. Instead, all non-local, intraLATA traffic is originated by IXCs typically selected by those end users that are separate from STC; it is these IXCs that terminate such traffic to TVC; it is these IXCs that owe terminating access charges to TVC; and it is these IXCs with which TVC has an exchange access service relationship, not with STC. Moreover, TVC's statement at page 19 of the Petition suggesting that public policy is somehow irrational if TVC is not allowed "to impose similar [exchange access] charges on STC based on the physical locations" of the calling and called end users *is totally misplaced because STC does not provide and does not terminate any such exchange access traffic on TVC's network!* There can be no charges by TVC to STC because there is no STC non-local calling area traffic for which ICC is owing by STC.

Conversely, since TVC does operate as an intraLATA IXC (as the facts and the quote at page 19 of the Petition from TVC referenced above demonstrate), TVC terminates intraLATA toll traffic (intermingled with TVC's local calling area traffic sent for termination) on the

network of STC, and STC is therefore well within its lawful rights to properly assess exchange access charges to TVC for this TVC intraLATA toll traffic.

Despite TVC's confusion, TVC is free to assess terminating access charges on IXCs, just as other local exchange carriers, pursuant to the policies and requirements of the Commission for intrastate terminating toll traffic and FCC policies and requirements for interstate terminating toll traffic. Those arrangements are outside of the scope of traffic subject to Section 251(b)(5) of the Act and rest solely with TVC. Those arrangements are not and cannot be made part of the Agreement that will arise from this arbitration. Thus, if TVC does not bill access charges, then the reasons are its own and are, in any event, outside the scope of this interconnection arbitration.

**B. Issue 2: Whether The Interconnection Agreement Should Recognize That The Intercarrier Compensation Framework Set Forth In The Agreement Should Apply To All Traffic Regardless Of Underlying Switching Technology Used For Signaling And Transport Of The Call (e.g., Time Division Multiplexing Protocol Versus Voice Over Internet Protocol).**

For the reasons stated herein and in the Response, STC respectfully requests that the Commission resolved Issue 2 by adopting STC's proposed Section 1.2. Specifically, STC's proposed final sentence in Section 1.2 of the Agreement that is the subject of Issue 2 is necessary to make clear that Internet Protocol-enabled calls (*i.e.*, Voice over Internet Protocol ("VoIP") voice calls) are to be treated the same as any other voice calling traffic that uses Time Division Multiplexing ("TDM") protocol. The sole purpose of this sentence is to remove any possible dispute regarding the proper treatment of VoIP traffic for compensation purposes. *See*, Response at 27. It is not clear why TVC would oppose simple confirmation of this treatment. Regardless, as explained below, TVC's opposition is baseless because of actions taken by the FCC, the terms of TVC's own tariff, and the Agreement's change of law provisions.

STC asserts that parties enter into contracts to achieve certain objectives including, for example, minimizing uncertainty and resulting risks between them, avoiding disputes, and avoiding unnecessary legal actions. STC's proposed language in Section 1.2 is included to achieve these objectives and makes clear that the same ICC framework (bill and keep for local interconnection traffic, and intrastate and interstate access charges for non-local traffic) that applies to traffic transmitted under traditional methods also applies to IP-enabled voice traffic. Regardless of what may be TVC's intent for its objection, there is no rational reason not to document *now* in the Agreement the applicability of the ICC applicable to *all* traffic types.

Without any explanation for its position, TVC's refusal is, at best, questionable and at worst, a further demonstration of the troubling pattern of conduct discussed above in Section I, *supra*. STC notes that in the TVC PSC Tariff No. 3, TVC has broadly defined the concept of "traffic" as "any electronic or light pulse transmissions, signals, messages, calls, or data, in any form and using any medium and any technology (including but not limited to TDM and IP Protocol). . . ." *See, Attachment F*, attached hereto (excerpts from TVC Tariff P.S.C. No. 3, Section 17, Second Revised Page 23). TVC then goes on to state in this definition, that, "[w]ithout limitation, such term includes all telecommunications traffic, telecommunications service provider traffic, provider of telecommunications service traffic; traffic to the Internet; wireless traffic; VOIP traffic, information services traffic, enhanced services traffic and Mobile Service Carrier or provider traffic." *Id.* And, further, TVC makes clear that the traffic means a call or calls as "call" or "calls" is used in the tariff. *See, id.*

With these provisions in its voluntarily filed intrastate access tariff, it is questionable how TVC could claim any concern with the sentence that STC seeks to add in Section 1.2. Put simply, TVC has filed a tariff that comparably states that ICC treatment for traffic should be no

different based on whether the carrier uses TDM protocol, IP-enabled, or both. *See*, Response at 27.

The conflict with TVC's position on Issue 2 is not limited to the voluntary interconnection agreements with Berkshire and with Taconic as reflected in **Attachment E**. The same is true for the voluntary agreement that TVC has acknowledged to exist with respect to the use of Verizon's PSC NY No. 8 as part of TVC's interconnection arrangement with Verizon. *See*, **Attachment D**, attached hereto (TVC Supplemental Response via email dated May 10, 2012). In this Verizon tariff, and based on the fact that TVC has provided no reservation on its use of the Verizon PSC NY No. 8, TVC has voluntarily agreed that

For the avoidance of doubt, the rates and regulations in this Part 6 apply *without regard to whether the traffic in question is originated or terminated or both in Internet Protocol ("IP") format*, provided that the traffic is delivered to the Telephone Company [*i.e.*, Verizon] in time division multiplexing format and that it would eligible for CLEC switched service if it had not been originated or terminated or both in IP format.

**Attachment D**, attached hereto, PSC NY No. 8 – Communications, Section 6, First Revised Page 1, Section 6.1.1.A (emphasis added); *see also, id.*, Section 2, Original Page 18 (definition of "Telephone Company").

The above-quoted language would result in the same implementation requirement as that which STC seeks to have adopted for the resolution of Issue 2. *See*, Agreement at 4, Section 1.2 (STC Proposed Language disputed by TVC – "Under this Agreement, the Parties agree that any and all intercarrier compensation regimes shall be no different than those applicable to the origination and termination of Time Division Multiplex protocol traffic regardless of the signaling and transport protocol used.")

Moreover, while STC acknowledges that the ICC treatment of VoIP-PSTN traffic has been settled prospectively by the FCC, *see, CAF/ICC Order* at paras. 940-975, STC trusts that

any lingering or other underlying concerns of TVC have now been addressed by the FCC's action. *See*, Petition at 11 ("The FCC is currently in the process of making sweeping changes in the treatment of traffic for intercarrier compensations, which may afford different treatment for different technologies.").

More importantly, however, and setting aside any future changes that the FCC may require, the FCC's action last November laid to rest any apparent claim by TVC that it is impermissible to differentiate between non-access reciprocal compensation traffic from access traffic. *See id.* at 22. Moreover, any concern that TVC may have is likely entirely baseless not only because, as a result of the applicable FCC decisions,<sup>31</sup> the effect of STC's proposed changes in Section 1.2 is to apply an analogous ICC approach (local traffic is subject to reciprocal compensation and non-local traffic is subject to access charges) to VoIP traffic as has applied to all other forms of traffic using other traditional forms of transport protocol *but also* because TVC has, itself, filed tariff revisions within its Tariff P.S.C. No. 3 to implement such FCC change. *See, Attachment F*, attached hereto (excerpts from TVC Tariff P.S.C. No. 3, First Revised Page 55 to First Revised Page 58 which became effective on February 21, 2012).

TVC's speculation regarding litigation of future FCC changes (*see* Petition at 22) would also be true of any issue that the FCC or the Commission has pending. That uncertainty,

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<sup>31</sup> While the FCC's treatment of the VoIP-PSTN was primarily addressing non-local (i.e., telephone toll service) that is outside of the definition of Local Traffic, the application of the compensation requirements analogous to TDM – exchange access – to such traffic (albeit using the lower of intrastate or interstate access rates) was the result. *See, In the Matter of Connect America Fund, et al., Order*, WC Docket No. 10-90, *et al.*, DA 12-147, released February 3, 2012 at para. 24; *see also, In the Matter of Connect America Fund, et al., Second Order on Reconsideration*, WC Docket No. 10-90, *et al.*, FCC 12-47, released April 25, 2012 at paras. 30-36 (modifying originating access charges for a set period of time).

however, should not be used to undermine clarity in the Agreement today and is adequately addressed, as noted by STC, through the change of law provisions. *See*, Response at 28.

Accordingly, for all of these reasons and those noted in the Response, STC requests that the additional sentence it added in Section 1.2 be approved.

**C. Issue 3: Whether TVC Should Be Required To Identify That It Is Providing Wholesale Services On Behalf Of Third-Party Retail Service Providers With Respect To TVC's Interconnection And Traffic With STC, And, If Yes, To Include A Process Within The Interconnection Agreement To Identify Those Third-Party Retail Service Providers?**

For all of the reasons stated herein and in the Response, STC respectfully requests that the Commission resolve Issue 3 in the manner requested by STC. In doing so, STC also respectfully requests that the Commission adopt STC's proposed language in the Agreement in the Third Whereas Clause and in Sections 1.10, 1.12, 2.4, 2.22, 6.1, 7.4 and 15.2.

STC respectfully submits that TVC should be required to identify those Third Party Service Providers for which TVC is providing wholesale services with respect to TVC's interconnection and traffic with STC. For the reasons stated herein, TVC should not be permitted to play a "find-the-pea" shell game with respect to its wholesale service customers because both practical and legal obligations are applicable to such third parties in addition to, and independent of, the commitment that TVC has made to be fully responsible for the traffic that is exchanged with STC with respect to such third party providers.<sup>32</sup> Moreover, such disclosure by

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<sup>32</sup> STC agrees with TVC that neither TVC nor STC are extending rights to third parties that are not parties to the Agreement. Instead, in the Agreement, STC merely extends rights to TVC that acts on behalf of Third Party Service Providers with respect to the interconnection that TVC obtains with STC. As such, STC also proposes that Third Party Service Providers be a defined term in the Section 2 – Definitions, and that the identities of such third party carriers (with respect to either TVC or STC) are specifically documented by written notice by the wholesale service providing Party to the other Party in new Section 1.12. This is why STC agreed to remove disputed language in Section 32.10. *See*, Responses at 36.

TVC to STC (or by STC to TVC should STC operate as a wholesale services provider)<sup>33</sup> is necessary in order to properly implement the obligations that either party has under the Agreement. As a result of these facts, STC has proposed an administratively reasonable and efficient process for the identification of such providers in its Response (*see*, Response at 35-36) which is provided below and should be adopted to resolve this Issue 3:

2.22 Third Party Service Provider means a third party providing retail services to End Users with which either Party may have a wholesale telecommunications carrier service arrangement and for which either Party is responsible with respect to compliance with the terms and conditions of this Agreement.

1.12. Each Party's respective Third Party Service Providers, and the description of the scope of operations for each Third Party Service Provider as it relates to the terms and conditions of this Agreement, shall be set forth in a written notice to the other Party within five business days of the beginning of each quarter of the year. To the extent that an objection is raised with respect to such Third Party Service Provider identified in any such notice, the Party receiving the Notice may seek redress of any such objection with the Commission.

In adopting this language, STC also notes that all references throughout the Agreement that refer to third party providers to which either Party may provide wholesale telecommunications shall be modified to use this new defined term (*i.e.*, "Third Party Service Providers").<sup>34</sup> Moreover, STC has provided language at the end of this proposed new section that would address to the Commission unresolved issues related to any pending Third Party Service Provider based, by way of example only, on the prior history or existing status of that Third Party Service Provider and its standing in New York.

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<sup>33</sup> STC does not contemplate acting as a wholesale provider for the foreseeable future. Nonetheless, STC has drafted Section 1.12 so to allow either party such option.

<sup>34</sup> Consistent with that noted in the Response at 36, n. 29, STC has not undertaken this revision in Attachment B submitted to the Commission on May 1, 2012 (*see, generally, May 1<sup>st</sup> Attachments Submission*), but would do so based on the outcome of Issue 3 within this arbitration.



**1. Issue 3 is not About Inhibiting Either Party from Serving Third Party Service Providers. Rather, Issue 3 Involves the Ability of Each Party to Enforce the Proper Legal and Practical Obligations Related to Third Party Service Providers' Operations and Traffic.**

During oral argument arising from a discovery dispute regarding this issue between TVC and STC, it was suggested that STC's position on Issue 3 could somehow be viewed as a position at odds with the FCC's directives in two of its decisions regarding wholesale telecommunications service providers.<sup>35</sup>

STC's efforts to resolve Issue 3 and its positions relative thereto do not contradict either the *TWC Declaratory Ruling* or the *CRC Declaratory Ruling*. As noted on pages 31 to 32 of the Response, STC stated specifically that, with respect to the *TWC Declaratory Ruling*,

a telecommunications carrier that provides wholesale telecommunications service to third party providers (regardless of whether such third party providers are deemed to be telecommunications providers, or not) has a right to seek interconnection "in its own right" for the purpose of transmitting traffic to and from an ILEC (like STC), including traffic related to a third party's service to end users. . . . Moreover, under this decision, the interconnection that a wholesale telecommunications carrier obtains with an ILEC [does] not afford any rights to the third party service provider.

Response at 31-32 *citing TWC Declaratory Order* at paras. 16 and 15, respectively. This statement is equally applicable to the *CRC Declaratory Ruling* since that ruling affirmed these wholesale rights and provided for arbitration based on a Section 251(b) request like that made by TVC. *See, e.g., CRC Declaratory Ruling* at para. 2.

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<sup>35</sup> *In the Matter of Time Warner Cable Request for Declaratory Ruling that Competitive Local Exchange Carriers May Obtain Interconnection Under Section 251 of the Communications Act of 1934, as Amended, to Provide Wholesale Telecommunications Services to VoIP Providers, Memorandum Opinion and Order*, WC Docket No. 06-55, DA 07-709, released March 1, 2007 ("TWC Declaratory Ruling") and *In the Matter of Petition of CRC Communications of Maine, Inc., and Time Warner Cable Inc. for Preemption Pursuant to Section 253 of the Communications Act, as Amended, Declaratory Ruling, et al.*, WC Docket No. 10-143, GN Docket 09-51 and CC Docket 01-92, FCC 11-83, released May 26, 2011 (the "CRC Declaratory Ruling").

With this in mind, STC notes that Issue 3 addresses how these wholesale directives are to be implemented so as to allow either party to know what providers are being served by the other, both from a practical and legal perspective. Since TVC is the entity that STC believes will be providing service to third party retail providers, STC's discussion will focus on that scenario.<sup>36</sup>

Independent of the obligations that TVC will solely assume under the Agreement, certain Third Party Service Providers have an independent legal obligation to STC in the context of porting telephone numbers. Section 52.34 of the FCC's rules specifically states:

(a) An interconnected VoIP or VRS or IP Relay provider must facilitate an end-user customer's or a Registered Internet-based TRS User's valid number portability request, as it is defined in this subpart, *either to or from a telecommunications carrier* or an interconnected VoIP or VRS or IP Relay provider. "Facilitate" is defined as the *interconnected VoIP or VRS or IP Relay provider's affirmative legal obligation to take all steps necessary to initiate or allow a port-in or port-out itself or through the telecommunications carriers*, if any, that it relies on to obtain numbering resources, subject to a valid port request, without unreasonable delay or unreasonable procedures that have the effect of delaying or denying porting of the NANP-based telephone number.

(b) An interconnected VoIP or VRS or IP Relay provider may not enter into any agreement that would prohibit an end-user customer or a Registered Internet-based TRS User from porting between interconnected VoIP or VRS or IP Relay providers, or to or from a telecommunications carrier.

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<sup>36</sup> While TVC refused to identify any Third Party Service Provider to which TVC currently provides service, STC's need for the proper terms and conditions arising from the resolution of Issue 3 is based on good faith. TVC has already identified Mid-Hudson Cablevision, Inc. as a "customer" in June of 2011 (*see, May 1<sup>st</sup> Record Submission*, Attachment RS-1, Letter from TVC at 2 (Response to Question 8)) and Mid-Hudson Cablevision, Inc. advertises a digital phone product. *See, <http://www2.mhcable.com/cablephone/#Activate Phone>* (last visited May 21, 2012). This digital phone product appears to be akin to that described as VoIP service in the *TWC Declaratory Ruling*.

47 C.F.R. §52.34 (emphasis added). Thus, STC's knowledge of the existence of a Third Party Service Provider that TVC may serve will allow STC to facilitate the legal obligation owed by it or to it by the Third Party Service Provider in the context of porting.<sup>37</sup>

Likewise from a practical perspective, the identification of all such Third Party Service Providers will provide STC the ability to know whether service-related complaints should be directed to TVC or to the Third Party Service Provider. To the extent that there are call completion issues such as those identified recently by the FCC,<sup>38</sup> the notice envisioned by STC's proposed Section 1.12 will facilitate the resolution of those issues as well.<sup>39</sup>

**2. STC's Proposed Language does not Disturb the Obligations that the Parties have to Each Other under the Agreement.**

At the same time and as noted in the Response at 33, STC recognizes that, to the extent that TVC may be acting as a wholesale provider to third parties furnishing calling services to end users (*i.e.*, the residential and business entities that are the ultimate users of telecommunications services and place and receive calls to and from STC's end users), TVC is

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<sup>37</sup> As noted in the Response, this is also important where such Third Party Service Providers may be assigned numbering resources directly from the North American Numbering Plan Administrator under the Third Party Service Provider's respective Operating Company Numbers, and thus where TVC is the responsible party delivering traffic to STC on behalf of that Third Party Service Provider. *See*, Response at 30.

<sup>38</sup> *See, In the Matter of Developing an Unified Inter-carrier Compensation Regime; Establishing Just and Reasonable Rates for Local Exchange Carriers, Declaratory Ruling*, CC Docket No. 01-92 and WC Docket No. 07-135, DA 12-154, released February 6, 2012. STC is confident that the Commission would not indirectly thwart the ability of any rural ILEC to ensure that call completion issues are minimized or are addressed promptly. STC's language helps ensure that result.

<sup>39</sup> If a Third Party Service Provider obtains its own numbering resource but has no fundamental network arrangement in place with STC, calls from STC end users to such third party end users could likely fail unless STC was made aware of such Third Party Service Provider by its wholesale service provider who does have such fundamental network arrangement in place with STC. In addition, STC would need to know the identity of the wholesale service provider while terminating traffic that would be originated by a Third Party Service Provider.

responsible to STC with respect to the terms and conditions of interconnection TVC has with STC, including the consequences that flow from TVC's relationship with such third parties. STC also recognizes that it is incumbent on TVC to insure that it will comply with the terms and conditions of the Agreement with STC including taking all actions with its third-party, retail service providers that are necessary to assure that TVC is in compliance. Yet, as noted above, the Third Party Service Providers do have obligations to STC either directly or indirectly. STC's proposal to resolve Issue 3 provides an appropriate and lawful method by which both the obligations that TVC has to STC and that TVC's Third Party Service Providers have to STC can proceed from a practical perspective, and does so in manner fully consistent with the *TWC Declaratory Ruling*<sup>40</sup> and the *CRC Declaratory Ruling*.

Furthermore, as discussed below and contrary to TVC's apparent contention, Third Party Service Providers (*e.g.*, cable television companies providing VoIP-based telephone services) are not end users, do not have the rights of end users, and have a relationship with the wholesale provider that is different from the relationship that end users have.<sup>41</sup> Accordingly, Third Party

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<sup>40</sup> As indicated in the Response, STC stated that in

seeking interconnection with an ILEC, on behalf of itself and the third party for which it may transmit traffic to and from the ILEC pursuant to that interconnection, the wholesale telecommunications carrier is fully responsible for its obligations with respect to that traffic, including those set forth in the interconnection agreement as well as requirements imposed by the FCC and state commissions.

Response at 32 *citing TWC Declaratory Ruling* at para. 16. STC also noted other provisions of the Agreement with which this obligation arises. *See id.* at 32, n. 26.

<sup>41</sup> Also, as VoIP service providers, these third parties have certain stand-alone regulatory obligations related to their service to end users, while end users do not. The notice to be provided by the Party serving these VoIP service providers will provide the non-serving Party the ability to know to whom any compliance issues should be directed.

Service Providers, and their relationship with TVC, should not be hidden by claiming that such service providers are end users.

To this end, it is STC's belief that TVC would be the local exchange carrier of record (in the various industry databases such as the Local Exchange Routing Guide, North American Number Plan, Local Number Portability Data Base, etc.) for the telephone numbers assigned/porting/used by any Third Party Service Provider that obtains wholesale services from TVC. If TVC delivers traffic to STC that is not associated with a telephone number of a TVC end user or an end user of a documented Third Party Service Provider for which TVC is the responsible wholesale carrier, that traffic would be subject to terms and conditions other than those being arbitrated in this proceeding. *See*, Response at 32-33. Moreover, with the resolution of Issue I as proposed by STC, the parties will have proper terms and conditions in place within the Agreement that will address a certain scope of traffic subject to specific terms of the Agreement. As such, each party needs to ensure the ability to enforce these terms and conditions. Without knowing the identity and scope of operations of Third Party Service Providers with which one party (*e.g.*, TVC) provides wholesale services, the other party (*e.g.*, STC) will likely be hampered or unable to fully identify the nature of traffic, to audit traffic, or to ensure that representations made by one party about the scope of traffic delivered to the other party is in compliance with the Agreement.

In the absence of identifying the Third Party Service Provider, STC also notes that, to the extent that porting obligations are not honored and a third party is an involved offender,<sup>42</sup> STC

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<sup>42</sup> STC has noted in its Response at 33-34, that in 2007 the FCC recognized that it is generally the traditional telecommunications carrier (such as TVC, with which VoIP providers will have a wholesale arrangement) that effectively undertakes numbering duties and obligations with the LEC (such as STC) for a VoIP provider. *See generally, In the Matter of Telephone Number Requirements for IP-Enabled Service Providers, et al., Report and Order, Declaratory Ruling,*

would not know the responsible to whom STC should direct remedial action. Quite simply, by identifying the scope of TVC's wholesale operation with respect to specific Third Party Service Providers, STC and any affected end users would avoid any unnecessary and unwarranted "hide and seek" game. If the Third Party Service Provider is within the scope of TVC's wholesale arrangement and TVC documents that relationship, STC can quickly and efficiently require TVC to honor its contractual obligations under the Agreement and pursue remedies with the identified Third Party Service Provider regarding that Third Party Service Provider's separate obligations. *See*, Response at 34.

Accordingly, it will be TVC that is responsible to STC for compliance with all of the terms and conditions related to the exchange of traffic with STC, including traffic of the Third Party Service Provider. Moreover, it will be TVC in combination with those third parties that are obligated to insure that telephone numbers will be ported to STC in the event that STC wins a customer, including the porting of telephone numbers that may be used by TVC's Third Party Service Provider partner. STC's interconnection terms and conditions merely propose that TVC

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*Order on Remand, and Notice of Proposed Rulemaking*, WC Docket No. 07-243 *et al.*, FCC 07-188, released November 8, 2007 ("2007 Number Requirements Order"). As such, recognizing that numbers can be ported to and from VoIP providers (or also referred to as "IP-Enabled" service providers), the FCC clarified that the "numbering partner" is a responsible party for ensuring that number porting obligations are met. *See id.* at paras. 30-37. And, the FCC also indicated, for example, that interconnected VoIP providers generally obtain NANP telephone numbers through commercial arrangements with one or more traditional telecommunications carriers. As a result, "the porting obligations . . . stem from the status of the interconnected VoIP provider's numbering partner . . . ." *Id.* at para. 34. In the interconnection arrangement between STC and TVC, both parties have number porting rights and responsibilities, and TVC's obligations to STC extend to the arrangements TVC may have with Third Party Service Providers.

accurately prescribe the scope of those third parties to ensure that the responsibilities are properly assigned and compliance ensured.<sup>43</sup>

For all of these reasons, TVC must confirm whether it will operate as a wholesale provider and must document those Third Party Service Providers and traffic for which TVC will be responsible. Without such confirmation and documentation, STC would be unable to identify the scope of TVC's responsibilities that the FCC has explicitly confirmed, including the identification of those responsibilities related to Third Party Service Provider provisions. Once again, the provision at issue here only imposes the duty of written notice as to the identity of such Third Party Service Provider entities and a description of the scope of their end user service offerings and traffic, and *vice versa*.<sup>44</sup>

**3. TVC's Apparent Efforts to Withhold the Identity of such Third Party Service Providers by Claiming They are "End Users" must be rejected.**

Finally, in the *2007 Number Requirements Order*, the FCC also concluded that the third party VoIP provider is not an end user. *See id.* at para. 31 ("We find that the 'user' in this context is the end-user customer that subscribes to the interconnected VoIP service and not the interconnected VoIP provider.") (footnote omitted); *see also*, Response at 35. It is the "real" end users that have service and telephone number portability choices, and those rights are different and distinct from the rights and obligations of carriers and/or VoIP service providers. The

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<sup>43</sup> Of course, third party identities and scope of operations divulged by one party to the other party would be subject to the confidentiality provisions of the Agreement.

<sup>44</sup> The specific duties imposed on TVC are those explicitly set forth in the Agreement. Many of those duties are affected by TVC's relationship with Third Party Service Providers with which TVC partners. However, to the extent that Third Party Service Providers have separate regulatory imposed obligations that are their individual responsibility, those obligations are the responsibility of the specific Third Party Service Provider.

established regulatory requirements conclude that the Third Party Service Provider is not an end user. Thus, TVC's efforts to provide an over-inclusive definition of "end user" within the Agreement that does not reflect a Third Party Service Provider's separate status should be rejected.

**D. Issue 4: What Rates, Terms And Conditions Will Govern The Relationship For The Ongoing Exchange Of Traffic In The Event That One Party Loses Its Local Exchange Carrier Certification?<sup>45</sup>**

For the reasons stated herein and in the Response, STC respectfully requests that the Commission resolve Issue 4 by adopting STC's proposed Section 1.11.

STC deems Section 1.11 to be an integral component of the Agreement. The foundational element is that each party is certificated by the Commission not only as a telecommunications carrier, but as a telecommunications carrier authorized by the Commission to offer and provide intrastate services to end users which, in turn, generate traffic that is the subject of the Agreement – local exchange service traffic or "Local Traffic." *See, generally* Section II.A, *supra*; *see also*, Response to Issue 1.<sup>46</sup> The importance of this certification is

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<sup>45</sup> Although STC has included additional information regarding the discovery responses from STC, the discussion of Issues 4 through 8 still substantially track the discussion contained in the Response, except that former Issue 8 in the Response has been consolidated into the discussion of Issue 5; and the discussion regarding Issue 9 in the Response has been renumbered as Issue 8, *infra*. These exceptions arise as a result of the agreed-to list of issues submitted by the parties. As a result, cross-references to the Response are not made in STC's discussion related to Issues 4 through 8.

<sup>46</sup> TVC makes a claim on page 11 of the Petition that STC wishes to "define TVC's authority to provide service inaccurately, seeking to define TVC as solely a telecommunications services provider and/or intrastate provider, and impermissibly drawing a distinction between TVC's rights as a retail provider and wholesale provider." Petition at 11. Nothing of the sort is occurring. STC seeks only to ensure that, in order to utilize the terms and conditions of the Agreement, TVC has all necessary certifications in place to provide either the wholesale and/or retail telecommunications carrier services that TVC seeks to provide to its customers and to Third Party Service Providers. As explained in Issue 3, the distinction between retail and



evidenced by the inclusion of representations and warranties in Sections 1.9 and 1.10 of the Agreement regarding the certifications that must be in place for STC and TVC, respectively, as well as in the very first recital of the Agreement on page 1. *See*, Agreement, First Recital, Section 1.9 and 1.10.<sup>47</sup> Should this foundational prerequisite no longer exist – certification to provide end user services that are addressed under the terms and conditions of the Agreement – then some replacement set of terms and conditions would need to be established as the default.

TVC's suggestion that there is a "conflict" between Section 1.11 and prior sections (Petition, Exhibit 16 (Answer to Question 9)) is entirely misplaced. The only general offering under which interconnection with STC may be obtained is pursuant to STC's intrastate exchange access tariff. It is this set of tariffed rates, terms and conditions which should apply as the parties unwind their previous telecommunications carrier-to-telecommunications carrier relationship for the exchange of Local Traffic. Absent that conclusion, the breaching party – the party that no longer has its local exchange carrier certification status – would be allowed to

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wholesale telecommunications carrier status has already been acknowledged by the FCC. *See*, discussion of Issue 3 in Section II.C, *supra*.

<sup>47</sup> STC has declined to negotiate terms and conditions that are without regard to the standards of Section 251(b) of the Act (*see, e.g.*, Petition, Exhibits 1, 15). As such, telecommunications carrier status is an unquestionable prerequisite under the applicable rules for, among other things, the exchange of traffic with STC and traditional number portability. *See, e.g.*, 47 C.F.R. §51.701(b)(1); 47 C.F.R. §52.1 (B) ("The purpose of these rules is to establish, for the United States, requirements and conditions for the administration and use of telecommunications numbers for provision of telecommunications services."); 47 C.F.R. §§ 52.21(j) (Definition of local exchange carrier), (n) (Definition of the term number portability as "the ability of users of telecommunications services to retain, at the same location, existing telecommunications numbers without impairment of quality, reliability, or convenience when switching from one telecommunications carrier to another."), and (t) (Definition of the term service provider portability as the "ability of users of telecommunications services to retain, at the same location, existing telecommunications numbers without impairment of quality, reliability, or convenience when switching from one telecommunications carrier to another."); 47 C.F.R. §52.23 (Requirement for the deployment of number portability for "all local exchange carriers (LECs).").

continue to benefit from the terms and conditions of the Agreement even though it no longer possesses the status or right to do so.<sup>48</sup>

For these reasons, STC's proposed Section 1.11 is wholly appropriate and rational. Section 1.11 addresses the circumstance in which one of the parties fails to comply with its certification representation and warranty under the Agreement. Breaches should not be rewarded. STC's language ensures that a common sense conclusion is achieved. STC's Section 1.11 should be adopted.

**E. Issue 5: What Are The Appropriate Standards To Be Employed For Porting Between TVC And STC And For Marketing To Customers?**

For the reasons stated herein and in the Response, STC respectfully requests that the Commission resolve Issue 5 by adopting STC's proposed Section 19.3. And, in doing so, reject TVC's proposed Section 6.15.

