Decision 08-12-005 December 4, 2008

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Pacific Bell Telephone Company) d/b/a AT&T California (U1001C), Complainant, vs. Sprint Spectrum L.P., Wireless Co., L.P. and Cox Communications PCS, L.P., jointly d/b/a Sprint PCS (U3064C), Defendant.	Case 07-12-019 (Filed December 19, 2007)

DECISION GRANTING RELIEF REQUESTED BY AT&T CALIFORNIA

1. Summary

In this decision, we determine that Sprint Spectrum L.P., Wireless Co., L.P. and Cox Communications PCS, L.P. (jointly Sprint PCS) violated the terms of its interconnection agreement with Pacific Bell Telephone Company d/b/a AT&T California (AT&T) by refusing to pay the transiting rates[1] mandated by that agreement. Sprint PCS is ordered to immediately pay AT&T all amounts AT&T has billed for transiting that Sprint PCS has withheld. Sprint PCS is also ordered to make late payment charges on the payments it withheld.

[1] Transit traffic is traffic carried by a carrier that is not the originating or terminating carrier. It is transport that is between the originating and terminating carriers.

2. Background

AT&T filed its complaint against Sprint PCS on December 19, 2007. In its complaint, AT&T claims that Sprint PCS unilaterally changed the rate for "transiting service" in its approved interconnection agreement (ICA) with AT&T. AT&T also claims that Sprint PCS is withholding amounts that it does not dispute on AT&T's current bills in an attempt to take back amounts Sprint PCS paid AT&T in the past for transiting.

In its February 11, 2008 answer, Sprint PCS denied the allegations of AT&T's complaint. The parties agree that this proceeding should be categorized as adjudicatory, but disagree on the need for hearings. AT&T believed that the matter could be resolved on the basis of motions, while Sprint PCS indicated that, without first having conducted discovery regarding the allegations in AT&T's complaint, Sprint PCS could not ascertain whether an evidentiary hearing would be required.

Following a period of discovery, a Prehearing Conference (PHC) was held on April 29, 2008. The assigned Administrative Law Judge (ALJ) indicated that the primary purpose of the PHC was to determine the need for hearings. At the PHC, Sprint PCS indicated that it had not yet completed the discovery process so the ALJ set up a process whereby the parties provided frequent progress updates by way of telephone conference calls.

A second PHC was held on July 1, 2008, and the ALJ ruled that an evidentiary hearing would be held on one issue, whether transit service and tandem switching are identical. The scope of the proceeding was reinforced in the Assigned Commissioner's Scoping Memo, issued on July 7, 2008. The parties filed testimony and a hearing was scheduled for August 19, 2008. On August 14, 2008, AT&T filed a motion to strike portions of the opening and reply testimony

of Sprint PCS' witness. Sprint filed in opposition to AT&T's motion on August 20, 2008.

After reviewing the testimony, the parties agreed that they would rely on the testimony as submitted, and there was no need for an evidentiary hearing. The parties continued to work on a stipulated set of documents which would be submitted into the record. The stipulated set of documents, including the parties' testimony, was provided to the assigned ALJ on September 25, 2008. Opening briefs were filed on September 23, 2008, and reply briefs, on October 8, 2008. On November 26, 2008, the ALJ ruled on AT&T's motion to strike and ruled that the stipulated set of documents would be placed in the formal file of the proceeding.

3. Total Element Long Run Incremental Cost (TELRIC) Pricing for Transit Service

Sprint PCS insists that the transiting rates that AT&T is billing Sprint PCS do not comply with federal law that requires transiting to be billed in compliance with the TELRIC standard. Sprint PCS points to Decision (D.) 06-08-029, in which the Commission held that transit traffic is a method of indirect interconnection and, as such, an obligation under § 251(c).[2] The Commission further recognized that the applicable pricing standard for the provision of transit service is TELRIC.[3]

AT&T rebuts Sprint PCS' claim that it is entitled to TELRIC pricing for transiting. AT&T points out that Sprint misstates the Commission's holding in D.06-08-029; in that case, the Commission arbitrated an ICA between SBC and

[2] D.06-08-029, § 5.1.2 Transit Traffic, *mimeo.* at 9.

