

STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

At a session of the Public Service
Commission held in the City of
Albany on January 12, 2000

COMMISSIONERS PRESENT:

Maureen O. Helmer, Chairman
Thomas J. Dunleavy
James D. Bennett
Leonard A. Weiss
Neal N. Galvin

CASE 99-C-1389 - Petition of Sprint Communications Company L.P.,
Pursuant to Section 252(b) of the
Telecommunications Act of 1996, for Arbitration
to Establish an Intercarrier Agreement with
Bell Atlantic-New York.

ORDER RESOLVING ARBITRATION ISSUES

(Issued and Effective January 28, 2000)

BY THE COMMISSION:

INTRODUCTION

In September 1997, the Commission approved the first interconnection agreement Sprint Communications Company L.P. (Sprint) executed with the New York Telephone Company d/b/a Bell Atlantic-New York (Bell Atlantic-New York) pursuant to the Telecommunications Act of 1996 (the Act).¹ The 1997 agreement expires on March 5, 2000; consequently, Sprint and Bell Atlantic-New York began to negotiate a new agreement in March of last year.²

¹ Case 96-C-0864, Sprint Communications Company L.P. and New York Telephone Company, Order Approving Interconnection Agreement (issued September 24, 1997); Confirmation Order (issued October 1, 1997).

² Originally, the 1997 agreement was due to expire in 1999; however, the parties extended its term. Case 96-C-0864, Order (issued November 15, 1999).

On October 12, 1999, Sprint filed an interconnection arbitration petition pursuant to §252 of the Act.¹ In it, the company identified 15 unresolved issues. Bell Atlantic-New York responded to Sprint's petition on November 8, 1999, addressing not only the 15 issues identified by Sprint but also presenting another 20 issues for arbitration.

The presiding officer assigned to this proceeding conducted conferences, on November 30 and December 7, 1999, at which Sprint and Bell Atlantic-New York reduced the number of disputed issues. The parties filed initial and reply briefs on December 15 and 21, 1999, respectively, limited to the 11 issues that remain.

Below, the Commission addresses and resolves each of the parties' disputes. The Commission's resolution of these matters constitutes its interconnection implementation plan for Sprint and Bell Atlantic-New York for next three years.²

DISPUTED ISSUES

A. "Most Favored Nation" Provision

Sprint has proposed that Bell Atlantic-New York make available to it any interconnection service or network element arrangement contained in any interconnection agreement to which Bell Atlantic-New York is a party. Sprint says it is entitled, under the Act, to obtain the same rates, terms and conditions as any other competitive local exchange carrier, and it may obtain them individually, separately or in their entirety. Sprint proposes either that this matter be resolved the same way it was addressed in its first interconnection agreement with Bell

¹ By letter dated July 14, 1999, Sprint and Bell-Atlantic have agreed, for purposes of applying the Act, that their formal negotiations began on May 4, 1999. Sprint filed its arbitration petition 160 days thereafter on October 12, 1999 and the Commission must decide this case by February 4, 2000.

² The initial term of the parties' agreement runs to March 3, 2003 and continues thereafter until a party acts to terminate it.

Atlantic-New York or that the contractual language it has offered in this case be adopted.

Bell Atlantic-New York does not dispute its basic duty to provide Sprint, as a most favored nation (MFN), the same interconnection service and network element arrangements it provides other carriers. However, it insists that Sprint must accept all the terms legitimately related to a particular arrangement. Bell Atlantic-New York urges that the carriers who receive MFN notices be provided the option to either select the MFN agreement or continue to receive performance under their original agreement. Finally, Bell Atlantic-New York says Sprint should bear its costs if Sprint decides to select another carrier's provisions. To this, Sprint responds that it is willing to pay its fair share of the costs directly attributable to its decision to select a provision from another agreement.

