BEFORE THE
WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

In the Matter of the Petition of Sprint Communications Company L.P. for Arbitration with Whidbey Telephone Company	)	Docket No. UT-073031 ANSWER OF WHIDBEY TELEPHONE COMPANY TO PETITION FOR ARBITRATION

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I. INTRODUCTION

1 Whidbey Telephone Company ("Whidbey") respectfully submits this Answer to the Petition for Arbitration ("Petition") submitted by Sprint Communications Company L.P. ("Sprint") to the Washington Utilities and Transportation Commission ("Commission") for filing on October 17, 2007. This Answer is submitted pursuant to Section 252(b) of the Communications Act of 1934, as amended (the "Act"), 47 U.S.C. § 252(b), and pursuant to WAC 480-07-630, each to the extent, if any, that the same may be applicable.

2 Whidbey has previously filed in this docket its Motion to Dismiss for Lack of Jurisdiction. Such motion was submitted to the Commission without waiving Whidbey's objection based upon such lack of jurisdiction. Similarly, this Answer is respectfully submitted by Whidbey without Whidbey waiving its objections to Sprint's attempts to obtain the Commission's assertion of jurisdiction in this matter. This Answer is being filed at this time, in advance of a Commission ruling on Whidbey's motion to dismiss for lack of jurisdiction, due to the deadlines for submitting an answer to the Petition set forth in Section 252(b) of the Act and WAC 480-07-160, if it were to be determined that the Commission's jurisdiction in this matter has been properly invoked.[1]

3 As required by WAC 480-07-630(7)(i), attached to this Answer is a form of Agreement for Local Interconnection and Local Traffic Exchange ("Traffic Agreement")

[1] By letter, dated November 5, 2007, Whidbey requested an extension of time within which to file its answer to the Petition until after the Commission ruled on Whidbey's motion to dismiss for lack of jurisdiction. By Notice of Alterations in Procedural Schedule, dated November 8, 2007, the Commission granted Whidbey an extension of time until November 16, 2007, at 3:00 p.m., to file its answer to the Petition.

proposed by Whidbey (Attachment 1 hereto).[2] Such form of Traffic Agreement is based upon the form of Interconnection Agreement that accompanied Sprint's letter of May 10, 2007, to Whidbey (Petition, Exhibit B). A redlined version of the Interconnection Agreement, which displays the differences between the version proposed by Whidbey and the one submitted by Sprint, is attached hereto as Attachment 2. A section-by-section description of the principal grounds for Whidbey's position with respect to the areas in which the Whidbey and Sprint versions of the Interconnection Agreement differ from one another on matters primarily of policy (rather than form or grammar) is attached hereto as Attachment 3.

4 Additional documents, as required to be attached to this Answer by Section 252(b) of the Act and WAC 480-07-630, are referred to more fully below and attached hereto as Attachment 4.

II. BACKGROUND

5 Whidbey is a relatively small, rural telecommunications company that is an incumbent local exchange carrier with respect to the South Whidbey Exchange[3] and the Point Roberts Exchange, each as shown on exchange area maps included in Whidbey's Tariff WN U-5 on file with the Commission. Sprint claims to be a provider of local

[2] Whidbey's proposed form of agreement is entitled, "Agreement for Local Interconnection and Local Traffic Exchange."

[3] The South Whidbey Exchange includes a "Supplemental Service Area." The National Exchange Carrier Association, Inc. has not recognized Whidbey as being an incumbent local exchange carrier with respect to the area encompassed by the Supplemental Service Area, and the Commission has not included the Supplemental Service Area in the area for which Whidbey is designated to be an "Eligible Telecommunications Carrier." The Supplemental Service Area includes portions of Verizon's Oak Harbor rate center. Telecommunications calls between access lines in the Supplemental Service Area served by Whidbey and access lines served by Verizon in Verizon's Coupeville Exchange, including the portion thereof that is coterminous with the Supplemental Service Area, are treated as "exchange access" traffic that is subject to the access charge tariffs of Whidbey and Verizon, respectively.

exchange services within the State of Washington and is part of Sprint Nextel, a national provider of telecommunications services, including wireless telecommunications services and interexchange long distance services.

6 On May 3, 2007, Whidbey received from Sprint a purported bona fide request for the deployment of local number portability ("LNP") in Whidbey's switching entities that serve the South Whidbey Rate Center, but not the switching entity that serves the Point Roberts Rate Center. Shortly thereafter, on May 11, 2007, Whidbey received from Sprint a request for negotiation of an interconnection agreement, that included, but was not limited to, LNP issues. Sprint's request for negotiation of an interconnection agreement did not specify whether it was limited to the South Whidbey Exchange (as Sprint's purported LNP request had been limited to the South Whidbey Rate Center), or whether it also included the Point Roberts Exchange. However, Whidbey understood the request for negotiation of an interconnection agreement to be similarly limited to the South Whidbey Exchange, or, with respect to LNP, the South Whidbey Rate Center. Sprint's request for negotiation of an interconnection agreement was accompanied by a "discussion draft" Interconnection Agreement, which also did not specify the geographic areas to which it was intended to apply.[4]

7 A number of items of correspondence were thereafter exchanged by Sprint and Whidbey. Copies of some, but less than all,[5] of that correspondence were attached to the

[4] While the request was not specific in this respect, it was understood by Whidbey to be seeking "local" interconnection, since Sprint already had (and continues to have) interconnection with Whidbey for purposes of originating and terminating interexchange telecommunications traffic, including exchange access traffic.

[5] WAC 480-07-630(5)(f) requires that a petition for arbitration be accompanied by all relevant documentation. Sprint has offered no explanation for its failure to comply with this requirement.

Petition. Copies of correspondence exchanged by Sprint and Whidbey with respect to Sprint's above-mentioned request for LNP and, to the extent not attached to the Petition, otherwise pertaining to Sprint's above-mentioned request for the negotiation of an interconnection agreement are attached hereto as Attachment 4, Exhibits 1 through 16.

8 This request for arbitration is being presented to the Commission at an unusual stage, since the parties have not engaged in any meaningful negotiations relating to either the terms of the requested Interconnection Agreement or with respect to any of three substantial threshold issues that Whidbey identified and presented to Sprint. Sprint alleges in the Petition that Whidbey has failed to negotiate in good faith, but Whidbey asserts that it is Sprint, and not Whidbey, that has failed to negotiate or otherwise proceed in good faith.

9 Given the absence of any meaningful negotiations regarding the terms of an interconnection agreement,[6] Whidbey respectfully requests that the Commission divide this proceeding into two phases. The first phase would address and resolve the threshold issues that Whidbey has raised (see Sections I, II and III in the Legal Brief that accompanies this Answer). The second phase would be reached only if the first phase resulted in a determination that Sprint was entitled to a negotiated interconnection agreement with Whidbey.