[3] D.06-08-029, § 5.1.3 Transiting Price, at 10-11.

MCI. AT&T states that the outcome ordered by the Commission does not apply in this case because the agreement between AT&T and Sprint PCS was negotiated, rather than arbitrated. Section 252(a)(1) of the Act provides that:

> [u]pon receiving a request for interconnection, services, or network elements pursuant to section 251 of this title, an incumbent local exchange carrier may negotiate and enter into a binding agreement with the requesting telecommunications carrier or carriers without regard to the standards set forth in subsections (b) and (c) of section 251 of this title."

Thus, states AT&T § 252(a)(1) gives carriers a choice: negotiate a private arrangement based on individual preferences and business needs, or go to the state commission for arbitration based on the pricing standards of the 1996 Act.

We note that Sprint PCS does not dispute that its ICA with AT&T is a negotiated, rather than an arbitrated, agreement. Section 252(c) of the Act clearly states that TELRIC pricing is only required for arbitrated ICAs. The pertinent portions of § 252(c) read as follows:

> (c) STANDARDS FOR ARBITRATION—In resolving by arbitration under subsection (b) any open issues and imposing conditions upon the parties to the agreement, a State commission shall—
>
> ….
>
> (2) establish any rates for interconnection, services, or network elements according to subsection (d)….

Subsection (d) includes the pricing standards for ICAs decided by arbitration, which was the basis for the Federal Communications Commission's TELRIC standard. This provision applies only to arbitrated ICAs, not to negotiated agreements. Under a negotiated agreement, parties are free to negotiate any rates for services, and those rates do not have to be based on TELRIC. We concur with AT&T that the outcome in the SBC/MCI case does not apply, since that rate was arbitrated by the Commission, not negotiated by the

parties. Therefore, we find that Sprint PCS is not entitled to TELRIC pricing for transiting service.

4. No Evidence of Discrimination

Sprint PCS claims that AT&T is discriminating against Sprint PCS by charging Sprint twice as much for transiting call setup and six times as much for transiting duration as AT&T is charging other wireless carriers, including its own wireless affiliate, Cingular Wireless, for what AT&T acknowledges is the exact same transiting service. Further, Sprint PCS asserts that AT&T failed to abide by the provisions of the ICA when it refused to correct the transiting rates after Sprint PCS invoked the Intervening Law provisions in Section 18 of the ICA.

According to AT&T, under the parties' ICA, the following rates apply to transit service:

Transit Set-Up	$0.001130 per call
Transit Duration:	$0.002770 per minute of use[4]

AT&T states that the transiting rates are clear and unambiguous. The ICA did not tie the transiting rates to the rates for any other service or facility (such as tandem switching). It did not tie the transiting rates to the Commission's determination of final rates for tandem switching in its Open Access Network Architecture development (OANAD) proceeding.

AT&T notes that, in contrast, the agreements of other carriers, including other wireless carriers like Nextel, stated that the rates for transiting would be based on the tandem switching rates that the Commission would determine. For

[4] AT&T/Sprint PCS Interconnection Agreement Appendix Pricing, p. 2.

example, in AT&T's ICA with Nextel, the following rate was specified for transiting:

INTERCONNECTION EQUATIONS

V. TRANSITING

Set-up (per Completed Call): TSS
Duration (per minute of use): TSD

INTERCONNECTION RATE ELEMENTS & FACTORS

Tandem Switching Setup (TSS)	$0.0011130
Tandem Switching Duration (TSD)	$0.000021

In September, 2004, the Commission issued D.04-09-063, the order adopting updated and final rates for certain unbundled network elements or UNEs. One of those UNEs was tandem switching. That decision, as modified by D.05-05-031 and D.05-03-037, determined the following rates for tandem switching:

Tandem Switching Setup, per completed message	$0.000629
Tandem switching holding time per Memoranda of Understanding	$0.000453[5]

AT&T notes that D.04-09-063 did not adopt a rate for transit service, nor did it discuss transit service or suggest that carriers' rates for transit service should be changed. As explained above, in some of AT&T's ICAs with carriers other than Sprint PCS, the parties agreed that the rates for transit service would be equivalent to or otherwise based on the tandem switching rates set by the Commission. When the Commission issued its new rates for tandem switching