* * *

The Act requires Bell Atlantic-New York to "make available any interconnection service or network element provided under an agreement approved under this section to which it is a party to any other requesting telecommunication carrier upon the same terms and conditions as those provided in the agreement."¹ As to this provision, the Federal Communications Commission (FCC) has said:

Given the primary purpose of Section 252(i) of preventing discrimination, we require incumbent LECs seeking to require a third party to agree to certain terms and conditions to exercise its rights under Section 252(i) to prove to the state commissions that the terms and conditions are legitimately related to the purchase of the individual element being sought. By contrast, incumbent LECs may not require as a 'same' term or condition the new entrant's agreement to terms and conditions relating to

¹ 47 U.S.C. §252(i).

other interconnection, services or elements in the appointed agreement.¹

In light of the Act's provision, and the FCC's determination, the Commission finds that neither Bell Atlantic-New York's, nor Sprint's, approach complies fully with the applicable requirements. Bell Atlantic-New York is correct, in part, that Sprint must select arrangements on the same terms and conditions as they were offered in the agreement to which it refers. Nonetheless, the terms and conditions legitimately related to an individual element are those that provide the quid pro quo for it. To incorporate this notion into the MFN provision of the parties' interconnection agreement, they should indicate that Bell Atlantic-New York will demonstrate to Sprint that any rates, terms and conditions claimed to be legitimately related to the services or elements Sprint selects were, in fact, causally related to each other as originally provided. This will ensure, as the FCC requires, that Bell Atlantic-New York will not impose unrelated interconnection services or elements on Sprint.

As to Sprint's proposal to select any rate, term or condition it wants from another agreement, the company may not pick only those rates or terms it deems favorable while avoiding any unfavorable quid pro quo terms in the agreement to which it refers. Any other approach would provide it unfettered discretion and would be inconsistent with the Act and the FCC's rules.

Concerning Bell Atlantic-New York's suggestion that it can require Sprint to retain all the terms of the agreement it executes with the company, the Commission finds that Sprint must take all the legitimately related terms and conditions of the service or element it selects; thus, no basis exists for a

¹ CC Docket No. 96-98, Local Competition Provisions of the Telecommunications Act of 1996 and CC Docket No. 95-185, Interconnection Between Local Exchange Carriers and Commercial Mobile Radio Service Providers, First Report and Order (released August 8, 1996), ¶1315.

contrary finding that Sprint must be held to its own agreement in its entirety.

Finally, the Commission accepts Sprint's offer to pay its fair share of the costs directly attributable to any decision it makes to select a service or element from another carrier's agreement with Bell Atlantic-New York.

B. Liability and Indemnification

Sprint has proposed liability and indemnity provisions which, it says, are reciprocal and reasonably related to the risks each company should assume. According to it, the liability and indemnity provisions Bell Atlantic-New York favors are too restrictive and would limit Sprint's ability to obtain recovery should Bell Atlantic-New York fail to perform its obligations. Sprint lists, as examples of its concerns, potential liability due to libel, slander, copyright or patent infringement, and negligence.

In response, Bell Atlantic-New York denies that its liability and indemnity proposals are overly restrictive; it says they are tailored to address legitimate concerns arising from the companies' services, including potential claims from customers. According to Bell Atlantic-New York, its proposals are consistent with Sprint's generic interconnection agreement even if they conflict with Sprint's specific proposals here. It insists, as well, that proximate causation principles should limit its liability and that it should be able to disclaim any implied warranties. Bell Atlantic-New York says these are reasonable and common commercial practices and they benefit consumers who pay lower prices than they might otherwise were the company subject to greater liability. Bell Atlantic-New York lists the following as the liability provisions of most concern to it:

- Sprint's proposal to insulate itself from liability due to damage caused by the carriers and vendors it selects;

- Sprint's proposal that the companies' tariffs, and other contracts, include provisions ensuring that neither company is liable to customers for losses arising from the interconnection agreement;
- Sprint's proposal for Bell Atlantic-New York to indemnify it for telephone usage associated with breaches of security; and,
- Sprint's proposal for either company to bring suits in equity for specific performance rather than invoke the dispute resolution process.