Section 6 of the Agreement outlines the conduct of the parties regarding the method by which local number portability will be undertaken. Schedule IV of the Agreement outlines the information that will be exchanged in a porting request and Schedule II outlines the information that will be exchanged *prior* to the first request for porting. While TVC is correct that the remaining issue in Section 6 is TVC's reference to the Commission's CLEC-to-CLEC migration guidelines, TVC also apparently believes that Schedule II needs to be completed before the Agreement "can be finalized." Petition at 10.

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<sup>48</sup> STC recognizes that, pursuant to the provisions of Section 33.1 of the Agreement, in the event of default that is not remedied during the 30-day cure period, the non-breaching party has the right to terminate the Agreement. However, Section 33.2 also provides that notwithstanding termination, the service arrangement provided under the Agreement may continue for up to 12 months and thus, there is a need to fill the void created by termination of the Agreement. STC submits that STC's intrastate exchange access tariff (or if STC committed an uncured breach and TVC terminated, TVC's intrastate exchange access tariff) is the only available and most appropriate source of terms and conditions to fill that void.

Further, in response to the second aspect of this Issue 5, STC's intent with respect to the additional language in Section 19.3 is to ensure that the broadly-worded language proposed by TVC in Section 19.3 is not otherwise construed to bar a party's "lawful marketing" of its services. STC's position regarding the disputed language of Section 19.3 is further expanded and explained below.

### **1. Porting Aspect of Issue 5.**

With respect to TVC's reference to Schedule II (*see*, Petition at 10), there is no issue. The Schedule specifically notes that:

**The Parties will exchange the information contained on this Schedule II, as required by Section 6.2, prior to a request for porting a telephone number between them.**

Section 6.2 of the Agreement states:

The Parties shall utilize the information contained in Schedule II to establish the scope and procedures by which they will exchange the necessary information required to respond to a specific request for porting a telephone number between them based on the information contained in Schedule IV.

There is no need to exchange the information before the Agreement is finalized. The trigger for exchanging the information is the first porting request. Thus, TVC's suggestion to the contrary should be rejected.

With respect to the mandatory use of the CLEC-to-CLEC Guidelines, TVC admits that these Guidelines are only applicable to CLECs and are *not* applicable to small ILECs like STC. *See*, Petition at 13 (in the context of Section 6.15, TVC cites specifically to the "CLEC-to-CLEC" migration guidelines and the lack of "CLEC-to-*ILEC*" guidelines.) (emphasis in the original); *see also, id.* at 25. Without question, STC is not a "CLEC." STC is an ILEC.

As the Commission has indicated when it addressed the mass migration guidelines:

We note also that it is important for this Commission to adopt these Guidelines as having the full force and effect of a Commission order to maintain consistency with the CLEC-to-CLEC End-User Migration Guidelines previously approved by us. We have followed the same process – development of draft Guidelines through a collaborative process, issuance for comments by all parties potentially affected by them, and formal adoption by Commission order – in both cases.

*Order Adopting Mass Migration Guidelines*, Case 00-C-0188, issued and effective December 4, 2001 (“*Mass Migration Guidelines Order*”) at 5-6. As this statement makes clear, the CLEC-to-CLEC guidelines were derived from general industry discussions and Commission orders. *See, e.g., Order Adopting Phase II Guidelines*, Case 00-C-0188, issued and effective June 14, 2002 (“*Phase II CLEC Guidelines Order*”) at 1-2. Accordingly, TVC is asking that the Commission impose requirements upon STC, an ILEC, without the same level of due process that was applied to address issues related *specifically* to CLEC conduct.<sup>49</sup>

TVC has failed to provide any reasonable basis for imposition of CLEC-to-CLEC Migration Guidelines on a small rural ILEC like STC. Further, TVC’s complaint that it would be “discriminatory” for the Commission to require that the CLEC alone comply with the guidelines is also without proper basis. *See*, Petition at 25. If TVC believes that some

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<sup>49</sup> Even the Phase II CLEC-to-CLEC Guidelines reflect the fact that they are not applicable to STC. “Similarly, procedures for end-user migrations between CLECs and Frontier Telephone Company of Rochester and other incumbent local exchange carriers in the state *are being or may be developed in other proceedings specific to those incumbent carriers.*” *Phase II CLEC Guideline Order*, Attachment “End User Migration Guidelines CLEC to CLEC, Phase II, dated June 2002, Introduction at 1 (emphasis added). Likewise, the document reflected the fact that “pending the formal adoption of guidelines applicable to an independent ILEC, these guidelines serve as a model for reasonable behavior against which to evaluate *particular situations on a company by company basis.*” *Id.* at 1-2 (emphasis added). Thus, the *Phase II CLEC Guideline Order* undermines TVC’s position for the incorporation of the CLEC-to-CLEC Guidelines in the Agreement since there has been no general industry participation as outlined in the *Mass Migration Guidelines Order* and until such general requirements are established that are applicable to STC, the evaluation of a concern arising from a specific situation will need to proceed on a case-by-case basis rather than, as TVC seeks, a general obligation regardless of such situation.

discriminatory treatment is being imposed upon it (and consequently has been imposed upon it for close to a decade since the issuance of the *Phase II CLEC Guidelines Order*), then TVC should file a petition with the Commission requesting an investigation of the application of guidelines to all providers of local exchange service, allowing full industry participation and discussion of that request in the manner described in the *Mass Migration Guidelines Order*. If the Commission were to agree (which is questionable since TVC cites to no decision within the Petition that the 2002 guidelines have been imposed on ILECs generally), the Agreement's change of law provision will allow TVC to request such incorporation into the Agreement at that time, assuming, of course, that the guidelines that would be imposed have any bearing on the terms and conditions for number porting.

In short, with TVC's admission that the guidelines apply to CLECs alone, the fact that applicable FCC rules are required to be followed, and the other business terms and conditions in Section 6, TVC's rights are amply protected. TVC's proposed Section 6.15 should be rejected and the remaining Sections 6 provisions should be re-numbered accordingly.

## **2. Marketing Aspect of Issue 5.**

Turning now to the second aspect of this Issue 5 related to marketing, it is STC's position that the extent of any disagreement is very small. STC agrees that "unlawful" marketing would be prohibited under the Agreement. Thus, STC agrees that under certain factual scenarios marketing to a customer that has expressed an interest in leaving the customer's current service provider may be an "impermissible" action such as where a carrier, for customer retention marketing purposes, uses proprietary information of other carriers that it receives in the local number porting process. See, *In the Matter of Bright House Networks, LLC et al., v. Verizon California, Inc., et al., Memorandum Opinion Order*, File No. EB-08-MD-002, FCC 08-159,

released June 23, 2008 at paras. 1 and 41 (“We stress, however, that our holding is limited to the particular facts and the particular statutory provision at issue in this case.”); *affirmed Verizon California, Inc. v. F.C.C.*, 555 F. 3d 270 (D.C. Cir. 2009).

Like many issues, however, the specific facts of each situation will govern whether conduct is or is not permissible. STC’s proposed language allows this type of fact-specific inquiry to proceed should the issue of some alleged impermissible marketing arise. Accordingly, STC submits that the explicit acknowledgment reflected in the additional language proposed by STC should be adopted as opposed to the overbroad language that TVC proposes. Using STC’s language, the Agreement would clearly provide that *both parties* retain the ability to engage in marketing that, in good faith, each respectively believes is in compliance with applicable law and that nothing in the Agreement otherwise prohibits such activities. Since TVC cannot claim and has not demonstrated that all marketing is unlawful or that all information may otherwise fall outside of Section 19 as provided in the agreed-upon Section 19.2, STC’s proposed language is entirely appropriate.

Accordingly, for these reasons, STC requests that the additional language in Section 19.3 that STC is proposing be adopted.

**F. Issue 6: What Are Reasonable Time Frames For Negotiating And Then Implementing Necessary And Appropriate Network Requirements For Direct Interconnection?**

For the reasons stated herein and in the Response, STC respectfully requests that the Commission resolve Issue 6 by adopting STC’s proposed Section 8.2. Since TVC has not objected to Section 5, STC sees no issue that requires resolution by the Commission with respect to this arbitration.

While STC agrees with TVC as to the scope of Section 8.2, it is STC's position that TVC's proposed language for this section is unreasonable. The open-endedness of TVC's proposal leaves the parties with no guidance as to how to efficiently discuss and resolve the network and operational issues associated with implementing a direct interconnection. STC's proposed language is not a barrier to entry as TVC's claims. *See*, Petition at 14. The language provides the option to TVC to elect to use indirect interconnection during the discussions related to direct connection which is the primary focus of Section 8.2. As such, TVC's position should be rejected and STC's proposed language adopted.

Direct interconnection is not an "add-water-and-mix" proposition. Technical, operational and practical issues need to be addressed and resolved to ensure that the ultimate reason for the direct connection – traffic exchange – is achieved consistent with the interconnection requirements of the Act. Consistent with this fact, STC has fashioned rational and reasonable parameters that address the general areas that the parties will need to address and does so in a manner that reflects how STC's network is deployed and the exchange of traffic takes place over that network today. Since TVC has sought interconnection from STC and STC cannot be required to provide a superior form of interconnection to TVC,<sup>50</sup> STC's approach is not only rational and reasonable but also is well within the directives of applicable law.

TVC's language that would limit the negotiating time period required to efficiently implement the direct connection arrangement is exactly the opposite of what rational decision makers would expect. Allowing more time to plan and discuss implementation of direct connection (four (4) months being proposed by STC for the negotiation) followed by a shorter

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<sup>50</sup> *See*, footnote 6, *supra*.

time period for implementation (two (2) months being proposed by STC) based on the planning is sensible. In contrast, TVC proposes only one (1) month for planning discussions and six (6) months for implementation. As a result, TVC's proposal runs the obvious risk of under-allocating time for the planning related to network issues associated with new facility arrangements normally required by engineers, and over allocating time needed for normal implementation.

From a practical perspective, therefore, TVC would cause the parties to engage in a hurried negotiation of the network plan, leaving the distinct possibility of poor planning thus creating a protracted and contentious implementation process. Further, TVC's proposal would likely result in the parties consuming more time relating to implementation disputes and delays and potentially raising compliance issues that may need to be addressed by the Commission. Such consequences are minimized under STC's proposal because the parties are provided with sufficient time to negotiate the parameters of direct interconnection implementation.

Finally, STC finds it troubling, at best, that TVC would allege that the language being proposed by STC could rationally be suggested to be a "barrier to entry." Petition at 14. To the contrary, and apparently lost on TVC, is the fact that TVC retains the right to utilize indirect interconnection with STC during the negotiation period under the undisputed language of Section 8.2. Since TVC is fully aware that STC has a traffic exchange agreement for EAS traffic in place with another carrier (*see*, Petition, Exhibits 6 and 7), TVC also should be aware that indirect interconnection through use of the Verizon tandem was made available by STC for EAS traffic pursuant to the requirements of the Commission's *CLEC EAS Order*. In fact, in July 2011, TVC noted that it used the Verizon tandem to send calls for termination to STC. *See, May 1<sup>st</sup> Record Submission*, Attachment RS-3 (Letter from TVC at 2).



For all of these reasons, including, but not limited to, providing clarity and certainty to the planners and implementers and also providing guidance in case of any disputes arising during this process, STC's proposed language for Section 8.2 should be adopted and TVC's proposed deletions should be rejected.

**G. Issue 7: How Should Failure To Comply With The FCC-Prescribed Call Identification Rules Be Defined In The Interconnection Agreement And What Should Be The Appropriate Remedies In The Event Of Such Violation?**

For the reasons stated herein and in the Response, STC respectfully requests that the Commission resolve Issue 7 by adopting STC's proposed Section 7.1.

STC's proposed addition to Section 7.1<sup>51</sup> would create a financial consequence if Calling Party Number ("CPN") and/or Automatic Number Identification ("ANI") information are either absent or subjected to spoofing.<sup>52</sup> That financial consequence – the charging of intrastate access to the non-complying party – creates incentives for proper compliance with Section 64.1601 (and thus the avoidance of phantom traffic-like situations), discourages misrepresentation of traffic,

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<sup>51</sup> Section 7.1 raises a discrete issue from those raised in Sections 1.11, 2.6 and 7.4. *See*, Response at 47, n. 35. Thus, the references made by TVC to Sections 1.11, 2.6, and 7.4 are misplaced. *See*, Petition at 24. Section 1.11 is addressed in Issue 4 and relates solely to the breach of warranties found in Sections 1.9 and Section 1.10. Section 2.6 is related ultimately to the proper scope of traffic under the definition of "Excluded Traffic" under Issue 1. Finally, while reference to access charges is made, the other area of disagreement under Section 7.4 relates to the written identification of third parties to which TVC provides wholesale telecommunications services related to local service interconnection with STC as addressed in Issue 3.

<sup>52</sup> The term "spoofing" refers to knowingly causing to transmit directly or indirectly inaccurate or misleading information with the intent to defraud, cause harm, or wrongfully obtain anything of value. *See*, 47 C.F.R. § 64.1604. Section 64.1604 promotes implementation of the CPN and ANI delivery requirements of Section 64.1601. Coupled with the commitment of the parties to conduct themselves in compliance with the law (*see*, Agreement, Section 1.8), each of the parties' adherence to Section 64.1604 in addition to Section 64.1601 is essential.

and avoids (or at least mitigates) the imposition of costly procedures upon the party that is in compliance.

Section 64.1601(a) describes the requirement of passing/delivery of unaltered CPN/Calling Number (“CN”) by any carrier involved in the path of a call. However, it exempts carriers from this requirement which are identified in Section 64.1601 (d), including, among others, payphones, certain centrex and private branch exchange equipment, telemarketers, etc. *See*, 47 C.F.R. §64.1601(d). The parties agree that these requirements apply. As indicated in the *CAF/ICC Order*, the Signaling System No. 7 message must include the unaltered CN where it is different than the CPN, and when using Multi-Frequency (“MF”) signaling, the number of the calling party (or CN, if different) must be provided in the MF ANI field. *See*, *CAF/ICC Order* at paras. 712-716.

The issue that TVC is avoiding is what to do when the requirement to provide these traffic identifiers is not fulfilled in violation of Section 64.1601 and Section 64.1604 requirements. The FCC has made clear in the context of VoIP-PSTN traffic that traffic terminating without compensation “could create a need for recovery that shifts costs created by phantom traffic to end-user rates or the Connect America Fund, undermining the transitional role for intercarrier compensation charges established as part of that framework,” and that the FCC’s “new call signaling rules are necessary to address these concerns.” *Id.* at para. 718. STC’s proposed language advances this policy by imposing compensation requirements on the non-compliant carrier for traffic that is in violation of the FCC’s traffic identification rules. At the same time, by providing this financial requirement, STC’s proposal will, in turn, create consequences that will create incentives for both parties to take such steps as are necessary to assure that the call signaling information that is being exchanged complies with the FCC’s

requirements.

While it is true that the FCC provided the option to initiate informal or formal complaints to resolve such disputes (*see id.* at para. 730), STC notes that the FCC also observed that carriers have a “number of options” to address such compliance. *See id.* STC’s proposal provides a proper and efficient “option” regarding the failure to properly provide CPN and/or ANI and does so in manner that avoids the expenditure of unnecessary resources by the parties and the Commission. To avoid the time-consuming and inefficient process associated with complaints and legal actions to collect proper compensation on misrepresented traffic, and to otherwise provide a clear remedy, STC’s proposed language provides incentives to the violating party to promptly correct any deficiencies in its CPN/CN delivery platform and provides the non-violating party a means to avoid contentious and costly processes that might otherwise be required to obtain compliance with the Agreement’s intent that the requirements of Section 64.1601 be followed.

From a practical perspective, the absence of STC’s additional language would reward the violating party to the financial detriment of the non-violating party by requiring costly traffic investigation efforts and the initiation of informal or formal complaint proceedings that consume time and resources. Such a result is irrational and counter-productive to the very purposes that carriers enter into interconnection agreements. At the same time, the proposed approach suggested by STC should minimize the “Phantom Traffic” issue that has consumed resources of regulators and the industry for many years. Of course, should some justified basis exist for the lack of the traffic identifiers, the dispute provisions of the Agreement are available as a means to discuss, and hopefully resolve issues presented. *See* Agreement, Section 26.

Finally, STC notes that TVC has already accepted and has committed to the requirements

to provide traffic identifiers pursuant to §§3.7, 7.1 and 7.4 in the TVC/Berkshire Agreement and the TVC/Taconic Agreement. *See, Attachment E*, attached hereto (TVC/Berkshire Agreement at Section 3.7 (page 7) and Section 7.1 (page 10); TVC/Taconic Agreement at Section 3.7 (page 7) and Section 7.1 (page 10)). In each of these sections, TVC has voluntarily agreed to pay intrastate access charges where proper call identification is not provided. *See, id.* This is the same result associated with STC's proposed language in Section 7.1 of the Agreement. TVC should not be permitted to change positions here.

Thus, for all of these reasons, TVC's claims regarding STC's proposed addition to Section 7.1 are misplaced. STC's proposed addition to Section 7.1 is fully justified and reasonable and should be adopted.

**H. Issue 8: What Is An Appropriate Change Of Law Provision And An Appropriate Look-Back Period For True-Up Within That Provision If A Party Fails To Timely Notify The Other Party Of The Potential That A Change In Law Has Occurred?**

TVC's discussion relating to STC's initial proposal with respect to the ten (10) day notice requirement has been superseded by the proposal provided by STC on March 15, 2011 as referenced in the third paragraph of the March 19, 2012 email from STC's counsel to TVC's counsel, a copy of which is included in Exhibit 20 to the Petition. For reasons unknown, TVC failed to include the March 15, 2011 email and attachment either within its documentation or its discussion of this issue in the Petition although the communication had been received by TVC and is referenced in Exhibit 20. STC attached this document to its Response as Attachment C.

Based on the provision that TVC included in the Petition at page 16, STC believes that the parties are not far apart with respect to closing this issue. STC sets forth below the provisions offered by TVC that STC is now willing to accept subject to two changes and one clarification.

First, as also noted below, STC proposes that the phrase “has the potential” be replaced with “specifically has the”. The change brings additional clarity (and thus leads to the avoidance of the expenditure of unnecessary resources by the parties and potentially by the Commission) as to what changes would trigger the parties’ discussion. Put simply, any change may have the “potential” for affecting anything. The overly broad concept of “potentially” should be rejected.

Second, STC makes explicit the fact that written notice is required by insertion of the phrase “upon written notice by either Party to the other Party.”

Third, even with the addition of the foregoing clarifying language, STC believes it is reasonable to allow *both* parties to retain the right to disagree as to whether triggering events as described in Section 32.9 have occurred so as to allow the Section 32.9 procedures to be instituted. Legitimate disagreements may arise as to whether a change of law triggers revisions to the Agreement. Therefore, the Agreement should not preclude a party from preserving its position regarding such good faith disagreement.

Accordingly, for these reasons, STC proposes that new language (in ***bold and italics***) for inclusion in Section 32.9 to reflect the three changes described above.

Finally, STC seeks confirmation that the last sentence of TVC’s proposed Section 32.9 provides that the change of law will only become effective once the amendment to the Agreement receives regulatory approval. Sections 252(e)(4) and (5) specifically address the methods by which interconnection agreements can be approved.<sup>53</sup> By referencing these

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<sup>53</sup> 47 U.S.C. §252(e)(4) states:

If the State commission does not act to approve or reject the agreement within 90 days after submission by the parties of an agreement adopted by negotiation under subsection (a) of this section, or within 30 days after submission by the parties of an agreement adopted by arbitration under subsection (b) of this section, the agreement shall be deemed approved. No State court shall have jurisdiction to

provisions, TVC appears to acknowledge that only when approved would the amendment be effective and therefore, from that date forward the change of law would be effective between the parties. If this is TVC's intent, STC is willing to agree to such timing, although STC would also be willing, as proposed to TVC on March 15, 2012, to agree that the effective date of the amendment would be the date that the written notice from a party requesting action under Section 32.9 is received by the other party.

Thus, for the above-described reasons, STC proposes that the following language for Section 32.9 be adopted by the Commission.

**Regulatory Changes.** If, after the effective date of this Agreement as noted above, a federal or state regulatory agency, government or a court of competent jurisdiction issues a rule, regulation, law or order (individually or collectively a "New Regulatory Requirement") which materially changes the obligations under this Agreement of a Party in existence on such effective date and ~~has the potential~~ ***specifically has the*** effect of canceling, changing, or superseding any material term or provision of this Agreement, then ***upon written notice by either Party to the other Party***, the Parties shall negotiate in good faith for a period of sixty (60) days ("Negotiation Period") in an effort to mutually agree upon an amendment to modify this Agreement in a manner consistent with the form, intent and purpose of this Agreement and as necessary to comply with such New Regulatory Requirement; ***provided however, that nothing in this Section 32.9 shall waive the right of a Party to challenge the assertion that there has been instituted a New Regulatory Requirement.*** In the event that such negotiations do not result in a mutually agreed-upon amendment within the sixty (60) day period, either Party may request the Commission to resolve any unresolved issue between the Parties with respect to the amendment referenced in this Section (which issues may

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review the action of a State commission in approving or rejecting an agreement under this section.

47 U.S.C. §252(e)(5) states:

If a State commission fails to act to carry out its responsibility under this section in any proceeding or other matter under this section, then the Commission shall issue an order preempting the State commission's jurisdiction of that proceeding or matter within 90 days after being notified (or taking notice) of such failure, and shall assume the responsibility of the State commission under this section with respect to the proceeding or matter and act for the State commission.

include, without limitation, the existence of a change triggering the requirements of this Section). Any amendment to this Agreement determined to be required by a New Regulatory Requirement shall be effective on the date determined by applying either 47 U.S.C. §252(e)(4) or 47 U.S.C. §252(e)(5), as applicable.

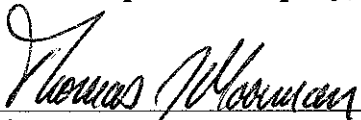
### **III. CONCLUSION**

For the reasons stated herein, STC respectfully requests that the Commission resolve the issues presented in this arbitration in the manner requested by STC.

Respectfully submitted,

**State Telephone Company, Inc.**

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Date: May 21, 2012

## **ATTACHMENTS**



**Attachment A**

**to**

**May 21, 2012 Initial Brief**

**Case 12-C-0138**

**TVC Response to STC Information Request Nos. 3 and 4**

**Information Request No. 3:** Information Request No. 3 seeks information regarding the traffic of third party Telecommunications Carriers for which TVC may provide call termination to STC's network.

(A) Does TVC provide call termination to third party Telecommunications Carriers (*e.g.*, Interexchange Carriers, Competitive Local Exchange Carriers, Commercial Mobile Radio Service providers, etc.) which results in TVC's delivery of such third party traffic to STC? If yes, please respond to the following:

1. Please identify each of those third party Telecommunications Carriers by name for which TVC provides call termination of traffic to STC's network.

2. For each identified third party Telecommunications Carrier, please provide an estimate of the amount of monthly minutes of use for the last six months that terminated to STC's end users as follows:

a. Total amount of terminated minutes of use.

b. Of the total amount of terminated minutes of use, the amount originated in LATA 134.

c. Of the total amount of terminated minutes of use, the amount originated in areas of LATA 134 that are within the local calling areas of STC's exchanges of Coxackie and Ravena.

d. Of the total amount of terminated minutes of use, the amount originated in areas outside of LATA 134.

3. For each identified third party Telecommunications Carrier, please identify both the intermediary carrier from item No. 2(A)(1) above and the trunk group(s) from item No. 2(A)(3) above that TVC uses for such identified third party Telecommunications Carrier's traffic. For each trunk group used (if more than one trunk group), please describe the type of traffic (geographic scope) delivered over each trunk group.

**Response:**

TVC objects to the question because it calls for speculation, is beyond the scope of this arbitration and is not calculated to lead to evidence that can be used in this proceeding. TVC's customers are not at issue in this proceeding. Further, as TVC rolls out an offering, TVC will be providing new services to new customers who will generate an unknown amount of traffic. Traffic exchanged during the past six months has no bearing on traffic that the parties propose to exchange pursuant to this agreement.

Under the terms of the proposed Interconnection Agreement that have already been found acceptable by both parties, TVC will provide STC with forecasts of expected traffic that will be used to size the direct interconnection contemplated by the agreement. Such forecasts have been sufficient information for virtually every interconnection agreement on file at the PSC and should be sufficient here as well. Neither the disputed or non-disputed sections of the agreement call for estimates on traffic by exchange, and such an exercise would be highly speculative at this point.

**Nevertheless, and without waiving its objections, TVC provides the following information in response to this request. According to TVC's best good faith estimates, TVC terminates approximately 1,253K MOU to STC over a 6 month period, and terminates approximately 991K MOU on behalf of STC.**

**Information Request No. 4:** Information Request No. 4 seeks information regarding the traffic of third party service providers using Voice over Internet Protocol ("VoIP") transmission (e.g., cable television entities providing voice calling services to end users) to which TVC may provide call termination to STC's network.

(A) Does TVC provide call termination services to third party service providers using VoIP transmission which results in TVC's delivery of such third party traffic to STC? If yes, please respond to the following:

1. Please identify each of those third party service providers by name for which TVC provides call termination of traffic to STC's network.

2. For each identified third party service provider, please provide an estimate of the amount of monthly minutes of use for the last six months that terminated to STC's end users as follows:

a. Total amount of terminated minutes of use.

b. Of the total amount of terminated minutes of use, the amount originated in LATA 134.

c. Of the total amount of terminated minutes of use, the amount originated in areas of LATA 134 that are within the local calling areas of STC's exchanges of Coxackie and Ravena.

d. Of the total amount of terminated minutes of use, the amount originated in areas outside of LATA 134.

3. For each identified third party service provider, please identify both the intermediary carrier from item No. 2(A)(1) above and the trunk group from item No. 2(A)(3) above that TVC uses for such identified third party service provider's traffic. For each trunk group used (if more than one trunk group), please describe the type of traffic (geographic scope) delivered over each trunk group.

**Response:**

TVC objects to the question because it calls for speculation, is beyond the scope of this arbitration and is not calculated to lead to evidence that can be used in this proceeding. Further, as TVC rolls out an offering, TVC will be providing new services to new customers who will generate an unknown amount of traffic. Traffic exchanged during the past six months has no bearing on traffic that the parties propose to exchange pursuant to this agreement.

Under the terms of the proposed Interconnection Agreement that have already been found acceptable by both parties, TVC will provide STC with forecasts of expected traffic that will be used to size the direct interconnection contemplated by the agreement. Such forecasts have been sufficient information for virtually every interconnection agreement on file at the PSC and should be sufficient here as well. Neither the disputed or non-disputed sections of the agreement call for estimates on traffic by exchange, and such an exercise would be highly speculative at this point.

**Nevertheless, and without waiving its objections, TVC provides the following information in response to this request. According to TVC's best good faith estimates, TVC terminates approximately 1,253K MOU to STC over a 6 month period, and terminates approximately 991K MOU on behalf of STC.**

**Attachment B**

**to**

**May 21, 2012 Initial Brief**

**Case 12-C-0138**

**TVC Response to STC Information Request No. 1**

**Information Request No. 1:** Please provide a list showing the blocks of telephone numbers (at the NPA-NXX-X level) used for assignment to end users by TVC or by a retail provider for which TVC provides wholesale telecommunications services in the Albany LATA ("LATA 134"). For each block of numbers (NPA-NXX-X) provide the following:

**Response:**

**Attached is a 2-page list provided in response to this question. The first list represents central office codes (NXXs) that NANPA shows as assigned to Mid-Hudson Communications, OCN 7989. The second list represents thousand-number blocks (NXX-X) that the Pooling Administrator shows assigned to Mid-Hudson Communications, OCN 7989.**

- (a) The associated rate center area for each NPA-NXX-X block,

**Please see attached 2-page list.**

- (b) The effective date each NPA-NXX-X block were acquired,

**Please see attached 2-page list.**

- (c) The OCN of the operating entity that acquired each NPA-NXX-X from NANPA, other regulatory entity, or any other carrier,

**The OCN assigned to Mid-Hudson Communications is OCN 7989.**

- (d) Whether TVC (or a third party provider to which TVC provides wholesale service) obtained such numbers, by NPA-NXX-X block, through acquisition of, or merger with, another carrier(s). If yes, please provide a brief description of this transaction leading to the acquisition of the NPX-NXX-X block of numbers, and

**Mid-Hudson Communications was merged with TVC Albany, Inc. in 2002. TVC is the successor company of Mid-Hudson Communications.**

- (e) Describe how information is listed in the LERG for each number block, *e.g.*, to include the switch to which traffic is to be homed for interLATA call routing, intraLATA call routing, etc.?