10 The second phase would permit Sprint and Whidbey a reasonable period (Whidbey suggests 60 days) within which to attempt to negotiate the terms of an interconnection

[6] In its response to Whidbey's Motion to Dismiss for Lack of Jurisdiction, Sprint acknowledges that there has been no negotiation of the terms of an interconnection agreement between Sprint and Whidbey. (Sprint Response to Motion to Dismiss, ¶ 20.)

agreement, and would then address any issues pertaining to the interconnection agreement that Sprint and Whidbey had been unable to resolve on their own. Such an approach would economize on the Commission's resources, as well as the resources of the parties, since as will readily be seen from the attached form of Interconnection Agreement, there are a large number of respects in which the discussion draft Interconnection Agreement submitted by Sprint and the current draft Interconnection Agreement submitted by Whidbey differ from one another. Some of the differences reflect fundamental differences of position, while other differences relate more to issues of contract drafting than policy disagreement. It is expected that differences of the latter sort, and even some of the former type, would likely be susceptible to resolution by Sprint and Whidbey without the need for Commission intervention.

III. STATEMENT REGARDING DISPUTED DATES

11 Sprint would have the Commission treat Sprint's initial request for interconnection has having been delivered to Whidbey on May 11, 2007, and commence the counting of the statutory period pursuant to Section 252(b) of the Act on that date, stating in the Petition that the dates which are 135 days and 160 days thereafter are September 22, 2007 and October 17, 2007, respectively. (Petition, ¶ 7.)[7]

12 Whidbey disputes these dates. Whidbey submits that the date on which Whidbey received the initial request for negotiation from Sprint is May 3, 2007, when Whidbey

[7] While the Petition characterizes Sprint's May 10, 2007, letter as a "Request for Interconnection," that letter did not request interconnection, but rather stated that it served "as a request to negotiate an interconnection agreement" (Petition, Exhibit A, p. 1, first paragraph) and as "Sprint's request for negotiations" (Petition, Exhibit A, p. 1, third paragraph). Whidbey does not dispute that Sprint may request interconnection, but does not agree that the Act obligates Whidbey to negotiate an interconnection agreement that would impose upon Whidbey contractual obligations above and beyond the statutory and regulatory obligations to which Whidbey may be subject in the absence of a bilateral agreement.

received a purported request for LNP from Ms. Victoria A. Danilov of Sprint, whose letterhead identified her capacity as "Interconnection Solutions" (emphasis added).[8] The dates corresponding to 135 and 160 days thereafter are September 15, 2007, and October 10, 2007, respectively.

13 That commencement of the Section 252(b) timeline (to the extent, if any, that it applies) was triggered by Sprint's request for LNP is evident from the extent to which the request for LNP was an integral part of Sprint's request for the negotiation of an interconnection agreement. First, the purported LNP request was submitted on Sprint Nextel letterhead bearing the legend "Interconnection solutions." Second, the discussion draft Interconnection Agreement that accompanied Sprint's May 10, 2007, letter included provisions dealing with LNP (see Sections 19.1 through 19.5 thereof[9]). Third, Sprint's May 2, 2007, letter pertaining to LNP included the statement, "Sprint plans to operate in the service area of and has sent or will be sending a request to negotiate an Interconnection Agreement with Whidbey Telephone Co." (Attachment 4, Exhibit 1, p. 1). Fourth, Sprint's May 10, 2007, letter substantially duplicated the request for LNP information regarding Whidbey's switching entities that was set forth in Sprint's May 2, 2007, letter, and clearly tied that request to the interconnection negotiation and arbitration provisions of Section 252(b) of the Act.[10]

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[8] Attachment 4, Exhibit 1.

[9] Petition, Exhibit B.

[10] Sprint's May 2, 2007, letter (Attachment 4, Exhibit 1) included the following request: "Please provide Sprint with the status of these rate centers regarding their Local Number Portability capabilities (i.e. software, hardware, remotes) within 10 days of your receipt of this request." Similarly, Sprint's May 10, 2007, letter included the following request: "Additionally, as provided for in 47 U.S.C. §252(b)(2) under the provisions and timelines established in 47 CFR 52.23(c), Sprint requests a list of Whidbey Telephone Company's switches for which number portability (1) is available, (2) has been requested but is not yet available or (3) has not yet been requested." Petition, Exhibit A.

IV. UNRESOLVED ISSUES FOR DETERMINATION

A. Threshold Issues for Determination.

14 There are three fundamental threshold issues that Whidbey believes need to be resolved before negotiations with Sprint can be productive or should even proceed. These issues were repeatedly presented to Sprint by Whidbey in an effort to secure their resolution so that, if appropriate, negotiations with respect to the terms of an Interconnection Agreement might proceed. However, Sprint steadfastly refused to address the threshold issues in any meaningful way. The three fundamental threshold issues are as follows:

15 1. **Issue 1:** Is Whidbey required to provide local interconnection to Sprint where the principal, if not the sole purpose for the interconnection Sprint desires, is to facilitate the provision of telecommunications service by an entity that is not registered with the Commission as a telecommunications company, as required by RCW 80.36.350?

16 2. **Issue 2:** With respect to the local interconnection that Sprint seeks from Whidbey, is Sprint a "telecommunications carrier," as that term is defined in the Act for purposes of Section 251 and, to the extent applicable, Section 252 of the Act?

17 3. **Issue 3:** With respect to the South Whidbey Rate Center, is Sprint eligible to submit to Whidbey a bona fide request for LNP?

18 If either Issue 1 or Issue 2 above is resolved in the negative, this arbitration proceeding should be dismissed. If Issue 3 above is resolved in the negative, LNP issues should be eliminated from this arbitration proceeding.

B. Issues Identified in the Petition as Unresolved Issues.

19 The Petition identifies the following unresolved issues for determination, and states Sprint's position with respect to them. A summary of Whidbey's position with respect to each of them follows:

20 1. "Should Whidbey be required to negotiate and sign an interconnection agreement with Sprint under Sections 251 and 252 of the Act. Sprint's position is that it is entitled to negotiate and sign an interconnection agreement with Whidbey."

Response:

(a) Section 251 requires Whidbey to provide interconnection to qualifying telecommunications carriers; it does not require that Whidbey enter into negotiations or sign an interconnection agreement with Sprint.

(b) Subject to (i) Sprint being eligible to submit a request for local interconnection to Whidbey, (ii) Sprint's intended use of such interconnection not being unlawful and (iii) Sprint negotiating in good faith, Whidbey is willing to enter into negotiations[11] with Sprint on a mutually acceptable agreement with Sprint for the exchange of telecommunications (including specified information services) traffic.

[11] Whidbey is a rural telephone company as defined by 47 U.S.C. §153(37) and holds an exemption from obligations under 47 U.S.C. §251(c), which includes the obligation to negotiate an interconnection agreement. See, 47 U.S.C. §251(f). While preserving this exemption, Whidbey is willing to enter into voluntary negotiations with Sprint.