[5] D.05-03-037, *Order Correcting Errors* (March 29, 2005), at Appendix B (corrected); D.05-05-031, *Opinion Modifying Decision 04-09-063 to Correct Unbundled Tandem Switching Rate* (May 27, 2005), at 9.

in D.04-09-063, carriers whose ICAs had transiting rates that referenced tandem switching rates had their transiting rates changed to reflect the new tandem switching rates. On the other hand, carriers whose ICAs did not have such rate-referencing language did not. Sprint PCS was one of those carriers that did not receive the updated transiting rates.

Sprint PCS asserts that unless its ICA clearly and unmistakably provided that there would *not* be a true-up of transiting prices, Sprint PCS was entitled to assume that such a true-up would occur.

AT&T states that the Unbundled Network Element (UNE) relook decision did not change the rates for transiting, but only changed the rates for the tandem switching UNE, and thus AT&T was only obligated to change the transiting rates of carriers whose interconnection agreements specifically incorporated an "interconnection equation" referencing tandem switching UNE elements. Both AT&T and Sprint PCS acknowledge that AT&T updated the transiting rates charged to those carriers that had "Interconnection Equations" and "OANAD Rate Factors" included in their ICAs. However, Sprint PCS asserts that AT&T's advice letters (ALJs 25684, 26608, and 26940 for implementing, respectively, D.04-09-063, D.05-03-026 andD.05-05-031) explicitly changed transiting rates—not the OANAD rate factors.

According to Sprint PCS, there is no question that in those ICAs that specify that tandem switching UNE rates will be the source for transiting rates, the tandem switching UNE rates must be used to establish transiting rates. However, Sprint asserts that just because an ICA does not identify tandem switching UNE rates as the source for the ICA's transiting rates does not mean that tandem switching UNE rates should not be used to establish such transiting rates. Sprint PCS concludes that, in order to avoid discrimination, the tandem

switching UNE rates must be used to establish transiting rates of all wireless carriers.

Under the 1996 Act, the Congress recognized that ICAs could be negotiated or arbitrated by state commissions. In Section 252(c) of the Act, the Congress set a more stringent standard for state commissions to follow in setting cost-based rates in the course of an arbitration. However, there is no such requirement for negotiated ICAs.

We believe that Sprint PCS should be bound by the four corners of its ICA with AT&T, and not what the ICA does *not* say. The Sprint PCS/AT&T ICA does not tie the rates for transiting to the rates for tandem switching, as do some other ICAs. The negotiated ICA between those two parties has a rate for transiting that is not tied to any other rate.

Sprint PCS attempts to prove that transiting and tandem switching are the same, and therefore, they should receive the rate for tandem switching for transiting. AT&T emphasizes the differences between the two services, saying that tandem switching does not include a local transport or multiplexing function to and from the tandem switch. Transit service, by contrast, includes more than just the isolated element of tandem switching: transit service also includes transport, multiplexing, record creation, and data distribution functions. According to AT&T, while both tandem switching and transit service establish a trunk-to-trunk connection, there are other, different functions performed at the tandem and within AT&T's data processing system for each type of service.

While AT&T cites the differences, we note that in several other negotiated ICAs, AT&T based the transiting rates on tandem switching rates. Therefore, the similarities must outweigh the differences if AT&T was willing to use tandem

switching rates as a proxy for transiting rates. However, the key issue here is not whether some of the agreements base transit rates on tandem switching, but what specific provisions are contained in the ICA between AT&T and Sprint PCS. The parties there set a transiting rate, with no reference to tandem switching or any other rate element.