**TVC objects to this request as the material sought is irrelevant to the terms and conditions of the interconnection agreement between TVC and STC. The terms and conditions of the proposed agreement already provide for the exchange of this information at the appropriate time.**

State	NPA-NXX	RateCenter	AssignDate
NY	518-512	ALBANY	11/16/2006
NY	518-540	ALBANY	
NY	518-694	ALBANY	
NY	518-876	AMSTERDAM	
NY	518-712	AVERILL PK	
NY	518-889	BALLSTNSPA	
NY	518-719	CATSKILL	
NY	518-721	CLAVERACK	
NY	518-823	COBLESKILL	
NY	518-867	COLONIE	
NY	518-412	ELIZABHTN	
NY	518-681	GLENSFALLS	
NY	518-659	HOOSICKFLS	
NY	518-697	HUDSON	
NY	518-278	JONESVILLE	
NY	518-685	LAKEGEORGE	
NY	518-418	LAKEPLACID	
NY	518-651	MALONE	
NY	518-652	MECHANICVL	
NY	518-722	OAK HILL	
NY	518-699	PLATTSBG	
NY	518-289	ROUND LAKE	
NY	518-323	SARANAC LK	
NY	518-682	SARATOGSPG	
NY	518-579	SCHENCTADY	
NY	518-847	SCHENCTADY	
NY	518-586	TICONDROGA	
NY	518-720	TROY	
NY	518-655	VOORHEESVL	02/23/2006
NY	518-981	WILLSBORO	
NY	518-750	WINDHAM	



NPA	NXX	X	Status	Contaminated (Y or N)	Rate Center	Block Effective Date	Assigned To	OCN	Date Assigned
518	242	7	AS	Y	ALBANY	09/11/2005	MID-HUDSON COMMUNICATIONS, INC.	7989	08/12/2005
518	275	4	AS	N	ALBANY	05/10/2004	MID-HUDSON COMMUNICATIONS, INC.	7989	04/28/2004
518	299	7	AS	N	PRATTSVL	02/27/2008	MID-HUDSON COMMUNICATIONS, INC.	7989	02/14/2008
518	336	1	AS	N	CASTLETON	08/27/2002	MID-HUDSON COMMUNICATIONS, INC.	7989	08/07/2002
518	380	5	AS	N	ALBANY	04/28/2011	MID-HUDSON COMMUNICATIONS, INC.	7989	04/04/2011
518	444	8	AS	N	ATHENS	05/21/2007	MID-HUDSON COMMUNICATIONS, INC.	7989	05/04/2007
518	512	2	AS	N	ALBANY	11/16/2006	MID-HUDSON COMMUNICATIONS, INC.	7989	11/06/2006
518	512	8	AS	Y	ALBANY	04/19/2010	MID-HUDSON COMMUNICATIONS, INC.	7989	03/26/2010
518	591	4	AS	N	ALBANY	06/07/2008	MID-HUDSON COMMUNICATIONS, INC.	7989	05/08/2008
518	623	7	AS	N	WARRENSBG	03/10/2003	MID-HUDSON COMMUNICATIONS, INC.	7989	02/14/2003
518	655	7	AS	N	VOORHEESVL	04/16/2006	MID-HUDSON COMMUNICATIONS, INC.	7989	02/23/2006
518	672	8	AS	N	PHILMONT	06/07/2003	MID-HUDSON COMMUNICATIONS, INC.	7989	05/14/2003
518	694	7	AS	N	ALBANY	05/14/2005	MID-HUDSON COMMUNICATIONS, INC.	7989	05/05/2005
518	697	5	AS	N	HUDSON	10/05/2007	MID-HUDSON COMMUNICATIONS, INC.	7989	09/26/2007
518	697	6	AS	N	HUDSON	10/05/2007	MID-HUDSON COMMUNICATIONS, INC.	7989	09/26/2007
518	697	7	AS	N	HUDSON	01/14/2007	MID-HUDSON COMMUNICATIONS, INC.	7989	01/05/2007
518	895	0	AS	N	DELANSON	08/27/2002	MID-HUDSON COMMUNICATIONS, INC.	7989	08/07/2002
518	966	0	AS	N	GREENVILLE	05/21/2007	MID-HUDSON COMMUNICATIONS, INC.	7989	05/04/2007
845	235	8	AS	N	POUGHKEPSI	09/06/2002	MID-HUDSON COMMUNICATIONS, INC.	7989	07/18/2002
845	863	8	AS	N	NEWBURGH	03/03/2003	MID-HUDSON COMMUNICATIONS, INC.	7989	02/06/2003
845	913	2	AS	N	NEWBURGH	01/02/2003	MID-HUDSON COMMUNICATIONS, INC.	7989	12/23/2002
845	913	3	AS	N	NEWBURGH	01/02/2003	MID-HUDSON COMMUNICATIONS, INC.	7989	12/23/2002
845	913	4	AS	N	NEWBURGH	01/02/2003	MID-HUDSON COMMUNICATIONS, INC.	7989	12/23/2002

**Attachment C**

**to**

**May 21, 2012 Initial Brief**

**Case 12-C-0138**

**TVC Response to STC Information Request No. 9**

**Excerpts from TVC P.S.C. Tariff No. 2**

Section 3 – CONNECTION CHARGES (cont'd)

## 3.5 PRIMARY INTEREXCHANGE CARRIER CHANGE CHARGE

Customers may be presubscribed to the carrier of their choice for both interLATA and intraLATA service. The customer will incur a charge each time there is a change in the long distance carrier associated with the customer's intraLATA or interLATA service after the initial installation of service.

Charge: \$ 5.00

## 3.6 RECORD ORDER CHARGE

The Record Order Charge (ROC) will be applied when a Customer requests an administrative change to their account, such as change in billing name or billing address. The ROC will also apply in other situations where the Customer requests an administrative change, as specified in this tariff.

	Min	Max
Charge:	\$ 10.00	\$ 75.00

Section 4 – INTRALATA TOLL USAGE AND MILEAGE CHARGES

4.1 GENERAL

4.1.1 Description

IntraLATA toll service is furnished for communication between telephones in different local calling areas within a particular LATA in accordance with the regulations and schedules of charges specified in this tariff. The toll service charges specified in this section are in payment for all service furnished between the calling and called telephone, except as otherwise provided in this Tariff.

IntraLATA toll calling includes the following types of calls: direct dialed, calling card, collect, 3<sup>rd</sup> number billed, special toll billing, requests to notify of time and charges, person to person calling and other station to station calls.

4.1.2 Classes of Calls

Service is offered as two classes: station to station calling and operator assisted calling.

- a) Station to Station Service is that service where the person originating the call dials the telephone number desired.
- b) Operator Assisted Service is that service where the person initiating the call requires the assistance of an automated or live operator. Surcharges apply for such calls in addition to base rates.

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SECTION 10 – LOCAL CALLING AREAS (cont'd)

## 10.3 NPA 518 LOCAL CALLING AREAS

From the Albany exchange to the following exchanges:

Albany	Greenfield Center	Saratoga Springs
Altamont	Greenville	Schenectady
Averill Park	Jonesville	Schuylerville
Ballston Spa	Hoosick Falls (N)	South Bethlehem
Berlin (N)	Kinderhook	Stephentown (N)
Berne	Mariaville	Troy
Castleton	Mechanicville	Valley Falls
Chatham (N)	Nassau	Voorheesville
Clarksville	Pittstown	West Lebanon (N)
Colonie	Ravena	Westerlo
Coxsackie	Rotterdam Junction	
Delanson	Round Lake	
Galway		

SECTION 10 – LOCAL CALLING AREAS (cont'd)

10.3 NPA 518 LOCAL CALLING AREAS (cont'd)

From the Amsterdam Exchange to the following exchanges:

Amsterdam  
Broadalbin  
Galway  
Johnstown  
Mariaville  
Rotterdam Junction  
Tribes Hill

SECTION 10 – LOCAL CALLING AREAS (cont'd)

10.3 NPA 518 LOCAL CALLING AREAS (cont'd)

From the Averill Park Exchange to the Following exchanges:

Albany  
Averill Park  
Castleton  
Colonie  
Jonesville  
Nassau\*  
Schenectady  
Troy

SECTION 10 – LOCAL CALLING AREAS (cont'd)

10.3 NPA 518 LOCAL CALLING AREAS (cont'd)

From the Ballston Spa Exchange to the following exchanges:

Albany  
Ballston Spa  
Colonie  
Galway  
Greenfield Center  
Jonesville  
Mechanicville  
Round Lake  
Saratoga Springs  
Schenectady  
Troy



SECTION 10 – LOCAL CALLING AREAS (cont'd)

10.3 NPA 518 LOCAL CALLING AREAS (cont'd)

From the Claverack Exchange to the following exchanges:

Athens  
Claverack  
Copake  
Germantown  
Hudson  
Philmont  
Pine Plains

SECTION 10 – LOCAL CALLING AREAS (cont'd)

10.3 NPA 518 LOCAL CALLING AREAS (cont'd)

From Catskill exchange to:

Athens  
Cairo  
Catskill  
Coxsackie  
Freehold  
Greenville  
Hudson  
Palenville

SECTION 10 – LOCAL CALLING AREAS (cont'd)

10.3 NPA 518 LOCAL CALLING AREAS (cont'd)

From the Cobleskill Exchange to the Following Exchanges:

Cobleskill  
Bramanville (Call Band "B")  
Central Bridge  
Richmondville  
Sharon Springs

SECTION 10 – LOCAL CALLING AREAS (cont'd)

## 10.3 NPA 518 LOCAL CALLING AREAS (cont'd)

From the Colonie exchange to the following exchanges:

Albany	Jonesville	South Bethlehem
Altamont	Mariaville	Troy
Averill Park	Mechanicville	Valley Falls
Ballston Spa	Nassau**	Voorheesville
Berne	Pittstown	Westerlo
Castleton	Ravena	
Clarksville	Rotterdam Jct. (N)	
Colonie	Round Lake	
Delanson	Saratoga Springs	
Galway	Schenectady	
Greenfield Center	Schuylerville	

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SECTION 10 – LOCAL CALLING AREAS (cont'd)

10.3 NPA 518 LOCAL CALLING AREAS (cont'd)

From Elizabethtown to the following exchanges:

Elizabethtown

SECTION 10 – LOCAL CALLING AREAS (cont'd)

10.3 NPA 518 LOCAL CALLING AREAS (cont'd)

From the Hoosick Falls Exchange to the following exchanges:

Hoosick Falls  
Troy  
Pittstown  
Cambridge  
Albany

SECTION 10 – LOCAL CALLING AREAS (cont'd)

10.3 NPA 518 LOCAL CALLING AREAS (cont'd)

From Glens Falls exchange to:

Argyle  
Corinth  
Fort Ann  
Glens Falls  
Hartford  
Kattskill Bay  
Lake George  
Lake Luzerne  
Saratoga Springs  
Schuylerville

SECTION 10 – LOCAL CALLING AREAS (cont'd)

10.3 NPA 518 LOCAL CALLING AREAS (cont'd)

From Hudson exchange to:

Athens  
Catskill  
Chatham  
Claverack  
Germantown  
Hudson  
Kinderhook  
Philmont



SECTION 10 – LOCAL CALLING AREAS (cont'd)

10.3 NPA 518 LOCAL CALLING AREAS (cont'd)

From the Jonesville exchange to:

Albany	Jonesville	Saratoga Springs
Averill Park	Mechanicville	Schenectady
Ballston Spa	Pittstown	Schuylerville
Colonie	Round Lake	Troy
Delanson		Valley Falls
Galway		

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SECTION 10 – LOCAL CALLING AREAS (cont'd)

10.3 NPA 518 LOCAL CALLING AREAS (cont'd)

From the Lake George Exchange:

Lake George  
Bolton Landing  
Glens Falls  
Warrensburg  
Kattskill Bay

SECTION 10 – LOCAL CALLING AREAS (cont'd)

10.3 NPA 518 LOCAL CALLING AREAS (cont'd)

From the Lake Placid Exchange to the following exchanges:

Lake Placid  
Saranac Lake

SECTION 10 – LOCAL CALLING AREAS (cont'd)

10.3 NPA 518 LOCAL CALLING AREAS (cont'd)

From the Mechanicville Exchange to the following exchanges:

Albany  
Ballston Spa  
Colonie  
Galway (C)  
Jonesville  
Mechanicville  
Pittstown  
Round Lake  
Saratoga Springs  
Schenectady (N)  
Schuylerville  
Troy

SECTION 10 – LOCAL CALLING AREAS (cont'd)

10.3 NPA 518 LOCAL CALLING AREAS (cont'd)

From the Malone exchange to the following exchanges:

Brainardsville  
Chateaugay  
Fort Covington  
Malone  
Moir  
St. Regis Falls

SECTION 10 – LOCAL CALLING AREAS (cont'd)

10.3 NPA 518 LOCAL CALLING AREAS (cont'd)

From the Oak Hill Exchange to the following exchanges:

Cairo  
Freehold  
Greenville  
Oak Hill

SECTION 10 – LOCAL CALLING AREAS (cont'd)

10.3 NPA 518 LOCAL CALLING AREAS (cont'd)

From Plattsburgh exchange to:

Champlain (N)  
Chazy  
Dannemore  
Ellenburg Depot  
Lyon Mountain (N)  
Mooers (N)  
Peru  
Plattsburgh  
Saranac  
West Chazy

SECTION 10 – LOCAL CALLING AREAS (cont'd)

10.3 NPA 518 LOCAL CALLING AREAS (cont'd)

From the Round Lake exchange to the following exchanges:

Albany	Pittstown
Ballston Spa	Round Lake
Colonie	Saratoga Springs
Galway	Schenectady
Jonesville	Troy
Mechanicville	Valley Falls



SECTION 10 – LOCAL CALLING AREAS (cont'd)

10.3 NPA 518 LOCAL CALLING AREAS (cont'd)

From the Saranac Lake exchange to the following exchanges:

Lake Placid  
Paul Smiths  
Saranac Lake  
Tupper Lake

SECTION 10 – LOCAL CALLING AREAS (cont'd)

10.3 NPA 518 LOCAL CALLING AREAS (cont'd)

From Saratoga Springs (681) to:

Albany  
Altamont  
Ballston Spa  
Colonie  
Corinth  
Galway  
Glens Falls  
Greenfield Center  
Jonesville  
Lake Luzerne  
Mechanicville  
Round Lake  
Saratoga Springs  
Schenectady  
Schuylerville  
Troy

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**SECTION 10 – LOCAL CALLING AREAS (cont'd)****10.3 NPA 518 LOCAL CALLING AREAS (cont'd)**

From the Schenectady exchange to the following exchanges:

Albany	Esperance	Round Lake
Altamont	Galway	Saratoga Springs (C)
Averill Park	Greenfield Center (C)	Schenectady
Ballston Spa	Jonesville	Schuylerville (N)
Berne	Mariaville	South Bethlehem (N)
Castleton	Mechanicville	Tribes Hill (N)
Central Bridge (C)	Nassau	Troy
Clarksville	Pittstown	Valley Falls
Colonie	Ravena	Voorheesville
Delanson	Rotterdam Junction	Westerlo

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SECTION 10 – LOCAL CALLING AREAS (cont'd)

10.3 NPA 518 LOCAL CALLING AREAS (cont'd)

From the Ticonderoga exchange to the following exchanges:

Hague  
Ticonderoga  
Putnam  
Crown Point (N)

SECTION 10 – LOCAL CALLING AREAS (cont'd)

10.3 NPA 518 LOCAL CALLING AREAS (cont'd)

From Troy exchange to:

Albany  
Altamont  
Averill Park  
Ballston Spa  
Berlin (N)  
Berne  
Castleton  
Clarksville  
Colonie  
Delanson  
Galway  
Hoosick Falls (N)  
Jonesville  
Mariaville  
Mechanicville  
Nassau  
Pittstown  
Ravena  
Round Lake  
Saratoga Springs  
Schenectady  
Schuylerville (N)  
Stephentown (N)  
South Bethlehem  
Troy  
Valley Falls  
Voorheesville  
Westerlo

SECTION 10 – LOCAL CALLING AREAS (cont'd)

10.3 NPA 518 LOCAL CALLING AREAS (cont'd)

From the Willsboro exchange to the following exchange:

Willsboro

SECTION 10 – LOCAL CALLING AREAS (cont'd)

10.3 NPA 518 LOCAL CALLING AREAS (cont'd)

From the Windham exchange to the following exchanges:

Hunter  
Lexington  
Prattsville  
Tannersville  
Windham

SECTION 11 – EXPLANATION OF TERMS (cont'd)

INCOMING SERVICE GROUP

Two or more central office lines arranged so that a call to the First line is completed to a succeeding line in the group when the first line is in use.

INTERFACE

That point on the premises of the subscriber at which provision is made for connection of facilities provided by someone other than the Company to facilities provided by the Company.

INTEROFFICE MILEAGE

The segment of a line which extends between the central office serving the originating and terminating points.

INTERRUPTION

The inability to complete calls, either incoming or outgoing or both, due to Company facilities malfunction or human errors.

JOINT USER

A person, firm, or corporation which uses the telephone service of a subscriber as provided in Section 1 of the Tariff.

KILOBIT

One thousand bits.

LATA

Local Access and Transport Area. The area within which the Company provides local and long distance ("intraLATA") service. For call to numbers outside this area ("interLATA") service is provided by long distance companies.



SECTION 11 – EXPLANATION OF TERMS (cont'd)

LEASED CHANNEL

A non-switched electrical path used for connection of equipment furnished by the subscriber to equipment furnished by the subscriber or the Company for a specific purpose.

LINK

The physical facility from the network interface on an end-user's or carrier's premises to the point of interconnection on the main distribution frame of the Company's central office.

LOCAL CALL

A call which, if place by a customer over the facilities of the Company, is not rated as a toll call.

LOCAL CALLING AREA

The area, consisting of one or more central office districts, within which a subscriber for exchange service may make telephone calls without a toll charge.

LOCAL SERVICE

Telephone exchange service within a local calling area

LOOP START

Describes the signaling between the terminal equipment or PBX/key system interface and the Company's switch. It is the signal requesting service.

LOOPS

Segments of a line which extend from the serving central office to the originating and to the terminating point.

MEGABIT

One million bits

**Attachment D**

**to**

**May 21, 2012 Initial Brief**

**Case 12-C-0138**

**TVC Response to STC Information Request No. 8**

**Information Request No. 8:** Please provide (by electronic file in both word and pdf format, if available) the current contract agreements under which TVC obtains interconnection with each incumbent local exchange carrier operating within LATA 134.

**RESPONSE:**

**TVC has Interconnection Agreements with Berkshire and Taconic. Copies of the agreements in .pdf format are provided.**

**The contract governing TVC's interconnection with Verizon is Verizon's NY PSC Tariff.**

## Tom Moorman

---

**From:** Steven D. Wilson <swilson@HarrisBeach.com>  
**Sent:** Thursday, May 10, 2012 1:08 PM  
**To:** Eleanor.Stein@dps.ny.gov  
**Cc:** Tom Moorman; 'Kath Mullholand'; Greg Sichak; david.kitchen@dps.ny.gov; linda.dorsey@dps.ny.gov; Maureen.McCauley@dps.ny.gov; Paul M. Schudel; robert.laurenzo@dps.ny.gov  
**Subject:** Case 12-C-0138: Arbitration Between TVC Albany, Inc., and State Telephone Company

Judge Stein,

In accordance with the Procedural Ruling directing that all discovery be filed, TVC Albany, Inc. ("TVC"), hereby informs Your Honor of additional information exchanged between the parties.

In addition to the two questions for which State Telephone Company ("STC") seeks a ruling compelling a response, STC also posed the following question in an e-mail to TVC on 5/4.

*3. The tariff number for the Verizon New York tariff that TVC has referenced in its response to IR 8*

TVC provided the following response:

**The Verizon tariffs are located at:**

[http://www22.verizon.com/tariffs/Tariffs.aspx?optState=NY&entity=I\\*&type=T\\*&typename=IT&tims\\_status=E](http://www22.verizon.com/tariffs/Tariffs.aspx?optState=NY&entity=I*&type=T*&typename=IT&tims_status=E)

PSC NY No. 8, 9, 10

**Steven D. Wilson**  
Senior Counsel

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## Network Interconnection Services

## 2. Tariff Information and General Regulations

### 2.3 Tariff Terminology

2.3.2	Definitions
<b>Interexchange Carrier or Interexchange Common Carrier</b> —Any individual, partnership, association, joint-stock company, trust, governmental entity or corporation, engaged for hire in intrastate communication by wire or radio, between two or more exchanges.	
<b>Interstate Communications</b> —Both interstate and foreign communications.	
<b>Intrastate Communications</b> —Any communications within a state subject to oversight by a state regulatory commission as provided by the laws of the state involved.	
<b>Legal Holiday</b> —Days other than Saturday or Sunday for which the Telephone Company is normally closed. These include New Year's Day, Independence Day, Labor Day, Veteran's Day, Thanksgiving Day, Christmas Day and a day when Washington's Birthday, Memorial Day or Columbus Day is legally observed and other locally observed holidays when the Telephone Company is closed.	
<b>Line</b> —A single electrical path between a Telephone Company wire center and a point at the customer's premises. The electrical path of a line has a transmission capability in the frequency range of 300 to 3000 Hz.	
<b>Local Access and Transport Area</b> —A geographic area established for the provision and administration of communications service. It encompasses one or more designated exchanges, which are grouped to serve common social, economic and other purposes. For purposes of administering regulations and rates contained in this tariff, LATA also denotes the Rochester market area.	
<b>Local Exchange Service</b> —A service which supplies the end user with local dial tone and a telephone connection to, and a unique telephone number address on the public switched telecommunications network (e.g., basic exchange lines, basic exchange trunks, digital PBX trunks, centrex or centrex-type station lines).	
<b>Local Traffic</b> —Any call between an end user of a CLEC-provided local exchange service and an end user of a Telephone Company provided local exchange service where the CLEC end user is assigned a telephone number residing within a CLEC NXX code and the Telephone Company end user is assigned a telephone number residing within a Telephone Company NXX code, and where both exchange services bear NPA-NXX designations corresponding to: (1) same region (i.e., home region call) or (2) the same geographic area where the Telephone Company provides intrastate interLATA local exchange service under extended area service arrangements; or (3) the same flat rate primary calling area or Band A, as they are delineated in the Telephone Company's tariffs. Also included within this definition of local traffic are calls redirected from the Telephone Company to the CLEC or from the CLEC to the Telephone Company under interim number portability agreements that otherwise meet the above mentioned criteria. For purposes of applying terminating access rates under this tariff, such redirected calls are treated as new calls originated from the Telephone Company end office where the originating end user-dialed NXX code resides.	

Issued: December 20, 2000

Effective: January 19, 2001

By Sandra Dilorio Thorn-General Counsel  
1095 Avenue of the Americas, NY, NY 10036

## Network Interconnection Services

2. Tariff Information and General Regulations  
2.3 Tariff Terminology

## 2.3.2 Definitions

**POTS Traffic**—IntraLATA exchange service traffic (local calls, toll/interregion calls, and 800 dialed calls with POTS translated numbers) which originates at the valid NXXs served by a CLEC's network and terminates at the NXXs served by the Telephone Company's network. 500, 700, 900, N11, operator, directory assistance and interLATA traffic are not considered to be POTS traffic for purposes of this tariff. IntraLATA calls carried by a CLEC that do not originate from that CLEC's valid NXX in the LATA are also not included in this definition. Moreover, this definition does not include exchange access, cellular and other wireless traffic. For the purpose of this definition, exchange service shall be a service which supplies the user with local dial tone and a telephone connection to, and a unique telephone number address on the public switched telecommunications network (e.g., basic exchange lines, basic exchange trunks, digital PBX trunks, centrex or centrex-type station lines).

**Premises**—A building or buildings on continuous property (except railroad right-of-way, etc.), not separated by a public highway.

**Responsible Organization**—That entity which is responsible for the management and administration of an 800 number record in the 800 SMS.

**Reseller**—A customer which purchases telecommunications services from the Telephone Company for resale as telecommunications services to its own customers and who possess a Certificate of Public Convenience and Necessity from PSC, or are designated as eligible for a sale-for-resale exclusion from the New York State Department of Taxation and Finance.

**Service Control Point**—The SS7 node where Telephone Company databases (e.g. LIDB) reside.

**Service Switching Point**—A signaling point that has the capability of initiating database queries.

**Signaling Point**—A switch that is capable of supporting SS7 signaling.

**Signaling Point of Interconnection**—The customer designated location, in the same LATA as the Telephone Company STP, where SS7 signaling information is exchanged between the Telephone Company and the CLEC.

**Signaling System 7 Network**—A digital data network carrying signaling information which interfaces with the Telephone Company voice/data network for services using the ANSI CCS7 signaling protocol.

**Signaling Transfer Point**—A signaling point which routes and/or transfers signaling messages through the common channel signaling network.

**Subtending End Office of an Access Tandem**—An end office that has final trunk group routing through that tandem.

**Switching Point Code**—A nine character, numeric code that identifies a switch that is supported by SS7 signaling.

Issued: November 1, 2010

Effective: January 3, 2011

By Keefe B. Clemons-General Counsel  
140 West Street, NY, NY 10007

## Network Interconnection Services

**2. Tariff Information and General Regulations****2.3 Tariff Terminology****2.3.2 Definitions**

**Synchronous Optical Network**—An optical interface standard that allows for transporting many different digital signals using a basic building block or base transmission rate of 51.84 Mbps (OC-1/STS-1) and higher rates are direct multiples of the base rate, such as OC-3/STS-3 which is equal to three times the base transmission rate.

**Tandem**—Refer to Access Tandem.

**Tandem Signaling**—All the signaling and data elements necessary for identifying by FGD switched access customer or a CLEC, each access or CLEC call in the routing of multi-FGD traffic via common transport to an access tandem.

**Telephone Company**—Verizon New York Inc. unless otherwise stated.

**Transmission Path**—An electrical path capable of transmitting signals within the range of the service offering, (e.g., a voice grade transmission path is capable of transmitting voice frequencies within the approximate range of 300 to 3000 Hz). A transmission path is comprised of physical or derived channels consisting of any form or configuration of facilities used in the telecommunications industry.

**Trunk**—A transmission path connecting two switching systems in a network, used in the establishment of an end-to-end connection.

**Trunk Circuit Identification Code**—The number assigned to each switched trunk to identify it to the SS7 signaling system.

**Trunk Group**—A set of trunks which are traffic engineered as a unit for the establishment of connections between switching systems in which all of the communications paths are interchangeable.

**Trunk Side Connection**—The connection of a transmission path to the trunk side of a local exchange switching system.

**Uniform Service Order Code**—A three or five character alphabetic, numeric, or an alphanumeric code that identifies a specific item of service or equipment. USOCs are used in the Telephone Company billing system to generate recurring rates and NRCs.

**User Service Information Parameter**—A mandatory SS7 parameter which carries bearer capability information. It is contained in the SS7 initial address message and is used for call routing. The USI parameter specifies the transmission requirements of a call.

**V&H Coordinates Method**—A method of computing airline miles between two points by utilizing an established formula which is based on the vertical and horizontal coordinates of the two points.

**Wire Center**—A building in which one or more central offices or access tandems are located.

## Network Interconnection Services

6. CLEC Switched Service  
6.1 General

Rates and charges for services described herein are contained in Section 35.6.

6.1.1	Description
A.	<p>CLEC switched service provides termination of switched intraLATA POTS traffic. A separate carrier identification code is required for this service arrangement. This service provides the termination and transmission of POTS calls from the CLEC's POT to the Telephone Company end user where the traffic terminates. For avoidance of doubt, the rates and regulations in this Part 6 apply without regard to whether the traffic in question is originated or terminated or both in Internet Protocol ("IP") format, provided that the traffic is delivered to the Telephone Company in time division multiplexing format and that it would be eligible for CLEC switched service if it had not been originated or terminated or both in IP format.</p> <p>1. The CLEC will determine whether the service is to be directly routed to either MPA, MPB, MPC, 2 Way MPA RTET, or 2 Way MPB RTET.</p> <p>a. <b>2 Way MPA RTET and 2 Way MPB RTET</b>—The end office will correspond to the information published and updated in the LERG. At the option of the CLEC, 64CCC may be utilized.</p> <p>2. When space, facilities and network capacity for termination at the POT of the meet point are not available, the Telephone Company may select and make available another meet point.</p>
B.	<p>CLEC switched service is provided as a terminating voice frequency transmission path composed of facilities determined by the CLEC. The voice frequency transmission path permits the transport of calls in the terminating direction from the CLEC's POT to the Telephone Company end user. All voice frequency transmission paths may be comprised of any form or configuration of plant capable of and typically used in the telecommunications industry for the transmission of voice and associated telephone signals within the frequency bandwidth of approximately 300 to 3000 Hz.</p>
C.	<p>CLEC NET-I services purchased under this tariff will not be prorated to reflect shared use or mixed use with other services such as private line services, special access services, DID-like and DOD-like services, and other services precluded under Section 2.5.1.</p>
D.	<p>Signaling for these connections will use CCS/SS7 protocol where available or MF signaling where CCS/SS7 signaling is not available.</p> <p>1. When CCS/SS7 signaling is used, service must conform to the requirements in TR-TSV-000905 and TR-TSV-000962.</p>
E.	<p><b>Limitations</b></p> <p>1. 2 Way MPA or 2 Way MPB RTET arrangements are not available with the following arrangements, services or options which, unless otherwise specified, are available under this tariff.</p> <p>a. 911/E911</p> <p>b. Directory Assistance</p>

(N)  
(N)

Issued: December 16, 2011

Effective: January 20, 2012

By Keefe B. Clemons-General Counsel  
140 West Street, New York, NY 10007



**Attachment E**

**to**

**May 21, 2012 Initial Brief**

**Case 12-C-0138**

**TVC Response to STC Information Request No. 8  
TVC Interconnection Agreements with  
Berkshire Telephone Corporation and Taconic Telephone Corporation**



Christopher S. Barron  
Director, State Affairs

521 East Morehead Street  
Suite 250  
Charlotte, NC 28202  
704-344-8150  
www.fairpoint.com

September 9, 2010

Honorable Jaclyn A. Brilling  
Secretary  
New York State Public Service Commission  
Three Empire Plaza  
Albany, New York 12223

Re: Interconnection Agreement between Berkshire Telephone Corporation and TVC Albany, Inc.

Dear Secretary Brilling:

Enclosed for filing please find the executed Interconnection Agreement adoption between Berkshire Telephone Corporation d/b/a FairPoint Communications ("Berkshire") and TVC Albany, Inc. d/b/a Tech Valley Communications ("TVC") for approval by the New York State Public Service Commission ("Commission"), in accordance with §§ 252(e)(1) and (e)(2) of the Telecommunications Act of 1996 ("Act").

Specifically, pursuant to § 252(i) of the Act, TVC elected to adopt the terms of the existing Commission-approved Interconnection Agreement between Berkshire and Sprint Communications Company L.P., which is attached as Appendix 1 (consisting of 32 pages). A copy of the adoption letter agreement is enclosed.

Section 252(e)(4) of the Act specifies that an interconnection agreement shall be deemed approved if a state agency does not act to approve or reject the agreement within ninety (90) days of the filing of the agreement with the Commission.

Communication to Berkshire may be sent to:

Regulatory Department  
Berkshire Telephone Corporation  
1 Davis Farm Road  
Portland, Maine 04103

With a copy to:

Shirley J. Linn  
General Counsel and Executive Vice President  
FairPoint Communications, Inc.  
521 E. Morehead Street, Suite 500  
Charlotte, North Carolina 28202

Communication to TVC may be sent to:

Harlan Bauer  
Controller  
TVC Albany, Inc. d/b/a Tech Valley Communications  
87 State Street  
Albany, New York 12207

With a copy to:

Keith Roland, Esq.  
Herzog, Engstrom & Koplovitz PC  
7 Southwoods Blvd  
Albany, New York 12211

If you have any questions regarding this filing, please contact the undersigned at 704-227-3651 or via electronic mail at [cbarron@fairpoint.com](mailto:cbarron@fairpoint.com).