(c) It is Sprint, and not Whidbey that has failed to negotiate in good faith, in that (i) Sprint failed to respond for long periods of time – thereby running out the clock, (ii) Sprint attempted to "stonewall" the threshold issues that Whidbey raised, including not addressing the legal support for Whidbey's position that Whidbey furnished to Sprint, and (iii) it repeatedly failed to provide the LNP-related information requested by Whidbey and to which Whidbey was clearly entitled pursuant to Section 52.23(b)(2)(iii) of the FCC's rules.

21 2. "Should Whidbey be sanctioned by the Commission for its failure to negotiate an interconnection agreement with Sprint pursuant to Subsection 252(b)(5) of the Act. Sprint's position is that Whidbey has raised baseless "threshold issues" to avoid negotiating with Sprint even when Sprint has refuted Whidbey's claims with law that is directly on point."

Response:

It is Whidbey's position that it has not violated any of its obligations under Section 251 or, if applicable, Section 252 of the Act. In Paragraphs 16 and 17 of the Petition, Sprint alleges that Whidbey has "refused to negotiate." As will be seen from the account below of the correspondence that has been exchanged by Sprint and Whidbey regarding this mater, Whidbey never refused to negotiate in good faith. If any party has failed to negotiate in good faith and should be sanctioned by the Commission, it is Sprint.

V. HISTORY OF SPRINT'S REQUEST TO NEGOTIATE AN INTERCONNECTION AGREEMENT

22 As noted above, Sprint's request to negotiate an interconnection agreement initially came in two parts. The first was a purported bona fide request for LNP, which was received by Whidbey on May 3, 2007.[12] The second was Sprint's May 10, 2007, letter expressly requesting negotiation of an interconnection agreement.[13] While Sprint's Petition has endeavored to ignore its May 2, 2007, letter and the correspondence to which it gave rise, it is apparent that Sprint's purported request for LNP was part of Sprint's request for negotiation of an Interconnection Agreement.

23 Until Sprint ultimately acknowledged that its request for LNP was part of its request for an Interconnection Agreement,[14] two separate strings of correspondence ensued. There are three attributes of this correspondence which should be noted. First, Whidbey responded promptly to Sprint's requests and devoted substantial resources to addressing them. Second, Whidbey's commitment to fulfillment of its obligations under Act, while complying with its other obligations under the laws of the State of Washington, is manifest, and from the effort it devoted to its correspondence and the detail in which it set forth its concerns, it clearly was proceeding in good faith. Third, the lack of progress in resolving the differences between Sprint and Whidbey is attributable to (i) Sprint's refusal to address on their merits the issues that Whidbey presented and (ii) the extraordinary delays in Sprint's responding to even the most perfunctory of issues.

24 The following is a summary of the two lines of correspondence:

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[12] Attachment 4, Exhibit 1.
[13] Petition, Exhibit A.
[14] See, Petition, Exhibit 6, p. 2: "... Sprint will include the local number portability issue in the interconnection negotiations."

A. LNP Correspondence

25 Sprint's purported bona fide request to Whidbey for LNP in the South Whidbey Rate Center was received by Whidbey on May 3, 2007.[15] Whidbey responded to that request by letter, dated May 15, 2007.[16] Prior to responding, Whidbey sought to confirm that Sprint was providing or offering (or planning to provide or offer in the near future) wireline local exchange service in the South Whidbey Rate Center. At the time of the May 2, 2007, letter from Sprint, Whidbey was among the entities with respect to which enforcement of the FCC's rules pertaining to intermodal LNP has been enjoined by the United States Court of Appeals for the District of Columbia Circuit.[17] Because Sprint's request to Whidbey arrived on letterhead of Sprint Nextel and Sprint Nextel is a major wireless telecommunications service provider, and because Whidbey was not aware of any presence Sprint had as a wireline carrier in the South Whidbey Rate Center, Whidbey was concerned that Sprint's request was possibly an effort by Sprint Nextel to circumvent the Court's stay.

26 Whidbey's efforts to confirm that Sprint was providing, or offering, wireline local exchange service in the South Whidbey Rate Center were unsuccessful. Whidbey researched Sprint's website. As of May 15, 2007, Sprint had a price list offering to furnish "Local Exchange telecommunications services"[18] services within the State of Washington posted on its website.[19] A copy of that price list accompanies this

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[15] Attachment 4, Exhibit 1.
[16] Attachment 4, Exhibit 2.
[17] *United States Telecommunications Assoc. et al. v. FCC*, 400 F.3d 29, 43 (D.C. Cir. 2005).
[18] See Original Title Page 1 of the referenced price list. (Attachment 4, Exhibit 3)
[19] As of November 4, 2007, the URL for the website where Sprint Tariffs, Price Lists and Schedules may be found is http://www2.sprint.com/tariffs/. The URL for the specific schedule to which the text above refers, as of November 4, 2007, was http://www2.sprint.com/tariffs/pdf_files_file_0125.pdf.

Answer as Attachment 4, Exhibit 3.[20] Section 3 of that price list, on Original Page 52, is entitled "Service Area," and reads in its entirety as follows:

> "3. Service Area
>
> Sprint provides Local Exchange Service in the areas where necessary underlying network elements are reasonably available to the company on terms that are both technically and economically feasible. Contact a Sprint Representative at 1-877-877-8748 to get a list of rate centers where Sprint provides Local Exchange Service and their respective Local Calling Area"

There is no other information in the price list indicating where Sprint serves in the State of Washington.

27 In accordance with the foregoing instruction in Sprint's price list, on May 15, 2007, a representative of Whidbey telephoned 1-877-877-8748 and asked for a list of rate centers where Sprint then offered local exchange service in the State of Washington. He was advised that Sprint did not offer local exchange service in the State of Washington, and was advised to call Embarq. He explained further that he was looking for rate centers where Sprint offered local exchange service in competition with the existing wireline carrier – as a CLEC – and was again told that Sprint did not offer local exchange service anywhere in the State of Washington.

28 Based in part upon this difficulty in confirming that Sprint was providing or offering wireline telecommunications service, Whidbey responded to the purported LNP request that Whidbey had received from Sprint on May 3, 2007, by letter dated May 15, 2007. (Attachment 4, Exhibit 2.) In that letter, Whidbey set forth its concern regarding

[20] A document that appears to be the same price list was still posted on Sprint's website as of November 4, 2007, at the URL identified in the immediately preceding footnote.

intermodal LNP and the applicability of the Federal Court intermodal LNP stay to Whidbey, and asked Sprint to provide Whidbey with solid evidence that Sprint was operating in, or planned to operate in, the South Whidbey Rate Center and that Sprint was providing, or planned to provide, non-wireless local exchange service in that rate center. This request was based upon the express wording of the applicable Federal Communications Commission ("FCC") rule, 47 C.F.R. § 52.23(c):

> "Beginning January 1, 1999, all LECs must make a long-term database method for number portability available within six months after a specific request by another *telecommunications carrier* in areas in which that telecommunications carrier *is operating or plans to operate.*" (Emphasis added.)

