BEFORE THE PUBLIC SERVICE COMMISSION

OF THE STATE OF MISSOURI

CENTURYTEL OF MISSOURI, LLC d/b/a CENTURYLINK AND SPECTRA COMMUNICATIONS GROUP, LLC d/b/a CENTURYLINK	)	
Complainant,	)	**CASE NO. _____**
v.	)	
SPRINT COMMUNICATIONS COMPANY, LP	)	
Respondent.	)	

CENTURYLINK'S COMPLAINT AGAINST SPRINT FOR VIOLATION OF INTRASTATE ACCESS TARIFFS

COMES NOW, CenturyTel of Missouri, LLC d/b/a "CenturyLink" and Spectra Communications Group, LLC d/b/a "CenturyLink" (collectively "Complainants" or "CenturyLink") pursuant to Sections 386.40, 386.250, 386.320.1, 386.330, 386.390, 386.400, 392.200.1 and .2, 392.410.2, 392.480, 392.550 RSMo. and 4 CSR 240-2.070(4) and other applicable authority, and for its Complaint against Sprint Communications Company, LP ("Sprint") regarding Sprint's refusal to pay applicable tarriffed intrastate exchange access charges for intrastate interexchange voice traffic routed to and terminated by CenturyLink, respectfully states as follows to the Commission:

I.
PARTIES AND COUNSEL

1. CenturyTel of Missouri, LLC d/b/a "CenturyLink" is a limited liability corporation organized and existing under the laws of the State of Louisiana and authorized to conduct business in the state of Missouri. It is a public utility subject to the jurisdiction of the Commission and provides telecommunication services in its service areas within the State of Missouri under authority granted and tariffs approved by the Commission. It is an "incumbent local exchange carrier" ("ILEC"), a "telecommunications company" and a "public utility" as those terms are defined in § 386.020, RSMo, and, thus, is subject to the jurisdiction, supervision and control of this Commission. Its principal place of business in Missouri is located at 1151 CenturyTel Drive, Wentzville, Missouri 63385.

2. Spectra Communications Group, LLC d/b/a "CenturyLink" is a Delaware limited liability corporation that is duly authorized to do business in Missouri. It is a public utility subject to the jurisdiction of the Commission and provides telecommunication services in its service areas within the State of Missouri under authority granted and tariffs approved by the Commission. It is an "incumbent local exchange carrier" ("ILEC"), a "telecommunications company" and a "public utility" as those terms are defined in § 386.020, RSMo, and, thus, is subject to the jurisdiction, supervision and control of this Commission. Its principal place of business in Missouri is located at 1151 CenturyTel Drive, Wentzville, Missouri 63385.

3. All inquiries, correspondence, communications, pleadings, notices, orders and decisions relating to this matter for CenturyLink should be directed to CenturyLink's counsel:

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4. Sprint is a limited partnership organized under the laws of Delaware with its principle place of business in Overland Park, Kansas. Sprint is a "telecommunications company," an "interexchange telecommunications company" ("IXC") and a "public utility" as those terms are defined in § 386.020 RSMo., and is subject to the jurisdiction, supervision and control of the Commission. Sprint is certificated with the Commission as an IXC and as a competitive local exchange company ("CLEC"). Sprint is also registered with the Commission as an interconnected Voice-over-Internet Protocol ("VoIP") service provider.

II.
JURISDICTION

5. The Commission has jurisdiction over this controversy pursuant to Commission Rule 4 C.S.R. 240-2.070(4), which authorizes formal complaints:

> [M]ade by petition or complaint in writing, setting forth any act or thing done or omitted to be done by any person, corporation, or public utility, including any rule or charge establish or fixed by or for any person, corporation or public utility, in violation of or claimed to be in violation of any provision of law or of any rule or order or decision of the commission.

6. The opening paragraph to this pleading lists a number of sections of the Missouri Revised Statutes that can serve to provide the Commission with jurisdiction over this matter. That the subject matter of this complaint is within the Commission's jurisdiction is clearly

demonstrated by at least six statutory sections: 1) Section 386.320, which grants the Commission the power of general supervision over all telephone corporations; 2) & 3) Sections 386.390 and .400, which vest the Commission with general authority to hear complaints; 4) Section 392.220, which generally requires all telecommunications companies to file "schedules" or tariffs with the Commission for all of the company's rates and charges and all of the company's rules and regulations applicable to such rates and charges; 5) Section 392.480, which requires that intrastate telecommunications services be offered under a tariff (a corollary to Section 392.220); and 6) Section 392.550.2 and .4(5), which subject interconnected Voice over Internet Protocol ("VoIP") services to the same exchange access charges[1] as telecommunications services are subject to, and authorizes the Commission to resolve complaints (under Sections 386.390 and .400) regarding the payment or nonpayment for exchange access services used by interexchange interconnected VoIP providers, respectively.

III.
NATURE OF COMPLAINT

7. The primary issue presented by this complaint is whether, during the timeframe prior to the implementation of the Federal Communications Commission's ("FCC") November 2011 *USF/ICC Transformation Order's*[2] compensation scheme for VoIP traffic, CenturyLink's

[1] "Exchange access service", a service provided by a local exchange telecommunications company which enables a telecommunications company or other customer to enter and exit the local exchange telecommunications network in order to originate or terminate interexchange telecommunications service. Section 386.020 (17), RSMo. In this complaint the terms "exchange access" and "access" are used interchangeably.