In addition to these concerns, Bell Atlantic-New York questions whether the Commission can act to increase its liability when it cannot award damages to customers.

* * *

The Act requires all common carriers, including Bell Atlantic-New York and Sprint, to bear full responsibility for their unlawful acts and any omissions that cause injury to others.¹ Thus, they share mutual responsibilities and it is necessary for them to address indemnification issues in the interconnection agreement they adopt. Similar to the findings presented above, the Commission finds here, as well, that neither Bell Atlantic-New York's, nor Sprint's, liability and indemnification proposals fully comply with the Act. The provisions Sprint has offered, if adopted in their entirety, would unreasonably extend Bell Atlantic-New York's potential liability for damages; Bell Atlantic-New York's provisions, on the other hand, are overly restrictive.

Beginning with §10.1 proposed by Sprint, the Commission finds that this indemnification provision should be amended to address Bell Atlantic-New York's concerns about excessive

¹ 47 U.S.C. §206.

liability and to reflect Sprint's willingness to adopt proximate causation principles.¹

With respect to Sprint-proposed §10.2, this provision is unnecessary because §10.1, as amended, should encompass customer recourse matters along with indemnification issues. As to Sprint's §10.3, and the third-party liability matters it addresses, this subject is beyond the proper scope of the parties' negotiations and the interconnection arrangements presented here. It too need not be included in the parties' agreement.

Sprint and Bell Atlantic-New York recently resolved their dispute concerning the interconnection agreement's references to tariff provisions; thus, Sprint-proposed §10.4 is unnecessary. Also, Bell Atlantic-New York's §10.4, concerning express and implied warranties, is approved since Sprint no longer has any objection to them.

Sprint-proposed §10.6 (addressing specific performance) is preferable to and should be used instead of the last sentence appearing in Bell Atlantic-New York's §10.2.1. In general, in a competitive market, Sprint's available remedies from Bell Atlantic-New York should not be limited to receiving pro rata refunds of monthly service charges. Otherwise, the Commission approves the use of the remainder of Bell Atlantic-New York's proposed §§10.2.1 and 10.2.2.

For the reasons stated above, Sprint-proposed §10.7 which addresses other remedies is approved. It allows Sprint to pursue available remedies, after pursuing good faith negotiations, and contrary to Bell Atlantic-New York's claim it is not overly broad as it is limited by Bell Atlantic-New York's §10.2.2 concerning consequential damages.

¹ Bell Atlantic-New York's proposed §§10.1.1 and 10.1.2 are rejected in favor of Sprint's §10.1, as it is to be amended. Absent any agreement between the parties on the final wording of §10.1, the attachment to this order provides the indemnification provision that should otherwise be included in the parties' agreement.

Finally, the companies recently resolved their dispute concerning clip-on fraud and have agreed to abide by the Commission's decision on this matter. Thus, Sprint's §10.8 and Bell Atlantic-New York's §10.3 are no longer in controversy and Sprint's proposed §10.5 (breach of physical security) is not necessary.

C. Audits and Examinations

Sprint wants to be able to conduct annual, comprehensive audits of the network functions and elements Bell Atlantic-New York provides to it. Sprint would give Bell Atlantic-New York 60 days' notice of an audit and the two companies would establish its scope before it begins. Each party would bear its own audit costs and any amounts found to be due as a result of an audit would be subject to 15% interest per annum. Audit rights would extend beyond the term of the agreement. Sprint says it needs all this to ensure that Bell Atlantic-New York complies with the agreement and to avoid Commission involvement in every matter involving the company's records, accounts and processes.