Sprint PCS would have us believe that AT&T did this on purpose, with the plan of discriminating against Sprint PCS, once the Commission set final rates for tandem switching. Sprint PCS' claim does not hold water. Sprint PCS is a large company with competent legal counsel. Also, as AT&T points out, the previous ICA between the parties included a provision that tied the transit rates to tandem switching. Therefore, Sprint PCS cannot claim ignorance that such a provision could be part of the ICA. That section of the previous ICA reads as follows:

> **Transit Calls.** An originating Party shall pay a transit rate of $0.004 per minute when it uses the other Party's Tandem ("the tandeming Party") to originate a call to a third party local exchange carrier, wireless service providers, or another of its own MSCs or central Offices. Once the Commission has adopted rates for tandem transit by final order in its OANAD proceeding, the applicable rates adopted in the OANAD proceeding would apply.[6]

Clearly, Sprint PCS was aware that such a provision could have been included in the current ICA with the parties, but agreed to a different provision in the current ICA. Therefore, we find that the transiting rates charged Sprint PCS under its ICA with AT&T were not discriminatory, even though they were significantly higher than the rates paid by other carriers. The carriers that received the revised transiting rates all had the provision in their ICAs that

linked those rates to the tandem switching rates. Sprint PCS and four other carriers[7] that did not have that provision, did not have their transiting rates updated. Sprint PCS has not identified any carrier with ICA provisions similar to those in the Sprint PCS agreement that had their transit rates updated following the issuance of D.04-09-063.

In its comments on the Proposed Decision (PD), Sprint PCS asserts the PD errs in Findings of Fact 6 when it states that carriers that received the revised transiting rates all had the provision in their ICAs that linked those rates to the tandem switching rates. Sprint PCS points to Exhibit T, which includes excerpts to AT&T's ICA with Fresno MSA Limited Partnership d/b/a Verizon Wireless (Verizon Wireless). According to Sprint PCS, that ICA did not have language linking the transit rates to tandem switching rates yet its ICA was amended with the new transiting rate. Sprint PCS cites the following provision in the Verizon Wireless ICA:

> ICA, Section 3.1.1.c:
>
> Transit calls. An originating Party shall pay a transit rate of $0.004 per minute when it uses the other Party's Tandem ("the tandeming Party") to originate a call to a third party LEC, WSP, or another of its own MSCs or Central Offices. Once the Commission has adopted rates for tandem transit by final order in its OANAD proceeding, the applicable rates adopted in the OANAD proceeding would apply.

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[6] PCS Interconnection Agreement between Pacific Bell and Sprint Spectrum L.P., Section 3.1.1(d).

[7] According to AT&T, the other carriers that have transiting rates that are not tied to tandem switching rates are NTCH-CA, Inc d/b/a Rio-Tel, Cricket Communications, Inc., SLO Cellular, Inc., and California RSA No. 3 LP.

As AT&T points out in its Reply Comments on the PD, the Verizon Wireless ICA specifically directed that upon the Commission's adoption of new tandem rates, the parties would apply those rates to transit service and update the contract's transit rates accordingly. Consequently, following the issuance of D.99-11-050 in 1999, an ICA amendment executed by the parties adjusted Verizon Wireless' transit rates and stated that "all interim OANAD prices identified in the Agreement are hereby deleted and replaced with the prices contained in the above-referenced OANAD order."[8] Several years later in D.04-09-063, the Commission updated the rates in D.99-11-050 and again adopted new tandem switching rates. In that decision, we stated that the rates we were adopting would replace the rates originally adopted in D.99-11-050.[9] As set forth above, the Verizon Wireless ICA Amendment explicitly provided that the transit rates contained therein were the result of tandem switching rates adopted in D.99-11-050. On the basis of that language and the Commission's order in D.04-09-063 that the rates adopted in that decision were to replace rates originally adopted in D.99-11-050, AT&T updated Verizon Wireless' transit rates in conformance with the tandem switching rates adopted in D.04-09-063.

We find that AT&T did not discriminate against Sprint PCS by not updating its rates. Only those carriers that had the provision in their ICA linking transiting to tandem switching, or some other provision in their ICA linking their transit rates to rates adopted in the OANAD proceeding had their rates updated. Verizon Wireless had a provision that linked its transit rate to rates adopted for

[8] ICA Amendment No. 1, pp. 1-2.

[9] D.04-09-063 *mimeo.* at 4.

tandem transit in the OANAD proceeding, but Sprint PCS did not have that provision in its ICA.