[2] *In the Matter of Connect America Fund; A National Broadband Plan for Our Future; Establishing Just and Reasonable Rates for Local Exchange Carriers; High-Cost Universal Service Support; Developing an Unified Intercarrier Compensation Regime; Federal-State Joint Board on Universal Service; Lifeline and Link-Up; Universal Service Reform - Mobility Fund*, WC Docket Nos. 10-90, 07-135, 05-337, 03-109, CC Docket Nos. 01-92, 96-45, GN Docket No. 09-51, WT Docket No. 10-208, Report and Order and Further Notice of Proposed Rulemaking, FCC 11-161, 26 FCC Rcd 17663 (rel. Nov. 18, 2011) (*USF/ICC Transformation Order*), *Order Clarifying Rules*, 27 FCC Rcd 605 (rel. Feb. 3, 2012) (*Clarification Order*), Erratum to *USF/ICC Transformation Order* (rel. Feb. 6, 2012), Application for Review pending, USCC, *et al.*, filed Mar. 5, 2012, *Further Clarification Order*, DA 12-298, 27 FCC Rcd 2142 (2012), Erratum to *Clarification Order* (rel. Mar. 30, 2012), Second Erratum to *USF/ICC Transformation Order*, DA 12-594 (rel. Apr. 16, 2012), *pets. for recon. granted in part and denied in part*, Second Order on Recon., FCC 12-47 (rel. Apr. 25, 2012), Third Order on Recon., FCC 12-52 (rel. May 14,

tariffed intrastate switched access charges were applicable to VoIP-originated interexchange traffic delivered by Sprint to CenturyLink and terminated by CenturyLink. A second issue presented is whether Sprint is entitled to withhold payment on undisputed charges in order to claw-back payments it made without dispute for two years prior to raising a dispute over access charges on VoIP-originated traffic. CenturyLink's position is that its intrastate switched access charges were applicable to interexchange VoIP-originated traffic that was routed to CenturyLink for termination. If CenturyLink's position on the primary issue prevails, then the second issue should be moot. However, if CenturyLink's position on the primary issue is rejected, then CenturyLink's position on the second issue is that Sprint is not entitled to retroactively claw-back payments that were previously made without dispute, and Sprint may certainly not accomplish that claw-back by withholding payments on other undisputed charges.

8. CenturyLink's complaint is founded upon its lawful intrastate exchange access tariffs, which were at all relevant times on file with the Commission.[3] Beginning in August

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2012), Erratum to *Second Order on Recon.* (rel. June 1, 2012), *Order Clarifying Rules*, DA 12-870 (rel. June 5, 2012), Erratum to *Order Clarifying Rules* (rel. June 12, 2012), *pets. for rev. of USF/ICC Transformation Order pending, sub nom. In re: FCC 11-161* (l0th Cir. No. 11-9900, Dec. 16, 2011).
(rel. June 1, 2012), *Order Clarifying Rules*, DA 12-870 (rel. June 5, 2012), Erratum to *Order Clarifying Rules* (rel. June 12, 2012), *pets. for rev. of USF/ICC Transformation Order pending, sub nom. In re: FCC 11-161* (l0th Cir. No. 11-9900, Dec. 16, 2011).

[3] Attached as Exhibit 1 are excerpts from CenturyTel of Missouri, LLC's "Facilities for Intrastate Access" tariff (with one exception, discussed below in this footnote). The entire tariff is nearly 500 pages long, so for the informational purposes of this pleading CenturyLink is only attaching a limited number of tariff pages that include portions of the following key tariff sections: Section 4.1, the first paragraph of which describes the basic service of "switched access;" Section 4.2.1, the first sentence of which links the provision of switched access services to the rates and charges in Section 4.6; Section 4.3.3, which contains provisions for the jurisdictionalization of switched access traffic (both current and superseded tariff pages are being provided, because Section 4.3.3 was updated during the period Sprint disputed CenturyLink's access charges); and Section 4.6.2, which provides the recurring rates and charges for intrastate switched access services. Only the CenturyTel of Missouri tariff is provided because the Spectra Communications Group, LLC tariff contains essentially the same language. The only exception is the inclusion in Exhibit 1of a separate Sections 4.6.2 to 4.6.7 (4.6.8 for Spectra) for both CenturyTel of Missouri and Spectra due to different switched access rates charged by the two companies during the period Sprint disputed CenturyLink's access charges.

2009, until January 2012,[4] Sprint refused to pay CenturyLink's tariffed charges for intrastate exchange access services provided to Sprint. Sprint's rationale for disputing CenturyLink's intrastate exchange access charges is based on Sprint's assertion that the interexchange traffic is VoIP traffic and that such traffic is exempt from intrastate exchange access charges. Rather than follow proper dispute procedures, and ignoring tariff provisions and the filed rate doctrine, Sprint unilaterally substituted a much lower rate, ultimately $0.0007 per minute. Sprint did this without ever challenging CenturyLink's access tariffs. Nor did Sprint ever file a rate complaint with, or seek a declaratory ruling from, this Commission before suddenly disputing exchange access charges that Sprint had routinely paid on VoIP-originated traffic for years.