Bell Atlantic-New York objects not only to Sprint's audit proposal but also to its proposal to conduct an unlimited number of other network element and billing process examinations. Bell Atlantic-New York considers these proposals to be one-sided, burdensome, distracting, and costly. In contrast, it would prefer that the parties mutual audit rights be limited to particular situations--such as reciprocal compensation usage and meet point billing matters. Otherwise, it points to the dispute resolution process available to the parties and says it is preferable to Sprint's proposals and can provide them the means to obtain reasonable amounts of relevant information if problems arise. Bell Atlantic-New York also points to the applicable carrier-to-carrier regulations, and the Amended Performance Assurance Plan (APAP) which, it says, provide Sprint adequate protection. Finally, Bell Atlantic-New York says a similar Sprint proposal was rejected in Massachusetts.

Sprint considers Bell Atlantic-New York's audit proposal to be too restrictive and claims it may need to examine such things as the provision and billing of unbundled network elements, resold local exchange service and collocation charges, among others. Sprint says it would not conduct an unreasonable number of examinations and it insists that more audit rights are needed than either the carrier-to-carrier regulations or the APAP provide. Finally, Sprint says its proposals are comparable to the provisions the Commission approved for inclusion in the current interconnection agreement which remain acceptable to it.¹

The Commission finds that the audit and examination terms contained in the parties' current interconnection agreement, which provides them mutual rights, should continue to be reflected in the new agreement. Current §10.4 allows each party to audit annually the other's books, records, and documents to ensure the accuracy of bills and invoices. A continuation of the current audit provisions affords each party reasonable assurances that the other will fulfill its obligations.

D. Sprint's Rates and Charges

Bell Atlantic-New York has proposed that Sprint not charge any more than Bell Atlantic-New York's tariff rates and charges for the services Sprint provides it, unless Sprint has a cost justification for a higher amount that has been accepted by the Commission. Sprint objects to any such cap on its rates and charges.²

According to Bell Atlantic-New York, it will be Sprint's captive customer for eight or more services and, in these instances, it says cost-based rates and charges are

¹ On this point Bell Atlantic-New York notes that no interconnection services or network elements have been provided to Sprint under the existing agreement.

² The only Bell Atlantic-New York tariff limitation Sprint would consider applies to the reciprocal compensation rates for traffic between the companies.

essential.¹ Sprint insists, however, that its rates and charges are not limited, as are Bell Atlantic-New York's, by the Act and the TELRIC costing standards. Sprint urges that the "light regulation" the Commission has adopted for non-dominant carriers continue to apply to it and that it not be required to provide cost studies, or any other cost support, for the tariffs and rates the Commission approves. It also says any issue about Sprint's prices should await Bell Atlantic-New York's specific interconnection plans.²

The Commission finds that the Bell Atlantic-New York proposal to tie Sprint's prices to its own tariff is unnecessary because Sprint is expected, and will be required, to maintain acceptable tariffs on file with the Commission. In any instance where Bell Atlantic-New York considers Sprint's proposed tariffs to be unwarranted, it may seek to raise the issue when the tariff provisions are presented to the Commission for action. No changes are necessary to the current process by which Sprint submits its tariffs to provide Bell Atlantic-New York a reasonable opportunity to address Sprint's rates.

E. Technical Standards For Digital Service Lines (DSL)

Sprint has proposed that Bell Atlantic-New York commit to providing A-type DSL and H-type DSL in accordance with

¹ The eight services are: transport (one-way trunks), multiplexing, SS7 signaling, tandem transit service, expanded interconnection, billing data/CPNI access, busy verification and busy line verification.

² Bell Atlantic-New York and Sprint do not currently have any interconnection facilities in place. During the term of the upcoming agreement, Sprint plans to use two-way trunking to interconnect with Bell Atlantic-New York which, it says, does not require collocation space and makes limited use of interoffice facilities. When Bell Atlantic-New York submits its interconnection proposals, Sprint says it will consider them.

applicable industry standards.¹ Sprint does not want Bell Atlantic-New York's standards to control in any instance where they depart from the industry standards. For this reason, it urges that the interconnection agreement not contain any references to Bell Atlantic-New York's Technical References for digital service lines.