Respectfully Submitted,



Chris Barron

Enclosures

---

cc: Harlan Bauer



521 East Morehead Street  
Suite 250  
Charlotte, NC 28202  
704-344-8150  
[www.fairpoint.com](http://www.fairpoint.com)

August 26, 2010  
*Via Electronic Mail*

TVC Albany, Inc. d/b/a Tech Valley Communications  
Attn: Harlan Bauer  
Controller  
87 State Street  
Albany, New York 12207

**Re: Request for Adoption Under Section 252(i) of the Communications Act**

Dear Mr. Bauer:

Berkshire Telephone Corporation d/b/a FairPoint Communications ("Berkshire"), a New York corporation with an address for notice c/o FairPoint Communications, Inc. at 521 East Morehead Street, Suite 500, Charlotte, NC 28202, has received correspondence stating that TVC Albany, Inc d/b/a Tech Valley Communications ("Tech Valley"), a corporation with a principal place of business at 87 State Street, Albany, NY 12207 wishes, pursuant to 252(i) of the Communications Act of 1934, as amended ("Act"), to adopt the terms of the Interconnection Agreement between Sprint Communications Company L.P. ("Sprint") and Berkshire approved by the New York Public Service Commission (the "Commission") as an effective agreement within the State of New York, as such agreement exists on the date hereof after giving effect to operation of law (the "Terms"). The current pricing schedule for Berkshire is attached hereto as Exhibit A. Please note the following with respect to Tech Valley's adoption of the Terms.

1. By Tech Valley's countersignature on this letter, Tech Valley hereby represents and agrees to the following nine points:
    - a) Berkshire is a debtor-in-possession operating under Chapter 11 of Title 11 of the United States Code in a bankruptcy case pending before the United States Bankruptcy Court for the Southern District of New York (Case No. 09-16335 (BRL)).
    - b) Tech Valley adopts and agrees to be bound by the Terms and, in accordance with the Terms agrees that Tech Valley shall be substituted in place of Sprint in the Terms wherever appropriate.
    - c) For avoidance of doubt, adoption of the Terms does not include adoption of any provision imposing any obligation on Berkshire or Tech Valley that no longer applies to Berkshire or Tech Valley pursuant to (i) any Order by the Commission; (ii) any Order by the Federal Communications Commission; or (iii) that is not otherwise required by 47 U.S.C. § 251(c)(3) or by 47 C.F.R. Part 51.
-

- d) If any part or all of Sprint's interconnection agreement is rejected by Berkshire during the current bankruptcy case, then Tech Valley agrees this adoption agreement and the adoption of the associated Sprint interconnection agreement will terminate within 45 days of that rejection becoming effective and Tech Valley shall either request to opt into another interconnection agreement or to negotiate a different interconnection agreement with Berkshire within that 45-day time period. Should the parties fail to reach an agreement in such time, they agree to continue to operate under the existing agreement until a replacement agreement is effective.
- e) Notice to Tech Valley and Berkshire as may be required or permitted under the Terms shall be provided as follows:

*To Tech Valley:* Harlan Bauer  
Controller  
TVC Albany, Inc. d/b/a Tech Valley Communications  
87 State Street  
Albany, NY 12207  
hbauer@techvalleycom.com

*With a copy to:* Keith Roland, Esq.  
Herzog, Engstrom & Koplovitz PC  
7 Southwoods Blvd  
Albany, NY 12211

*To Berkshire:* Regulatory Department  
FairPoint Communications  
1 Davis Farm Road  
Portland, ME 04103

*With a copy to:* Shirley J. Linn  
General Counsel and Executive Vice President  
FairPoint Communications, Inc.  
521 East Morehead Street, Suite 500  
Charlotte, NC 28202

- f) Tech Valley represents and warrants that it is a certified provider of local telecommunications service in the State of New York, and that its adoption of the Terms will cover services in the State of New York only.
- g) The Parties agree that the Terms shall supersede and replace in full any and all prior agreements, written, and oral, between Tech Valley and Berkshire for interconnection and other services addressed in the Terms. Any outstanding payment obligations of the parties that were incurred but not fully paid under any prior agreement between Tech Valley and Berkshire constitute payment obligations of the parties under this adoption.
- h) Berkshire's pricing schedule (as schedule may be amended from time to time) for interconnection agreements which is attached as Exhibit A hereto, shall apply to Tech Valley's adoption of the Terms. Tech Valley should note that the aforementioned

pricing schedule may contain rates for certain services, the terms of which are not included in the Terms or that are otherwise not part of the adoption, and may include phrases or wording not identical to those utilized in the Terms. The inclusion of such rates in no way obligates Berkshire to provide the subject services and in no way waives Berkshire's rights, and the use of different wording or phrasing in the pricing schedule does not alter the obligations and rights set forth in the Terms.

- i) Tech Valley's adoption of the Terms shall become effective on the date the New York Public Service Commission approves this agreement. Berkshire shall file this adoption letter with the Commission promptly upon receipt of an original of this letter countersigned by Tech Valley.
2. As the Terms are being adopted by Tech Valley pursuant to § 252(i) of the Act, Berkshire does not provide the Terms to Tech Valley as either a voluntary or negotiated agreement. The filing and performance by Berkshire of the Terms does not in any way constitute a waiver by Berkshire of any position as to the Terms or a portion thereof, nor does it constitute a waiver by Berkshire of any rights or remedies it may have to seek review of the Terms, or to seek to review any provisions included in the Terms as a result of Tech Valley's adoption of the Terms.
3. Nothing herein shall be construed as or is intended to be a concession or admission by Berkshire that any provision in the Terms complies with the rights and duties imposed by the Act, the decisions of the FCC and the Commission, the decisions of the courts, or other law, and Berkshire expressly reserves its full rights to assert and pursue claims arising from or related to the Terms.
4. Berkshire reserves the right to deny Tech Valley's application of the Terms, in whole or in part, upon proving to the Commission that:
  - a) the costs of providing the Terms to Tech Valley are greater than the costs of providing them to Sprint;
  - b) provisioning the Terms to Tech Valley is not technically feasible; and/or
  - c) To the extent that Berkshire otherwise is not required to make the Terms available to Tech Valley under the law.
5. For avoidance of any doubt, please note that adoption of the terms will not result in reciprocal compensation payments for Internet traffic.
6. Should either party try to apply the Terms in a manner that conflicts with Paragraphs 2 through 5 above, the other party reserves the right to seek appropriate legal and/or equitable relief.

7. In the event that a voluntary or involuntary petition has been or is in the future filed against Tech Valley under bankruptcy or insolvency laws, or any law relating to the relief of debtors, readjustment of indebtedness, debtor reorganization or composition or extension of debt (any such proceeding an "Insolvency Proceeding"), then: (A) all rights of Berkshire under such laws including without limitation, all rights of Berkshire under 11 U.S.C. § 366, shall be preserved, and Tech Valley's adoption of the Terms shall in no way impair such rights of Berkshire; and (B) all rights of Tech Valley resulting from Tech Valley's adoption of the Terms shall be subject to and modified by any Stipulations and Orders entered in the Insolvency Proceeding, including, without limitation, any Stipulation or Order providing adequate assurance of payment to Berkshire pursuant to 11 U.S.C. § 366.

**BERKSHIRE TELEPHONE CORPORATION d/b/a FAIRPOINT COMMUNICATIONS**

By: Suz L Sowell  
Printed Name: Susan L Sowell  
Title: VP + Assistant General Counsel  
Date: 9/2/10

By signing below, Tech Valley agrees to the adoption of the Agreement as well as all terms and conditions specified in Paragraph 1 of this letter.

**TVC ALBANY, INC. d/b/a TECH VALLEY COMMUNICATIONS**

By: Brian Kurkowski  
Printed Name: Brian Kurkowski  
Title: CFO  
Date: 8-31-10



Exhibit A

## Pricing Attachment





**General.** The rates contained in this Pricing Attachment are the rates as referenced in the various sections on the Interconnection Agreement.

**A. Direct Interconnection Facilities:**

- |    |                                     |  |
|----|-------------------------------------|--|
| 1. | Direct Trunk Transport Termination: |  |
|    | a) DS1                              | \$ 94.38 / termination /month                                      |
|    | b) DS3                              | \$ 525.64 / termination /month                                     |
| 2. | Direct Trunk Transport Facility:    |  |
|    | a) DS1                              | \$ 19.14 / mile / month  |
|    | b) DS3                              | \$ 131.77 / mile / month   |
| 3. | Non-recurring Installation Charge   | \$ 338.00 / Per 24 trunks activated or fraction thereof, per order |

**B. Transit Traffic Rate:** \$0.008 / min.

**C. General Charges:**

- |    |                                     |                    |
|----|-------------------------------------|--------------------|
| 1. | Service Order Charge (LSR)**        | \$ 25.00 / request |
| 2. | Service Order Cancellation Charge** | \$ 12.00 / request |
| 3. | Service Order Change Charge**       | \$ 12.00 / request |
| 4. | Expedited Due Date Charge**         | \$ 45.00 / request |
| 5. | Technical Labor:**                  |                    |

Install & Repair Technician:

Basic Time (normally scheduled hours)	\$ 24.57 / ½ hr
*Overtime (outside normally schld hrs on schld work day)	\$ 36.85 / ½ hr
*Premium Time (outside of scheduled work day)	\$ 49.13 / ½ hr

Central Office Technician:

Basic Time (normally scheduled hours)	\$ 29.97 / ½ hr
*Overtime (outside normally schld hrs on schld work day)	\$ 44.96 / ½ hr
*Premium Time (outside of scheduled work day)	\$ 59.95 / ½ hr

LNP Coordinator:

Basic Time (normally scheduled hours)	\$ 43.32 / ½ hr
*Overtime (outside normally schld hrs on schld work day)	\$ 64.99 / ½ hr
*Premium Time (outside of scheduled work day)	\$ 86.65 / ½ hr

Administrative Support:

Basic Time (normally scheduled hours)	\$ 13.65 / ½ hr
*Overtime (outside normally schld hrs on schld work day)	\$ 20.47 / ½ hr
*Premium Time (outside of schedule work day)	\$ 27.29 / ½ hr

- |    |   |   |
|----|---|---|
| 6. | Rates and Charges for LNP Coordinated Hot Cut (CHC) | Per Sections 2 and 3 of the LNP Attachment, charged time will be in half hour increments for the personnel involved in the CHC at the rates in Section 5 above. |
|----|---|---|

\* Minimum 4 hours when a technician is called out during Overtime or Premium Time.

\*\* These charges are reciprocal and apply to both ILEC and CLEC.

**SPRINT/BERKSHIRE CONFORMING AGREEMENT  
NY CASES 05-C-0170 AND 05-C-0183**

**INTERCONNECTION AGREEMENT**

By and Between

**BERKSHIRE TELEPHONE CORPORATION**

And

**SPRINT COMMUNICATIONS COMPANY L.P.**

**SPRINT/BERKSHIRE CONFORMING AGREEMENT  
NY CASES 05-C-0170 AND 05-C-0183**

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**SPRINT/BERKSHIRE CONFORMING AGREEMENT**  
**NY CASES 05-C-0170 AND 05-C-0183**

This Interconnection Agreement ("Agreement") is made effective as of the day of December 15, 2005 by and between Berkshire Telephone Corporation ("Berkshire"), a New York corporation with offices at One Taconic Place, Chatham, NY 12937 and Sprint Communications Company L.P. a Delaware limited partnership with offices at 6160 Sprint Parkway, Overland Park, KS 66251 (Sprint). Berkshire and Sprint may also be referred to herein singularly as a "Party" or collectively as the "Parties."

**RECITALS**

WHEREAS, Berkshire is an incumbent local exchange carrier ("ILEC") and Sprint is a competitive local exchange carrier ("CLEC") and both Parties are authorized by the New York State Public Service Commission ("Commission") to provide telecommunications services in the State of New York; and

WHEREAS, Sections 251 and 252 of the Communications Act of 1934 as amended by the Telecommunications Act of 1996 (the "Act") have specific requirements for interconnection, and the Parties intend to comply with these requirements; and

WHEREAS, The Parties desire to interconnect their respective networks to allow either Party to deliver its originating End User Local Traffic to the other Party for termination to the End Users of the other Party; and

WHEREAS the Parties are entering into this Agreement to set forth the respective obligations of the Parties and the terms and conditions under which the Parties will interconnect their networks and provide other services as required by the Act and applicable law; and

WHEREAS, the Parties have arrived at this Agreement through negotiations undertaken pursuant to the Act and have agreed on the terms and conditions as set forth below.

NOW THEREFORE, in consideration of the mutual obligations set forth below, the Parties agree to the following terms and conditions:

**1. Scope of Agreement**

1.1 This Agreement addresses the terms and conditions under which Sprint and Berkshire agree to exchange only Local Traffic between their respective End Users, as specified in Schedule I, by a direct or indirect connection at the Point of Interconnection in accordance with this Agreement. All traffic that either Party may deliver to the POI that falls outside of the definition of Local Traffic shall not be subject to the terms and conditions of this Agreement (the "Excluded Traffic") but may be subject to other arrangements and/or tariffs of the Parties which shall govern the intercarrier treatment of such Excluded Traffic. The Parties further agree that they will strictly construe the definition of Local Traffic and will ensure that they each will abide by the additional terms and conditions of Section 8 regarding facilities and traffic addressed under this Agreement.

1.2 All Local Traffic exchanged between the Parties shall be compensated in accordance with Section 4, below.

**SPRINT/BERKSHIRE CONFORMING AGREEMENT**  
**NY CASES 05-C-0170 AND 05-C-0183**

- 1.3 Each Party agrees that it will not knowingly provision any of its services in a manner that permits the arbitrage and/or circumvention of the application of applicable switched access charges by the other Party and/or the utilization of the physical connecting arrangements described in this Agreement to permit the delivery to the other Party of Excluded Traffic through the POI. If any arbitrage and/or delivery of Excluded Traffic through the POI is identified, each Party also agrees to take all reasonable steps to terminate and/or reroute any service to one of its end users that permits that End User or any entity to arbitrage and/or circumvent the application of applicable switched access charges by the other Party or that permits the End User or any entity to utilize the POI for the delivery or receipt of Excluded Traffic through the POI; provided, however, that until such time as the arbitrage is resolved, the Party that is allowing the POI to be used for the delivery of Excluded Traffic shall pay either terminating or originating access charges based on the directionality of the traffic and pursuant to the applicable tariff of the other Party..
- 1.4 The Parties enter into this Agreement without prejudice to any positions they have taken previously, or may take in the future in any legislative, regulatory, judicial or other public forum addressing any matters, including matters related specifically to this Agreement, or other types of arrangements prescribed in this Agreement; provided, however, that this agreement shall remain binding on the Parties.
- 1.5 All references to Sections and Schedules are deemed to be references to the Sections of and the Schedules to this Agreement unless the context otherwise requires. Unless the context shall otherwise require, any reference to any agreement, other instrument (including offerings, guides or practices of either Party or other third party), statute, regulation, rule or tariff is to such agreement, instrument, statute, regulation, or rule or tariff as amended and supplemented from time to time (and, in the case of a statute, regulation, rule or tariff, to any successor provision).
- 1.6 The Parties acknowledge that some of the services, facilities, or arrangements described herein may reference the terms of federal or state tariffs of the Parties. Each Party hereby incorporates by reference those provisions of any tariff that governs any terms specified in this Agreement. If any provision contained in this main body of the Agreement and any Exhibit hereto cannot be reasonably construed or interpreted to avoid conflict, the provision contained in this main body of this Agreement shall prevail. If any provision of this Agreement and an applicable tariff cannot be reasonably construed or interpreted to avoid conflict, the Parties agree that the provision contained in this main body of this Agreement prevails.
- 1.7 Each Party shall comply with all federal, state, and local statutes, regulations, rules, ordinances, judicial decisions, and administrative rulings applicable to its performance under this Agreement. Each Party shall promptly notify the other Party in writing of any governmental action that suspends, cancels, withdraws, limits, or otherwise materially affects its ability to perform its obligations hereunder.

**2. Definitions**

Except as otherwise specified herein, the following definitions will apply to all sections contained in this Agreement. Additional definitions that are specific to the matters covered in a

**SPRINT/BERKSHIRE CONFORMING AGREEMENT**  
**NY CASES 05-C-0170 AND 05-C-0183**

particular section may appear in that section. Any term used in this Agreement that is not specifically defined shall have the meaning ascribed to such term in the Act. If no specific meaning exists for a specific term used in this Agreement, then normal usage in the telecommunications industry shall apply.

- 2.1 Act, as used in this Agreement, means the Communications Act of 1934 (47 U.S.C. Section 151 et seq.), as amended by the Telecommunications Act of 1996, and as from time to time interpreted in the duly authorized rules and regulations of the Federal Communications Commission ("FCC") or the Commission.
- 2.2 Certificated Area means the geographic area within which Berkshire is authorized to provide local exchange service and exchange access service as established and defined by the Commission.
- 2.3 Commission means the New York State Public Service Commission.
- 2.4 Customer, End User or End User Customer means the residence or business subscriber that is the ultimate user of telecommunications services provided directly to such subscriber by either of the Parties or by a third party telecommunications carrier that is an authorized Local Exchange Carrier providing local exchange service and for purposes of this Agreement, that may place or receive Local or EAS Traffic and, except for Virtual NXX or FX customers, that is physically located within the Rate Center within the Certificated Area.
- 2.5 DS1 is a digital signal transmission rate of 1.544 Megabits per second ("Mbps").
- 2.6 DS3 is a digital signal transmission rate of 44.736 Mbps.
- 2.7 Information Service Provider or ISP is any entity, including but not limited to an Internet service provider, that provides information services but is not a cable television service provider or any other entity providing voice telecommunications services to end users.
- 2.8 ISP Traffic is traffic originated by an end user of one Party and delivered to the other Party for switching to an ISP.
- 2.9 Interconnection means the indirect or direct physical linking of two networks for the mutual exchange of traffic.
- 2.10 Intra-LATA Toll Traffic is as defined in the Act.
- 2.11 Local Access and Transport Area ("LATA") has the same meaning as that contained in the Act.
- 2.12 Local Exchange Carrier or LEC means any common carrier authorized to provide exchange and exchange access services.
- 2.13 Local Exchange Service means any form of switched telecommunications provided within a defined geographic area known as the local calling area.

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- 2.14 Local Number Portability means the ability of users of telecommunications services to retain, at the same location, existing telecommunications numbers without impairment of quality, reliability, or convenience when switching from one telecommunications carrier to another.
- 2.15 Local Traffic means calls that are exchanged by the Parties between telephone numbers assigned to Rate Centers located within Berkshire's local calling area as defined by Berkshire's general subscriber tariff or like mechanism.
- 2.16 NPA-NXX means the first six digits of a ten-digit telephone number, which denote a consecutive 10,000 number block within the North American Numbering Plan. As used in the Agreement, the term refers exclusively to geographic NPAs associated with Rate Center areas and excludes Service Access Codes, unless otherwise specifically noted.
- 2.17 Point of Interconnection (POI) means the physical location(s) at which the Parties' networks meet for the purpose of exchanging Local Traffic.
- 2.18. Rate Center means the specific geographic point ("Vertical and Horizontal" ("V&H") coordinates) and corresponding geographic area which are associated with one or more particular NPA-NXX codes which have been assigned to a LEC for its provision of basic exchange telecommunications services. The "rate center point" is the finite geographic point identified by a specific V&H coordinate, which is used to measure distance-sensitive end user traffic to/from the particular NPA-NXX designations associated with the specific Rate Center. The "Rate Center area" is the exclusive geographic area identified as the area within which the LEC provides basic exchange telecommunications service bearing the particular NPA-NXX designations associated with the specific Rate Center.
- 2.19. SS7 means Signaling System 7, the common channel out-of-band signaling protocol developed by the Consultative Committee for International Telephone and Telegraph (CCITT) and the American National Standards Institute (ANSI).

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**3. Interconnection Arrangements**

- 3.1 Each Party shall be responsible for the cost and any requirements associated with the establishment, including but not limited to, if applicable, ordering processes and access service request processes of providing trunks to the POI for Local Traffic which that Party originates. The POI must be at or within Berkshire's exchange area boundary. Each Party will be solely responsible for the costs and operation of its portion of the construction of facilities to the POI.
- 3.2 The Parties acknowledge that Sprint may lease facilities from Berkshire or an alternate third party provider, or, construct its own facilities in order to achieve connection at the POI. Where a Party arranged for the leasing or construction by a third party of the facilities it requires to the POI, that Party shall ensure and be responsible for the activities of that third party including, but not limited to, the necessary coordination of that third party's activities with the other Party. At the time of execution of this Agreement, traffic exchanged between the Parties for termination on the other Party's network is at a level that is de minimis and Sprint may choose to indirectly

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Interconnection with Berkshire through the use of a third party's transit service. When Sprint determines that the volume of traffic exchanged between the Parties warrants a direct connection, such direct connection will be established pursuant to 3.3.

- 3.3. The Parties will interconnect their networks for the exchange of traffic as specified in the terms and conditions contained in Schedule I hereto and incorporated by reference. A new POI can be established, or the existing POI moved, only with the consent of both Parties; provided, however, that where one Party requests that the POI be moved, the Party requesting such move may be required to pay the costs of the other Party associated with the move.
- 3.4. The Parties will use the trunk group(s) established at the POI to route Local Traffic to one another, pursuant to the terms and conditions of this Section 3 of the Agreement.
- 3.5. This Agreement is applicable only for the exchange of Local Traffic. Both Parties agree to deliver only traffic within the scope of this Agreement.
- 3.6. Each Party warrants and represents that it will not provision any of its services or exchange any traffic hereunder in a manner that permits the unlawful avoidance of the application of intrastate or interstate access charges by any other Party including, but not limited to, third party carriers, aggregators, resellers, and the Commission-defined unlawful resale or bridging of Local Traffic. Each Party also agrees to take all reasonable steps to terminate any service to one of its users that permits that user to unlawfully avoid the application of access charges by the other Party.
- 3.7. Both Parties warrant and represent that they will: (a) assign telephone numbers in a manner consistent with this Agreement to End Users that obtain Local Exchange Service in the Rate Center areas associated with the telephone number; (b) provision their local exchange carrier services in a manner that the resulting traffic exchanged between the Parties pursuant to this Agreement will be confined to the scope of the traffic as set forth in this Section; (c) adopt the Rate Center areas and Rate Center points that are identical to those used by Berkshire within its local calling area as defined by the Commission for the Local Traffic exchanged pursuant to this Agreement; (d) when securing numbering resources, assign whole NXX Codes to each Rate Center, or where, applicable, thousand number blocks within a NXX Code assigned to that Rate Center; and (e) transmit CPN and/or Automatic Number Identification ("ANI") on at least ninety-five percent (95%) of all traffic delivered to the POI. Where CPN and/or ANI is not provided, the Parties agree that the Party receiving such traffic shall assess, and the delivering Party shall pay to the receiving Party, the applicable intrastate terminating access charges. Both Parties agree that they will engineer their respective networks and design their respective systems to deliver traffic in compliance with this Section 3.
- 3.8. This Agreement does not obligate either Party to provide any arrangements or services not specifically provided for herein. This Agreement has no effect on the definition of end user services that either Party offers to its end user customers, the services either Party chooses to offer to its respective end user customers, the rate levels or rate structures that either Party charges its end users for services.



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- 3.9. Each Party is solely responsible for the receipt and transmission of 911/E911 traffic originated by users of its Telephone Exchange Services. The Parties acknowledge and affirm that calls to 911/E911 services shall NOT be routed over the interconnection trunk group(s). To the extent that a Party incorrectly routes such traffic over such arrangements, that Party shall fully indemnify and hold harmless the other Party for any claims, including claims of third parties, related to such calls.
- 3.10 Each Party shall solely be responsible for its Communications Assistance for Law Enforcement Act ("CALEA") enforcement-related activity. Each Party shall also ensure that it takes all actions necessary for a full response to any CALEA and/or other law enforcement-related inquiry related in any manner to the originating/terminating traffic from an End User it serves and that such actions are completed in a timely manner. Where a Party fails (the "Failing Party") to comply with any one or more of these obligations and an action is brought or costs imposed upon the other Party (the "Non-Failing Party"), the Failing Party shall indemnify the Non-Failing Party pursuant to the requirements of Section 17 of this Agreement.

**4. Compensation for Local Traffic**

The Parties agree that the mutual provisions and relative obligations of the Parties pursuant to this Agreement represent good and valuable consideration, the sufficiency of which between the Parties is acknowledged, and that the relative obligations and consideration are sufficiently in balance between the Parties such that neither Party has any obligation to provide any net monetary compensation to the other Party for the other Party's origination or termination of Local Traffic. The specific compensation terms and conditions set forth in this Agreement are related to, dependent on, and limited to the exchange of Local Traffic between the Parties.

**5. Compensation for Facilities**

Should Sprint lease facilities from Berkshire in order to achieve connection at the POI, as specified in Section 3.2 above, Sprint agrees to pay Berkshire the applicable published or price listed tariff rates for the lease of such facilities.

**6. Local Number Portability (LNP)**

- 6.1 In compliance with Part 52 of the FCC's rules, the Parties will mutually provide LNP services from properly equipped central offices. LNP applies when one of the Parties has received a request from a Customer with an active account with the other Party that indicates the Customer desires to change local carriers while retaining the telephone number or numbers associated with his/her account.
- 6.2 The Parties shall utilize the information contained in Schedule II to establish the scope and procedures by which they will exchange the necessary information required to respond to a specific request for porting a telephone number between them based on the information contained in Schedule IV.
- 6.3. Both Parties will perform testing to ensure proper routing and completion of calls to a ported number, and cooperate in conducting any additional testing to ensure interoperability between their respective networks and respective systems. Additional

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testing charges are as specified in Schedule III and shall be paid by the Party requesting such additional testing. Each Party shall inform the other Party of any system updates that may affect the other Party's network and each Party shall, at the other Party's reasonable request and, to the extent practical, perform tests to validate the operation of the network.

- 6.4 LNP shall only be provided as required by law.
- 6.5 Intentionally left blank
- 6.6 Each Party will coordinate LNP activities with the Number Portability Administration Center ("NPAC") as required.
- 6.7 When a ported telephone number becomes vacant, e.g., the telephone number is no longer in service by the original end user, the ported telephone number will snap-back to the NXX code holder, or if thousand block pooling is being used in the rate center, the thousand block holder.
- 6.8 The Parties agree that traffic will be routed via a Location Routing Number ("LRN") assigned in accordance with industry guidelines.
- 6.9 The Parties agree to coordinate the timing for disconnection from one Party and connection with the other Party when an End User ports his or her telephone number.
- 6.10 The party that is porting out the telephone number may charge the other requesting Party for Coordinated LNP activities scheduled outside of the specified hours for addressing such requests as identified in Schedule III at the usual and customary hourly labor rates as identified in the porting Party's then-existing approved interstate exchange access tariff or like mechanism.
- 6.11 Letter of Authorization (LOA). Each Party is responsible for obtaining an LOA from each End User that requests LNP from one Party to the other Party. Both Parties agree to adhere to the applicable federal and/or state requirements regarding LOAs and preferred carrier freezes.
- 6.12 Combined LNP Requests. Each Party will accept LNP requests from the other Party for one End User that includes multiple requests for LNP only where the End User will retain each of the telephone numbers identified in the LNP request.
- 6.13 Expedited Order Charge. Expedited order requests will be accepted where reasonable and practical but will be assessed an expedited order charge. The expedited order charge is as agreed to in Schedule III.
- 6.14 LNP Request Date Modifications/ End User Not Ready. Either Party may request a change in due date prior to the originally scheduled due date without additional charges if the new LNP date is requested during normal business hours and no additional or alternate workforce is needed to complete the modification

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- 6.15 If an "LNP Date Modifications/ End User Not Ready" request is made outside normal business hours (if available) or is made within normal business hours and requires additional internal or outside work force, the Requesting Party (i.e. the Porting Party or the New Service Provider) will be assessed an Expedited Order Charge/LNP Date Modification as found in Schedule III.
- 7. Traffic Identifiers and Audits**
- 7.1 To ensure proper implementation of this Agreement, the Party delivering traffic to the POI shall provide the Automatic Number Identification ("ANI") or Calling Party Number ("CPN") (or similar industry standard traffic elements) for all traffic (the "Traffic Identifiers") in order that the terminating Party can properly identify the telephone number associated with the End User placing the call. Where the Traffic Identifiers are not provided as described in Section 3, the terminating Party shall assess, and the originating Party shall pay, access charges pursuant to the terminating Party's applicable tariff or like mechanism.
- 7.2 Each Party shall keep six (6) months of usage records for the traffic delivered by it to the POI, if such records are kept in the ordinary course of business by the Parties. Either Party may request an audit of usage data on not less than forty-five (45) days' written notice. Any such audit shall be accomplished during normal business hours at the office of the Party being audited. Audits may be performed by a qualified independent auditor or consultant paid for by the Party requesting the audit. However, no right to request or receive usage data from the other Party under this Section 7.3 accrues to a Party who cannot reciprocate, unless otherwise agreed by the Parties.
- 7.3 In order to facilitate audits, the Parties must accommodate prospective data collection if prior period data is not available as contemplated in Section 7.3 above.
- 7.4. On all traffic exchanged pursuant to this Agreement, neither Party shall intentionally substitute nor implement any arrangement within its switch(es) that generates an incorrect ANI, CPN or other SS7 parameters then those associated with the originating End User. Upon determination that a Party has intentionally substituted or generated such incorrect parameters on traffic exchanged pursuant to this Agreement, the offending Party shall pay the other Party the difference between compensation paid (if any) and applicable access charges, plus interest due under the terms of the applicable access tariff from the date the traffic would have been billed if such parameters had been passed unaltered. The intentional substitution or generation of incorrect parameters shall constitute a default of this Agreement.
- 7.5 In addition to the other requirements contained in this Section 7, either Party may, upon written notice to the other Party, conduct an audit, during normal business hours, only on the source data/documents as may contain information bearing upon the services being provided under the terms and conditions of this Agreement. An audit may be conducted no more frequently than once per 12 month period, and only to verify the other Party's compliance with provisions of this Agreement. The notice requesting an audit must identify the date upon which it is requested to commence, the estimated duration, the materials to be reviewed, and the number of individuals who will be performing the

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audit. Each audit will be conducted expeditiously. Any audit is to be performed as follows: (i) following at least 45 days' prior written notice to the audited Party; (ii) subject to the reasonable scheduling requirements and limitations of the audited Party; (iii) at the auditing Party's sole cost and expense; (iv) of a reasonable scope and duration; (v) in a manner so as not to interfere with the audited Party's business operations. No original books or records of the Party being reviewed may leave the premises of the Party being reviewed. Prior to commencing the review, the Party being reviewed may request the execution of a confidentiality agreement to protect confidential information disclosed through the course of the review at its sole discretion.