9. In addition, also beginning in August 2009, Sprint took the egregious step of refusing to pay CenturyLink for *undisputed* charges in an effort by Sprint to retroactively "claw back" exchange access charge payments made by Sprint prior to July 2009. Sprint claimed a credit going back 2 years for allegedly overpaying exchange access charges above Sprint's unilaterally established $0.0007 rate on interexchange VoIP traffic. Sprint then engaged in unlawful self-help by applying its imaginary credit to offset what Sprint owed on subsequent bills from CenturyLink. The total outstanding balance of Missouri intrastate charges, both disputed and undisputed, that Sprint has refused to pay CenturyLink currently totals $3,106,087.00, not including late payment charges that are authorized by tariff.

Background to the Complaint

10. Every time a customer of Sprint makes a long distance call to a local telephone customer using the wireline network of CenturyLink, the local telephone network facilities of CenturyLink must be used to complete, or "terminate," the call. This is true

[4] Sprint's disputes ceased in January 2012 with the implementation of Federal Communication Commission's *USF/ICC Transformation Order* requirement that all interexchange VoIP traffic was subject to interstate access charge.

with respect to voice calls originated using Time Division Multiplexing ("TDM") technology or voice calls originated using interconnected VoIP technology. Both types of voice calls are terminated to the Public Switched Telephone Network ("PSTN"). For many decades Sprint has routed interexchange voice traffic to CenturyLink for termination, and CenturyLink duly terminates such traffic as required by law and by tariff.

11. CenturyLink determines the intrastate jurisdiction of Sprint's traffic based on the originating and terminating points of the call, which are industry-standard criteria set forth in CenturyLink's intrastate exchange access tariff, and CenturyLink then bills Sprint the appropriate intrastate exchange access charges. At all relevant times, the rates, terms and conditions of CenturyLink's intrastate exchange access tariff did not distinguish between transmission technologies. The services provided by CenturyLink under its intrastate exchange access tariff are the same regardless of the transmission technology. Regardless of whether the Sprint customer chooses to *originate* a call via VoIP or TDM, the call *enters* CenturyLink's network at the Sprint point of presence ("POP") as a TDM call and uses CenturyLink's network in exactly the same manner. Depending upon the network configuration chosen by Sprint – i.e., interconnection at the tandem or at the end office – the call may use one or more of the following network elements owned by CenturyLink for which it is entitled to compensation under its intrastate exchange access tariff:

a. tandem switch,

b. transport facilities,

c. end office switch, and/or

d. local loop.

12. For several years before August 2009, Sprint consistently paid the rates contained in CenturyLink's intrastate exchange access tariff for use of CenturyLink's local telephone network without protest and without distinction based on the transmission technology of the originating traffic. In fact, Sprint had a policy of treating VoIP traffic the same as TDM traffic for intercarrier compensation purposes, including the payment of exchange access. Sprint also consistently represented to the FCC[5] and to various state commissions[6] that in its business of providing wholesale telecommunications services to VoIP-based voice providers, principally cable companies, Sprint provided a "telecommunications service" and Sprint was responsible for the payment of reciprocal compensation and exchange access charges associated with those wholesale services. Beginning in August 2009, however, Sprint lodged a series of disputes and - for the very first time - refused to pay the rates contained in CenturyLink's intrastate exchange access tariff on VoIP-originated traffic terminated over CenturyLink's facilities. At that time, Sprint disputed the applicability of access rates to VoIP traffic and unilaterally re-rated the traffic and recalculated the charges to the rate that Sprint declared it was "willing" to pay, or $.0007 per minute.

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[5] *See generally Petition of Time Warner Cable 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 (filed Mar. 1, 2006) ("*Time Warner Petition"*) and Sprint Nextel Corporation's Comments in Support of Petition for Declaratory Ruling, WC Docket No. 06-55, at 3, 5, 13 – 15 (dated Apr. 10, 2006).

[6] See, e.g., Sprint Initial Brief, *Application of Sprint Communications Company L.P. For Approval of the Right to Offer, Render, Furnish or Supply Telecommunications Services as a Competitive Local Exchange Carrier to the Public in the Service Territories of Alltel Pennsylvania, Inc., Commonwealth Telephone Company and Palmerton Telephone Company*, Pa. P.U.C. Docket No. A-310183F0002AMA, at 9 (filed Feb. 23, 2006); *Petition of Sprint Communications Company L.P., Pursuant to Section 252(b) of the Telecommunications Act of 1996, for Arbitration to Establish an Intercarrier Agreement with Independent Companies*, NYPSC Case No. 05-C-0170, Order Resolving Arbitration Issues, at 5 (May 24, 2005); *Cambridge Telephone Company, et al., Petitions for Declaratory Relief and/or Suspension or Modification Relating to Certain Duties under Sections 251(b) and (c) of the Federal Telecommunications Act, pursuant to Section 251(f)(2) of that Act; and for any other necessary or appropriate relief*, Illinois CC Docket Nos. 05-0259, *et seq*., Order, at 4 (July 13, 2005). The Illinois Commission emphasized that, in favoring Sprint's position on the right to interconnect with Petitioners, the commission "fully expect[ed] Sprint to abide by its sworn affidavits, especially its responsibility for all intercarrier compensation arrangements." Order. at 14.