Under this FCC rule, if Sprint either was not a "telecommunications carrier" or was not operating, or did not have plans to operate, as a telecommunications carrier in the South Whidbey Rate Center, then it would not be entitled to submit to Whidbey a request for LNP.

29 Also potentially relevant to Whidbey's response to Sprint's purported request for LNP was 47 C.F.R. § 52.23(b)(2)(i), which reads,

> "(i) Any wireline carrier that is certified (or has applied for certification) to provide local exchange service in a state, or any licensed CMRS provider, must be permitted to make a request for deployment of number portability in that state."

While it was not entirely clear that this provision would have application outside of the top 100 MSAs after December 31, 1998, it suggested that state authority to provide local service was a prerequisite to being eligible to submit a request for LNP. Accordingly, Whidbey sought to ascertain from the Commission's website and records center whether

Sprint had state authority to provide local service and whether that authority specifically extended to the South Whidbey Rate Center. That endeavor was inconclusive.

30 In response to Whidbey's letter of May 15, 2007, in a telephone conversation on May 21, 2007, Sprint referred Whidbey to the website www.localcallingguide.com for evidence that Sprint was providing local exchange service in the State of Washington. However, rather than confirming that Sprint was providing such service in the State of Washington or, more particularly, in the South Whidbey Rate Center, that website, when queried in the manner instructed by Sprint, returned a response of "No Exchanges Found." A copy of that website response, as generated during that telephone conversation, is attached hereto as Attachment 4, Exhibit 4.

31 During that same telephone conversation, Sprint disclosed that the purpose for the requested LNP was to enable Sprint to provide wholesale local exchange service to "Millennium Cable."

32 Sprint's letter of May 2, 2007, had asked that Whidbey provide Sprint with certain information regarding the status of the South Whidbey Rate Center with respect to the deployment of LNP. Sprint asked that such information be furnished within 10 days after Whidbey's receipt of Sprint's letter. In its letter of May 15, 2007, Whidbey furnished the requested information, and asked for Sprint to identify the Sprint switching entity or entities to which Sprint anticipated that Whidbey would be requested to port local telephone numbers that are assigned to the South Whidbey Rate Center in the event that LNP between Whidbey and Sprint were to be established.[21] Whidbey believed that this

[21] Attachment 4, Exhibit 2.

information was necessary in order to begin considering routing issues that the deployment of LNP by Whidbey and the commencement of the porting by Whidbey to Sprint of South Whidbey local telephone numbers would entail. Accordingly, to the extent, if any, that Section 51.301(c)(8) of the FCC's rules, 47 C.F.R. § 51.301(c)(8) would have application, this was information that Sprint was required to provide pursuant to that rule, as information needed to reach an agreement.[22]

33 Following the telephone conversation between Sprint and Whidbey on May 21, 2007, by letter dated May 24, 2007, Sprint responded to Whidbey's letter of May 15, 2007. (Attachment 4, Exhibit 5) Although Whidbey had suggested that any response be sent by fax, so as to expedite the matter, Sprint chose to send its response only by mail. Sprint's May 24 letter also did not provide the information that Whidbey had requested pertaining to the contemplated Sprint switching entity or entities to which Sprint would want South Whidbey telephone numbers to be ported by Whidbey. Instead, the May 24, 2007, letter again identified where Sprint desired LNP from Whidbey.

34 Because of the manner in which Sprint sent its May 24 letter, Whidbey did not receive that letter until a week later, on May 31, 2007. Whidbey responded five days after that, by Whidbey's letter dated June 5, 2007 (Attachment 4, Exhibit 6). In its June 5 letter, Whidbey stated in part:

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[22] Section 51.301(c)(8) provides in relevant part,

> "(c) If proven to the Commission, an appropriate state commission, or a court of competent jurisdiction, the following actions or practices, among others, violate the duty to negotiate in good faith:
>
> * * * * *
>
> (8) Refusing to provide information necessary to reach agreement."

> If [Sprint] is undertaking to submit a [bona fide request] for LNP solely as a provider of wholesale local exchange services to another entity intending to provide services in the South Whidbey rate center, it would appear questionable whether [Sprint] would be eligible to submit such a [bona fide request] where, as appears to be the case here, that other entity lacks state authorization to provide local exchange telecommunications services within the relevant rate center."[23]

35 Whidbey's June 5 letter also recounted Whidbey's inability to confirm that Sprint was providing or intended to provide any other local exchange services in the South Whidbey Rate Center. Based upon the absence of such evidence, and the fact that Sprint was evidently requesting LNP solely in its capacity as a wholesale provider to an entity that appeared not be authorized to provide local exchange telecommunications services within the State of Washington, Whidbey declined to accept Sprint's request for LNP. Whidbey also asked that Sprint advise it of any ruling by the FCC, the Commission or any court recognizing Sprint's eligibility to submit a bona fide request for LNP under the present circumstances, indicating Whidbey's willingness to reconsider its position and to consider such evidence, if any, that Sprint might choose to provide in that regard.[24]

36 Whidbey's June 5 letter also requested the information pertaining to LNP deployment by Sprint that 47 C.F.R. §52.23(b)(2)(iii) requires all LECs to provide, submitted a request that Sprint provide Whidbey with LNP, contingent upon Sprint being eligible to submit its LNP request to Whidbey, and reiterated the request from Whidbey's May 15 letter that Sprint provide identification of the switching entity/entities to which

[23] Attachment 4, Exhibit 6, p. 2.
[24] Attachment 4, Exhibit 6, p. 2 last ¶, repeated on p. 3 last ¶.

Sprint would expect Whidbey to port South Whidbey Rate Center numbers if LNP were to become available in the South Whidbey Rate Center.[25]

37 Sprint responded by letter dated June 13, 2007 (Attachment 4, Exhibit 7). The second paragraph of that letter included the statement, "Sprint CLEC is the network provider for Millenium Cable Company who will begin selling local service in your service area." (Emphasis added.) Since Whidbey was not aware that Millennium Cable Company[26] was authorized to provide local exchange service in the South Whidbey Rate Center, it sought to confirm that Millennium Cable Company was registered with the Commission as a telecommunications company, or had at least applied for such registration. From the Commission's website, it did not appear that Millennium Cable Company was registered with the Commission as a telecommunications carrier, or had any petition for registration then pending with the Commission.

38 Sprint's June 13 letter also included a copy of a Memorandum Opinion and Order in WC Docket No. 06-55, adopted and released March 1, 2007, by the Chief, Wireline Competition Bureau.[27] However, the Time Warner Order served to reinforce the proposition, previously raised by Whidbey, that only telecommunications carriers are eligible to exercise the rights conferred by Sections 251(a) and (b) of the Act. The Time Warner Order recognized that in order for an entity to be a telecommunications carrier,

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[25] Attachment 4, Exhibit 6, p. 3.