**8. Physical Interconnection**

8.1 The Parties agree that unless mutually agreed to the contrary all Local Traffic exchanged between them shall be transmitted on trunks solely dedicated to such Local Traffic. Neither Party shall terminate Intra-LATA nor inter-LATA toll switched access traffic or originate untranslated toll-free traffic, including but not limited to 550/55X/555/800/888/877/866 traffic, over dedicated Local Traffic trunks. Local Traffic exchange shall be provided via two-way trunks where technically and operationally feasible unless both Parties agree to implement one-way trunks.

8.2 Neither Party shall construct facilities that require the other Party to build unnecessary facilities.

8.3 The Parties will mutually agree on the appropriate sizing for facilities based on the standards set forth below. The capacity of Interconnection facilities provided by each Party will be based on mutual forecasts and sound engineering practice, as mutually agreed to by the Parties. The Interconnection facilities provided by each Party shall, where technically available, be formatted using Bipolar 8 Zero Substitution ("B8ZS"). The Grade of Service for all facilities between the Parties will be engineered and provisioned to achieve P.01 Grade of Service. Each Party shall make available to the other Party trunks over which the originating Party can terminate Local Traffic of the end users of the originating Party to the end users of the terminating Party.

8.4 The electrical interface at the POI will be for a DS1 level. If any other electrical interface is mutually agreed to by the Parties, then each will provide any required multiplexing to a DS1 level.

8.5 N11 codes (including but not limited to, 411, 611, & 911) shall not be sent between the networks of the Parties over the Local Traffic trunk groups.

8.6 Prior to establishment of the physical, direct connection of their respective networks at the POI as anticipated by this Agreement, each Party shall provide the other with a point of contact for the reconciliation of trunk forecasts, escalation for ordering and provisioning related matters.

**9. Trunk Forecasting**

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The Parties will work towards the development of joint forecasting responsibilities for traffic utilization over Local Traffic trunk groups covered in this Agreement. Orders for trunks that exceed forecasted quantities for forecasted locations will be accommodated as facilities and/or equipment becomes available. Parties will make all reasonable efforts and cooperate in good faith to develop alternative solutions to accommodate orders when facilities are not available. Inter-company forecast information must be provided by the Parties to each other upon reasonable request, per Section 8.6 above.

**10. Network Management**

**10.1 Protective Controls**

Either Party may use protective network traffic management controls as available in their networks such as, but not limited to, 7-digit and 10-digit code gaps, on traffic toward each other's network, when required to protect the public switched network from congestion due to facility failures, switch congestion or failure or focused overload. Sprint and Berkshire will immediately notify each other of any protective control action planned or executed.

**10.2. Network Congestion Due to Mass Calling**

Sprint and Berkshire will cooperate and share pre-planning information regarding cross-network mass call-ins expected to generate large or focused temporary increases in call volumes. Both Parties will work cooperatively to reduce network congestion caused by such cross-network mass call-ins.

**10.3 Network Harm**

Neither Party will use any service related to or using any of the services provided in this Agreement in any manner that interferes with third parties in the use of their service, prevents third parties from using their service, impairs the quality of service to other carriers or to either Party's End Users; causes electrical hazards to either Party's personnel, damage to either Party's equipment or malfunction of either Party's billing equipment (individually and collectively, "Network Harm"). If a Network Harm occurs or if a Party reasonably determines that a Network Harm is imminent, such Party will, where practicable, notify the other Party that temporary discontinuance or refusal of service may be required; provided, however, wherever prior notice is not practicable, such Party may temporarily discontinue or refuse service forthwith, if such action is reasonable under the circumstances. In case of such temporary discontinuance or refusal, such Party will:

- (a) Promptly notify the other Party of such temporary discontinuance or refusal;
- (b) Afford the other Party the opportunity to correct the situation which gave rise to such temporary discontinuance or refusal; and
- (c) Inform the other Party of its right to bring a complaint to the Commission or Federal Communications Commission ("FCC").

- 10.4** The Parties agree that each will share responsibility for all maintenance and repair of trunks/trunk groups. The Parties agree to: (a) cooperatively plan and implement coordinated repair procedures for the meet point and local interconnection trunks and

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facilities to ensure trouble reports are resolved in a timely and appropriate manner; (b) provide trained personnel with adequate and compatible test equipment to work with each other's technicians; (c) promptly notify each other when there is any change affecting the service requested, including the date service is to be started; (d) coordinate and schedule testing activities of their own personnel, and others as applicable, to ensure its interconnection trunks/trunk groups are installed per the interconnection order, meet agreed upon acceptance test requirements, and are placed in service by the due date; (e) perform sectionalization to determine if a trouble condition is located in its facility or its portion of the interconnection trunks prior to referring any trouble to each other; (f) provide each other with a trouble reporting number to a work center; (g) immediately report to each other any equipment failure which may affect the interconnection trunks; (h) provide, based on the trunking architecture, for mutual tests for system assurance for the proper recording of AMA records in each company's switch. These tests are repeatable on demand by either Party upon reasonable notice.

- 10.5 A maintenance service charge applies whenever either Party requests the dispatch of the other Party's personnel for the purpose of performing maintenance activity on the interconnection trunks, and any of the following conditions exist: (a) No trouble is found in the interconnection trunks; (b) The trouble condition results from equipment, facilities or systems not provided by the Party whose personnel were dispatched; or (c) Trouble clearance did not otherwise require a dispatch, and upon dispatch requested for repair verification, the interconnection trunk does not exceed maintenance limits. If a maintenance service charge has been applied and trouble is subsequently found in the facilities of the Party whose personnel were dispatched, the charge will be canceled. Billing for maintenance service by either Party is based on each half-hour or fraction thereof expended to perform the work requested. The time worked is categorized and billed at one of the following three rates: (1) basic time; (2) overtime; or (3) premium time as defined in the billing Party's approved intrastate access tariff.

**11. Office Code Translations**

- 11.1 It shall be the responsibility of each Party to program and update its own switches and network systems in accordance with the information derived from such sources as the Local Exchange Routing Guide ("LERG") in order to recognize and route traffic to the other Party's assigned NXX codes at all times.
- 11.2 The Parties recognize that some of the traffic to be exchanged under this Agreement may be destined for telephone numbers that have been ported. Where traffic to be exchange under this Agreement is destined for telephone numbers that have, in turn, been ported and when more than one carrier is involved in completing that traffic, the N-1 carrier has the responsibility to determine if a query is required, to launch the query, and to route the call to the appropriate switch or network in which the telephone number resides.
- 11.3 If a Party does not fulfill its N-1 carrier responsibility (the "Non-Querying Party"), the other Party (the "Querying Party") shall perform default LNP queries on calls to telephone numbers with portable NXXs received from the Non-Querying Party and route the call to the appropriate switch or network in which the telephone number resides. The Non-Querying Party shall be responsible for payment of all charges assessed by the Querying Party as identified in Schedule III for "Default Query Service" including any

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reciprocal compensation assessed by the third party terminating carrier and/or transit charges assessed by a third party tandem provider. When such charges are billed by the Querying Party to the Non-Querying Party and such charges are disputed by the Non-Querying Party, the Querying Party shall provide the Non-Querying Party with an opportunity to challenge such charges. If such charges are disputed by the Non-Querying Party, the Non-Querying Party may request the Querying Party to provide its underlying validation of those charges to the Non-Querying Party for examination and review.

**12. SS7 Signaling**

In order to track and monitor the traffic that is being exchanged at the POI both Parties agree to utilize SS7 Common Channel Signaling ("CCS") between their respective networks for the traffic addressed in this Agreement. Both Parties will provide CCS connectivity in accordance with accepted industry practice and standard technical specifications. For all traffic they deliver to the POI, the Parties agree to cooperate with one another on the exchange of all appropriate unaltered CCS messages for call set-up, including without limitation ISDN User Part ("ISUP") and Transaction Capability User Part ("TCAP") messages to facilitate interoperability of CCS-based features and functions between their respective networks, including CLASS features and functions. All CCS signaling parameters, including, but not limited to, the Jurisdictional Indicator Parameter ("JIP") and the originating end user telephone number, will be provided by each Party in conjunction with all traffic it delivers to the POI.

**13. Directory Listings and Distribution Services**

13.1. The following provisions of Section 14 are specifically included as a result of actions and prior decisions by the Commission, and apply only in those years where Sprint provides notice to Berkshire that Sprint seeks to have its directory listings published in the Berkshire directory, provided that Berkshire receives from Sprint written notice sufficiently in advance for Berkshire to receive the information required of Sprint by this Section 14 in order for Berkshire to include such information in the Berkshire directory.

13.2. Sprint agrees to provide to Berkshire or its publisher, as specified by Berkshire, all subscriber list information (including additions, changes and deletions) for its End Users physically located within the same geographic area covered by the Berkshire's published directory. To the extent that the Independent includes within its directory, listing information regarding customers to whom the Independent provides Foreign Exchange ("FX") service, the Independent will also accept listing information from Sprint associated with a Sprint "Foreign Exchange" End User. It is the responsibility of Sprint to submit directory listings in the prescribed manner to Berkshire prior to the directory listing publication cut-off date, which will be provided by Berkshire to Sprint.

13.3. Berkshire will include Sprint's End Users' primary listings (residence and business) in its White Pages Directory, and if applicable in its Yellow Pages Directory under the appropriate heading classification as determined by publisher as well as in any electronic directories in which Berkshire's own Customers are ordinarily included. Listings of Sprint's End Users will be interfiled with listings of Berkshire's End Users and the End Users of other LECs, in the local section of Berkshire's directories.

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- 13.4 Sprint shall not provide Berkshire with any information regarding Sprint's End User where that End User has selected "non-published" or like status with Sprint.
- 13.5 Sprint will provide Berkshire with the directory information for all its End Users in the format specified by Berkshire. Subscriber list information will include customer name, address, telephone number, appropriate classified heading and all other pertinent data elements as requested by Berkshire, as appropriate with each order, to provide Berkshire the ability to identify listing ownership. Sprint will provide all End User listings at no charge to Berkshire or its publisher.
- 13.6 Sprint's End User s' standard primary listing information in the telephone directories will be provided at no charge. Sprint will pay Berkshire's charges as contained in Berkshire's general subscriber service tariff on file with the PSC for additional and foreign telephone directory listings that may be assessed to its End Users.
- 13.7 Both Parties will use their best efforts to ensure the accurate listing of Sprint's End User listings. Sprint is responsible for all listing questions and contacts with its End Users including but not limited to queries, complaints, account maintenance, privacy requirements and services. Sprint will provide Berkshire with appropriate internal contact information to fulfill these requirements.
- 13.8 Berkshire will accord Sprint directory listing information the same level of confidentiality which Berkshire accords its own directory listing information. Sprint grants Berkshire full authority to provide Sprint subscriber listings, excluding non-published telephone numbers, to other directory publishers and fully releases and agrees to indemnify Berkshire and its publisher from any alleged or proven liability resulting from the provisioning of such listings.
- 13.9 Sprint is responsible for sending to Berkshire by the date specified by Berkshire an approximate directory count for Sprint's End Users for the purpose of ensuring an adequate quantity of Berkshire's directories is printed. Sprint shall not alter or otherwise change any aspect of the directory that Berkshire provides: ~~Berkshire shall provide to~~ Sprint the quantity of directories that Sprint previously specified. Sprint shall be responsible for distribution of such directories to its End Users.
- 13.10 Sprint shall pay Berkshire both the rate per directory listed in Schedule III hereto and the cost Berkshire incurs in complying with the requirements of Section 13.9. Berkshire will place the same restrictions on the Sprint's End Users as it does for itself when assigning book quantities.
- 13.11 Sprint will adhere to all practices, standards, and ethical requirements of Berkshire with regard to listings, and, by providing Berkshire with listing information, warrants to Berkshire that Sprint has the right to place such listings on behalf of End Users. Sprint shall be solely responsible for knowing and adhering to state laws or rulings regarding listing information and for supplying Berkshire with applicable listing information. In addition, Sprint agrees to release, defend, hold harmless and indemnify Berkshire and/or Berkshire's directory publisher from and against any and all claims, losses, damages, suits, or other actions, or any liability whatsoever (except as may be provided for in



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Section 16 following) or, suffered, made, instituted, or asserted by any person arising out of Berkshire's listing of the information provided by Sprint hereunder or any activity Berkshire and/or its directory publisher may take arising from the actions required by this Section 13.

- 13.12 Berkshire's liability to Sprint in the event of Berkshire's error in or omission of a listing will not exceed the amount of charges actually paid by Sprint to Berkshire for such listing. In addition, Sprint agrees to take, with respect to its own End Users, all reasonable steps to ensure that its' and Berkshire's liability to Sprint's End Users in the event of Berkshire' error in or omission of a listing will be subject to the same limitations that Berkshire's liability to which its own End Users are subject.
- 13.13 Nothing in this Section 13 shall require or obligate Berkshire to provide a greater degree of service to a Sprint End User with respect to directory listings and publishing than those that Berkshire provides to its End Users.

**14. Term of Agreement, Regulatory Approvals and Filing**

- 14.1 This Agreement shall commence when fully executed and approved by the Commission and have an initial term of one (1) year from the date of that Commission approval. This Agreement shall automatically renew for successive one (1) year periods, unless either Party gives written notice at least sixty (60) days prior to the expiration of the initial, or any renewal term, of its desire not to renew. A copy of such termination notice shall be sent to the Commission and include an explanation for the termination. If such notice is given, this Agreement shall not renew. However, the Parties will continue to exchange traffic to the mutual benefit of their respective End Users; provided, however, that physical termination of the connection of the Parties' respective networks established in this Agreement shall occur only in compliance with applicable rules and regulations of the Commission. During the period prior to termination, the Parties agree to cooperate with one another in ensuring that the exchange of Local Traffic as provided for in this Agreement is not disrupted and to respond to any Commission inquiry that may occur regarding the termination of this Agreement.
- 14.2 Each Party is responsible for obtaining and maintaining in effect all state regulatory commission approvals and certifications that are required for that Party's provision of local exchange and/or local exchange access services in the service areas covered by this Agreement.
- 14.3 The Parties agree to jointly file this Agreement with the Commission and to fully cooperate with each other in obtaining Commission approval

**15. Limitation of Liability**

- 15.1 Except in the instance of harm resulting from an intentional or grossly negligent action or willful misconduct of one Party, the liability of either Party to the other Party for

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damages arising out of (1) failure to comply with a direction to install, restore or terminate facilities, or (2) out of failures, mistakes, omissions, interruptions, delays, errors, or defects occurring in the course of furnishing any services, arrangements, or facilities hereunder shall be determined in accordance with the terms of the applicable tariff(s) of the providing Party. In the event no tariff(s) apply, the providing Party's liability shall not exceed an amount equal to the pro rata monthly charge for the period in which such failures, mistakes, omissions, interruptions, delays, errors or defects occur. Recovery of said amount shall be the injured Party's sole and exclusive remedy against the providing Party for such failures, mistakes, omissions, interruptions, delays, errors or defects. Because of the mutual nature of the exchange of traffic arrangement between the Parties pursuant to this Agreement, the Parties acknowledge that the amount of liability incurred under this Section 15.1 may be zero.

- 15.2 In no event shall either Party be liable to the other in connection with the provision or use of services offered under this Agreement for indirect, incidental, consequential, reliance or special damages, including (without limitation) damages for lost profits (collectively, "Consequential Damages"), regardless of the form of action, whether in contract, warranty, strict liability, or tort, including, without limitation, negligence of any kind, even if the other Party has been advised of the possibility of such damages; provided, that the foregoing shall not limit a Party's obligation under Section 16.
- 15.3 Except in the instance of harm resulting from an intentional or grossly negligent action or willful misconduct, the Parties agree that neither Party shall be liable to the customers of the other Party in connection with its provision of services to the other Party under this Agreement. Nothing in this Agreement shall be deemed to create a third party beneficiary relationship between the Party providing the service and the Customers of the Party purchasing the service. In the event of a dispute involving both Parties with a Customer of one Party, both Parties shall assert the applicability of any limitations on liability to customers that may be contained in either Party's applicable tariff(s).

**16 Indemnification**

- 16.1 Each Party agrees to release, indemnify, defend and hold harmless the other Party from and against all losses, claims, demands, damages, expenses, suits or other actions, or any liability whatsoever related to the subject matter of this Agreement, including, but not limited to, reasonable costs and attorneys' fees (collectively, a "Loss"), (a) whether suffered, made, instituted, or asserted by any other party or person, relating to personal injury to or death of any person, or for loss, damage to, or destruction of real and/or personal property, whether or not owned by others, incurred during the term of this Agreement and to the extent proximately caused by the acts or omissions of the indemnifying Party, regardless of the form of action, or (b) suffered, made, instituted, or asserted by its own customer(s) against the other Party arising out of the other Party's provision of services to the indemnifying Party under this Agreement, except to the extent caused by the indemnified Party's intentional or gross negligent acts or willful misconduct. Notwithstanding the foregoing indemnification, nothing in this Section 6.0 shall affect or limit any claims, remedies, or other actions the indemnifying Party may have against the indemnified Party under this Agreement, any other contract, or any applicable tariff(s), regulations or laws for the indemnified Party's provision of said services.

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- 16.2 The indemnification provided herein shall be conditioned upon:
- 16.2.1 The indemnified Party shall promptly notify the indemnifying Party of any action taken against the indemnified Party relating to the indemnification.
  - 16.2.2 The indemnifying Party shall have sole authority to defend any such action, including the selection of legal counsel, and the indemnified Party may engage separate legal counsel only at its sole cost and expense. Prior to retaining legal counsel pursuant to this Section 16.2.2, the indemnifying Party shall seek written assurances from the legal counsel chosen that such counsel does not have any conflict of interest with the indemnified Party.
  - 16.2.3 In no event shall the indemnifying Party settle or consent to any judgment pertaining to any such action without the prior written consent of the indemnified Party, which consent shall not be unreasonably withheld.
  - 16.2.4 The indemnified Party shall, in all cases, assert any and all provisions in its Tariffs that limit liability to third parties as a bar to any recovery by the third party claimant in excess of such limitation of liability.
  - 16.2.5 The indemnified Party shall offer the indemnifying Party all reasonable cooperation and assistance in the defense of any such action.
- 16.3 To the extent permitted by law, and in addition to its indemnity obligations under Sections 16.1 and 16.2, each Party may provide, in its Tariffs that relate to any Telecommunications Service provided or contemplated under this Agreement, that in no case shall such Party or any of its agents, contractors or others retained by such parties be liable to any Customer or third party for (i) any Loss relating to or arising out of this Agreement, whether in contract or tort, that exceeds the amount such Party would have charged the applicable Customer for the service(s) or function(s) that gave rise to such Loss, or (ii) any Consequential Damages (as defined in subsection 16.2, above)

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**17. Force Majeure**

Neither Party shall be liable for any delay or failure in performance of any part of this Agreement from any cause beyond its control and without its fault or negligence, regardless of whether such delays or failures in performance were foreseen or foreseeable as of the date of this Agreement, including, without limitation, acts of God, acts of civil or military authority, embargoes, epidemics, war, terrorist acts, riots, insurrections, fires, explosions, earthquakes, nuclear accidents, floods, power failure or blackouts, or adverse weather conditions, labor unrest, including without limitation, strikes, slowdowns, picketing, or boycotts. In the event of any such excused delay in the performance of a Party's obligation(s) under this Agreement, the due date for the performance of the original obligation(s) shall be extended by a term equal to the time lost by reason of the delay. In the event of such delay, the delaying Party shall perform its obligations at a performance level no less than that which it uses for its own operations.

**18. Agency**

Nothing contained herein shall constitute the Parties as joint venturers, partners, employees or agents of one another, and neither Party shall have the right or power to bind or obligate the other.

**19. Nondisclosure of Proprietary Information**

19.1 The Parties agree that it may be necessary to exchange with each other certain confidential information during the term of this Agreement including, without limitation, technical and business plans, technical information, proposals, specifications, drawings, procedures, orders for services, usage information in any form, customer account data, call detail records, and Customer Proprietary Network Information ("CPNI") as that term is defined by the Communications Act of 1934, as amended, and the rules and regulations of the FCC and similar information (collectively, "Confidential Information"). Confidential Information shall include (i) all information delivered in written form and marked "confidential" or "proprietary" or bearing mark of similar import; (ii) oral information, if identified as confidential or proprietary at the time of disclosure and confirmed by written notification within ten (10) days of disclosure; and (iii) information derived by the Recipient (as hereinafter defined) from a Disclosing Party's (as hereinafter defined) usage of the Recipient's network. The Confidential Information shall remain the property of the Disclosing Party and is deemed proprietary to the Disclosing Party. Confidential Information shall be protected by the Recipient as the Recipient would protect its own proprietary information, including but not limited to protecting the Confidential Information from distribution, disclosure, or dissemination to anyone except employees or duly authorized agents of the Parties with a need to know such information and which the affected employees and agents agree to be bound by the terms of this Section. Confidential Information shall not be disclosed or used for any purpose other than to provide service as specified in this Agreement, or upon such other terms as may be agreed to by the Parties in writing. For purposes of this Section, the Disclosing Party shall mean the owner of the Confidential Information, and the Recipient shall mean the party to whom Confidential Information is disclosed.

19.2 Recipient shall have no obligation to safeguard Confidential Information (i) which was in the Recipient's possession free of restriction prior to its receipt from the Disclosing Party,

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(ii) after it becomes publicly known or available through no breach of this Agreement by Recipient, (iii) after it is rightfully acquired by Recipient free of restrictions on the Disclosing Party, or (iv) after it is independently developed by personnel of Recipient to whom the Disclosing Party's Confidential Information had not been previously disclosed. Recipient may disclose Confidential Information if required by law, a court, or governmental agency or to enforce or defend its actions under this Agreement, provided that the Disclosing Party has been notified of the requirement promptly after Recipient becomes aware of the requirement, and provided that Recipient undertakes all reasonable lawful measures to avoid disclosing such information until the Disclosing Party has had reasonable time to obtain a protective order. Recipient agrees to comply with any protective order that covers the Confidential Information to be disclosed.

19.3 Each Party agrees that the Disclosing Party would be irreparably injured by a breach of this Section 19 by Recipient or its representatives and that the Disclosing Party shall be entitled to seek equitable relief, including injunctive relief and specific performance, in the event of any breach of this paragraph. Such remedies shall not be exclusive, but shall be in addition to all other remedies available at law or in equity.

**20. Notices**

Notices given by one Party to the other under this Agreement shall be in writing and delivered by hand, overnight courier or pre-paid first class mail certified U.S mail, return receipt requested, to the following addresses of the Parties:

For Sprint:  
Sprint Communications Company L.P.  
Sprint Legal Department  
Second Floor  
6450 Sprint Parkway  
Overland Park, KS 66251

With a copy to:  
Mark Felton  
6330 Sprint Pkwy  
KSOPHA0310 – 3B372  
Overland Park, KS 66251

For Berkshire:  
Berkshire Telephone Corporation  
Attention: Jane Valik  
One Berkshire Place  
Chatham, NY 12037  
Phone: (518) 392-5000

With a copy to:  
John J. La Penta  
FairPoint Communications

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521 E. Morehead Street  
Suite 250  
Charlotte, NC 28202  
Phone: (704) 227-3663

or to such other location as the receiving Party may direct in writing. Notices will be deemed given as of (i) the next business day when notice is sent via express delivery service or personal delivery, or (ii) three (3) days after mailing in the case of first class or certified U.S. mail.

**21. Payments and Due Dates**

All compensation payable pursuant to this Agreement shall be due within thirty (30) days of the issuance date of the invoice. All undisputed charges are subject to a late charge if not paid within the thirty (30) day period. Where charges are disputed and the disputed charges are found to be due and owing to the Party issuing the invoice (the "Resolved Amount"), the Resolved Amount shall be subject to a late charge from the issuance date of the invoice that included the Resolved Amount. For purposes of this Section, the rate of the late charge shall be the lesser of one and one-half percent (1.5 %) per month or the maximum amount allowed by law.

**22. Severability**

If any part of this Agreement is held to be unenforceable or invalid in any respect under law or regulation, such unenforceability or invalidity shall affect only the portion of the Agreement which is unenforceable or invalid. In all other respects this Agreement shall stand as if such invalid provision had not been a part thereof, and the remainder of the Agreement shall remain in full force and effect, unless removal of that provision results in a material change to this Agreement. In such a case, the Parties shall negotiate in good faith for replacement language. If replacement language cannot be agreed upon, either Party may request dispute resolution pursuant to Section 26.

**23. Assignment**

This Agreement shall be binding upon, and inure to the benefit of, the Parties hereto and their respective successors and permitted assigns. Any assignment or transfer (whether by operation of law or otherwise) by either Party of any right, obligation, or duty, in whole or in part, or of any interest, without the written consent of the other Party shall be void ab initio, provided however that such consent shall not be unreasonably withheld, conditioned or delayed and shall not be required if such assignment is to a corporate affiliate or an entity under common control or an entity acquiring all or substantially all of its assets or equity, whether by sale, merger, consolidation or otherwise or in connection with a financing transaction.

**SPRINT/BERKSHIRE CONFORMING AGREEMENT**  
**NY CASES 05-C-0170 AND 05-C-0183**

**24. Entire Agreement**

This Agreement, including all attachments and subordinate documents attached hereto or referenced herein, all of which are hereby incorporated by reference herein, constitute the entire matter thereof, and supersede all prior oral or written agreements, representations, statements, negotiations, understandings, proposals, and undertakings with respect to the subject matter thereof.

**25. Multiple Counterparts**

This Agreement may be executed in counterparts and each of which shall be an original and all of which shall constitute one and the same instrument and such counterparts shall together constitute one and the same instrument.

**26. Dispute Resolution**

- 26.1 No claims will be brought for disputes arising from this Agreement more than twenty-four (24) months from the date of occurrence that gives rise to the dispute.
- 26.2 The Parties desire to resolve disputes arising out of this Agreement without litigation. Accordingly, except for action seeking a temporary restraining order or an injunction related to the purposes of this Agreement, or suit to compel compliance with this dispute resolution process, the Parties agree to use the dispute resolution procedure set forth in this Section with respect to any controversy or claim arising out of or relating to this Agreement or its breach.
- 26.3 At the written request of a Party, each Party will appoint a good faith representative having the authority to resolve such dispute arising under this Agreement. The location, form, frequency, duration and conclusion of these discussions will be left to the discretion of the representatives. Upon agreement, the representatives may utilize other alternative dispute resolution procedures such as mediation to assist in the negotiations. Discussions and correspondence among the representatives for purposes of settlement are exempt from discovery and production and shall not be admissible in the arbitration described below or in any lawsuit without the concurrence of all Parties. Documents identified in or provided with such communications, which are not prepared for purposes of the negotiations, are not so exempted and, if otherwise admissible, may be admitted as evidence in the arbitration or lawsuit.
- 26.4 If the negotiations do not resolve the dispute within sixty (60) days of the initial written request, either Party may submit the dispute to either the Commission, judicial forum of competent jurisdiction, or upon mutual agreement to the American Arbitration Association ("AAA") for binding arbitration pursuant to the respective rules and practices of the entity to which the dispute is submitted.
- 26.5 Each Party shall bear its own costs associated with its activities taken pursuant to this Section 26.

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**27. Governing Law**

To the extent not governed by, and construed in accordance with, the laws and regulations of the United States, this Agreement shall be governed by, and construed in accordance with, the laws and regulations of the state of New York, without regard to its conflicts of laws principles.

**28. Joint Work Product**

This Agreement is the joint work product of the Parties and has been negotiated by the Parties and shall be fairly interpreted in accordance with its terms and, in the event of any ambiguities, no inferences shall be drawn against either Party.

**29. Taxes**

Each Party shall be responsible for any and all taxes and surcharges arising from its conduct under this Agreement and shall, consistent with Section 16, indemnify and hold harmless the other Party for its failure to pay and/or report any applicable taxes and surcharges.

**30. Survival**

The Parties' obligations under this Agreement which by their nature are intended to continue beyond the termination or expiration of this Agreement shall survive the termination or expiration of this Agreement.

**31. Publicity**

Neither Party nor its subcontractors or agents shall use the other Party's trademarks, service marks, logos, company name or other proprietary trade dress in any advertising, press releases, publicity matters or other promotional materials without such Party's prior written consent.

**32. Miscellaneous**

32.1 Berkshire does not waive, nor shall it be estopped from asserting, any rights it may have pursuant to 47 U.S.C. Section 251(f).

32.2 This Agreement does not apply to traffic that is carried on third-party networks not expressly contemplated by this Agreement; or any traffic originated or terminated by a commercial mobile radio services or paging service providers.

32.3 Amendments. This Agreement may not be amended, modified, or supplemented, except by written instrument signed by both Parties.

32.4 No License.  
Nothing in this Agreement shall be construed as the grant of a license, either express or implied, with respect to any patent, copyright, trademark, trade name, trade secret or any other proprietary or intellectual property now or hereafter owned, controlled or licensable by either Party. Neither Party may use any patent, copyrightable materials, trademark, trade name, trade secret or other intellectual property right of the other Party except in



**SPRINT/BERKSHIRE CONFORMING AGREEMENT**  
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accordance with the terms of a separate license agreement between the Parties granting such rights.

32.5 Independent Contractors. The Parties to this Agreement are independent contractors. Neither Party is an agent, representative, or partner of the other Party. Neither Party will have any right, power or authority to enter into any agreement for, or on behalf of, or incur any obligation or liability of, or to otherwise bind, the other Party. This Agreement will not be interpreted or construed to create an association, agency, joint venture or partnership between the Parties or to impose any liability attributable to such a relationship upon either Party.

32.6 No Warranties.

32.6.1 EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT, NEITHER PARTY MAKES, AND EACH PARTY HEREBY SPECIFICALLY DISCLAIMS, ANY REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, REGARDING ANY MATTER SUBJECT TO THIS AGREEMENT, INCLUDING ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OR IMPLIED WARRANTIES ARISING FROM COURSE OF DEALING OR COURSE OF PERFORMANCE.

32.6.2. NOTWITHSTANDING ANY OTHER PROVISION OF THIS AGREEMENT, THE PARTIES AGREE THAT NEITHER PARTY HAS MADE, AND THAT THERE DOES NOT EXIST, ANY WARRANTY, EXPRESS OR IMPLIED, THAT THE USE BY THE PARTIES OF THE OTHER'S FACILITIES, ARRANGEMENTS, OR SERVICES PROVIDED UNDER THIS AGREEMENT SHALL NOT GIVE RISE TO A CLAIM BY ANY THIRD PARTY OF INFRINGEMENT, MISUSE, OR DISSAPPROPRIATION OF ANY INTELLECTUAL PROPERTY RIGHT OF SUCH THIRD PARTY.