13. Sprint also disputed CenturyLink's switched access charges retroactively to August 2007 on the estimated VoIP traffic that CenturyLink had previously billed and Sprint had previously paid without dispute. By Sprint's own admission, this Sprint-declared retroactive dispute was not an undetected overbilling situation, nor was it caused by a change in the law or CenturyLink's switched access tariffs. Rather, the retroactive dispute conjured up by Sprint merely reflected a corporate decision to reduce costs by unilaterally changing its position with respect to the amount it was willing to compensate other carriers for terminating VoIP-originated traffic.[7]

14. By retroactively disputing 24-months of previously paid bills, and unilaterally applying the rate it was "willing" to pay ($0.0007 per MOU) for VoIP-originated traffic, Sprint calculated a credit it claimed to be owed by CenturyLink. In order to recover this self-proclaimed credit, Sprint ceased remitting payment for both disputed *and undisputed* charges until it had "clawed-back" the amount of the credit it had unilaterally calculated without any independent determination whatsoever that it was entitled to expropriate such amounts.[8] In many instances, Sprint's "claw-back" strategy meant that it not only failed to pay the disputed portion of newly invoiced amounts, but paid nothing at all on its bill despite the fact that some charges were for traffic or amounts that were not in dispute. As a result, Sprint has withheld payment for "disputes" that it waited *two years* to assert and Sprint has also withheld payment for other charges, such as intrastate exchange access charges owed on TDM-originated traffic, which were not disputed at all.

[7]See the Virginia's federal district court's findings in *Cent. Tel. Co. of Va. v. Sprint Communs. Co. of Va., Inc*, 759 F. Supp. 2d 789, 796 (E.D. Va. 2011) (*Cent. Tel. of Va*) ("in reality, Sprint's decision to dispute access charges emanated, not from any understanding the company may have had of the ICAs' text, but from the company's decision to reduce costs"), *affirmed Cent. Tel. Co. of Va. v. Sprint Communs. Co. of Va., Inc.,* 715 F.3d 501 (4th Cir. 2013), *writ of certiorari denied* 134 S. Ct. 423 (2013). The district court's decision in *Cent. Tel. of Va.* is attached hereto as Exhibit 2.

[8] These actions did not comply with the dispute resolution provisions in CenturyLink's intrastate exchange access tariff.

15. Sprint's new policy was also conveniently asymmetrical. Sprint did not apply its proposed lower rates to the toll traffic it terminated for CenturyLink. In other words, while Sprint would only offer to pay $0.0007 for TDM toll traffic it claimed originated in VoIP, it charged CenturyLink full access charge rates for TDM traffic it delivered to VoIP providers.

16. Sprint is also ignoring industry practice as the large majority of carriers, including other Competitive Local Exchange Carriers ("CLECs") serving cable companies, have honored their obligation to pay exchange access charges on VoIP-to-PSTN traffic.

17. CenturyLink has made repeated requests to Sprint to pay access charges consistent with the Missouri intrastate exchange access tariffs for the use of CenturyLink's facilities. Sprint has refused to pay the billed amounts but continues to use CenturyLink's local telephone network facilities.

Related Litigation

18. Sprint's refusal to pay CenturyLink's tariffed access charges has already resulted in two law suits. The first case involved the CenturyLink ILECs that were acquired as a result of CenturyTel's 2009 merger with Embarq Corporation . In 2010 the CenturyLink/Embarq ILECs ("Embarq") filed a law suit in the U.S. District Court for the Eastern District of Virginia that consolidated all of Embarq's claims against Sprint for failure to pay appropriate access charges (both intrastate and interstate), under the terms of the interconnection agreements ("ICA") between Embarq and Sprint, as well as under the terms of the Embarq's access tariffs incorporated by those ICAs.

19. Embarq's ICAs with Sprint have explicit language requiring the intercarrier compensation for VoIP calls to be the same as for voice calls ("e.g., reciprocal compensation,

interstate access, and intrastate access.")[9] This language in Embarq's ICAs generally mirrors the language in Section 392.550.2 RSMo. regarding the application of intrastate exchange access charges to VoIP traffic, i.e., VoIP traffic is subject to exchange access charges to the same extent that voice calls are subject to exchange access charges. The court found in favor of Embarq's interpretation of the ICAs, and entered a judgment ordering Sprint to pay damages and late fees totaling approximately $24 million.[10] After an appeal by Sprint, the court's decision was affirmed by the United States Court of Appeals in the Fourth Circuit, and the U.S. Supreme Court denied Sprint's petition for writ of certiorari on October 15, 2013. [11]