According to Bell Atlantic-New York, the industry standards to which Sprint refers do not contain loop specifications. It says they almost exclusively deal with the parameters for implementing ADSL and HDSL system architectures for which loops only serve as the interface. Electronic parameters and loop descriptions, Bell Atlantic-New York says, were purposefully omitted from the industry standards and they can only be found in the company's Technical References.

Bell Atlantic-New York fears that Sprint wants it to overhaul completely its loop qualification information system to accommodate Sprint's definitions of ADSL and HDSL compatible loops. It says this would be unreasonable, costly, and detrimental to numerous other carriers who obtain standard ADSL and HDSL loops in conformance with the company's Technical References. Bell Atlantic-New York says, if it provides standard ADSL and HDSL loops that differ from Sprint's technical requirements, it is prepared to offer Sprint "digital design loops" to meet its needs.

The Commission finds that Bell Atlantic-New York's Technical Standards for ADSL and HDSL should apply only to the extent they do not conflict with industry standards. Where a true or perceived conflict exists between the Technical Standards and industry standards, the parties should seek to settle their differences and achieve an acceptable resolution that imposes the least costs on them. If the parties are unable to resolve their differences, the agreement's dispute resolution process shall apply.

¹ For ADSL Sprint proposes compliance with ANSI T1.413.1998; for HDSL it proposes Bellcore TA-NWT-001210.

F. Sprint-Provided Unbundled Network Elements and Collocation

Bell Atlantic-New York has proposed terms to address Sprint-provided unbundled network elements (UNEs) and collocation at Sprint facilities. Sprint insists, however, that the Act imposes no duty on it to provide UNEs or collocation to Bell Atlantic-New York. According to Bell Atlantic-New York, Sprint should not object to any such terms that would be discretionary unless the law were to change. With respect to Sprint-provided collocation, Bell Atlantic-New York says it requires economic interconnections like any other carrier. Bell Atlantic-New York claims that state law precludes Sprint from discriminating against it and the Act requires all carriers, including Sprint, to provide reasonable interconnection terms.

In response, Sprint says Bell Atlantic-New York has only raised these matters to stall negotiations and to frustrate its efforts. Sprint observes that it has no collocation arrangements with any other carriers and that state law applies to it independent of the interconnection agreement it executes with Bell Atlantic-New York. Thus, it concludes, there are no factual nor any legal bases to include UNE or collocation requirements for Sprint in the agreement.

The Commission finds that Bell Atlantic-New York's proposed provisions concerning Sprint's future provision of UNEs and collocation need not be included in the parties' agreement. Nonetheless, the interconnection agreement will contain an uncontested provision recognizing that changes in applicable law could materially affect the agreement.¹ In any such instance, the parties would resume their good faith negotiations and attempt to reach agreement on new terms to comply with the legal requirements. Moreover, the interconnection agreement does not preclude the parties from voluntarily addressing Sprint-provided UNEs, or collocation at Sprint facilities, at any time when it is in their mutual interests to do so.

¹ See Bell Atlantic-New York's proposed §8.3 and Sprint's §2.3.

G. Interconnection

1. Geographically Relevant
Interconnection Points (GRIP)

Sprint plans to establish a single interconnection point with Bell Atlantic-New York in accordance with applicable tariff provisions. Bell Atlantic-New York prefers a geographically relevant interconnection point (GRIP) system that would require Sprint to establish interconnection points in every Bell Atlantic-New York rate center or to purchase dedicated UNE transport from it or another carrier. Bell Atlantic-New York acknowledges that its GRIP proposal is being considered in another proceeding.¹ Nonetheless, the company urges the Commission to apply GRIP to Sprint pending a final decision in Case 98-C-1357.

Sprint says the GRIP proposal is too costly, insisting that Bell Atlantic-New York should be responsible for the cost of transporting its customers' telephone calls to Sprint's single interconnection point. Sprint also claims the GRIP proposal unreasonably requires non-technically feasible interconnection points. According to Sprint, its collocation cages at Bell Atlantic-New York's end offices are not intended to supplant or supplement its single point of interconnection. Sprint urges that it not be required to make its network any more complicated than necessary to achieve its network and customer service objectives. According to Sprint, consideration of the GRIP proposal should remain in Case 98-C-1357.