[26] In the correspondence that has been exchanged between Sprint and Whidbey, this entity is variously referred to as "Millenium Cable Company," "Millennium Digital Media" and "Millenium Cable." It is Whidbey's understanding that the legal name of the entity is "Millennium Digital Media, LLC," and that it is currently doing business as "Broadstripe." Except where its name appears in quotations, that entity is referred to in this Answer as "Millenium Cable Company."

[27] *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*, WC Docket No. 06-55, *Memorandum Opinion and Order*, DA 07-709 (Released March 1, 2007) ("Time Warner Order").

the services it offered needed to "be offered for a fee "directly to the public, or to such classes of users as to be effectively available directly to the public." Time Warner Order at ¶ 12. While the Time Warner Order recognized that both retail and wholesale services could satisfy this requirement, the need for them to be offered ubiquitously was emphasized.[28] Also, while Sprint claimed that the Time Warner Order validated Sprint's wholesale business model, Sprint did not provide any information that would allow one to confirm that the "business model" that was addressed in the Time Warner Order was the same as the one that Sprint was proposing to utilize in the South Whidbey Rate Center. Whidbey endeavored to find on Sprint's website any offering of "wholesale" local exchange services in the State of Washington, but did not find any such offering.

39 Sprint's June 13 letter again did not provide any of the LNP-related information that Whidbey had requested in its letters of May 15 and June 5, 2007.

40 Whidbey responded to Sprint June 13 letter by its letter of July 6, 2007 (Attachment 4, Exhibit 8). This letter again explained Whidbey's concerns regarding the impact of Millenium Cable Company's lack of registration with the Commission upon Sprint's eligibility to submit a request for LNP.[29] It also explained Whidbey's concerns regarding Sprint's apparent failure to qualify as a "telecommunications carrier" within the meaning of that term as used in the Act, and specifically asked Sprint to advise Whidbey

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[28] Time Warner Order at ¶¶12 and 14.

[29] Whidbey's July 6, 2007, letter was sent prior to announcement by the Federal Communications Commission of its Report and Order, Declaratory Order on Remand, and Notice of Proposed Rulemaking, released November 8, 2007, in *Telephone Number Requirements for IP-Enable Service Providers*, WC Docket No. 07-243 (FCC 07-188), which was first announced by FCC News Release, dated October 31, 2007. While that FCC order may have a bearing upon the need for interconnected VoIP providers to be certificated or licensed in order to be eligible for numbering resources, it does not appear to affect the state issue of illegality if Millenium Cable Company were to engage in operations as a telecommunications company without being appropriately registered with the Commission.

"if Sprint had a published tariff or price list offering in the State of Washington, on a common carrier basis, the wholesale local exchange services it is providing (or intends to provide) to Millenium Cable Company"[30] and, if so, to provide Whidbey with directions as to where such tariff or price list might be found. Whidbey's July 6 letter also reiterated Whidbey's earlier requests for LNP-related information. The letter concluded by stating,

> "If Whidbey has misunderstood the non-common carrier nature of the relationship between Sprint and Millenium Cable Company, as discussed above, or if Millenium Cable Company is duly authorized by the WUTC to provide local exchange services within the South Whidbey rate center, please let us know." (Attachment 4, Exhibit 8, p. 3.)

41 No further response by Sprint in this line of correspondence was received by Whidbey. Sprint never provided any explanation of why its relationship with Millenium Cable Company qualified it as a "telecommunications carrier" for purposes of the Act. In this regard, it should be noted that the issue was not merely that of Sprint being a wholesaler, but whether its wholesale services were offered as "telecommunications services" in a manner that had sufficient common carrier attributes. Nor did Sprint provide Whidbey with identification of any applicable Sprint tariff or price list by which such wholesale services were offered by Sprint in the State of Washington.

B. Other Interconnection Correspondence Between Sprint and Whidbey[31]

42 As previously discussed, Whidbey received Sprint's May 10, 2007, letter requesting negotiation of an interconnection agreement on May 11, 2007. That letter was accompanied by a discussion draft "Interconnection Agreement" and a draft

[30] Attachment 4, Exhibit 8, p. 3.
[31] Copies of some, but not all, of the correspondence addressed in this Section is attached to the Petition as Exhibits A through L thereto. Such exhibits are incorporated as though they were attached hereto.

"Interconnection Discussion Nondisclosure Agreement." (Petition, Exhibits A, B and C)

43 Whidbey responded to that May 10, 2007 letter with a letter dated June 5, 2007,[32] and included in its response information relating to LNP that Whidbey believed to be sufficient to respond to Sprint's requests for such information in Sprint's May 10, 2007, letter. In the June 5, 2007, letter, Whidbey noted its desire not to cause an inadvertent waiver of its rural exemption under Section 251(f)(1) of the Act, and made a procedural proposal to Sprint "so as to permit an expeditious exploration of interconnection and/or traffic exchange possibilities between Sprint and Whidbey without jeopardizing Whidbey's rural exemption." (Petition, Exhibit D, p. 2.) Whidbey's letter also designated Robert S. Snyder as "Whidbey's initial point of contact for the above-mentioned discussions and/or negotiations." (Petition, Exhibit D, p. 3.) Whidbey also indicated that if Sprint were willing to proceed on the terms set forth in Whidbey's letter, Whidbey would proceed to review both the draft Non-Disclosure Agreement and the draft Interconnection Agreement and that it would be appreciated if Sprint would e-mail to Whidbey and Mr. Snyder copies of those documents in Word or WordPerfect format.

44 It should be clearly understood that Whidbey's designation of Mr. Snyder was limited to a singular role as "its initial point of contact for the above-mentioned discussions and/or negotiations." In its Response to Whidbey's Motion to Dismiss for Lack of Jurisdiction, Sprint seeks to make more of this designation than it was. Sprint's Response states, "Whidbey designated Robert S. Snyder as its "point of contact" or representative for Sprint negotiations, through a letter dated June 5, 2007...." Sprint

[32] Petition, Exhibit D.

Response, ¶ 11. This characterization omits the reference to "initial," and adds "or representative for Sprint negotiations," which was not in Whidbey's letter. Indeed, Whidbey's letter specifically reserved that future correspondence directly with Whidbey regarding this matter should be addressed to Whidbey's Vice President, not to Mr. Snyder. Moreover, Whidbey's designation of Mr. Snyder was in response to the request by Sprint, in its letter of May 10, 2007, for Whidbey to provide Whidbey's "point of contact for negotiations." Sprint did not ask Whidbey to designate a "representative."

45 In its response to Whidbey's Motion to Dismiss for Lack of Jurisdiction, Sprint also characterizes Mr. Snyder as Whidbey's "representative with authority to make business representations." Sprint Response, ¶ 12. Sprint seems to confuse Mr. Snyder's designation with the appointment contemplated by 47 C.F.R. § 51.301(c)(7), which addresses "[r]efusing throughout the negotiation process to designate a representative with authority to make binding representations, if such refusal significantly delays resolution of issues. Whidbey's correspondence does not refer to Mr. Snyder as being so designated. Further, Section 51.301(c) of the FCC's rules has no application to Whidbey, because it arises under Section 251(c)(1) of the Act, from which Whidbey is exempt by reason of Section 251(f)(1) of the Act. Most importantly, nothing appointed Mr. Snyder as the agent for receipt of service.