20. The decisions of the Virginia federal district court and the Fourth Circuit focused on language in the ICA's between Embarq and Sprint. The ICA language is very comparable to the language of Section 392.550.2 RSMo., and in both instances the applicable access tariffs do not distinguish in any way between whether interexchange traffic originated in a VoIP format or in a TDM format. Moreover, the district court found that Sprint's decision in 2009 to begin disputing the assessment of access charges on VoIP interexchange traffic was not based on a legitimately-held belief that VoIP traffic was suddenly no longer subject to the access charges, which Sprint had consistently paid in the past. Rather, the district court found that in 2009 Sprint broadly chose to begin disputing (with multiple carriers) the applicability of access charges to VoIP traffic as a result of economic difficulties in Sprint's business, which resulted in a plan to simply cut costs.[12] Additionally the district court found that prior to August 2009, Sprint actually had an affirmative policy of treating VoIP traffic as subject to access charges in the

[9] *Cen. Tel. of Va.*, 759 F. Supp. 2d at 793.
[10] *Id.* at 809.
[11] *Cent. Tel. Co. of Va. v. Sprint Communs. Co. of Va., Inc.*, 715 F.3d 501 (4th Cir. 2013), *writ of certiorari denied* 134 S. Ct. 423 (2013).
[12] *Cen. Tel. of Va*, 759 F. Supp. 2d at 795-797.

same manner that traditional voice or TDM traffic is subject to access charges.[13] Consequently, while there may be no ICAs involved in the instant complaint, the district court's findings about Sprint's change in practice for paying intercarrier compensation, and its motives for changing that practice, apply equally to this complaint. Moreover, given the language of Section 392.550, no specific language regarding VoIP traffic is needed in an ICA or tariff in order for VoIP to be subject to intrastate exchange access charges.

21. The second law suit involves a number of the CenturyLink ILECs,[14] including the Complainants, and Sprint, and was filed on November 23, 2009, in the United States District Court for the Western District of Louisiana.[15] This law suit consolidated all of the CenturyLink ILECs' claims against Sprint for non-payment of switched access charges for termination of interexchange VoIP traffic and the claims are based on the ILECs' interstate and intrastate switched access tariffs. On January 25, 2011, the court issued a stay in the proceeding while it referred to the FCC the threshold issue of the applicability of switched access charges to VoIP traffic. As discussed below, the FCC subsequently issued the *USF/ICC Transformation Order*, which established a default intercarrier compensation rate for toll VoIP-to-PSTN traffic on a *prospective basis* only. On March 14, 2014, CenturyLink filed a Motion to Lift Stay with the court so that CenturyLink can dismiss its claims related to intrastate access switched charges from the law suit. The presence of CenturyLink's intrastate claims in the law suit, pending their ultimate dismissal by CenturyLink, do not preclude CenturyLink from initiating this complaint in order to pursue its Missouri-specific claims in front of this Commission.

[13] *Cen. Tel. of Va,* 759 F. Supp. 2d at 793-794, 807.
[14] These ILECs were part of CenturyTel prior to the merger with Embarq and the subsequent name change to CenturyLink.
[15] *CenturyTel of Chatham, et al., v. Sprint Communs. Co.*, Case No. 3:09-cv-01951 (W.D. La).

The FCC's *USF/ICC Transformation Order*

22. No discussion of an intercarrier compensation dispute would be complete without a discussion of the FCC's *USF/ICC Transformation Order.* In the *USF/ICC Transformation Order*, the FCC set default intercarrier compensation rates for toll VoIP-to-PSTN traffic equal to interstate access rates applicable to non-VoIP traffic, on a prospective basis.[16] While the FCC did not specifically address intercarrier compensation obligations for VoIP-to-PSTN traffic for prior periods, both the policies and legal conclusions reflected in the *Order* further support the applicability of access charges to Sprint's VoIP-to-PSTN traffic.

23. For example, the FCC rejected proposals for an "asymmetric approach" to intercarrier compensation, whereby different compensation rates would apply to IP-originated and IP-terminated traffic.[17] In doing so, the FCC sought to avoid "marketplace distortions that give one category of providers an artificial regulatory advantage in costs and revenues relative to other market participants."[18] Yet this is exactly the type of improper and unreasonable advantage that Sprint has sought to gain for itself.

24. In addition to being asymmetric, Sprint's self-imposed flash cut to a $0.0007 compensation rate also conflicts with the *Order's* "measured transition" away from existing intercarrier compensation regimes for VoIP-to-PSTN traffic.[19] The FCC found in the *Order* that an immediate adoption of bill-and-keep for this traffic would not "appropriately balance[] other competing policy objectives," because the FCC sought "a more measured transition away from

[16] *USF/ICC Transformation Order*, 26 FCC Rcd at 18008 ¶ 944.
[17] *See id.* at 18007-08 ¶ 942. In its *Second Order on Recon.*, the FCC treated originating and terminating access somewhat differently from one another. However, the FCC still confirmed that both originating and terminating traffic are subject to tariffed access rates, just at different jurisdictional rates. *Second Order on Recon.* ¶¶ 30, 34.
[18] *USF/ICC Transformation Order* 26 FCC Rcd at 18007-08 ¶ 942.
[19] *USF/ICC Transformation Order*, 26 FCC Rcd at 18003 ¶ 935, 18012-13 ¶ 952.