5. Effect of Intervening Law Provision

Sprint PCS asserts that the ICA clearly gave Sprint PCS certain rights, including the right to invoke the Intervening Law provisions of the ICA. Sprint PCS sent AT&T a letter on July 18, 2007, invoking the Intervening Law provisions of the ICA and requesting AT&T to adjust that transiting rates in accordance with the change of law.

AT&T rejected Sprint PCS' request saying that D.04-09-063 made no mention of transit rates and did not establish a transit rate for carriers. AT&T maintained that it had amended all carriers' ICAs that expressly referenced OANAD rates with the rates that were established by the Commission in the decision. According to Sprint PCS, the reason for having an Intervening Law provision is to address circumstances where the parties agree to one rate in the agreement, but that rate is subsequently modified by a court or regulatory agency. According to Sprint PCS, there can be no question that the Commission's UNE relook decision changed the TELRIC cost for the transiting interconnection service.

AT&T rebuts Sprint PCS' claim, saying that the Intervening law provision of the ICA applies only where rates, terms or conditions of the ICA have been invalidated, modified or stayed by a court, legislature or regulatory agency. Thus, to show that it is entitled to invoke Section 18.1, Sprint PCs must show that this Commission, or some other regulatory agency, court or commission, has invalidated, modified to stay the transiting rates contained in Sprint PCS' ICA.

According to AT&T, Sprint makes two attempts to prove its point, but each one fails. First, Sprint argues that the Commission's act of identifying the

TELRIC rate for tandem switching automatically identified the TELRIC rate for transiting. We agree with AT&T that Sprint PCS is incorrect. Nowhere in D.04-09-063 does the Commission say that it is changing the rates for transiting or that transiting and tandem switching are the same or interchangeable.

Second, Sprint relies on D.06-08-029, the arbitration of an ICA between SBC and MCI. The Commission has repeatedly stated that an arbitration decision does not constitute binding precedent and the Commission is not bound by any provision it adopted in any prior arbitration proceeding.[10] In addition, the Act makes clear that negotiated agreements under Section 251(a)(1)—which we are dealing with in this case—are not bound by such precedent. Also, we repeat our finding that pursuant to Section 252(a)(1), TELRIC rates are not required for negotiated agreements. Therefore, the fact that we found that TELRIC pricing was appropriate in the SBC/MCI arbitration, has no impact on the negotiated ICA between AT&T and Sprint PCS.

6. Disposition of the Complaint

We have determined that Sprint PCS is not entitled to the transiting rates which are based on the Interconnection Factors found in the ICAs of some other carriers. AT&T did not discriminate against Sprint PCS because all the carriers with the same transiting rates as Sprint PCS were treated the same; none of them had their transiting rates modified.

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[10] D.00-08-011, *Application by AT&T Communications of California, Inc., et al (U5002C) for Arbitration of an Interconnection Agreement with Pacific Bell Telephone Company (U1001C) Pursuant to Section 252(b) of the Telecommunications Act of 1996,* 2000 Cal. PUC LEXIS, at *44 (August 3, 2000).

We conclude that Sprint PCS is required to pay AT&T the rate for transit that is specified in the parties' ICA.

According to AT&T's complaint, in July 2007, Sprint PCS began withholding payments to AT&T to reimburse itself for amounts that Sprint PCS previously paid for transiting since October 2004. Also, since July 2007, Sprint PCS refused to make payments on bills for services other than transiting, in order to take back from AT&T payments that Sprint PCS made to AT&T for transiting since October 2004. AT&T states that Sprint PCS' actions were in conflict with the provisions of the ICA. We agree. This is clearly in violation of Section 8.2.2 of the ICA that requires parties to "*pay to each other all undisputed charges due each other* within thirty (30) days of the date the statement was rendered (bill date) for those charges." Where charges are subject to a bona fide dispute between the parties, "the disputing Party shall, within 30 days after the bill due date, give written notice to the billing Party of the amounts it disputes, the specific details and reasons for disputing each item."[11] Sprint PCS unilaterally withheld payment of 2007 bills in an attempt to retrieve payments it made in 2004-2006. For the bulk of the challenged charges, Sprint PCS failed to give notice within 30 days of billing of the disputed amounts and the reasons for disputing those amounts.