46 Sprint responded to Whidbey's June 5, 2007, letter by letter dated June 14, 2007, stating in part, "Sprint is not seeking to implicate or remove the rural exemption which Whidbey Telephone Company has under Section 251(e) [sic]."[33] Sprint also provided, via e-mail on June 13, 2007, electronic versions of the discussion draft Interconnection Agreement and the draft Interconnection Discussion Nondisclosure Agreement that had

[33] Petition, Exhibit E.

accompanied Sprint's May 10, 2007, letter. A copy of that e-mail (excluding its attachments) is attached hereto as Attachment 4, Exhibit 9.

47 On June 22, 2007, Mr. Snyder responded on Whidbey's behalf to Sprint's June 14, 2007, letter. Petition, Exhibit F. That letter set out certain basic understandings for which Whidbey sought confirmation:

> "At the outset, I wish to be sure that there is no misunderstanding as to the status of the request for interconnection being made of Whidbey by Sprint Communications Company L.P. ("Sprint"). First, based upon your June 14 letter, it is Whidbey's understanding that Sprint is not requesting interconnection, or any other arrangement, right or remedy, pursuant to subsection 251(c) of the Communications Act of 1934, as amended ('Act'). Second, it is Whidbey's understanding that Sprint is in agreement with Whidbey that, by proceeding to enter into and conduct discussions or negotiations with Sprint relating to interconnection or the exchange of traffic, Whidbey does not waive its 'rural exemption' arising under subsection 251(f) of the Act in any respect or to any extent. [Footnote omitted.] Third, it is Whidbey's understanding that Sprint seeks interconnection with Whidbey solely for the purpose of exchanging 'local' traffic that both originates and terminates in the South Whidbey exchange, as defined by Whidbey's exchange area maps on file with the Washington Utilities and Transportation Commission, and for which the rate center is also known as South Whidbey. [Footnote omitted.] Fourth, it is Whidbey's understanding that Sprint does not, and does not presently intend to, provide local exchange telecommunications services directly to end user customers within the South Whidbey exchange, but rather intends to provide solely wholesale local exchange services to the entity that your letter identifies as 'Millenium Cable,' and that it would be that entity that would provide retail local exchange telecommunications services to its end user customers utilizing the underlying wholesale local exchange services furnished by Sprint."[34]

48 Mr. Snyder requested that Sprint let him know by return correspondence whether any of the understandings set forth above were in any respect incorrect and, if so, then to provide a statement that would accurately correct what was stated incorrectly. Mr.

[34] Petition, Exhibit F, p. 1-2.

Snyder's letter also noted that it appeared that Sprint and Whidbey were of differing understandings regarding the applicability of Section 252 of the Act to Sprint's request, and set forth in detail the two threshold issues that Whidbey had raised (other than the one that related solely to LNP and that had been presented in detail previously in correspondence addressed to Sprint's Ms. Danilov). Mr. Snyder's letter also stated,

> "With the thought that Sprint may be reluctant to disclose the details of its relationship with Millenium Cable and/or others in sufficient detail to address Whidbey's concerns without a non-disclosure agreement being in place, I am enclosing clean and redlined versions of a revised draft of the Non-Disclosure Agreement . . . ."[35]

Finally, Mr. Snyder's June 22 letter noted his reluctance to respond to Ms. Danilov's June 13, 2007, letter to Whidbey because Sprint now appeared to be represented by counsel and inquired whether Mr. Cowin would prefer that Mr. Snyder's response to Ms. Danilov's letter be addressed to him, or whether he consented to Mr. Snyder responding directly to Ms. Danilov.

49 It was not until it sent a letter dated July 27, 2007[36] - more than a month after Mr. Snyder's letter was sent - that Sprint finally responded to Mr. Snyder's June 22, 2007.[37] During that time, Mr. Snyder was prevented from responding to Ms. Danilov's June 13 letter by reason of the absence of a response to his inquiry as to whether Sprint's counsel would consent to such direct response – hardly a matter that should take more than a month to address.

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[35] Petition, Exhibit F, p. 3.
[36] The letter was actually received July 30, 2007.
[37] By e-mail, dated July 23, 2007, Sprint did return a mark-up of the draft Non-Disclosure Agreement (Attachment 4, Exhibit 10).

50 Most importantly, Sprint did not express any disagreement with the four points of Whidbey's understanding that Mr. Snyder had set forth at the beginning of his June 22 letter, although Sprint did state,

> "We intend to exchange local traffic with Whidbey, but would expect that the parties would also exchange extended area service traffic to the extent Whidbey has such arrangements. Initially Sprint intends to provide wholesale services, but we do not intend for the resulting interconnection agreement to preclude Sprint's provision of services on a retail basis." (Petition, Exhibit G, p. 1.)

With respect to the second sentence of the above quotation, Whidbey did not understand that statement to be disagreeing with the proposition that Sprint was not providing, and had no present plans to provide, local exchange services directly to end user customers in the South Whidbey Exchange.

51 With respect to the two "threshold issues" that Whidbey had raised, Sprint's July 27, 2007, letter addressed one of them, but only in part. Sprint addressed the issue of whether, as a provider of wholesale local exchange services, Sprint was a "telecommunications carrier" under Section 251 of the Act. However, Sprint did not address the issue of whether, in its relationship with Millenium Cable Company, it was operating as a "telecommunications carrier" within the meaning of that term as used in the Act, and it did not address the state law issues arising from Millenium Cable Company's apparent lack of registration pursuant to RCW 80.36.350. Instead, it simply dismissively stated, "Accordingly, there are no 'threshold issues' to resolve before negotiations can proceed." With regard to the issue of the manner in which Mr. Snyder should respond to Ms. Daniliov's correspondence, Sprint's July 27 letter stated, "Finally, with respect to the request for local number portability, there is no need to respond to Ms. Danilov because

Sprint will include the local number portability issue in the interconnection negotiations."[38] Here, then is the acknowledgement that the request for LNP was an integral part of the request for an interconnection agreement.