carriers' reliance on intercarrier compensation as a significant revenue source."[20] The FCC further found that approaches that would adopt reciprocal compensation charges for VoIP traffic -- as advocated by Sprint -- would be "almost as significant a departure from the intercarrier compensation payments for VoIP traffic that have been made in the recent past as a bill-and-keep approach."[21]

25. Sprint has also argued to CenturyLink, and to the FCC, that the "Enhanced Service Provider (ESP) Exemption" shields VoIP traffic from exchange access charges. The ESP Exemption allowed *ESPs* to be treated as end users (*i.e.,* by paying business line rates and subscriber line charges, rather than carriers' carrier rates), but it did not create "an access charge exemption" for the carriers from which the ESPs purchased services.[22] Sprint's reliance on the ESP Exemption also is incompatible with the FCC's conclusion in the *Order* that, "as a policy matter," it should not "adopt the equivalent of the ESP Exemption in this context."[23] The FCC distinguished situations where the ILEC is providing exchange access directly to an Internet Service Provider ("ISP"), and those, like here, where a telecommunications carrier is serving a VoIP provider, which furnishes VoIP service to the end user. The ESP Exemption applies only in the first scenario.[24]

26. The logic of the *USF/ICC Transformation Order* necessarily supports a finding that exchange access charges properly applied to Sprint's traffic -- in two other important ways. *First,* the FCC found in the *Order* that it could address intercarrier compensation obligations for VoIP-to-PSTN traffic without resolving the classification of VoIP traffic as either a

[20] *Id.* at 18012-13 ¶ 952.
[21] *Id.* at 18013 ¶ 953.
[22] *In re Northwestern Bell Telephone Company Petition for Declaratory Ruling*, Memorandum Opinion and Order, 2 FCC Rcd 5986, 5988 ¶ 21 (1987).
[23] *USF/ICC Transformation Order* at 18008-09 ¶ 945, n. 1905.
[24] *See id.* at 18015-17 ¶ 957.

telecommunications service or an information service, because -- as is the case here -- the exchange of VoIP-to-PSTN traffic "typically occurs between two telecommunications carriers, one or both of which are wholesale carrier partners of retail VoIP service providers."[25]

27. *Second*, the FCC rejected an argument of Sprint's, which is based on an interpretation of section 251(g)[26] that would exempt VoIP traffic from the access charge regime on the theory that VoIP traffic did not exist prior to the passage of the federal Telecommunications Act of 1996. The FCC in the *Order* specifically rejected Sprint's position "that VoIP-PSTN traffic did not exist prior to the 1996 Act, and thus cannot be part of the access charge regimes 'grandfathered' by section 251(g)."[27] As the FCC found, "[t]his argument flows from a mistaken interpretation of section 251(g)."[28] The essential question under section 251(g) is not whether VoIP existed prior to the Act, but whether there was "a pre-Act obligation relating to intercarrier compensation for particular traffic exchanged between a LEC and interexchange carriers and information service providers."[29] The FCC concluded that there was, because this traffic was subject to "the overarching FCC rules governing exchange access prior to the 1996 Act."[30]

28. Hence, the policies and logic of the *USF/ICC Transformation Order* inevitably lead to the conclusion that Sprint's VoIP-to-PSTN traffic was subject to access charges during the period covered by this complaint. The same conclusion follows from a review of CenturyLink's intrastate tariffs, and from the plain language of Section 392.550.2 RSMo. (which

[25] *Id.* at 18013-14 ¶ 954. The FCC also noted its earlier conclusion that the telecommunications carriers involved in originating or terminating a VoIP communication via the PSTN are by definition offering telecommunications. *Id.*
[26] 47 USC Section 251(g).
[27] *USF/ICC Transformation Order*, 26 FCC Rcd at 18015 ¶ 956 (Fn 1951citing Sprint Section XV Comments at 5-6).
[28] *Id.* at 18015 ¶ 956.
[29] *Id.* (quotations omitted).
[30] *Id.* at 18015-17 ¶ 957.

has been in effect since 2008, before Sprint first disputed CenturyLink's exchange access charges).

IV.
RELIEF REQUESTED

29. Pursuant to 4 C.S.R. 240-2.070(4) and the Commission's authority under Section 392.550.2. and 4.(5) RSMo., CenturyLink seeks a determination by this Commission that Sprint has violated CenturyLink's intrastate exchange access tariff and Section 392.550.2. RSMo. by refusing to pay intrastate exchange access charges on interexchange VoIP traffic that was routed by Sprint to CenturyLink for termination, and that Sprint is liable to pay CenturyLink for such charges and associated late payment charges.

30. Furthermore, CenturyLink seeks a determination by this Commission that all charges Sprint refused to pay CenturyLink after August 2009 in an attempt by Sprint to retroactively claw-back exchange access payments made to CenturyLink prior to August 2009, were payments unlawfully withheld under CenturyLink's tariffs and applicable law and that Sprint is liable for such payments and associated late payment charges.