32.7 Default. If either Party believes the other is in breach of this Agreement or otherwise in violation of law, it will first give thirty (30) days notice of such breach or violation and an opportunity for the allegedly defaulting Party to cure. Thereafter, the Parties will employ the dispute resolution procedures set forth in this Agreement.

32.8 Waiver. Any failure on the part of a Party hereto to comply with any of its obligations, agreements or conditions hereunder may be waived by written documentation by the other Party to whom such compliance is owed. No waiver of any provision of this Agreement shall be deemed, or shall constitute, a waiver of any other provision, nor shall any waiver constitute a continuing waiver.

**SPRINT/BERKSHIRE CONFORMING AGREEMENT**  
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- 32.9 Regulatory Changes. If a federal or state regulatory agency or a court of competent jurisdiction issues a rule, regulation, law or order (collectively, "Regulatory Requirement") which has the effect of canceling, changing, or superseding any material term or provision of this Agreement then the Parties shall negotiate in good faith to modify this Agreement in a manner consistent with the form, intent and purpose of this Agreement and as necessary to comply with such Regulatory Requirement.
- 32.10 No Third Party Beneficiaries. This Agreement shall not be deemed to provide any other third party with any benefit, remedy, claim, right of action or other right except with respect to Sprint's business relationship with Time Warner Cable (who shall be the sole third party contemplated by this Agreement) as identified in the Commission's "Order Resolving Arbitration Issues" issued on May 24, 2005 in CASE 05-C-0170 and CASE 05-C-0183.
- 32.11 Headings. The headings contained in this Agreement are for reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement.

NY CASES 05-C-0170 AND 05-C-0183  
SPRINT/BERKSHIRE CONFORMING AGREEMENT PURSUANT TO THE  
COMMISSION'S ORDER ISSUED OCTOBER 28, 2005

32.12. Authorization. Berkshire is a corporation duly organized, validly existing and in good standing under the laws of the State of New York and has full power and authority to execute and deliver this Agreement and to perform the obligations hereunder. Sprint Communications Company, L.P. is a limited liability company duly organized, validly existing and in good standing under the laws of the State of Delaware and has full power and authority to execute and deliver this Agreement and to perform the obligations hereunder.

33. Termination

33.1. Either Party may terminate this Agreement for cause upon thirty (30) days prior written notice if (a) the other Party materially breaches this Agreement or defaults on its obligations and fails to cure such breach or default during such thirty (30) day period, (b) the other Party's authority to provide the services provided herein is revoked or terminated, or (c) the other Party is insolvent, or files for bankruptcy (or other protection from creditors generally) and such bankruptcy petition is not dismissed within sixty (60) days. Termination of this Agreement for any cause shall not release either Party from any liability which at the time of the termination had already accrued to the other Party or which thereafter accrues in any respect for any act or omission occurring prior to the termination relating to an obligation which is expressly stated in this Agreement.

33.2 For service arrangements made available under this Agreement and existing at the time of termination, those arrangements will continue without interruption following the date of termination or until a replacement agreement has been executed by the Parties either (a) under a new agreement voluntarily executed by the Parties; (b) under a new agreement negotiated pursuant to the provisions of Section 252 of the Act; or c) under any agreement available according to the provisions of Section 252(i) of the Act; however, in no case will those arrangements continue for more than 12 months following the date of termination.

IN WITNESS WHEREOF, the Parties agree that the effective date of this Agreement is the date first written above, and each Party warrants that it has caused this Agreement to be signed and delivered by its duly authorized representative.

By: Sprint Communications Company L.P.

By: Berkshire Telephone Corporation

  
Signature

W. Richard Morris  
Typed or Printed Name

Vice-President External Affairs

Date

\_\_\_\_\_  
Signature

Jane Valik  
Typed or Printed Name

President

Date

**SPRINT/BERKSHIRE CONFORMING AGREEMENT FILED PURSUANT TO  
COMMISSION DECISIONS IN NY CASES 05-C-0170 AND 05-C-0183**

- 33.2 For service arrangements made available under this Agreement and existing at the time of termination, those arrangements will continue without interruption following the date of termination or until a replacement agreement has been executed by the Parties either (a) under a new agreement voluntarily executed by the Parties; (b) under a new agreement negotiated pursuant to the provisions of Section 252 of the Act; or c) under any agreement available according to the provisions of Section 252(i) of the Act; however, in no case will those arrangements continue for more than 12 months following the date of termination.

**IN WITNESS WHEREOF**, the Parties agree that the effective date of this Agreement is the date first written above, and each Party warrants that it has caused this Agreement to be signed and delivered by its duly authorized representative.

By: Sprint Communications Company L.P.

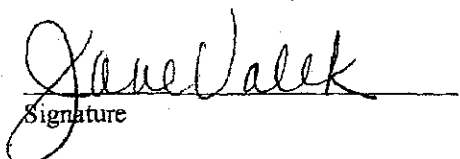
By: Berkshire Telephone Corporation

\_\_\_\_\_  
Signature

W. Richard Morris  
Typed or Printed Name

Vice-President External Affairs

\_\_\_\_\_  
Date

  
Signature

Jane Valik  
Typed or Printed Name

President

11-15-05  
Date

**SPRINT/BERKSHIRE CONFORMING AGREEMENT  
NY CASES 05-C-0170 AND 05-C-0183**

**Schedule I: Network Information**

<b>Berkshire Switch CLLI</b>	<b>Berkshire Rate Center</b>	<b>V &amp; H of POI Located at Berkshire's Certificated Service Area Boundary</b>	<b>Sprint Switch CLLI (2)</b>	<b>Sprint Serving Rate Center/s</b>
KNDRNYXADS0	Kinderhook	V-4679 H-1588	ALBYNYSSXSY	Note (1)
NVVLNYXARS0	Niverville	V-4679 H-1588	ALBYNYSSXSY	Note (1)
STFLNYXARS0	Stuyvesant Falls	V-4679 H-1588	ALBYNYSSXSY	Note (1)

Note (1) Sprint Rate Centers for local calling under this agreement are limited to those rate centers that are not subject to then existing contractual terms and conditions between Sprint and Berkshire and that are located in Berkshire's Local Calling Area as defined in its tariff, as updated from time to time.

Note (2) Sprint Switch CLLI serves all Sprint Serving Rate Centers.

Note (2) Sprint Switch CLLI serves all Sprint Serving Rate Centers

**SPRINT/BERKSHIRE CONFORMING AGREEMENT**  
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**Schedule II**  
**LNP SUPPORT INFORMATION**

<u>Item</u>	<u>Sprint</u>	<u>Berkshire</u>
1. Company OCN		
2. Company CLLI Codes within Berkshire Rate Center		
3. Rate Center Information		
A. Covered Rate Center(s)		
B. Associated LRN per Covered Rate Center(s)		
C. Rate Center V and H Coordinates NECA Tariff FCC No. 4	Yes	Yes
4. Utilization of electronic automated interface to process interconnection or service requests		No
5. Contact information for requests and inquiries	Insert Contact Name Title Mailing Address Telephone Numbers Fax Number	Insert Contact Name Title Mailing Address Telephone Numbers Fax Number
6. Business Hours:	XX a.m. to XX p.m. Monday through Friday	XX a.m. to XX p.m. Monday through Friday
7. Contact Information for Billing Default LNP Queries (If different than No. 5, above)		

**NOTE:**

**The Parties will exchange the information contained on this Schedule II, as required by Section 6.2, prior to a request for porting a telephone number between them.**

**SPRINT/BERKSHIRE CONFORMING AGREEMENT  
NY CASES 05-C-0170 AND 05-C-0183**

**Schedule III  
PRICING**

<u>SERVICE</u>		<u>CHARGE</u>	
RECIPROCAL COMPENSATION		No separate charges for Local Traffic	
EXPEDITED ORDER CHARGE		To be determined on an individual case basis based on the time spent at the hourly labor rates identified in the Receiving Party's interstate access tariff and pass through of LNP service bureau charges	
THIRD PARTY CHARGES INCURRED FOR DEFAULT QUERY SERVICE		Pass-Through	
DIRECTORY DISTRIBUTION CHARGES		Charges \$	Service Order
	Per-Directory Charge	Shipping & Handling Charge	Charge
Berkshire	\$10.00	incl. in copying charge	incl. in copy charge

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Schedule IV  
LNP LSR FORM INFORMATION -Berkshire

Local Service Request

Administrative -

Customer Carrier Name Abbreviation

Purchase Order Number

Local Service Request Number

Location Quantity

Service Center

Date and Time Sent

Desired Due Date

Request Type

Activity

Supplement Type

Response Type Requested

Company Code

New Network Service Provider Identification

Agency Authorization Status

Type of Service

Number Portability Direction Indicator

Bill Section-

Billing Account Number Identifier

Billing Account Number

Contact Section-

Initiator Identification

Initiator Telephone Number



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**SCHEDULE - IV (Cont.)**

Initiator Street Address

Initiator Address: Floor

Initiator Address: City

Initiator Address: State/Province

Initiator Address: ZIP/Postal Code

Implementation Contact Name

Implementation Contact Telephone Number

Remarks

**End User Information**

**EU Location & Access -**

Location Number

End User Name

State

ZIP

End User Listing Treatment

**EU Bill Section-**

Existing Account Telephone Number

**Number Portability**

Number Portability Quantity

**NP Service Details-**

Location Number

Line Number

Line Activity

Ported Telephone Number

Number Portability Type

LRN of the Ported Telephone Number



Christopher S. Barron  
Director, State Affairs

521 East Morehead Street  
Suite 250  
Charlotte, NC 28202  
704-344-8150  
www.fairpoint.com

September 9, 2010

Honorable Jaclyn A. Brilling  
Secretary  
New York State Public Service Commission  
Three Empire Plaza  
Albany, New York 12223

Re: Interconnection Agreement between Taconic Telephone Corp. and TVC Albany, Inc.

Dear Secretary Brilling:

Enclosed for filing please find the executed Interconnection Agreement adoption between Taconic Telephone Corp. d/b/a FairPoint Communications ("Taconic") and TVC Albany, Inc. d/b/a Tech Valley Communications ("TVC") for approval by the New York State Public Service Commission ("Commission"), in accordance with §§ 252(e)(1) and (e)(2) of the Telecommunications Act of 1996 ("Act").

Specifically, pursuant to § 252(i) of the Act, TVC elected to adopt the terms of the existing Commission-approved Interconnection Agreement between Taconic and Sprint Communications Company L.P., which is attached as Appendix 1 (consisting of 31 pages). A copy of the adoption letter agreement is enclosed.

Section 252(e)(4) of the Act specifies that an interconnection agreement shall be deemed approved if a state agency does not act to approve or reject the agreement within ninety (90) days of the filing of the agreement with the Commission.

Communication to Taconic may be sent to:

Regulatory Department  
Berkshire Telephone Corporation  
1 Davis Farm Road  
Portland, Maine 04103

With a copy to:

Shirley J. Linn  
General Counsel and Executive Vice President  
FairPoint Communications, Inc.  
521 E. Morehead Street, Suite 500  
Charlotte, North Carolina 28202

Communication to TVC may be sent to:

Harlan Bauer  
Controller  
TVC Albany, Inc. d/b/a Tech Valley Communications  
87 State Street  
Albany, New York 12207

With a copy to:

Keith Roland, Esq.  
Herzog, Engstrom & Koplovitz PC  
7 Southwoods Blvd  
Albany, New York 12211

If you have any questions regarding this filing, please contact the undersigned at 704-227-3651 or via electronic mail at [cbarron@fairpoint.com](mailto:cbarron@fairpoint.com).

Respectfully Submitted,



Chris Barron

Enclosures

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cc: Harlan Bauer



521 East Morehead Street  
Suite 250  
Charlotte, NC 28202  
704-344-8150  
[www.fairpoint.com](http://www.fairpoint.com)

August 26, 2010  
*Via Electronic Mail*

TVC Albany, Inc. d/b/a Tech Valley Communications  
Attn: Harlan Bauer  
Controller  
87 State Street  
Albany, New York 12207

**Re: Request for Adoption Under Section 252(i) of the Communications Act**

Dear Mr. Bauer:

Taconic Telephone Corp. d/b/a FairPoint Communications ("Taconic"), a New York corporation with an address for notice c/o FairPoint Communications, Inc. at 521 East Morehead Street, Suite 500, Charlotte, NC 28202, has received correspondence stating that TVC Albany, Inc d/b/a Tech Valley Communications ("Tech Valley"), a corporation with a principal place of business at 87 State Street, Albany, NY 12207 wishes, pursuant to 252(i) of the Communications Act of 1934, as amended ("Act"), to adopt the terms of the Interconnection Agreement between Sprint Communications Company L.P. ("Sprint") and Taconic approved by the New York Public Service Commission (the "Commission") as an effective agreement within the State of New York, as such agreement exists on the date hereof after giving effect to operation of law (the "Terms"). The current pricing schedule for Taconic is attached hereto as Exhibit A. Please note the following with respect to Tech Valley's adoption of the Terms.

1. By Tech Valley's countersignature on this letter, Tech Valley hereby represents and agrees to the following nine points:
  - a) Taconic is a debtor-in-possession operating under Chapter 11 of Title 11 of the United States Code in a bankruptcy case pending before the United States Bankruptcy Court for the Southern District of New York (Case No. 09-16335 (BRL)).
  - b) Tech Valley adopts and agrees to be bound by the Terms and, in accordance with the Terms agrees that Tech Valley shall be substituted in place of Sprint in the Terms wherever appropriate.
  - c) For avoidance of doubt, adoption of the Terms does not include adoption of any provision imposing any obligation on Taconic or Tech Valley that no longer applies to Taconic or Tech Valley pursuant to (i) any Order by the Commission; (ii) any Order by the Federal Communications Commission; or (iii) that is not otherwise required by 47 U.S.C. § 251(c)(3) or by 47 C.F.R. Part 51.

- d) If any part or all of Sprint's interconnection agreement is rejected by Taconic during the current bankruptcy case, then Tech Valley agrees this adoption agreement and the adoption of the associated Sprint interconnection agreement will terminate within 45 days of that rejection becoming effective and Tech Valley shall either request to opt into another interconnection agreement or to negotiate a different interconnection agreement with Taconic within that 45-day time period. Should the parties fail to reach an agreement in such time, they agree to continue to operate under the existing agreement until a replacement agreement is effective.
- e) Notice to Tech Valley and Taconic as may be required or permitted under the Terms shall be provided as follows:

*To Tech Valley:* Harlan Bauer  
Controller  
TVC Albany, Inc. d/b/a Tech Valley Communications  
87 State Street  
Albany, NY 12207  
hbauer@techvalleycom.com

*With a copy to:* Keith Roland, Esq.  
Herzog, Engstrom & Koplovitz PC  
7 Southwoods Blvd  
Albany, NY 12211

*To Taconic:* Regulatory Department  
FairPoint Communications  
1 Davis Farm Road  
Portland, ME 04103

*With a copy to:* Shirley J. Linn  
General Counsel and Executive Vice President  
FairPoint Communications, Inc.  
521 East Morehead Street, Suite 500  
Charlotte, NC 28202

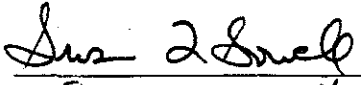
- f) Tech Valley represents and warrants that it is a certified provider of local telecommunications service in the State of New York, and that its adoption of the Terms will cover services in the State of New York only.
- g) The Parties agree that the Terms shall supersede and replace in full any and all prior agreements, written, and oral, between Tech Valley and Taconic for interconnection and other services addressed in the Terms. Any outstanding payment obligations of the parties that were incurred but not fully paid under any prior agreement between Tech Valley and Taconic constitute payment obligations of the parties under this adoption.
- h) Taconic's pricing schedule (as schedule may be amended from time to time) for interconnection agreements which is attached as Exhibit A hereto, shall apply to Tech Valley's adoption of the Terms. Tech Valley should note that the aforementioned

pricing schedule may contain rates for certain services, the terms of which are not included in the Terms or that are otherwise not part of the adoption, and may include phrases or wording not identical to those utilized in the Terms. The inclusion of such rates in no way obligates Taconic to provide the subject services and in no way waives Taconic's rights, and the use of different wording or phrasing in the pricing schedule does not alter the obligations and rights set forth in the Terms.

- i) Tech Valley's adoption of the Terms shall become effective on the date the New York Public Service Commission approves this agreement. Taconic shall file this adoption letter with the Commission promptly upon receipt of an original of this letter countersigned by Tech Valley.
2. As the Terms are being adopted by Tech Valley pursuant to § 252(i) of the Act, Taconic does not provide the Terms to Tech Valley as either a voluntary or negotiated agreement. The filing and performance by Taconic of the Terms does not in any way constitute a waiver by Taconic of any position as to the Terms or a portion thereof, nor does it constitute a waiver by Taconic of any rights or remedies it may have to seek review of the Terms, or to seek to review any provisions included in the Terms as a result of Tech Valley's adoption of the Terms.
3. Nothing herein shall be construed as or is intended to be a concession or admission by Taconic that any provision in the Terms complies with the rights and duties imposed by the Act, the decisions of the FCC and the Commission, the decisions of the courts, or other law, and Taconic expressly reserves its full rights to assert and pursue claims arising from or related to the Terms.
4. Taconic reserves the right to deny Tech Valley's application of the Terms, in whole or in part, upon proving to the Commission that:
  - a) the costs of providing the Terms to Tech Valley are greater than the costs of providing them to Sprint;
  - b) provisioning the Terms to Tech Valley is not technically feasible; and/or
  - c) To the extent that Taconic otherwise is not required to make the Terms available to Tech Valley under the law.
5. For avoidance of any doubt, please note that adoption of the terms will not result in reciprocal compensation payments for Internet traffic.
6. Should either party try to apply the Terms in a manner that conflicts with Paragraphs 2 through 5 above, the other party reserves the right to seek appropriate legal and/or equitable relief.

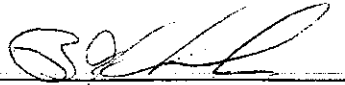
7. In the event that a voluntary or involuntary petition has been or is in the future filed against Tech Valley under bankruptcy or insolvency laws, or any law relating to the relief of debtors, readjustment of indebtedness, debtor reorganization or composition or extension of debt (any such proceeding an "Insolvency Proceeding"), then: (A) all rights of Taconic under such laws including without limitation, all rights of Taconic under 11 U.S.C. § 366, shall be preserved, and Tech Valley's adoption of the Terms shall in no way impair such rights of Taconic; and (B) all rights of Tech Valley resulting from Tech Valley's adoption of the Terms shall be subject to and modified by any Stipulations and Orders entered in the Insolvency Proceeding, including, without limitation, any Stipulation or Order providing adequate assurance of payment to Taconic pursuant to 11 U.S.C. § 366.

**TACONIC TELEPHONE CORP. d/b/a FAIRPOINT COMMUNICATIONS**

By:   
Printed Name: Susan L. Sowell  
Title: VP + Assistant General Counsel  
Date: 9/2/10

By signing below, Tech Valley agrees to the adoption of the Agreement as well as all terms and conditions specified in Paragraph 1 of this letter:

**TVC ALBANY, INC. d/b/a TECH VALLEY COMMUNICATIONS**

By:   
Printed Name: Brian Kurkowski  
Title: CFO  
Date: 8-31-10

**Fair  
Point**



Exhibit A

## **Pricing Attachment**

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**General.** The rates contained in this Pricing Attachment are the rates as referenced in the various sections on the Interconnection Agreement.

A. Direct Interconnection Facilities:

- |    |                                     |  |
|----|-------------------------------------|--|
| 1. | Direct Trunk Transport Termination: |  |
|    | a) DS1                              | \$ 94.38 / termination / month                                     |
|    | b) DS3                              | \$ 525.64 / termination / month                                    |
| 2. | Direct Trunk Transport Facility:    |  |
|    | a) DS1                              | \$ 19.14 / mile / month  |
|    | b) DS3                              | \$ 131.77 / mile / month   |
| 3. | Non-recurring Installation Charge   | \$ 338.00 / Per 24 trunks activated or fraction thereof, per order |

B. Transit Traffic Rate: \$0.008 / min.

C. General Charges:

- |    |                                     |                    |
|----|-------------------------------------|--------------------|
| 1. | Service Order Charge (LSR)**        | \$ 25.00 / request |
| 2. | Service Order Cancellation Charge** | \$ 12.00 / request |
| 3. | Service Order Change Charge**       | \$ 12.00 / request |
| 4. | Expedited Due Date Charge**         | \$ 45.00 / request |
| 5. | Technical Labor:**                  |                    |

Install & Repair Technician:

Basic Time (normally scheduled hours)	\$ 24.57 / ½ hr
*Overtime (outside normally schld hrs on schld work day)	\$ 36.85 / ½ hr
*Premium Time (outside of scheduled work day)	\$ 49.13 / ½ hr

Central Office Technician:

Basic Time (normally scheduled hours)	\$ 29.97 / ½ hr
*Overtime (outside normally schld hrs on schld work day)	\$ 44.96 / ½ hr
*Premium Time (outside of scheduled work day)	\$ 59.95 / ½ hr

LNP Coordinator:

Basic Time (normally scheduled hours)	\$ 43.32 / ½ hr
*Overtime (outside normally schld hrs on schld work day)	\$ 64.99 / ½ hr
*Premium Time (outside of scheduled work day)	\$ 86.65 / ½ hr

Administrative Support:

Basic Time (normally scheduled hours)	\$ 13.65 / ½ hr
*Overtime (outside normally schld hrs on schld work day)	\$ 20.47 / ½ hr
*Premium Time (outside of schedule work day)	\$ 27.29 / ½ hr

- |    |   |   |
|----|---|---|
| 6. | Rates and Charges for LNP Coordinated Hot Cut (CHC) | Per Sections 2 and 3 of the LNP Attachment, charged time will be in half hour increments for the personnel involved in the CHC at the rates in Section 5 above. |
|----|---|---|

\* Minimum 4 hours when a technician is called out during Overtime or Premium Time.

\*\* These charges are reciprocal and apply to both ILEC and CLEC.

**SPRINT/TACONIC CONFORMING AGREEMENT  
NY CASES 05-C-0170 AND 05-C-0183**

**INTERCONNECTION AGREEMENT**

By and Between

**TACONIC TELEPHONE CORPORATION**

And

**SPRINT COMMUNICATIONS COMPANY L.P.**

**SPRINT/TACONIC CONFORMING AGREEMENT  
NY CASES 05-C-0170 AND 05-C-0183**

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**SPRINT/TACONIC CONFORMING AGREEMENT**  
**NY CASES 05-C-0170 AND 05-C-0183**

This Interconnection Agreement ("Agreement") is made effective as of the day of December 15, 2005 by and between Taconic Telephone Corporation ("Taconic"), a New York corporation with offices at One Taconic Place, Chatham, NY 12037 and Sprint Communications Company L.P. a Delaware limited partnership with offices at 6160 Sprint Parkway, Overland Park, KS 66251 (Sprint). Taconic and Sprint may also be referred to herein singularly as a "Party" or collectively as the "Parties."

**RECITALS**

WHEREAS, Taconic is an incumbent local exchange carrier ("LEC") and Sprint is a competitive local exchange carrier ("CLEC") and both Parties are authorized by the New York State Public Service Commission ("Commission") to provide telecommunications services in the State of New York; and

WHEREAS, Sections 251 and 252 of the Communications Act of 1934 as amended by the Telecommunications Act of 1996 (the "Act") have specific requirements for interconnection, and the Parties intend to comply with these requirements; and

WHEREAS, The Parties desire to interconnect their respective networks to allow either Party to deliver its originating End User Local Traffic to the other Party for termination to the End Users of the other Party; and

WHEREAS the Parties are entering into this Agreement to set forth the respective obligations of the Parties and the terms and conditions under which the Parties will interconnect their networks and provide other services as required by the Act and applicable law; and

WHEREAS, the Parties have arrived at this Agreement through negotiations undertaken pursuant to the Act and have agreed on the terms and conditions as set forth below.

NOW THEREFORE, in consideration of the mutual obligations set forth below, the Parties agree to the following terms and conditions:

**1. Scope of Agreement**

1.1 This Agreement addresses the terms and conditions under which Sprint and Taconic agree to exchange only Local Traffic between their respective End Users, as specified in Schedule I, by a direct or indirect connection at the Point of Interconnection in accordance with this Agreement. All traffic that either Party may deliver to the POI that falls outside of the definition of Local Traffic shall not be subject to the terms and conditions of this Agreement (the "Excluded Traffic") but may be subject to other arrangements and/or tariffs of the Parties which shall govern the intercarrier treatment of such Excluded Traffic. The Parties further agree that they will strictly construe the definition of Local Traffic and will ensure that they each will abide by the additional terms and conditions of Section 8 regarding facilities and traffic addressed under this Agreement.

1.2 All Local Traffic exchanged between the Parties shall be compensated in accordance with Section 4, below.

1.3 Each Party agrees that it will not knowingly provision any of its services in a manner that permits the arbitrage and/or circumvention of the application of applicable switched

**SPRINT/TACONIC CONFORMING AGREEMENT  
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access charges by the other Party and/or the utilization of the physical connecting arrangements described in this Agreement to permit the delivery to the other Party of Excluded Traffic through the POI. If any arbitrage and/or delivery of Excluded Traffic through the POI is identified, each Party also agrees to take all reasonable steps to terminate and/or reroute any service to one of its end users that permits that End User or any entity to arbitrage and/or circumvent the application of applicable switched access charges by the other Party or that permits the End User or any entity to utilize the POI for the delivery or receipt of Excluded Traffic through the POI; provided, however, that until such time as the arbitrage is resolved, the Party that is allowing the POI to be used for the delivery of Excluded Traffic shall pay either terminating or originating access charges based on the directionality of the traffic and pursuant to the applicable tariff of the other Party..

- 1.4 The Parties enter into this Agreement without prejudice to any positions they have taken previously, or may take in the future in any legislative, regulatory, judicial or other public forum addressing any matters, including matters related specifically to this Agreement, or other types of arrangements prescribed in this Agreement; provided, however, that this agreement shall remain binding on the Parties.
- 1.5 All references to Sections and Schedules are deemed to be references to the Sections of and the Schedules to this Agreement unless the context otherwise requires. Unless the context shall otherwise require, any reference to any agreement, other instrument (including offerings, guides or practices of either Party or other third party), statute, regulation, rule or tariff is to such agreement, instrument, statute, regulation, or rule or tariff as amended and supplemented from time to time (and, in the case of a statute, regulation, rule or tariff, to any successor provision).
- 1.6 The Parties acknowledge that some of the services, facilities, or arrangements described herein may reference the terms of federal or state tariffs of the Parties. Each Party hereby incorporates by reference those provisions of any tariff that governs any terms specified in this Agreement. If any provision contained in this main body of the Agreement and any Exhibit hereto cannot be reasonably construed or interpreted to avoid conflict, the provision contained in this main body of this Agreement shall prevail. If any provision of this Agreement and an applicable tariff cannot be reasonably construed or interpreted to avoid conflict, the Parties agree that the provision contained in this main body of this Agreement prevails.
- 1.7 Each Party shall comply with all federal, state, and local statutes, regulations, rules, ordinances, judicial decisions, and administrative rulings applicable to its performance under this Agreement. Each Party shall promptly notify the other Party in writing of any governmental action that suspends, cancels, withdraws, limits, or otherwise materially affects its ability to perform its obligations hereunder.

**2. Definitions**

Except as otherwise specified herein, the following definitions will apply to all sections contained in this Agreement. Additional definitions that are specific to the matters covered in a particular section may appear in that section. Any term used in this Agreement that is not specifically defined shall have the meaning ascribed to such term in the Act. If no specific

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meaning exists for a specific term used in this Agreement, then normal usage in the telecommunications industry shall apply.

- 2.1 Act, as used in this Agreement, means the Communications Act of 1934 (47 U.S.C. Section 151 *et seq.*), as amended by the Telecommunications Act of 1996, and as from time to time interpreted in the duly authorized rules and regulations of the Federal Communications Commission ("FCC") or the Commission.
- 2.2 Certificated Area means the geographic area within which Taconic is authorized to provide local exchange service and exchange access service as established and defined by the Commission.
- 2.3 Commission means the New York State Public Service Commission.
- 2.4 Customer, End User or End User Customer means the residence or business subscriber that is the ultimate user of telecommunications services provided directly to such subscriber by either of the Parties or by a third party telecommunications carrier that is an authorized Local Exchange Carrier providing local exchange service and for purposes of this Agreement, that may place or receive Local or EAS Traffic and, except for Virtual NXX or FX customers, that is physically located within the Rate Center within the Certificated Area.
- 2.5 DS1 is a digital signal transmission rate of 1.544 Megabits per second ("Mbps").
- 2.6 DS3 is a digital signal transmission rate of 44.736 Mbps.
- 2.7 Information Service Provider or ISP is any entity, including but not limited to an Internet service provider, that provides information services but is not a cable television service provider or any other entity providing voice telecommunications services to end users.
- 2.8 ISP Traffic is traffic originated by an end user of one Party and delivered to the other Party for switching to an ISP.
- 2.9 Interconnection means the indirect or direct physical linking of two networks for the mutual exchange of traffic.
- 2.10 Intra-LATA Toll Traffic is as defined in the Act.
- 2.11 Local Access and Transport Area ("LATA") has the same meaning as that contained in the Act.
- 2.12 Local Exchange Carrier or LEC means any common carrier authorized to provide exchange and exchange access services.
- 2.13 Local Exchange Service means any form of switched telecommunications provided within a defined geographic area known as the local calling area.
- 2.14 Local Number Portability means the ability of users of telecommunications services to retain, at the same location, existing telecommunications numbers without impairment of

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quality, reliability, or convenience when switching from one telecommunications carrier to another.

- 2.15 Local Traffic means calls that are exchanged by the Parties between telephone numbers assigned to Rate Centers located within Taconic's local calling area as defined by Taconic's general subscriber tariff or like mechanism.
- 2.16 NPA-NXX means the first six digits of a ten-digit telephone number, which denote a consecutive 10,000 number block within the North American Numbering Plan. As used in the Agreement, the term refers exclusively to geographic NPAs associated with Rate Center areas and excludes Service Access Codes, unless otherwise specifically noted.
- 2.17 Point of Interconnection (POI) means the physical location(s) at which the Parties' networks meet for the purpose of exchanging Local Traffic.
- 2.18. Rate Center means the specific geographic point ("Vertical and Horizontal" ("V&H") coordinates) and corresponding geographic area which are associated with one or more particular NPA-NXX codes which have been assigned to a LEC for its provision of basic exchange telecommunications services. The "rate center point" is the finite geographic point identified by a specific V&H coordinate, which is used to measure distance-sensitive end user traffic to/from the particular NPA-NXX designations associated with the specific Rate Center. The "Rate Center area" is the exclusive geographic area identified as the area within which the LEC provides basic exchange telecommunications service bearing the particular NPA-NXX designations associated with the specific Rate Center.
- 2.19. SS7 means Signaling System 7, the common channel out-of-band signaling protocol developed by the Consultative Committee for International Telephone and Telegraph (CCITT) and the American National Standards Institute (ANSI).