Also, Section 8.2.7.2 of the ICA provides "Neither Party may request credit for any billing by the other Party pursuant to this Agreement more than nine (9) months after the date of the bill on which the service or facility was billed. If the request for credit leads to a billing dispute, such dispute shall be in

[11] California Agreement for Interconnection by and between Sprint PCS and Pacific Bell Telephone Company, § 8.2.2.

accordance with Section 17." Sprint PCS is attempting to retrieve payments it made in 2004-2006, which is more than 9 months after bills for that time were issued. That violates the requirement in Section 8.2.7.2.

In this case, Sprint PCS has unilaterally awarded itself credits for past payments Sprint PCS has made to cover transit charges. This a clear violation of the ICA. Sprint PCS must request credits from AT&T, not decide unilaterally that it should not have paid AT&T's prior bills and then withhold current payments to recover prior undisputed payments.

Sprint PCS has violated the terms of its ICA with AT&T by withholding payment, in violation of §§ 8.2.2 and 8.2.7.2 of the ICA. Sprint PCS is required to immediately pay AT&T any and all amounts AT&T has billed that Sprint PCS has withheld.

In its Comments on the PD, AT&T states that the rate of interest awarded in the PD[12] is legal error because the Commission has held that, if a contract is silent on the applicable interest rate, proper rate of interest for breach of an ICA is the statutory rate mandated by Section 3289(b) of the California Civil Code. AT&T cites the Commission's own words:

> Under Civ. Code § 3289, unless the terms of a contract provide otherwise, the legal rate of prejudgment interest for breach of contract is 10 percent per annum. (D.01-09-053, *mimeo*, at 3.)

AT&T points to Section 8.2.6.2 of the ICA between and Sprint PCS that states the applicable interest on billed amounts that are not paid when due is "the lesser of (i) one and one-half percent (1½%) per month or (ii) the highest rate

[12] Interest set on "the three-month commercial paper rate published in the Federal Reserve Statistical release H.15."

of interest that may be changed under Applicable Law." According to AT&T, because the 10% per annum rate specified by Section 3289(b) is less than a rate of 1½% per month (which translates to 18% on a per annum basis), the proper interest rate to be applied is 10%.

In its Reply Comments on the PD, Sprint PCS points out that under the ICA Sprint PCS does not owe interest on "disputed" amounts, instead, Sprint would owe "late payment charges" to AT&T. According to Sprint PCS, AT&T's reliance on Section 8.2.6.2 of the ICA is misplaced. By its terms, Section 8.2.6.2 applies only to ***undisputed*** amounts not paid when due. Sprint PCS asserts that the proper section of the ICA the applies to disputed billing amounts is Section 17.7 "Resolution of Billing Disputes," which reads as follows:

> 17.7.2 When a billing dispute is resolved in favor of the billing Party, the following will occur within thirty (30) days:
>
> 17.7.2.1 Late payment charges will be paid by the disputing Party on any amount not paid that is found to be due according to the Dispute Resolution.

Sprint PCS says it is important to note that these sections do not assess interest charges. Accordingly, AT&T's reliance on California Civil Code Section 3289(b) is inapplicable because that section specifically addresses interest charges, not late payment charges.

Sprint PCS notes that the ICA makes a distinction based on whether the "billing Party" or the "disputing Party" prevails. The "billing Party" pays interest if the "billed Party" prevails (under Section 17.7.1.1 of the ICA), but the "disputing Party" only pays "late payment charges" if the "billing Party" prevails (under Section 17.7.2 of the ICA). Sprint PCS concludes that since the ICA used the word "interest" when assessing charges against the "billing Party," but used the term "late payment charges" when assessing charges against the

"disputing Party," it must be presumed that the distinction was intentional. We concur with Sprint PCS' conclusion that AT&T incorrectly relied on Section 8.2.6.2 of the ICA when it determined that interest should be paid on the amount Sprint PCS owes AT&T.

Section 17.7.2 establishes that "late payment charges" will apply when assessing charges against the disputing Party. Sprint PCS indicates that the ICA does not identify the appropriate late payment charges to be paid by the disputing Party in the event of a billing dispute where the billing Party prevails. Sprint concludes that the Commission should determine the appropriate late payment charges to be paid by Sprint PCS. Sprint PCS states that the 3-month commercial paper rate published in the Federal Reserve Statistical Release H.15 would be an appropriate rate for late payment charges. We agree.