WHEREFORE, based on the foregoing, CenturyLink respectfully requests that the Commission:

(a) Issue an Order finding that Sprint has violated CenturyLink's intrastate switched access tariffs by refusing to pay CenturyLink's tariffed charges (including late payment charges) for switched access services provided to Sprint for termination of intrastate interexchange VoIP traffic, and further finding that Sprint improperly and unlawfully withheld payments on undisputed charges in an attempt to retroactively claw-back switched access payments that had already been made;

(b) promptly set a pre-hearing conference for the purpose of establishing a procedural schedule in this case; and

(c) grant such other and further relief to which CenturyLink is justly entitled.

Respectfully submitted,

/s/

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ATTORNEYS FOR CENTURYTEL OF MISSOURI, LLC D/B/A CENTURYLINK AND SPECTRA COMMUNICATIONS GROUP, LLC D/B/A CENTURYLINK

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this 28th day of March 2014, a copy of the above and foregoing CENTURYLINK'S COMPLAINT AGAINST SPRINT FOR VIOLATION OF INTRASTATE ACCESS TARIFFS was served electronically to each of the following:

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EXHIBIT 1

CenturyTel of Missouri, LLC's "Facilities for Intrastate Access" tariff
Section 4.1
Section 4.2.1
Section 4.3.3

FACILITIES FOR INTRASTATE ACCESS

4. SWITCHED ACCESS

4.1 General

Switched Access provides two-point communications paths between the point of termination at a CDL and the points of termination at Telephone Company end user premises within the Access Area. Each path is established through the use of Switched Transport, End Office Services, and Common Lines or Special Access Lines. Switched Access provides for the ability to originate calls from an end user's premises to the CDL and to terminate calls from the CDL to an end user's premises. Specific descriptions of Switched Access are in 4.2.

Switched Access is ordered in either quantities of lines, trunks or in Busy Hour Minutes of Capacity (BHMC). FGA and BSA-A is furnished on a per-line basis, and FGB, FGC, FGD, BSA-B, BSA-C, BSA-D and SAC Access Service are furnished on a per-trunk basis in accordance with the capacity ordered in trunks or BHMC.

Quantities of lines, trunks or total BHMC of the circuit group connecting the first point of switching and the CDL are determined at the Telephone Company's first point of switching.

A customer may designate one or more CDLs within the LATA for FGA, FGB, FGC, FGD, BSA-A, BSA-B, BSA-C, BSA-D Switched Access or SAC Access Service, except that in the case of 800 SAC Access Service, customers may request connections only to suitably equipped end offices and access tandem offices as discussed in 3.1.1(D).

The following option will not be applicable to FGC, FGD, BSA-C and BSA-D. When the first point of switching and the CDL are in the same Wire Center Area, transport for FGA, FGB, BSA-A or BSA-B Switched Access Service is rated as in Section 4.2.3. When the Telephone Company's first point of switching and the CDL are served by different Wire Center Areas for FGA, FGB, BSA-A or BSA-B Service, but within the same LATA, the customer will be given an option on how the transport will be rated. In this instance, the customer may opt to have the transport rated as Switched Transport from the wire center serving the existing CDL to the end office(s) originating or terminating the traffic, in 4.2.3(A)(1), or choose to have that portion of the transport between the wire center serving the existing CDL and the selected first point of switching rated as Special Transport. By selecting the Special Transport option, the customer has established a new CDL for Switched Access rating purposes in the selected Access Area. That Transport between the wire center serving the existing CDL and the new CDL is rated as Special Transport, in 5.1.1(B), and Switched Access rates will be applicable from the wire center serving the new CDL to each end office originating or terminating traffic within the selected FGA, FGB, BSA-A or BSA-B Access Area. A Special Access Line charge is also applicable where the customer chooses the Special Transport option as in 5.1.1(C). Switched Transport and Special Transport shall not be combined within the same hunt group arrangement. When the customer requests to change for rating purposes from one type of transport to another (e.g., Special to Switched), the Subsequent Ordering Charge - Switched Access, in 4.6.1(B) or the Subsequent Ordering Charge - Special Access in 5.6.1(D)(1) (b) will apply. The charge for the change depends on the type of transport option being selected by the customer.

When Switched Access is ordered in BHMC, the BHMC must be differentiated by Feature Group type and directionality of traffic as in 4.3.2 in order for the Telephone Company to properly design Switched Access to meet the traffic carrying capacity requirements of the customer.

When a customer plans to use Switched Access in connection with the resale of services of an IC, the provisions for such Switched Access charges are in Section 12.

Switched Access is provided with basic testing as described in 4.2.1, 4.2.2, and 4.2.7. Additional testing is provided as described in 6.6. Testing is provided only on the FIA supplied by the Telephone Company.

FACILITIES FOR INTRASTATE ACCESS

4. SWITCHED ACCESS (Cont'd)

4.1 General (Cont'd)

Shared use between Switched Access and Special Access over high capacity facilities is described in 5.6.7.

Switched Access may be ordered by the customer for mixed intrastate and interstate communications as in 4.3.2 and 4.3.3.