The Commission declines to adopt Bell Atlantic-New York's GRIP proposal at this time. A full examination of the GRIP proposal will be conducted in Case 98-C-1357 and it would be improper to prejudge the results of that proceeding here. If the GRIP proposal is ultimately approved, Bell Atlantic-New York will be permitted to implement it at that time.

Aside from Bell Atlantic-New York's GRIP proposal, the Commission finds that Sprint's general proposal to use a single

¹ Case 98-C-1357, Second Network Elements Proceeding.

interconnection point amounts to an unreasonable and inefficient use of the telecommunications network. Sprint's arguments for a single interconnection point in each LATA are unconvincing; it has not presented any valid technical reason why more efficient interconnections should not be established. Consequently, the Commission will permit Bell Atlantic-New York to interconnect at any technically feasible points it chooses to deliver traffic to Sprint, as long as Bell Atlantic-New York is willing to bear the costs of constructing and maintaining any such facilities.

2. Other Interconnection Issues

Bell Atlantic-New York has raised multiple, technical issues concerning its interconnection with Sprint, including the definition of trunk types and other matters. Sprint's competing provisions of the agreement are equally technical and somewhat vague. The Commission finds that most, if not all, of these technical matters are adequately addressed in Bell Atlantic-New York's 914 tariff which should govern for now since Sprint has not yet filed its corresponding tariff. Before it can provide local service, Sprint must submit its tariff for Commission review. The tariff provisions Sprint ultimately adopts will be sufficient to resolve these matters.¹

3. Calling Party Number (CPN)

Standard telephone industry practice requires carriers to pass along the calling party number (CPN) for calls originating on their networks to the carriers that terminate the calls.² This information is important for purposes of determining whether calls are local, intraLATA or interLATA so

¹ Sprint can either concur in Bell Atlantic-New York's 914 tariff or, in the alternative, file an original tariff that is consistent with the Bell Atlantic-New York tariff. In addition, each company should provide the other with a schedule of available interconnection points.

² The calling party number is automatically provided by switching equipment that uses SS7 signaling technology.

that appropriate charges can be applied to them. In some instances, carriers do not provide this information.

Bell Atlantic-New York has proposed that both companies be held to a standard of providing CPN information for no less than 95% of the calls they deliver. If this standard is not met, it proposes that the terminating carrier have the option to bill the calls without CPN at its interstate switched exchange access service rates. Sprint prefers a 90% CPN standard and urges that other billing factors be used to determine whether a call is local or long distance when the CPN information is omitted. Sprint claims it is unacceptable for Bell Atlantic-New York to apply access charges to all calls lacking CPN information when it can examine other call records, and verify billing factors, to ascertain their origins.

Bell Atlantic-New York's position is reasonable given the signaling technology commonly employed by carriers and is therefore approved. Sprint has presented no valid technical reason for believing that it cannot meet a 95% CPN standard. The agreement should therefore contain the provision that Bell Atlantic-New York has provided.

H. Reciprocal Compensation

In February 1999, the FCC determined that telephone network traffic that is directed to an internet service provider (ISP) is largely interstate in nature and, therefore, such traffic is not subject to its reciprocal compensation rule. The FCC has instituted a proposed rulemaking to address this subject but has concluded, for the time being, that carriers remain bound by their existing interconnection agreements, as interpreted by state commissions, and that the states remain free to apply reciprocal compensation to ISP traffic.¹ Bell Atlantic-New York

¹ CC Docket No. 96-98, Local Competition Provisions of the Telecommunications Act of 1996, and CC Docket No. 99-68, Inter-Carrier Compensation for ISP-Bound Traffic, Declaratory Ruling and Notice of Proposed Rulemaking (released February 26, 1999)(FCC ISP Ruling).

has brought suit against this aspect of the FCC's decision, contending that state commissions lack authority to impose reciprocal compensation plans for internet-bound traffic.