**3. Interconnection Arrangements**

- 3.1 Each Party shall be responsible for the cost and any requirements associated with the establishment, including but not limited to, if applicable, ordering processes and access service request processes of providing trunks to the POI for Local Traffic which that Party originates. The POI must be at or within Taconic's exchange area boundary. Each Party will be solely responsible for the costs and operation of its portion of the construction of facilities to the POI.
- 3.2 The Parties acknowledge that Sprint may lease facilities from Taconic or an alternate third party provider, or, construct its own facilities in order to achieve connection at the POI. Where a Party arranged for the leasing or construction by a third party of the facilities it requires to the POI, that Party shall ensure and be responsible for the activities of that third party including, but not limited to, the necessary coordination of that third party's activities with the other Party. At the time of execution of this Agreement, traffic exchanged between the Parties for termination on the other Party's network is at a level that is de minimis and Sprint may choose to indirectly interconnection with Taconic through the use of a third party's transit service. When Sprint determines that the volume of traffic exchanged between the Parties warrants a direct connection, such direct connection will be established pursuant to 3.3.

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- 3.3. The Parties will interconnect their networks for the exchange of traffic as specified in the terms and conditions contained in Schedule I hereto and incorporated by reference. A new POI can be established, or the existing POI moved, only with the consent of both Parties; provided, however, that where one Party requests that the POI be moved, the Party requesting such move may be required to pay the costs of the other Party associated with the move.
- 3.4. The Parties will use the trunk group(s) established at the POI to route Local Traffic to one another, pursuant to the terms and conditions of this Section 3 of the Agreement.
- 3.5. This Agreement is applicable only for the exchange of Local Traffic. Both Parties agree to deliver only traffic within the scope of this Agreement.
- 3.6. Each Party warrants and represents that it will not provision any of its services or exchange any traffic hereunder in a manner that permits the unlawful avoidance of the application of intrastate or interstate access charges by any other Party including, but not limited to, third party carriers, aggregators, resellers, and the Commission-defined unlawful resale or bridging of Local Traffic. Each Party also agrees to take all reasonable steps to terminate any service to one of its users that permits that user to unlawfully avoid the application of access charges by the other Party.
- 3.7. Both Parties warrant and represent that they will: (a) assign telephone numbers in a manner consistent with this Agreement to End Users that obtain Local Exchange Service in the Rate Center areas associated with the telephone number; (b) provision their local exchange carrier services in a manner that the resulting traffic exchanged between the Parties pursuant to this Agreement will be confined to the scope of the traffic as set forth in this Section; (c) adopt the Rate Center areas and Rate Center points that are identical to those used by Taconic within its local calling area as defined by the Commission for the Local Traffic exchanged pursuant to this Agreement; (d) when securing numbering resources, assign whole NXX Codes to each Rate Center, or where, applicable, thousand number blocks within a NXX Code assigned to that Rate Center; and (e) transmit CPN and/or Automatic Number Identification ("ANI") on at least ninety-five percent (95%) of all traffic delivered to the POI. Where CPN and/or ANI is not provided, the Parties agree that the Party receiving such traffic shall assess, and the delivering Party shall pay to the receiving Party, the applicable intrastate terminating access charges. Both Parties agree that they will engineer their respective networks and design their respective systems to deliver traffic in compliance with this Section 3.
- 3.8. This Agreement does not obligate either Party to provide any arrangements or services not specifically provided for herein. This Agreement has no effect on the definition of end user services that either Party offers to its end user customers, the services either Party chooses to offer to its respective end user customers, the rate levels or rate structures that either Party charges its end users for services.
- 3.9. Each Party is solely responsible for the receipt and transmission of 911/E911 traffic originated by users of its Telephone Exchange Services. The Parties acknowledge and affirm that calls to 911/E911 services shall NOT be routed over the interconnection trunk group(s). To the extent that a Party incorrectly routes such traffic over such



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arrangements, that Party shall fully indemnify and hold harmless the other Party for any claims, including claims of third parties, related to such calls.

- 3.10 Each Party shall solely be responsible for its Communications Assistance for Law Enforcement Act ("CALEA") enforcement-related activity. Each Party shall also ensure that it takes all actions necessary for a full response to any CALEA and/or other law enforcement-related inquiry related in any manner to the originating/terminating traffic from an End User it serves and that such actions are completed in a timely manner. Where a Party fails (the "Failing Party") to comply with any one or more of these obligations and an action is brought or costs imposed upon the other Party (the "Non-Failing Party"), the Failing Party shall indemnify the Non-Failing Party pursuant to the requirements of Section 17 of this Agreement.

**4. Compensation for Local Traffic**

The Parties agree that the mutual provisions and relative obligations of the Parties pursuant to this Agreement represent good and valuable consideration, the sufficiency of which between the Parties is acknowledged, and that the relative obligations and consideration are sufficiently in balance between the Parties such that neither Party has any obligation to provide any net monetary compensation to the other Party for the other Party's origination or termination of Local Traffic. The specific compensation terms and conditions set forth in this Agreement are related to, dependent on, and limited to the exchange of Local Traffic between the Parties.

**5. Compensation for Facilities**

Should Sprint lease facilities from Taconic in order to achieve connection at the POI, as specified in Section 3.2 above, Sprint agrees to pay Taconic the applicable published or price listed tariff rates for the lease of such facilities.

**6. Local Number Portability (LNP)**

- 6.1 In compliance with Part 52 of the FCC's rules, the Parties will mutually provide LNP services from properly equipped central offices. LNP applies when one of the Parties has received a request from a Customer with an active account with the other Party that indicates the Customer desires to change local carriers while retaining the telephone number or numbers associated with his/her account.
- 6.2 The Parties shall utilize the information contained in Schedule II to establish the scope and procedures by which they will exchange the necessary information required to respond to a specific request for porting a telephone number between them based on the information contained in Schedule IV.
- 6.3 Both Parties will perform testing to ensure proper routing and completion of calls to a ported number, and cooperate in conducting any additional testing to ensure interoperability between their respective networks and respective systems. Additional testing charges are as specified in Schedule III and shall be paid by the Party requesting such additional testing. Each Party shall inform the other Party of any system updates that may affect the other Party's network and each Party shall, at the other Party's reasonable request and, to the extent practical, perform tests to validate the operation of the network.

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**7. Traffic Identifiers and Audits**

- 7.1 To ensure proper implementation of this Agreement, the Party delivering traffic to the POI shall provide the Automatic Number Identification ("ANI") or Calling Party Number ("CPN") (or similar industry standard traffic elements) for all traffic (the "Traffic Identifiers") in order that the terminating Party can properly identify the telephone number associated with the End User placing the call. Where the Traffic Identifiers are not provided as described in Section 3, the terminating Party shall assess, and the originating Party shall pay, access charges pursuant to the terminating Party's applicable tariff or like mechanism.
- 7.2 Each Party shall keep six (6) months of usage records for the traffic delivered by it to the POI, if such records are kept in the ordinary course of business by the Parties. Either Party may request an audit of usage data on not less than forty-five (45) days' written notice. Any such audit shall be accomplished during normal business hours at the office of the Party being audited. Audits may be performed by a qualified independent auditor or consultant paid for by the Party requesting the audit. However, no right to request or receive usage data from the other Party under this Section 7.3 accrues to a Party who cannot reciprocate, unless otherwise agreed by the Parties.
- 7.3 In order to facilitate audits, the Parties must accommodate prospective data collection if prior period data is not available as contemplated in Section 7.3 above.
- 7.4 On all traffic exchanged pursuant to this Agreement, neither Party shall intentionally substitute nor implement any arrangement within its switch(es) that generates an incorrect ANI, CPN or other SS7 parameters then those associated with the originating End User. Upon determination that a Party has intentionally substituted or generated such incorrect parameters on traffic exchanged pursuant to this Agreement, the offending Party shall pay the other Party the difference between compensation paid (if any) and applicable access charges, plus interest due under the terms of the applicable access tariff from the date the traffic would have been billed if such parameters had been passed unaltered. The intentional substitution or generation of incorrect parameters shall constitute a default of this Agreement.
- 7.5 In addition to the other requirements contained in this Section 7, either Party may, upon written notice to the other Party, conduct an audit, during normal business hours, only on the source data/documents as may contain information bearing upon the services being provided under the terms and conditions of this Agreement. An audit may be conducted no more frequently than once per 12 month period, and only to verify the other Party's compliance with provisions of this Agreement. The notice requesting an audit must identify the date upon which it is requested to commence, the estimated duration, the materials to be reviewed, and the number of individuals who will be performing the audit. Each audit will be conducted expeditiously. Any audit is to be performed as follows: (i) following at least 45 days' prior written notice to the audited Party; (ii) subject to the reasonable scheduling requirements and limitations of the audited Party; (iii) at the auditing Party's sole cost and expense; (iv) of a reasonable scope and duration; (v) in a manner so as not to interfere with the audited Party's business operations. No original books or records of the Party being reviewed may leave the premises of the Party being reviewed. Prior to commencing the review, the Party being

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reviewed may request the execution of a confidentiality agreement to protect confidential information disclosed through the course of the review at its sole discretion.

**8. Physical Interconnection**

8.1 The Parties agree that unless mutually agreed to the contrary all Local Traffic exchanged between them shall be transmitted on trunks solely dedicated to such Local Traffic. Neither Party shall terminate Intra-LATA nor inter-LATA toll switched access traffic or originate untranslated toll-free traffic, including but not limited to 550/55X/555/800/888/877/866 traffic, over dedicated Local Traffic trunks. Local Traffic exchange shall be provided via two-way trunks where technically and operationally feasible unless both Parties agree to implement one-way trunks.

8.2 Neither Party shall construct facilities that require the other Party to build unnecessary facilities.

8.3 The Parties will mutually agree on the appropriate sizing for facilities based on the standards set forth below. The capacity of Interconnection facilities provided by each Party will be based on mutual forecasts and sound engineering practice, as mutually agreed to by the Parties. The Interconnection facilities provided by each Party shall, where technically available, be formatted using Bipolar 8 Zero Substitution ("B8ZS"). The Grade of Service for all facilities between the Parties will be engineered and provisioned to achieve P.01 Grade of Service. Each Party shall make available to the other Party trunks over which the originating Party can terminate Local Traffic of the end users of the originating Party to the end users of the terminating Party.

8.4 The electrical interface at the POI will be for a DS1 level. If any other electrical interface is mutually agreed to by the Parties, then each will provide any required multiplexing to a DS1 level.

8.5 N11 codes (including but not limited to, 411, 611, & 911) shall not be sent between the networks of the Parties over the Local Traffic trunk groups.

8.6 Prior to establishment of the physical, direct connection of their respective networks at the POI as anticipated by this Agreement, each Party shall provide the other with a point of contact for the reconciliation of trunk forecasts, escalation for ordering and provisioning related matters.

**9. Trunk Forecasting**

The Parties will work towards the development of joint forecasting responsibilities for traffic utilization over Local Traffic trunk groups covered in this Agreement. Orders for trunks that exceed forecasted quantities for forecasted locations will be accommodated as facilities and/or equipment becomes available. Parties will make all reasonable efforts and cooperate in good faith to develop alternative solutions to accommodate orders when facilities are not available. Inter-company forecast information must be provided by the Parties to each other upon reasonable request, per Section 8.6 above.

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**10. Network Management**

**10.1 Protective Controls**

Either Party may use protective network traffic management controls as available in their networks such as, but not limited to, 7-digit and 10-digit code gaps, on traffic toward each other's network, when required to protect the public switched network from congestion due to facility failures, switch congestion or failure or focused overload. Sprint and Taconic will immediately notify each other of any protective control action planned or executed.

**10.2. Network Congestion Due to Mass Calling**

Sprint and Taconic will cooperate and share pre-planning information regarding cross-network mass call-ins expected to generate large or focused temporary increases in call volumes. Both Parties will work cooperatively to reduce network congestion caused by such cross-network mass call-ins.

**10.3 Network Harm**

Neither Party will use any service related to or using any of the services provided in this Agreement in any manner that interferes with third parties in the use of their service, prevents third parties from using their service, impairs the quality of service to other carriers or to either Party's End Users; causes electrical hazards to either Party's personnel, damage to either Party's equipment or malfunction of either Party's billing equipment (individually and collectively, "Network Harm"). If a Network Harm occurs or if a Party reasonably determines that a Network Harm is imminent, such Party will, where practicable, notify the other Party that temporary discontinuance or refusal of service may be required; provided, however, wherever prior notice is not practicable, such Party may temporarily discontinue or refuse service forthwith, if such action is reasonable under the circumstances. In case of such temporary discontinuance or refusal, such Party will:

- (a) Promptly notify the other Party of such temporary discontinuance or refusal;
- (b) Afford the other Party the opportunity to correct the situation which gave rise to such temporary discontinuance or refusal; and
- (c) Inform the other Party of its right to bring a complaint to the Commission or Federal Communications Commission ("FCC").

- 10.4** The Parties agree that each will share responsibility for all maintenance and repair of trunks/trunk groups. The Parties agree to: (a) cooperatively plan and implement coordinated repair procedures for the meet point and local interconnection trunks and facilities to ensure trouble reports are resolved in a timely and appropriate manner; (b) provide trained personnel with adequate and compatible test equipment to work with each other's technicians; (c) promptly notify each other when there is any change affecting the service requested, including the date service is to be started; (d) coordinate and schedule testing activities of their own personnel, and others as applicable, to ensure its interconnection trunks/trunk groups are installed per the interconnection order, meet agreed upon acceptance test requirements, and are placed in service by the due date; (e) perform sectionalization to determine if a trouble condition is located in its facility or its portion of the interconnection trunks prior to referring any trouble to each other; (f)

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provide each other with a trouble reporting number to a work center; (g) immediately report to each other any equipment failure which may affect the interconnection trunks; (h) provide, based on the trunking architecture, for mutual tests for system assurance for the proper recording of AMA records in each company's switch. These tests are repeatable on demand by either Party upon reasonable notice.

- 10.5 A maintenance service charge applies whenever either Party requests the dispatch of the other Party's personnel for the purpose of performing maintenance activity on the interconnection trunks, and any of the following conditions exist: (a) No trouble is found in the interconnection trunks; (b) The trouble condition results from equipment, facilities or systems not provided by the Party whose personnel were dispatched; or (c) Trouble clearance did not otherwise require a dispatch, and upon dispatch requested for repair verification, the interconnection trunk does not exceed maintenance limits. If a maintenance service charge has been applied and trouble is subsequently found in the facilities of the Party whose personnel were dispatched, the charge will be canceled. Billing for maintenance service by either Party is based on each half-hour or fraction thereof expended to perform the work requested. The time worked is categorized and billed at one of the following three rates: (1) basic time; (2) overtime; or (3) premium time as defined in the billing Party's approved intrastate access tariff.

**11. Office Code Translations**

- 11.1 It shall be the responsibility of each Party to program and update its own switches and network systems in accordance with the information derived from such sources as the Local Exchange Routing Guide ("LERG") in order to recognize and route traffic to the other Party's assigned NXX codes at all times.
- 11.2 The Parties recognize that some of the traffic to be exchanged under this Agreement may be destined for telephone numbers that have been ported. Where traffic to be exchanged under this Agreement is destined for telephone numbers that have, in turn, been ported and when more than one carrier is involved in completing that traffic, the N-1 carrier has the responsibility to determine if a query is required, to launch the query, and to route the call to the appropriate switch or network in which the telephone number resides.
- 11.3 If a Party does not fulfill its N-1 carrier responsibility (the "Non-Querying Party"), the other Party (the "Querying Party") shall perform default LNP queries on calls to telephone numbers with portable NXXs received from the Non-Querying Party and route the call to the appropriate switch or network in which the telephone number resides. The Non-Querying Party shall be responsible for payment of all charges assessed by the Querying Party as identified in Schedule III for "Default Query Service" including any reciprocal compensation assessed by the third party terminating carrier and/or transit charges assessed by a third party tandem provider. When such charges are billed by the Querying Party to the Non-Querying Party and such charges are disputed by the Non-Querying Party, the Querying Party shall provide the Non-Querying Party with an opportunity to challenge such charges. If such charges are disputed by the Non-Querying Party, the Non-Querying Party may request the Querying Party to provide its underlying validation of those charges to the Non-Querying Party for examination and review.

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**12. SS7 Signaling**

In order to track and monitor the traffic that is being exchanged at the POI both Parties agree to utilize SS7 Common Channel Signaling ("CCS") between their respective networks for the traffic addressed in this Agreement. Both Parties will provide CCS connectivity in accordance with accepted industry practice and standard technical specifications. For all traffic they deliver to the POI, the Parties agree to cooperate with one another on the exchange of all appropriate unaltered CCS messages for call set-up, including without limitation ISDN User Part ("ISUP") and Transaction Capability User Part ("TCAP") messages to facilitate interoperability of CCS-based features and functions between their respective networks, including CLASS features and functions. All CCS signaling parameters, including, but not limited to, the Jurisdictional Indicator Parameter ("JIP") and the originating end user telephone number, will be provided by each Party in conjunction with all traffic it delivers to the POI.

**13. Directory Listings and Distribution Services**

- 13.1. The following provisions of Section 14 are specifically included as a result of actions and prior decisions by the Commission, and apply only in those years where Sprint provides notice to Taconic that Sprint seeks to have its directory listings published in the Taconic directory, provided that Taconic receives from Sprint written notice sufficiently in advance for Taconic to receive the information required of Sprint by this Section 14 in order for Taconic to include such information in the Taconic directory.
- 13.2 Sprint agrees to provide to Taconic or its publisher, as specified by Taconic, all subscriber list information (including additions, changes and deletions) for its End Users physically located within the same geographic area covered by the Taconic's published directory. To the extent that the Independent includes within its directory, listing information regarding customers to whom the Independent provides Foreign Exchange ("FX") service, the Independent will also accept listing information from Sprint associated with a Sprint "Foreign Exchange" End User. It is the responsibility of Sprint to submit directory listings in the prescribed manner to Taconic prior to the directory listing publication cut-off date, which will be provided by Taconic to Sprint.
- 13.3 Taconic will include Sprint's End Users' primary listings (residence and business) in its White Pages Directory, and if applicable in its Yellow Pages Directory under the appropriate heading classification as determined by publisher as well as in any electronic directories in which Taconic's own Customers are ordinarily included. Listings of Sprint's End Users will be interfiled with listings of Taconic's End Users and the End Users of other LECs, in the local section of Taconic's directories.
- 13.4 Sprint shall not provide Taconic with any information regarding Sprint's End User where that End User has selected "non-published" or like status with Sprint.
- 13.5 Sprint will provide Taconic with the directory information for all its End Users in the format specified by the Taconic. Subscriber list information will include customer name, address, telephone number, appropriate classified heading and all other pertinent data elements as requested by Taconic, as appropriate with each order, to provide Taconic the ability to identify listing ownership. Sprint will provide all End User listings at no charge to Taconic or its publisher.

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- 13.6 Sprint's End User s' standard primary listing information in the telephone directories will be provided at no charge. Sprint will pay Taconic's charges as contained in Taconic's general subscriber service tariff on file with the PSC for additional and foreign telephone directory listings that may be assessed to its End Users.
- 13.7 Both Parties will use their best efforts to ensure the accurate listing of Sprint's End User listings. Sprint is responsible for all listing questions and contacts with its End Users including but not limited to queries, complaints, account maintenance, privacy requirements and services. Sprint will provide Taconic with appropriate internal contact information to fulfill these requirements.
- 13.8 Taconic will accord Sprint directory listing information the same level of confidentiality which Taconic accords its own directory listing information. Sprint grants Taconic full authority to provide Sprint subscriber listings, excluding non-published telephone numbers, to other directory publishers and fully releases and agrees to indemnify Taconic and its publisher from any alleged or proven liability resulting from the provisioning of such listings.
- 13.9 Sprint is responsible for sending to Taconic by the date specified by Taconic an approximate directory count for Sprint's End Users for the purpose of ensuring an adequate quantity of Taconic's directories is printed. Sprint shall not alter or otherwise change any aspect of the directory that Taconic provides. Taconic shall provide to Sprint the quantity of directories that Sprint previously specified. Sprint shall be responsible for distribution of such directories to its End Users.
- 13.10 Sprint shall pay Taconic both the rate per directory listed in Schedule III hereto and the cost Taconic incurs in complying with the requirements of Section 13.9. Taconic will place the same restrictions on the Sprint's End Users as it does for itself when assigning book quantities.
- 13.11 Sprint will adhere to all practices, standards, and ethical requirements of Taconic with regard to listings, and, by providing Taconic with listing information, warrants to Taconic that Sprint has the right to place such listings on behalf of End Users. Sprint shall be solely responsible for knowing and adhering to state laws or rulings regarding listing information and for supplying Taconic with applicable listing information. In addition, Sprint agrees to release, defend, hold harmless and indemnify Taconic and/or Taconic's directory publisher from and against any and all claims, losses, damages, suits, or other actions, or any liability whatsoever (except as may be provided for in Section 16 following) or, suffered, made, instituted, or asserted by any person arising out of Taconic's listing of the information provided by Sprint hereunder or any activity Taconic and/or its directory publisher may take arising from the actions required by this Section 13.
- 13.12 Taconic's liability to Sprint in the event of Taconic's error in or omission of a listing will not exceed the amount of charges actually paid by Sprint to Taconic for such listing. In addition, Sprint agrees to take, with respect to its own End Users, all reasonable steps to ensure that its' and Taconic's liability to Sprint's End Users in the event of Taconic' error in or omission of a listing will be subject to the same limitations that Taconic's liability to which its own End Users are subject.

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- 13.13 Nothing in this Section 13 shall require or obligate Taconic to provide a greater degree of service to a Sprint End User with respect to directory listings and publishing than those that Taconic provides to its End Users.

**14. Term of Agreement, Regulatory Approvals and Filing**

- 14.1 This Agreement shall commence when fully executed and approved by the Commission and have an initial term of one (1) year from the date of that Commission approval. This Agreement shall automatically renew for successive one (1) year periods, unless either Party gives written notice at least sixty (60) days prior to the expiration of the initial, or any renewal term, of its desire not to renew. A copy of such termination notice shall be sent to the Commission and include an explanation for the termination. If such notice is given, this Agreement shall not renew. However, the Parties will continue to exchange traffic to the mutual benefit of their respective End Users; provided, however, that physical termination of the connection of the Parties' respective networks established in this Agreement shall occur only in compliance with applicable rules and regulations of the Commission. During the period prior to termination, the Parties agree to cooperate with one another in ensuring that the exchange of Local Traffic as provided for in this Agreement is not disrupted and to respond to any Commission inquiry that may occur regarding the termination of this Agreement.
- 14.2 Each Party is responsible for obtaining and maintaining in effect all state regulatory commission approvals and certifications that are required for that Party's provision of local exchange and/or local exchange access services in the service areas covered by this Agreement.
- 14.3 The Parties agree to jointly file this Agreement with the Commission and to fully cooperate with each other in obtaining Commission approval

**15. Limitation of Liability**

- 15.1 Except in the instance of harm resulting from an intentional or grossly negligent action or willful misconduct of one Party, the liability of either Party to the other Party for damages arising out of (1) failure to comply with a direction to install, restore or terminate facilities, or (2) out of failures, mistakes, omissions, interruptions, delays, errors, or defects occurring in the course of furnishing any services, arrangements, or facilities hereunder shall be determined in accordance with the terms of the applicable tariff(s) of the providing Party. In the event no tariff(s) apply, the providing Party's liability shall not exceed an amount equal to the pro rata monthly charge for the period in which such failures, mistakes, omissions, interruptions, delays, errors or defects occur. Recovery of said amount shall be the injured Party's sole and exclusive remedy against the providing Party for such failures, mistakes, omissions, interruptions, delays, errors or defects. Because of the mutual nature of the exchange of traffic arrangement between the Parties pursuant to this Agreement, the Parties acknowledge that the amount of liability incurred under this Section 15.1 may be zero.



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- 15.2 In no event shall either Party be liable to the other in connection with the provision or use of services offered under this Agreement for indirect, incidental, consequential, reliance or special damages, including (without limitation) damages for lost profits (collectively, "Consequential Damages"), regardless of the form of action, whether in contract, warranty, strict liability, or tort, including, without limitation, negligence of any kind, even if the other Party has been advised of the possibility of such damages; provided, that the foregoing shall not limit a Party's obligation under Section 16.
- 15.3 Except in the instance of harm resulting from an intentional or grossly negligent action or willful misconduct, the Parties agree that neither Party shall be liable to the customers of the other Party in connection with its provision of services to the other Party under this Agreement. Nothing in this Agreement shall be deemed to create a third party beneficiary relationship between the Party providing the service and the Customers of the Party purchasing the service. In the event of a dispute involving both Parties with a Customer of one Party, both Parties shall assert the applicability of any limitations on liability to customers that may be contained in either Party's applicable tariff(s).

**16 Indemnification**

- 16.1 Each Party agrees to release, indemnify, defend and hold harmless the other Party from and against all losses, claims, demands, damages, expenses, suits or other actions, or any liability whatsoever related to the subject matter of this Agreement, including, but not limited to, reasonable costs and attorneys' fees (collectively, a "Loss"), (a) whether suffered, made, instituted, or asserted by any other party or person, relating to personal injury to or death of any person, or for loss, damage to, or destruction of real and/or personal property, whether or not owned by others, incurred during the term of this Agreement and to the extent proximately caused by the acts or omissions of the indemnifying Party, regardless of the form of action, or (b) suffered, made, instituted, or asserted by its own customer(s) against the other Party arising out of the other Party's provision of services to the indemnifying Party under this Agreement, except to the extent caused by the indemnified Party's intentional or gross negligent acts or willful misconduct. Notwithstanding the foregoing indemnification, nothing in this Section 6.0 shall affect or limit any claims, remedies, or other actions the indemnifying Party may have against the indemnified Party under this Agreement, any other contract, or any applicable tariff(s), regulations or laws for the indemnified Party's provision of said services.
- 16.2 The indemnification provided herein shall be conditioned upon:
- 16.2.1 The indemnified Party shall promptly notify the indemnifying Party of any action taken against the indemnified Party relating to the indemnification.
- 16.2.2 The indemnifying Party shall have sole authority to defend any such action, including the selection of legal counsel, and the indemnified Party may engage separate legal counsel only at its sole cost and expense. Prior to retaining legal counsel pursuant to this Section 16.2.2, the indemnifying Party shall seek written assurances from the legal counsel chosen that such counsel does not have any conflict of interest with the indemnified Party.

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- 16.2.3 In no event shall the indemnifying Party settle or consent to any judgment pertaining to any such action without the prior written consent of the indemnified Party, which consent shall not be unreasonably withheld.
- 16.2.4 The indemnified Party shall, in all cases, assert any and all provisions in its Tariffs that limit liability to third parties as a bar to any recovery by the third party claimant in excess of such limitation of liability.
- 16.2.5 The indemnified Party shall offer the indemnifying Party all reasonable cooperation and assistance in the defense of any such action.

16.3 To the extent permitted by law, and in addition to its indemnity obligations under Sections 16.1 and 16.2, each Party may provide, in its Tariffs that relate to any Telecommunications Service provided or contemplated under this Agreement, that in no case shall such Party or any of its agents, contractors or others retained by such parties be liable to any Customer or third party for (i) any Loss relating to or arising out of this Agreement, whether in contract or tort, that exceeds the amount such Party would have charged the applicable Customer for the service(s) or function(s) that gave rise to such Loss, or (ii) any Consequential Damages (as defined in subsection 16.2, above)

**17. Force Majeure**

Neither Party shall be liable for any delay or failure in performance of any part of this Agreement from any cause beyond its control and without its fault or negligence, regardless of whether such delays or failures in performance were foreseen or foreseeable as of the date of this Agreement, including, without limitation, acts of God, acts of civil or military authority, embargoes, epidemics, war, terrorist acts, riots, insurrections, fires, explosions, earthquakes, nuclear accidents, floods, power failure or blackouts, or adverse weather conditions, labor unrest, including without limitation, strikes, slowdowns, picketing, or boycotts. In the event of any such excused delay in the performance of a Party's obligation(s) under this Agreement, the due date for the performance of the original obligation(s) shall be extended by a term equal to the time lost by reason of the delay. In the event of such delay, the delaying Party shall perform its obligations at a performance level no less than that which it uses for its own operations.

**18. Agency**

Nothing contained herein shall constitute the Parties as joint venturers, partners, employees or agents of one another, and neither Party shall have the right or power to bind or obligate the other.

**19. Nondisclosure of Proprietary Information**

19.1 The Parties agree that it may be necessary to exchange with each other certain confidential information during the term of this Agreement including, without limitation, technical and business plans, technical information, proposals, specifications, drawings, procedures, orders for services, usage information in any form, customer account data, call detail records, and Customer Proprietary Network Information ("CPNI") as that term is defined by the Communications Act of 1934, as amended, and the rules and regulations of the FCC and similar information (collectively, "Confidential

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Information"). Confidential Information shall include (i) all information delivered in written form and marked "confidential" or "proprietary" or bearing mark of similar import; (ii) oral information, if identified as confidential or proprietary at the time of disclosure and confirmed by written notification within ten (10) days of disclosure; and (iii) information derived by the Recipient (as hereinafter defined) from a Disclosing Party's (as hereinafter defined) usage of the Recipient's network. The Confidential Information shall remain the property of the Disclosing Party and is deemed proprietary to the Disclosing Party. Confidential Information shall be protected by the Recipient as the Recipient would protect its own proprietary information, including but not limited to protecting the Confidential Information from distribution, disclosure, or dissemination to anyone except employees or duly authorized agents of the Parties with a need to know such information and which the affected employees and agents agree to be bound by the terms of this Section. Confidential Information shall not be disclosed or used for any purpose other than to provide service as specified in this Agreement, or upon such other terms as may be agreed to by the Parties in writing. For purposes of this Section, the Disclosing Party shall mean the owner of the Confidential Information, and the Recipient shall mean the party to whom Confidential Information is disclosed.