Sprint PCS shall immediately pay to AT&T late payment charges, from when the amounts were originally withheld, at the three-month commercial paper rate published in the Federal Reserve Statistical Release H.15.on the payments withheld by Sprint PCS.

7. Comments on Proposed Decision

The proposed decision of the ALJ in this matter was mailed to the parties in accordance with Section 311 of the Public Utilities Code and comments were allowed under Rule 14.3 of the Commission's Rules of Practice and Procedure. Comments were filed on November 20, 2008, and reply comments on November 25, 2008 by AT&T and Sprint PCS. Those comments have been taken into account, as appropriate, in finalizing this decision.

8. Assignment of Proceeding

President Michael R. Peevey is the assigned Commissioner and Karen A. Jones is the assigned ALJ in this proceeding.

Findings of Fact

1. The ICA between Sprint PCS and AT&T was negotiated, not arbitrated by the Commission.

2. Under a negotiated agreement, parties are free to negotiate any rates for services, and those rates do not have to be based on TELRIC.

3. AT&T updated the transiting rates charged to those carriers that had "Interconnection Equations" and "OANAD Rate Factors" included in their ICAs.

4. The ICA between Sprint PCS and AT&T does not tie the rates for transiting to the rates for tandem switching.

5. The previous ICA between the parties included a provision that tied the transit rates to tandem switching.

6. The carriers that received the revised transiting rates either had a provision in their ICAs that linked those rates to the tandem switching rates or some other provision in their ICA linking their transit rates to rates adopted in the OANAD proceeding.

7. Sprint PCS has not identified any carrier with ICA provisions similar to those in the Sprint PCS agreement that had their transit rates updated following the issuance of D.04-09-063.

8. The Commission does not mention rates for transiting in D.04-09-063.

9. Sprint PCS unilaterally withheld payment of 2007 bills in an attempt to retrieve payments it made in 2004-2006.

10. The ICA does not identify the appropriate late payment charges to be paid by the "disputing Party" in the event of a billing dispute where the "billing Party" prevails.

Conclusions of Law

1. Section 252(c) of the Telecommunications Act states that TELRIC pricing is only required for arbitrated ICAs.

2. Sprint PCS is not entitled to TELRIC pricing for transiting service.

3. The transiting rates charged Sprint PCS under its ICA with AT&T were not discriminatory, even though they were significantly higher than the rates that other carriers paid.

4. Arbitration decisions do not constitute binding precedent, and the Commission is not bound by any provision it adopted in any prior arbitration proceeding.

5. Sprint PCS' failure to make payments on bills for services other than transiting is a violation of Section 8.2.2 of the ICA.

6. Sprint PCS' attempt to recoup payments more than nine months after the date a bill was issued is a violation of Section 8.2.7.2 of the ICA.

7. Section 17.7.2 of the ICA establishes that "late payment charges" will apply when assessing charges against the disputing Party

O R D E R

IT IS ORDERED that:

1. Sprint Spectrum L.P., Wireless Co., L.P. and Cox Communications PCS, L.P. (jointly Sprint PCS) is required to pay AT&T California (AT&T) the rate for transiting service that is specified in the parties' interconnection agreement.

2. Sprint PCS shall, within 30 days of the effective date of this decision, pay to AT&T any and all amounts AT&T has billed and Sprint PCS has withheld to recoup amounts Sprint PCS paid AT&T in the past for transiting.

3. Sprint PCS shall, within 30 days of the effective date of this decision, pay to AT&T late payment charges, from when the amounts were originally withheld, at the three-month commercial paper rate published in the Federal Reserve Statistical Release H.15 on the payments withheld by Sprint PCS.

4. Case 07-12-019 is closed.

This order is effective today.

Dated December 4, 2008, at San Francisco, California.

MICHAEL R. PEEVEY
President
DIAN M. GRUENEICH
JOHN A. BOHN
RACHELLE B. CHONG
TIMOTHY ALAN SIMON
Commissioners