In August 1999, the Commission decided to treat ISP traffic no differently than any other type of convergent traffic. Thus, it found that the same reciprocal compensation rates should apply to internet-bound traffic as apply to other convergent traffic.¹

In this case, Sprint and Bell Atlantic-New York have been unable to agree on reciprocal compensation rates for internet-bound traffic. Bell Atlantic-New York asserts the same position here as it has taken in its challenge to the FCC ISP Ruling; namely, the traffic is not local and it should not receive reciprocal compensation.

Sprint proposes that the interconnection agreement include the provisions it drafted which, it says, are consistent with Opinion No. 99-10. Specifically, it proposes that the companies compensate each other for internet-bound traffic at local traffic transport and termination rates based on actual usage.²

The Commission finds, absent any agreement between the parties addressing compensation for ISP traffic, that the requirements of Opinion No. 99-10 shall apply. The provisions for the interconnection agreement Sprint has provided are consistent with Opinion No. 99-10; consequently, they are approved.

I. Taxes

Sprint and Bell Atlantic-New York disagree about the amount of notice the companies should provide to collect taxes and whether a company's failure to provide timely notice should

¹ Case 99-C-0529, Reciprocal Compensation Proceeding, Opinion No. 99-10 (issued August 26, 1999) pp. 56-59.

² Sprint has proposed a reciprocal compensation rate of \$0.0066/minute of use.

relieve it from having to reimburse the other. Sprint has proposed that each company inform the other within seven business days of its receipt of a notice of tax liability and that the failure to provide such information should preclude the company from collecting the amount.

Bell Atlantic-New York considers seven business days too short and commercially unreasonable. It observes that taxes are long-term, cyclical events and that prompt, emergency notice requirements should not apply. According to Bell Atlantic-New York, its employees who routinely handle tax matters are not expected to provide other interested parties any such quick notice.

The Commission finds that the parties should provide notice within 60 days that a taxing jurisdiction is seeking to recover taxes pertaining to the other carrier. In the event this standard is not met, untimely notification should not, by itself, excuse a party from having to pay the taxes it owes. Should any chronic tax notification problems arise, the parties should use the dispute resolution process to establish better practices.

J. Resale Restrictions

Bell Atlantic-New York proposes to include a provision in the agreement permitting it to restrict Sprint's resale of its retail telecommunication services to the extent any such restrictions are permitted by law. Bell Atlantic-New York seeks this provision to preserve its future right to impose resale restrictions should the law change. According to Bell Atlantic-New York, absent this provision, there would be ambiguity and an implication that it agreed to a future limitation of its rights.

In response, Sprint observes that the Act does not permit local exchange carriers to prohibit, or unreasonably restrict, the resale of telecommunications services. Sprint also points out that the parties have agreed that "[t]he provisions of this Agreement are subject in their entirety to the applicable provisions of the Act and any other orders, restrictions and requirements of governmental, regulatory and judicial

authorities."¹ According to Sprint, the parties are obliged to renegotiate in good faith any of the agreement's provisions that are materially affected by changes in applicable law.² Thus, it says this proposal is unnecessary.

The Commission finds that the parties have agreed to renegotiate in good faith any provision of their agreement that is materially affected by changes in the applicable law. Thus, there is no need for the provision Bell Atlantic-New York has sought and Sprint's position is adopted.

K. Access to Unbundled Network Elements

Bell Atlantic-New York insists that Sprint obtain UNEs either as standard offerings (pursuant to the company's 914 tariff) or as special arrangements (pursuant to its 916 tariff). According to it, UNEs cannot be provided at any point of interconnection (POI) Sprint may elect. It says it is difficult to assess the technical feasibility and costs of doing so when it lacks specific information from Sprint concerning the configuration, operation, and logistics of its POI. Bell Atlantic-New York is willing to negotiate special UNE access arrangements with Sprint but first it needs Sprint's detailed proposal.