19.2 Recipient shall have no obligation to safeguard Confidential Information (i) which was in the Recipient's possession free of restriction prior to its receipt from the Disclosing Party, (ii) after it becomes publicly known or available through no breach of this Agreement by Recipient, (iii) after it is rightfully acquired by Recipient free of restrictions on the Disclosing Party, or (iv) after it is independently developed by personnel of Recipient to whom the Disclosing Party's Confidential Information had not been previously disclosed. Recipient may disclose Confidential Information if required by law, a court, or governmental agency or to enforce or defend its actions under this Agreement, provided that the Disclosing Party has been notified of the requirement promptly after Recipient becomes aware of the requirement, and provided that Recipient undertakes all reasonable lawful measures to avoid disclosing such information until the Disclosing Party has had reasonable time to obtain a protective order. Recipient agrees to comply with any protective order that covers the Confidential Information to be disclosed.

19.3 Each Party agrees that the Disclosing Party would be irreparably injured by a breach of this Section 19 by Recipient or its representatives and that the Disclosing Party shall be entitled to seek equitable relief, including injunctive relief and specific performance, in the event of any breach of this paragraph. Such remedies shall not be exclusive, but shall be in addition to all other remedies available at law or in equity.

**20. Notices**

Notices given by one Party to the other under this Agreement shall be in writing and delivered by hand, overnight courier or pre-paid first class mail certified U.S mail, return receipt requested, to the following addresses of the Parties:

For Sprint:  
Sprint Communications Company L.P.  
Sprint Legal Department  
Second Floor  
6450 Sprint Parkway  
Overland Park, KS 66251

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With a copy to:  
Mark Felton  
6330 Sprint Pkwy  
KSOPHA0310 - 3B372  
Overland Park, KS 66251

For Taconic:  
Taconic Telephone Corporation  
Attention: Jane Valik  
One Taconic Place  
Chatham, NY 12037  
Phone: (518) 392-5000

With a copy to:  
John J. La Penta  
FairPoint Communications  
521 E. Morehead Street  
Suite 250  
Charlotte, NC 28202  
Phone: (704) 227-3663

Or to such other location as the receiving Party may direct in writing. Notices will be deemed given as of (i) the next business day when notice is sent via express delivery service or personal delivery, or (ii) three (3) days after mailing in the case of first class or certified U.S. mail.

**21. Payments and Due Dates**

All compensation payable pursuant to this Agreement shall be due within thirty (30) days of the issuance date of the invoice. All undisputed charges are subject to a late charge if not paid within the thirty (30) day period. Where charges are disputed and the disputed charges are found to be due and owing to the Party issuing the invoice (the "Resolved Amount"), the Resolved Amount shall be subject to a late charge from the issuance date of the invoice that included the Resolved Amount. For purposes of this Section, the rate of the late charge shall be the lesser of one and one-half percent (1.5 %) per month or the maximum amount allowed by law.

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**22. Severability**

If any part of this Agreement is held to be unenforceable or invalid in any respect under law or regulation, such unenforceability or invalidity shall affect only the portion of the Agreement which is unenforceable or invalid. In all other respects this Agreement shall stand as if such invalid provision had not been a part thereof, and the remainder of the Agreement shall remain in full force and effect, unless removal of that provision results in a material change to this Agreement. In such a case, the Parties shall negotiate in good faith for replacement language. If replacement language cannot be agreed upon, either Party may request dispute resolution pursuant to Section 26.

**23. Assignment**

This Agreement shall be binding upon, and inure to the benefit of, the Parties hereto and their respective successors and permitted assigns. Any assignment or transfer (whether by operation of law or otherwise) by either Party of any right, obligation, or duty, in whole or in part, or of any interest, without the written consent of the other Party shall be void ab initio, provided however that such consent shall not be unreasonably withheld, conditioned or delayed and shall not be required if such assignment is to a corporate affiliate or an entity under common control or an entity acquiring all or substantially all of its assets or equity, whether by sale, merger, consolidation or otherwise or in connection with a financing transaction.

**24. Entire Agreement**

This Agreement, including all attachments and subordinate documents attached hereto or referenced herein, all of which are hereby incorporated by reference herein, constitute the entire matter thereof, and supersede all prior oral or written agreements, representations, statements, negotiations, understandings, proposals, and undertakings with respect to the subject matter thereof.

**25. Multiple Counterparts**

This Agreement may be executed in counterparts and each of which shall be an original and all of which shall constitute one and the same instrument and such counterparts shall together constitute one and the same instrument.

**26. Dispute Resolution**

26.1 No claims will be brought for disputes arising from this Agreement more than twenty-four (24) months from the date of occurrence that gives rise to the dispute.

26.2 The Parties desire to resolve disputes arising out of this Agreement without litigation. Accordingly, except for action seeking a temporary restraining order or an injunction related to the purposes of this Agreement, or suit to compel compliance with this dispute resolution process, the Parties agree to use the dispute resolution procedure set forth in this Section with respect to any controversy or claim arising out of or relating to this Agreement or its breach.

26.3 At the written request of a Party, each Party will appoint a good faith representative having the authority to resolve such dispute arising under this Agreement. The location,

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form, frequency, duration and conclusion of these discussions will be left to the discretion of the representatives. Upon agreement, the representatives may utilize other alternative dispute resolution procedures such as mediation to assist in the negotiations. Discussions and correspondence among the representatives for purposes of settlement are exempt from discovery and production and shall not be admissible in the arbitration described below or in any lawsuit without the concurrence of all Parties. Documents identified in or provided with such communications, which are not prepared for purposes of the negotiations, are not so exempted and, if otherwise admissible, may be admitted as evidence in the arbitration or lawsuit.

26.4 If the negotiations do not resolve the dispute within sixty (60) days of the initial written request, either Party may submit the dispute to either the Commission, judicial forum of competent jurisdiction, or upon mutual agreement to the American Arbitration Association ("AAA") for binding arbitration pursuant to the respective rules and practices of the entity to which the dispute is submitted.

26.5 Each Party shall bear its own costs associated with its activities taken pursuant to this Section 26.

**27. Governing Law**

To the extent not governed by, and construed in accordance with, the laws and regulations of the United States, this Agreement shall be governed by, and construed in accordance with, the laws and regulations of the state of New York, without regard to its conflicts of laws principles.

**28. Joint Work Product**

This Agreement is the joint work product of the Parties and has been negotiated by the Parties and shall be fairly interpreted in accordance with its terms and, in the event of any ambiguities, no inferences shall be drawn against either Party.

**29. Taxes**

Each Party shall be responsible for any and all taxes and surcharges arising from its conduct under this Agreement and shall, consistent with Section 16, indemnify and hold harmless the other Party for its failure to pay and/or report any applicable taxes and surcharges.

**30. Survival**

The Parties' obligations under this Agreement which by their nature are intended to continue beyond the termination or expiration of this Agreement shall survive the termination or expiration of this Agreement.

**31. Publicity**

Neither Party nor its subcontractors or agents shall use the other Party's trademarks, service marks, logos, company name or other proprietary trade dress in any advertising, press releases, publicity matters or other promotional materials without such Party's prior written consent.

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**32. Miscellaneous**

32.1 Taconic does not waive, nor shall it be estopped from asserting, any rights it may have pursuant to 47 U.S.C. Section 251(f).

32.2 This Agreement does not apply to traffic that is carried on third-party networks not expressly contemplated by this Agreement; or any traffic originated or terminated by a commercial mobile radio services or paging service providers.

32.3 Amendments. This Agreement may not be amended, modified, or supplemented, except by written instrument signed by both Parties.

32.4 No License.

Nothing in this Agreement shall be construed as the grant of a license, either express or implied, with respect to any patent, copyright, trademark, trade name, trade secret or any other proprietary or intellectual property now or hereafter owned, controlled or licensable by either Party. Neither Party may use any patent, copyrightable materials, trademark, trade name, trade secret or other intellectual property right of the other Party except in accordance with the terms of a separate license agreement between the Parties granting such rights.

32.5 Independent Contractors. The Parties to this Agreement are independent contractors. Neither Party is an agent, representative, or partner of the other Party. Neither Party will have any right, power or authority to enter into any agreement for, or on behalf of, or incur any obligation or liability of, or to otherwise bind, the other Party. This Agreement will not be interpreted or construed to create an association, agency, joint venture or partnership between the Parties or to impose any liability attributable to such a relationship upon either Party.

32.6 No Warranties.

32.6.1 EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT, NEITHER PARTY MAKES, AND EACH PARTY HEREBY SPECIFICALLY DISCLAIMS, ANY REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, REGARDING ANY MATTER SUBJECT TO THIS AGREEMENT, INCLUDING ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OR IMPLIED WARRANTIES ARISING FROM COURSE OF DEALING OR COURSE OF PERFORMANCE.

32.6.2. NOTWITHSTANDING ANY OTHER PROVISION OF THIS AGREEMENT, THE PARTIES AGREE THAT NEITHER PARTY HAS MADE, AND THAT THERE DOES NOT EXIST, ANY WARRANTY, EXPRESS OR IMPLIED, THAT THE USE BY THE PARTIES OF THE OTHER'S FACILITIES, ARRANGEMENTS, OR SERVICES PROVIDED UNDER THIS AGREEMENT SHALL NOT GIVE RISE TO A CLAIM BY ANY THIRD PARTY OF INFRINGEMENT, MISUSE, OR DISSAPPROPRIATION OF ANY INTELLECTUAL PROPERTY RIGHT OF SUCH THIRD PARTY.

**SPRINT/TACONIC CONFORMING AGREEMENT**  
**NY CASES 05-C-0170 AND 05-C-0183**

- 32.7 Default. If either Party believes the other is in breach of this Agreement or otherwise in violation of law, it will first give thirty (30) days notice of such breach or violation and an opportunity for the allegedly defaulting Party to cure. Thereafter, the Parties will employ the dispute resolution procedures set forth in this Agreement.
- 32.8 Waiver. Any failure on the part of a Party hereto to comply with any of its obligations, agreements or conditions hereunder may be waived by written documentation by the other Party to whom such compliance is owed. No waiver of any provision of this Agreement shall be deemed, or shall constitute, a waiver of any other provision, nor shall any waiver constitute a continuing waiver.
- 32.9 Regulatory Changes. If a federal or state regulatory agency or a court of competent jurisdiction issues a rule, regulation, law or order (collectively, "Regulatory Requirement") which has the effect of canceling, changing, or superseding any material term or provision of this Agreement then the Parties shall negotiate in good faith to modify this Agreement in a manner consistent with the form, intent and purpose of this Agreement and as necessary to comply with such Regulatory Requirement.
- 32.10 No Third Party Beneficiaries. This Agreement shall not be deemed to provide any other third party with any benefit, remedy, claim, right of action or other right except with respect to Sprint's business relationship with Time Warner Cable (who shall be the sole third party contemplated by this Agreement) as identified in the Commission's "Order Resolving Arbitration Issues" issued on May 24, 2005 in CASE 05-C-0170 and CASE 05-C-0183.
- 32.11 Headings. The headings contained in this Agreement are for reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement.
- 32.12. Authorization. Taconic is a corporation duly organized, validly existing and in good standing under the laws of the State of New York and has full power and authority to execute and deliver this Agreement and to perform the obligations hereunder. Sprint Communications Company, L.P. is a limited liability company duly organized, validly existing and in good standing under the laws of the State of Delaware and has full power and authority to execute and deliver this Agreement and to perform the obligations hereunder.

**33. Termination**

- 33.1. Either Party may terminate this Agreement for cause upon thirty (30) days prior written notice if (a) the other Party materially breaches this Agreement or defaults on its obligations and fails to cure such breach or default during such thirty (30) day period, (b) the other Party's authority to provide the services provided herein is revoked or



NY CASES 05-C-0170 AND 05-C-0183  
SPRINT/TACONIC CONFORMING AGREEMENT PURSUANT TO THE  
COMMISSION'S ORDER ISSUED OCTOBER 28, 2005

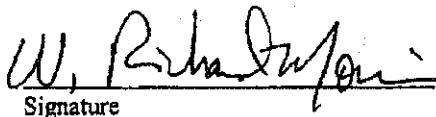
terminated, or (c) the other Party is insolvent, or files for bankruptcy (or other protection from creditors generally) and such bankruptcy petition is not dismissed within sixty (60) days. Termination of this Agreement for any cause shall not release either Party from any liability which at the time of the termination had already accrued to the other Party or which thereafter accrues in any respect for any act or omission occurring prior to the termination relating to an obligation which is expressly stated in this Agreement.

- 33.2 For service arrangements made available under this Agreement and existing at the time of termination, those arrangements will continue without interruption following the date of termination or until a replacement agreement has been executed by the Parties either (a) under a new agreement voluntarily executed by the Parties; (b) under a new agreement negotiated pursuant to the provisions of Section 252 of the Act; or c) under any agreement available according to the provisions of Section 252(i) of the Act; however, in no case will those arrangements continue for more than 12 months following the date of termination.

IN WITNESS WHEREOF, the Parties agree that the effective date of this Agreement is the date first written above, and each Party warrants that it has caused this Agreement to be signed and delivered by its duly authorized representative.

By: Sprint Communications Company L.P.

By: Taconic Telephone Corporation

  
Signature

\_\_\_\_\_  
Signature

W. Richard Morris  
Typed or Printed Name

Jane Valik  
Typed or Printed Name

Vice-President External Affairs

President

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

**SPRINT/TACONIC CONFORMING AGREEMENT FILED PURSUANT TO  
COMMISSION DECISIONS IN NY CASES 05-C-0170 AND 05-C-0183**

terminated, or (c) the other Party is insolvent, or files for bankruptcy (or other protection from creditors generally) and such bankruptcy petition is not dismissed within sixty (60) days. Termination of this Agreement for any cause shall not release either Party from any liability which at the time of the termination had already accrued to the other Party or which thereafter accrues in any respect for any act or omission occurring prior to the termination relating to an obligation which is expressly stated in this Agreement.

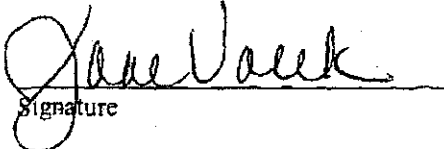
- 33.2 For service arrangements made available under this Agreement and existing at the time of termination, those arrangements will continue without interruption following the date of termination or until a replacement agreement has been executed by the Parties either (a) under a new agreement voluntarily executed by the Parties; (b) under a new agreement negotiated pursuant to the provisions of Section 252 of the Act; or c) under any agreement available according to the provisions of Section 252(i) of the Act; however, in no case will those arrangements continue for more than 12 months following the date of termination.

**IN WITNESS WHEREOF**, the Parties agree that the effective date of this Agreement is the date first written above, and each Party warrants that it has caused this Agreement to be signed and delivered by its duly authorized representative.

By: Sprint Communications Company L.P.

By: Taconic Telephone Corporation

\_\_\_\_\_  
Signature

  
Signature

W. Richard Morris  
Typed or Printed Name

Jane Valik  
Typed or Printed Name

Vice-President External Affairs

President

\_\_\_\_\_  
Date

11-15-05  
Date

**SPRINT/TACONIC CONFORMING AGREEMENT  
NY CASES 05-C-0170 AND 05-C-0183**

**Schedule I  
NETWORK INFORMATION**

<b>Taconic Switch CLLI</b>	<b>Taconic Rate Center</b>	<b>V &amp; H of POI Located at Taconic's Certificated Service Area Boundary</b>	<b>Sprint Switch CLLI (2)</b>	<b>Sprint Serving Rate Center/s</b>
BRLNNYXARS0	Berlin	V-4663 and H-1616	ALBYNYSSXSY	(1)
CANNNYXARS0	Canaan	V-4663 and H-1616	ALBYNYSSXSY	(1)
CHHMNYXADS0	Chatham	V-4663 and H-1616	ALBYNYSSXSY	(1)
COPKNYXARS0	Copake	V-4663 and H-1616	ALBYNYSSXSY	(1)
HLDLNYXARS0	Hillsdale	V-4663 and H-1616	ALBYNYSSXSY	(1)
MLLTNYXARS0	Millerton	V-4663 and H-1616	ALBYNYSSXSY	(1)
NASSNYXARS0	Nassau	V-4663 and H-1616	ALBYNYSSXSY	(1)
PNPLNYXARS0	Pine Plains	V-4663 and H-1616	ALBYNYSSXSY	(1)
STTWNYXARS0	Stephentown	V-4663 and H-1616	ALBYNYSSXSY	(1)
WLBNNYXARS0	West Labanon	V-4663 and H-1616	ALBYNYSSXSY	(1)

Note (1) Sprint Rate Centers for local calling under this agreement are limited to those rate centers that are not subject to then existing contractual terms and conditions between Sprint and Taconic and that are located in Taconic's Local Calling Area as defined in its tariff, as updated from time to time.

Note (2) Sprint Switch CLLI serves all Sprint Serving Rate Centers

**SPRINT/TACONIC CONFORMING AGREEMENT  
NY CASES 05-C-0170 AND 05-C-0183**

**Schedule II -  
LNP SUPPORT INFORMATION**

<u>Item</u>	<u>Sprint</u>	<u>Taconic</u>
1. Company OCN		
2. Company CLLI Codes within Taconic Rate Center		
3. Rate Center Information		
A. Covered Rate Center(s)		
B. Associated LRN per Covered Rate Center(s)		
C. Rate Center V and H Coordinates NECA Tariff FCC No. 4	Yes	Yes
4. Utilization of electronic automated interface to process interconnection or service requests		No
5. Contact information for requests and inquiries	Insert Contact Name Title Mailing Address Telephone Numbers Fax Number	Insert Contact Name Title Mailing Address Telephone Numbers Fax Number
6. Business Hours:	XX a.m. to XX p.m. Monday through Friday	XX a.m. to XX p.m. Monday through Friday
7. Contact Information for Billing Default LNP Queries (If different than No. 5, above)		

**NOTE:**

**The Parties will exchange the information contained on this Schedule II, as required by Section 6.2, prior to a request for porting a telephone number between them.**

**SPRINT/TACONIC CONFORMING AGREEMENT  
NY CASES 05-C-0170 AND 05-C-0183**

**Schedule III  
PRICING**

<u>SERVICE</u>	<u>CHARGE</u>	
RECIPROCAL COMPENSATION	No separate charges for Local Traffic	
EXPEDITED ORDER CHARGE	To be determined on an individual case basis based on the time spent at the hourly labor rates identified in the Receiving Party's interstate access tariff and pass through of LNP service bureau charges	
THIRD PARTY CHARGES INCURRED FOR DEFAULT QUERY SERVICE	Pass-Through	
DIRECTORY DISTRIBUTION CHARGES		
	Charges \$	
	Shipping & Handling Charge	Service Order Charge
Taconic	\$10.00	incl. in copy charge

**SPRINT/TACONIC CONFORMING AGREEMENT  
NY CASES 05-C-0170 AND 05-C-0183**

**Schedule IV  
LNP LSR FORM INFORMATION - ("Taconic")**

**Local Service Request**

**Administrative -**

Customer Carrier Name Abbreviation

Purchase Order Number

Local Service Request Number

Location Quantity

Service Center

Date and Time Sent

Desired Due Date

Request Type

Activity

Supplement Type

Response Type Requested

Company Code

New Network Service Provider Identification

Agency Authorization Status

Type of Service

Number Portability Direction Indicator

**Bill Section-**

Billing Account Number Identifier

Billing Account Number

**Contact Section-**

Initiator Identification

Initiator Telephone Number

**SPRINT/TACONIC CONFORMING AGREEMENT  
NY CASES 05-C-0170 AND 05-C-0183**

**SCHEDULE - IV (Cont.)**

Initiator Street Address

Initiator Address: Floor

Initiator Address: City

Initiator Address: State/Province

Initiator Address: ZIP/Postal Code

Implementation Contact Name

Implementation Contact Telephone Number

Remarks

**End User Information**

**EU Location & Access -**

Location Number

End User Name

State

ZIP

End User Listing Treatment

**EU Bill Section-**

Existing Account Telephone Number

**Number Portability**

Number Portability Quantity

**NP Service Details-**

Location Number

Line Number

Line Activity

Ported Telephone Number

Number Portability Type

LRN of the Ported Telephone Number

**Attachment F**

**to**

**May 21, 2012 Initial Brief**

**Case 12-C-0138**

**TVC Response to STC Information Request No. 9  
Excerpts from TVC Tariff P.S.C. No. 3**



1. Application of Tariff (cont'd)

- 1.4 This tariff will not apply to (a) intraLATA traffic which originates with an end user of the Company and is delivered by the Company to a local exchange carrier to be terminated to an end user of such local exchange carrier, within LATA 134, or (b) traffic received by the Company from a local exchange carrier, where such traffic originated with an end user of the local exchange carrier in LATA 134, which delivers such traffic to Company for termination to an end user of the Company. All such traffic will be billed by the Company under its Tariff PSC No. 4 Local Transport and Termination. The provisions of this paragraph 1.4 do not apply to any intraLATA or interLATA traffic (including local traffic) delivered by Company to, or received by Company from, an interexchange carrier, or to any traffic other than traffic delivered by Company to a local exchange carrier, or received by Company from a local exchange carrier, where such traffic is between an end user of the Company and an end user of the local exchange carrier, where both end users are located in LATA 134.
- 1.5 This tariff applies to any entity which orders service from the Company. Service can be directly ordered by submitting requests for service, or constructively ordered. An entity constructively orders service under this tariff by accepting traffic from the Company (directly or indirectly) and transmitting, transporting, or delivering that traffic to another entity or end user, or by delivering traffic to the Company (directly or indirectly) for termination by the Company to its end user. An entity which fails to block either the receipt from, or delivery to, the Company of such traffic is deemed to constructively order service. An entity will be deemed a Customer under this tariff, and liable for all charges hereunder, when it constructively orders service as described above.
- 1.6 Subject to 1.3 and 1.4 above, this tariff applies to all traffic as defined in Section 17 below.

Date of Issue: July 2, 2009

Date Effective: August 3, 2009

ISSUED BY: Andrew Ragogna, Chief Financial Officer  
TVC Albany, Inc.  
87 State Street  
Albany, New York 12207

ACCESS SERVICE

17. Definitions (cont'd)

Intra-LATA Toll Traffic and Intra-LATA Toll Calls

All traffic of any type, and any calls, between end users, wherever originated, where the originating and terminating points of the call or traffic are within the same LATA, but not within the same Rate Center. For purposes of this definition, the term "Rate Center" shall mean the Rate Centers established by Verizon New York and applicable to its local exchange and retail toll services. Any call and any traffic which, if carried by Verizon New York between its own end users, would be deemed an Intra-LATA Toll call, will be deemed an Intra-LATA Toll call under this tariff. C

Intralata Communications or IntraLata Traffic

The term IntraLata Communications means communications which originate and terminate within the same Lata. IntraLata Communications are IntraLata Traffic.

IntraLata Toll Traffic

Toll traffic completed within the same LATA. Except as provided in Section 1, §1.4, IntraLata Toll Traffic is subject to access charges under this Tariff.

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Date of Issue: December 8, 2009

Date Effective: March 20, 2010

ISSUED BY: Andrew Ragogna, Chief Financial Officer  
TVC Albany, Inc.  
87 State Street  
Albany, New York 12207

ACCESS SERVICE

17. Definitions (cont'd)

Toll Traffic and Toll Calls

Toll Traffic and Toll Calls means (a) traffic and calls to a station outside an end user subscriber's Rate Center or (b) calls or traffic carried at any time in a call transmission path by an Interexchange Carrier, regardless of the points of origination and termination. A toll call originated by a Company end user, or received by the Company for termination to its end user, will result in the Company providing switched access service to the Customer under this tariff, for which payment is due from such Customer to the Company.

The Term "Rate Center" means the boundaries of the rate centers established by Verizon New York, and any call made by or to a Company end user, which if carried by Verizon New York, would be deemed a toll call, will be deemed a toll call under this Tariff.

Traffic

The term traffic means any electronic or light pulse transmissions, signals, messages, calls, or data, in any form and using any medium and any technology (including but not limited to TDM and IP Protocol) including but not limited to electromagnetic, radio wave, or fiber optic transmission, containing information services or telecommunications services, or any other form of content or intelligence, delivered directly or indirectly by Company to a third party, or delivered directly or indirectly by any entity to Company for termination by Company to its end user. Without limitation, such term includes all telecommunications traffic; telecommunications service provider traffic; provider of telecommunications services traffic; traffic to the Internet; wireless traffic; VOIP traffic, information services traffic, enhanced services traffic, and Mobile Service Carrier or provider traffic. Traffic shall have the same meaning under this tariff as the term Communications. "Traffic" is used interchangeably with the term "Call"; traffic consists of one or more calls; each call is traffic.

Date of Issue: December 8, 2009

Date Effective: March 20, 2010

ISSUED BY: Andrew Ragogna, Chief Financial Officer  
TVC Albany, Inc.  
87 State Street  
Albany, New York 12207

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ACCESS SERVICE

6. Switched Access Rates, (Cont'd)

6.8 Identification and Rating of VoIP-PSTN Traffic

(A) Scope

- (1) VoIP-PSTN traffic is defined as traffic exchanged over the public switched telephone network ("PSTN") facilities that originates and/or terminates in Internet Protocol ("IP") format. This section governs the identification of toll VoIP-PSTN ("toll VoIP") traffic that in the absence of an interconnection agreement will be subject to interstate switched access rates in accordance with the Federal Communications Commission Report and Order in WC Docket Nos. 10-90, etc., FCC No. 11-161 released (Nov. 18, 2011) ("FCC Order") as it may hereinafter be amended or clarified. Specifically, this section establishes the method of distinguishing toll VoIP traffic from the customer's total intrastate access traffic, so that toll VoIP traffic will be billed in accordance with the FCC Order.
- (2) This section will be applied to the billing of switched access charges to a customer acting as a local exchange carrier only to the extent that the customer has also implemented billing of interstate access charges for VoIP-PSTN Traffic in accordance with the FCC Order.

(B) Rating of toll VoIP-PSTN traffic

The Company will bill toll VoIP-PSTN traffic which it identifies in accordance with this tariff section at rates equal to the Telephone Company's tariffed interstate switched access rates.

C

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ACCESS SERVICE

6. Switched Access Rates, (Cont'd)

6.8 Identification and Rating of VoIP-PSTN Traffic (Cont'd)

(C) Calculation and Application of Percent-VoIP-Usage Factor

TVC Albany, Inc. d/b/a Tech Valley Communications (TVC) will determine the number of Relevant VoIP-PSTN Traffic minutes of use ("MOU") to which interstate rates will be applied under subsection (B), above, by applying a Percent VoIP Usage ("PVU") factor to the total intrastate access MOU exchanged between a TVC end user and the customer. The PVU will be derived and applied as follows:

- (1) The customer will calculate and furnish to TVC a factor (the "PVU-C") representing the percentage of the total intrastate and interstate access MOU that the customer exchanges with TVC in the State, that (a) is sent to TVC and that originated in IP format; or (b) is received from TVC and terminated in IP format. This PVU-C shall be based on information such as the number of the customers retail VoIP subscriptions in the state (e.g., as reported on FCC Form 477), traffic studies, actual call detail, or other relevant and verifiable information. C
- (2) TVC will, likewise, calculate a factor (the "PVU-V") representing the percentage of TVC's total intrastate and interstate access MOU in the State that TVC originates or terminates on its network in IP format. This PVU-V shall be based on information, such as the number of TVC's retail VoIP subscriptions in the state (e.g., as reported on FCC Form 477), traffic studies, actual call detail, or other relevant and verifiable information.
- (3) TVC will use the PVU-C and PVU-V factors to calculate a PVU factor that represents the percentage of total intrastate and interstate access MOU exchanged between a TVC end user and the customer that is originated or terminated in IP format, whether at TVC's end, at the customer's end, or at both ends. The PVU factor will be calculated as the sum of: (A) the PVU-C factor and (B) the PVU-V factor times (1.0 minus the PVU-C factor).

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ACCESS SERVICE

6. Switched Access Rates, (Cont'd)

6.8 Identification and Rating of VoIP-PSTN Traffic (Cont'd)

(C) Calculation and Application of Percent-VoIP-Usage Factor (cont'd)

- (4) TVC will apply the PVU factor to the total intrastate access MOU exchanged with the customer to determine the number of Relevant VoIP-PSTN Traffic MOUs.

*Example 1:* The PVU-V is 10% and the PVU-C is 40%. The PVU factor is equal to  $40\% + (10\% \times 60\%) = 46\%$ . TVC will bill 46% of the customers intrastate access MOU at its applicable tariffed interstate rates.

*Example 2:* The PVU-V is 10% and the PVU-C is 0%. The PVU factor is  $0\% + (100\% \times 10\%) = 10\%$ . TVC will bill 10% of the customer's intrastate access MOU at TVC's applicable tariffed interstate switched access rates. C

*Example 3:* The PVU-C is 100%. No matter what the PVU-V factor is, the PVU is 100%. TVC will bill 100% of the customers intrastate access MOU at TVC's applicable tariffed interstate switched access rates.

- (5) If the customer does not furnish TVC with a PVU-C pursuant to the preceding paragraph 1, TVC will utilize a PVU equal to the PVU-V.

(D) Initial PVU Factor

If the PVU factor is not available and/or cannot be implemented in TVC's billing systems by January 1, 2012, once the factor is available and can be implemented TVC will adjust the customers bills to reflect the PVU retroactively to January 1, 2012. In calculating the initial PVU, TVC will take the customer-specified PVU-C into account retroactively to January 1, 2012, *provided that* the customer provides the factor to TVC no later than April 15, 2012; otherwise, it will set the initial PVU equal to the PVU-V, as specified in subsection (C)(5), above.

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ACCESS SERVICE

6. Switched Access Rates, (Cont'd)

6.8 Identification and Rating of VoIP-PSTN Traffic (Cont'd)

(E) PVU Factor Updates

The customer may update the PVU-C factor quarterly using the method set forth in subsection (C)(1), above. If the customer chooses to submit such updates, it shall forward to TVC, no later than 15 days after the first day of January, April, July and/or October of each year, a revised PVU-C factor based on data for the prior three months, ending the last day of December, March, June, and September, respectively. TVC will use the revised PVU-C to calculate a revised PVU. The revised PVU factor will apply prospectively and serve as the basis for billing until superseded by a new PVU.

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Date of Issue: February 7, 2012  
Issued by: Kevin O'Connor, Chief Executive Officer  
TVC Albany, Inc.  
87 State Street  
Albany, New York 12207

Date Effective: February 21, 2012