52 By letter dated August 10, 2007,[39] Mr. Snyder responded on behalf of Whidbey to Sprint's July 27, 2007, letter, which was not received by Mr. Snyder until July 30, 2007. In that letter, Mr. Snyder again addressed the "threshold issues" that Whidbey had presented and that Sprint consistently failed to address in any meaningful way. Indeed, Sprint had consistently ignored the issue of Millenium Cable Company's lack of registration. With regard to that issue, Mr. Snyder's letter elaborated upon some of the potential consequences of the lack of such registration in the context of Sprint's request:

> "A violation of the requirement for registration with the WUTC is a violation of Washington's public services [sic] laws. Aiding or abetting such a violation carries civil and criminal penalties. *See, generally,* RCW 80.04.380, -.385, -.387 and -.390. Whidbey is concerned that if, knowing the identity of Sprint's wholesale customer and it appearing that such customer is not registered with the WUTC, Whidbey were to provide the 'interconnection' that Sprint appears to be seeking, so doing could potentially be viewed as aiding or abetting the unlawful provision of service by Sprint's wholesale customer, and Whidbey or its personnel might thereby become exposed to potential liability for civil or criminal penalties. Under these circumstances, Whidbey does not feel that it can move forward with steps looking toward effecting such interconnection – or the exchange of local traffic contemplated by such interconnection – unless and until there is adequate assurance that the service Sprint intends to facilitate by the requested interconnection and contemplated traffic exchange is not unlawful."[40]

53 Mr. Snyder's August 10, 2007, letter also noted that Whidbey had previously requested information from Sprint in connection with LNP – including Whidbey's own

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[38] Petition, Exhibit G, p. 2.
[39] Petition, Exhibit I.
[40] Petition, Exhibit I, p. 3.

conditional request to Sprint for LNP – and that Whidbey had still not received from Sprint any of the requested information. His letter further stated, "If Sprint intends to seek LNP from Whidbey in the South Whidbey rate center, please respond to those requests."[41] Sprint never has responded to those requests.

54 Mr. Snyder's August 10, 2007, letter concluded with a reaffirmation of Whidbey's commitment to fulfilling its obligations under Sections 251(a) and (b) of the Act:

> "Whidbey is committed to fulfilling its obligations under Sections 251(a) and (b) of the Communications Act of 1934, as amended, and remains receptive to bona fide requests for interconnection from telecommunications carriers eligible to submit them, where those requests do not have an unlawful purpose or effect. Whidbey would be willing to enter into an appropriate non-disclosure agreement with Sprint if Sprint is willing to address in a substantive and meaningful way the threshold issues that Whidbey has raised, and would be willing to proceed with non-Section 251(c) discussions/negotiations with Sprint regarding Section 251(a) and (b) matters, if it were to appear from such information as Sprint may choose to furnish in response to those threshold issues that Whidbey's concerns are misplaced and that Sprint is eligible to submit the subject requests for interconnection and LNP in the South Whidbey rate center."[42]

55 Also enclosed with Mr. Snyder's August 10, 2007, letter were clean and redlined versions of a revised draft of the non-disclosure agreement. The redlined version included not only suggested changes, but also comments explaining the reasons for some of the changes he had proposed. Among the changes that Mr. Snyder had earlier requested was the deletion of Section 6 of the non-disclosure agreement, which, as proposed by Sprint, would require the return or destruction of confidential information. In Sprint's e-mailed comments of July 23, 2007, Sprint had asked why there was a concern with the return or destruction of confidential information, and Mr. Snyder replied as follows:

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[41] Petition, Exhibit I, p. 3.
[42] Petition, Exhibit I, p. 4.

"The concern is two-fold: First, to the extent that the history of dealings between the parties may bear upon whether they have complied with their regulatory obligations, it would seem that the parties should be able to retain the materials they have exchanged. Second, to the extent that electronic communication is used, such as e-mail, it is extremely difficult to ensure that all copies have been found and still more difficult to ensure that they have been destroyed."[43]

56 This exchange is significant because Section 51.301(c)(1) of the FCC's rules, 47 C.F.R. § 51.301(c)(1), designates demanding a non-disclosure agreement that precludes the other party from providing information requested by the FCC or state commission or in support of a request for arbitration as violating the duty to negotiate in good faith. The clause to which Mr. Snyder objected would have had just such an effect, since by giving parties the discretion to designate material as confidential and then request its return or destruction, the material could be suppressed from being presented voluntarily to a regulatory authority or rendered unavailable to be furnished in response to a request by the appropriate regulatory authority.

57 By e-mail, dated August 14, 2007, Sprint acknowledged receipt of Mr. Snyder's August 10, 2007, letter, and indicated that Sprint would be reviewing the non-disclosure agreement that had accompanied it. (Attachment 4, Exhibit 12.) However, it was not until nearly two months later, by e-mail dated October 4, 2007, that Sprint responded with respect to the non-disclosure agreement (Attachment 4, Exhibit 13), focusing on the deleted Section 6 and asking the reason why Mr. Snyder had proposed that it be deleted – the very explanation of which had been set forth in Mr. Snyder's redlined version of the non-disclosure agreement that had accompanied his letter of August 10, 2007. By his e-

[43] Attachment 4, Exhibit 11, Interconnection Discussion Nondisclosure Agreement (redlined version), p. 3 inserted comment.

mail of October 9, 2007 (Petition, Exhibit K and Attachment 4, Exhibit 13), Mr. Snyder referred Sprint to the redlined version of the non-disclosure agreement that had accompanied his letter of August 10, 2007, inquired if Sprint had remaining concerns with the requested deletion and invited discussion. Mr. Snyder did not receive any further response from Sprint regarding the proposed non-disclosure agreement; thus, suggesting that Section 6 may have been a principal reason Sprint had proposed a non-disclosure agreement in the first place.

58 While Mr. Snyder did not receive any further correspondence from Sprint relating to the non-disclosure agreement or the threshold issues that Whidbey had identified, commencing on October 4, 2007, Sprint's attorney, Jeffrey M. Pfaff, and Mr. Snyder exchanged communications exploring the possibility of extending the 135-160 day window for commencement of this proceeding, if Section 252(b) of the Act were determined to be applicable. This exchange started with an inquiry from Sprint as to whether Whidbey would be amenable to extending the window. Mr. Snyder replied by preparing a draft extension agreement, and by his e-mail of October 9, 2007, (Petition, Exhibit K and Attachment 4, Exhibit 13), forwarding a copy of it to Mr. Pfaff, noting that the length of the extension had not been filled in, since Sprint had not indicated the length of the extension it desired. Mr. Snyder also indicated that if Sprint would identify the length of the extension it desired, Mr. Snyder would review Sprint's request with Whidbey.

59 Mr. Pfaff responded by e-mail, dated October 10, 2007, indicating that Sprint would suggest a 60-day extension. Attachment 4, Exhibit 14. By e-mail dated October 11, 2007, Mr. Snyder noted that with a 60-day extension, if Sprint were to file a petition for arbitration on the last day of the window, Whidbey's twenty-five days to prepare a

response would run during the December holiday season. Attachment 4, Exhibit 14. Mr. Snyder also observed that, given the pace at which the matter had progressed thus far, it did not seem likely that a 60-day extension would be adequate. Accordingly, Mr. Snyder suggested a 90-day extension, and indicated that he would discuss both Sprint's 60-day proposal and his 90-day suggestion with Whidbey. Mr. Snyder's statement that he would review Sprint's request with Whidbey, clearly reflects that Mr. Snyder was merely a point of contact for Whidbey on this matter.