Sprint is interested in obtaining direct UNE transport from various collocation cages to the central switch facilities where its POI will be located. The company says it is entitled to UNE transport under the Act and the interconnection agreement with Bell Atlantic-New York should contain its commitment. In response, Bell Atlantic-New York reiterates that UNE interoffice facilities from Sprint's collocation nodes to its switch can be provided as a special arrangement to which the interconnection agreement can refer--rather than contain Sprint's alternative

¹ Bell Atlantic-New York's §8.1

² Bell Atlantic-New York's §8.3.

which it considers to be ambiguous and susceptible to misinterpretation.

The Commission finds that, pursuant to the Act, Bell Atlantic-New York must provide Sprint non-discriminatory access to unbundled network elements at any technically feasible point. Sprint's access to Bell Atlantic-New York's UNEs is not limited to the prevailing collocation alternatives available as standard offerings pursuant to the company's tariffs. Additional arrangements should be made available to Sprint to accommodate the specific switching and transport configurations it plans to use. Accordingly, the interconnection plan the Commission is adopting here requires Bell Atlantic-New York to provide Sprint UNEs either through collocation or any other technically feasible arrangements. Should any disputes arise between the parties concerning the specific configurations Sprint requests, the parties should use the dispute resolution process they have agreed to. Absent a satisfactory mutual resolution, the Commission stands ready to resolve any such disputes that may arise during the term of this agreement.

CONCLUSION

Having resolved the issues the parties submitted for arbitration, Bell Atlantic-New York and Sprint are expected to execute an interconnection agreement consistent with the uncontested results of their negotiations and incorporating the requirements of the implementation plan contained in this order by no later than March 5, 2000.

The Commission orders:

1. The issues presented for arbitration by Sprint Communications Company L.P. and the New York Telephone Company d/b/a Bell Atlantic-New York are resolved as decided herein.

2. This proceeding is continued.

By the Commission,

(SIGNED)

DEBRA RENNER
Acting Secretary

INDEMNIFICATION PROVISION

Each Party agrees to indemnify and hold harmless the other Party from and against claims for damage to tangible personal or real property and/or personal injuries arising out of the negligence or willful act or omission of the indemnifying Party or its agents, servants, employees, contractors or representatives. To the extent not prohibited by law, each Party shall defend, indemnify and hold the other Party harmless against any loss to a third party arising out of the negligence or willful misconduct by such indemnifying Party, its agents, or contractors in connection with its provision of services or functions under this Agreement, provided such loss was proximately caused by the negligent or otherwise tortious acts or omissions of the indemnifying Party. In the case of any loss alleged by a Customer of either Party pertaining to a service under this Agreement, the Party whose customer alleged such loss shall indemnify the other Party and hold it harmless against any and all such loss alleged by each and every Customer pertaining to services provided under this Agreement provided such loss was proximately caused by the negligent or otherwise tortious acts or omissions of the indemnifying Party. The indemnifying Party under this Section agrees to defend any suit brought against the other Party either individually or jointly with the indemnified Party for any such loss, injury, liability, claim or demand. The indemnified Party agrees to notify the other Party promptly, in writing, of any written claims, lawsuits, or demands for which it is claimed that the indemnifying Party is responsible under this Section and to cooperate in every reasonable way to facilitate defense or settlement of claims. The Indemnifying Party shall have complete control over defense of the case and over the terms of any proposed settlement or compromise thereof. The indemnifying Party shall not be liable under this Section for settlement by the indemnified Party of any claim, lawsuit, or demand, if the indemnifying Party has not approved the settlement in advance, unless the indemnifying Party has had the defense of the claim, lawsuit, or demand tendered to it in writing and has failed to assume such defense. In the event of such failure to assume defense, the indemnifying Party shall be liable for any reasonable settlement made by the indemnified Party without approval of the indemnifying Party.