60 By e-mail dated October 11, 2007, Mr. Pfaff responded that Sprint still preferred a 60-day extension. Attachment 4, Exhibit 15. In response, by e-mail dated October 12, 2007, Mr. Snyder suggested a 60-day lengthening of the window, a 15-day lengthening of Whidbey's opportunity to respond, and a lengthening of the period within which the Commission would need to complete the arbitration proceeding, so as not to cause the Commission to be placed in a scheduling squeeze. Attachment 4, Exhibit 15.

61 Mr. Pfaff responded by e-mail, dated October 15, 2007, and proposed a 30-day extension of Sprint's opportunity to file its petition for arbitration, and no extension of Whidbey's opportunity to respond (nor any extension of the Commission's time for completion of the arbitration proceeding). Attachment 4, Exhibit 16. Mr. Pfaff's e-mail asked for a response by noon on October 16, 2007. By e-mail dated October 16, 2007, at 12:15 P.M., Mr. Snyder responded, noting that Sprint's proposed 30-day extension would essentially lengthen Sprint's opportunity to prepare its petition for arbitration and shorten the number of working days available to Whidbey to prepare its response. Mr. Snyder's e-mail concluded,

> "We've now made several attempts to find common ground. Regrettably [sic], at this late juncture I don't think that it is going to occur. If you wish to discuss this further, please feel free to give me a call on my cell phone . . . ."[44]

62 Mr. Snyder did not receive any further communication from Mr. Pfaff on this subject. Rather, on October 17, 2007, Sprint submitted its petition for arbitration to the Commission for filing.

63 Five salient characteristics are evident from the above-described correspondence. First, Whidbey repeatedly sought to respond to Sprint in a timely fashion, explaining its concerns, and attempted to expedite the opportunity for discussion or negotiation of an agreement between Whidbey and Sprint. Second, Sprint was largely unwilling to respond to Whidbey's concerns on their merits. Third, Sprint failed to furnish Whidbey with the LNP-related information that Whidbey had requested and which Sprint was required by FCC rule to supply. Fourth, Sprint introduced extensive delay in the correspondence between the parties, thereby causing the period for negotiation that preceded the deadline for the filing of a petition for arbitration to expire without any negotiation of an interconnection agreement having occurred. Finally, while Sprint asked that Whidbey designate a single point of contact for negotiations, Sprint's correspondence to Whidbey or Mr. Snyder came from four different Sprint employees.

VI. INFORMATION THE ARBITRATOR SHOULD REQUEST FROM SPRINT PURSUANT TO 47 U.S.C. § 252(b)(4)(B))

64 Central to the threshold issues identified by Whidbey is the relationship between Sprint and Millennium Cable Company and the nature of Sprint's offering of

[44] Attachment 4, Exhibit 16.

services to Millenium Cable Company. The nature of Sprint's service offering and of its relationship with Millenium Cable Company – including whether its relationship with Millenium Cable Company is consistent with such offering, if any, that Sprint may make of such services on a common carrier basis -- has a substantial bearing on the issue of whether Sprint is acting as a "telecommunications carrier" with respect to the interconnection it is seeking from Whidbey. That information may also cast further light on the lawfulness or unlawfulness of the use of the requested interconnection by Sprint and, to the extent that Sprint intends to provide wholesale local exchange services to its customers utilizing such interconnection, the lawfulness or unlawfulness of such intended use. Accordingly, pursuant to Section 252(b)(4)(B) of the Act, the Arbitrator should request the following information from Sprint:[45]

65 (1) complete and accurate information regarding Sprint's relationship with Millenium Cable Company, especially with respect to the South Whidbey Exchange and the South Whidbey Rate Center, and including a copy of any and all agreements between Sprint and Millennium Cable Company relating or pertaining to the provision of local exchange service by either of them within the State of Washington; and

66 (2) any and all documents and other information, if any, upon which Sprint relies to establish that it is a "telecommunications carrier"

[45] If this arbitration is not dismissed, it is Whidbey's intent to seek such information by means of voluntary discovery, as contemplated by WAC 480-07-630(10). If the information is not provided voluntarily, the Arbitrator should then request the identified items.

within the meaning of that term as defined in Section 153(44) of the Act with respect to the wholesale local exchange services that it intends to provide to Millenium Cable Company the South Whidbey Exchange and within the South Whidbey Rate Center.

67 In addition, because the discussion draft Interconnection Agreement submitted by Sprint as an attachment to the Petition refers to industry standards, industry guidelines, accepted industry practice and standard technical specifications, without further identifying them, the Arbitrator, pursuant to Section 252(b)(4)(B) of the Act, should request that the following information be supplied by Sprint:

68 (3) Copies of all industry standards, industry guidelines, accepted industry practices and standard technical specifications to which those terms refer in the discussion draft Interconnection Agreement attached by Sprint to the Petition as Exhibit A thereto.

VII. CONDITIONS THAT WHIDBEY REQUESTS BE IMPOSED

69 Whidbey respectfully requests that the following conditions be imposed, if the Commission concludes, as a matter of fact and law, that Whidbey is required to enter into an interconnection agreement with Sprint contemplating local interconnection:

70 (1) That the Commission rule as a matter of law that Whidbey's entering local interconnection negotiations with Sprint and entering into such Interconnection Agreement as may be ordered in this proceeding does not constitute a violation by Whidbey, or by any of its officers, directors, trustees, employees, agents, attorneys or

other representatives, of any portion of RCW 80.04.380, RCW 80.04.385, RCW 80.04.387, RCW 80.04.390 or RCW 80.04.405, or render either Whidbey or any of its officers, directors, trustees, employees, agents, attorneys or other representatives liable for any of the sanctions specified in any of those sections of Title 80 RCW; and

71 (2) That (i) the parties be accorded an opportunity to negotiate in good faith for a period of sixty (60) days in an effort to enter into a mutually acceptable interconnection agreement and, upon the expiration of said sixty (60) days, if such a mutually acceptable interconnection agreement has not been achieved, that any then unresolved issues be submitted to the Commission for arbitration, or (ii) Sprint be required to enter into and sign an Interconnection Agreement with Whidbey in the form of Attachment 2.

[Blank intentional for formatting purposes.]

CONCLUSION

72 Whidbey respectfully submits this Answer in compliance with the Commission's schedule in this matter, noting that it is submitted subject to the determination of Whidbey's pending Motion to Dismiss.

Dated this 16th day of November, 2007.

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VERIFICATION

Bruce Russell states as follows:

I am Secretary, Treasurer and Chief Financial Officer of Whidbey Telephone Company, and am authorized to make this verification on behalf of Whidbey Telephone Company. The facts asserted in the foregoing Answer of Whidbey Telephone Company are true and correct to the best of my belief.

DATED at Langley, Washington this 16th day of November, 2007.

Bruce Russell