4.2 Description of Switched Access

Switched Access is provided in conjunction with either of two types of access services, bundled Feature Groups or unbundled Basic Serving Arrangements (BSAs). BSAs, described in 4.2.2, are provided in two basic categories differentiated by their technical characteristics and how they connect, line side or trunk side connection, to the Telephone Company's first point of switching. The trunk side BSA is further differentiated into three alternatives based upon how the end user accesses the trunk side BSA, with or without an access code. Feature Group A (FGA) and Basic Serving Arrangement A (BSA-A) are defined as line side connections to the Telephone Company's network. Feature Group B (FGB), Feature Group C (FGC), Feature Group D (FGD), Basic Serving Arrangement Alternative B (BSA-B), Basic Serving Arrangement Alternative C (BSA-C), and Basic Serving Arrangement Alternative D (BSA-D) are defined as trunk side connections to the Telephone Company's network. The use of a line side or trunk side switched access connection is dependent upon the switched access arrangement ordered by the customer. Feature Groups and BSAs are arranged for either originating, terminating, or two-way calling, based on the end office switching capacity ordered. Originating calling permits the delivery of calls from Telephone Company exchange service locations to the customer's premises. Terminating calling permits the delivery of calls from the customer's premises to Telephone Company exchange service locations. Two-Way calling permits the delivery of calls in both directions, but not simultaneously.

Switched Access will be provided as both Feature Groups and BSAs to Telephone Company end offices either directly routed or routed via an access tandem, except as set forth following:

- Feature Group and BSA trunk side equivalents (FGB and BSA-B, FGC and BSA-C, and FGD and BSA-D) may not be provided for the same Carrier Identification Code (CIC) and/or Billing Account Number (BAN) at Telephone Company end offices which subtend the same tandem. When a Telephone Company end office subtends multiple tandems, Feature Group and BSA trunk side equivalents may not be provided for the same CIC and/or BAN at any Telephone Company end office which subtends either tandem.
- Feature Group and BSA line side equivalents (FGA and BSA-A) may not be mixed in the same multiline hunt group.

4.2.1 Descriptions of Feature Groups

The Telephone Company, under the ordering provisions in Section 3, at rates and charges as specified in 4.6, will provide Switched Access as follows:

(A) Feature Group A

Feature Group A (FGA), which is available to all customers, provides line-side access to Telephone Company end office switches with an end user access code of NXX-XXXX for the customer's use in originating and terminating communications. FGA is available as Message Telecommunications Service-type or Wide Area Telecommunications Service-type (WTS/WATS-type) access or as Foreign Central Office/Off Network Access Line (FCO/ONAL) open end access, for customer provided intrastate communications capability or connection to an interexchange intrastate service.

FACILITIES FOR INTRASTATE ACCESS

4. SWITCHED ACCESS (Cont'd)

4.3 Obligations of the Customer

4.3.1 On and Off-Hook Supervision

The customer facilities shall provide the necessary on and off-hook supervision.

4.3.2 ASR Requirements

The customer shall order all Switched Access as in Section 3, and 4.3.2 and 4.3.3.

Switched Access capacity is measured at the Telephone Company's first point of switching. ASRs for Switched Access must specify the number of lines, trunks or BHMC (USOC - BHM++) connecting the first point of switching to the CDL. Ordered quantities shall be specified by originating and terminating direction and by traffic type (e.g., MTS/MTS-type or WATS/WATS-type). Where the customer desires to segregate its originating traffic into separate trunk groups by type of traffic, the customer must specify the ordered quantities by trunk group and by traffic type. For example, if a customer desires a separate trunk group to carry its 500, 800 or 900 traffic, the order must specify the trunks or BHMCs associated with 500, 800 or 900 traffic for that trunk group. In addition, the customer shall provide, when it orders BHMC, its projected interstate BHMC between the CDL and each end office in the Access Area by traffic type. The customer shall provide, when it orders lines or trunks, its projected intrastate traffic distribution by percent for each end office in the Access Area by traffic type. If the customer fails to provide its traffic distribution, the Telephone Company will use appropriate Telephone Company traffic studies to project distribution by end office.

When FGA or BSA-A is ordered the customer shall specify whether or not the terminating traffic is to be restricted to the Access Area as in 4.2.1(A)(6), and 4.2.5(C), (D) or (E), or extended beyond the Access Area (i.e., local calling area). If the customer wishes to extend the traffic beyond the FGA or BSA-A Access Area, the rates in 4.5.2(N)(3), will apply. If the customer wishes to restrict the traffic, the rates in 4.5.2(B) may apply, depending upon the optional arrangement selected.

When a customer orders Switched Access for mixed interstate and intrastate usage, the customer shall provide an estimate of the total usage which will be intrastate by traffic type.

The customer allocated percentages will be used as a basis of the jurisdictional determination for billing purposes of all charges until a more accurate determination can be provided as in 4.3.3 and 4.5.2(J).

4.3.3 Jurisdictional Determination

For purposes of determining the jurisdiction of Switched Access traffic, once the Switched Access service is activated, the following criteria will apply:

(A) When the Telephone Company has measurement capability to provide the data to determine the jurisdiction of Switched Access traffic, the Telephone Company will determine the jurisdiction of Switched Access traffic. In those instances where the Telephone Company cannot determine the jurisdiction, the customer will be required to provide this information as described following.

FACILITIES FOR INTRASTATE ACCESS

4. SWITCHED ACCESS (Cont'd)

4.3 Obligations of the Customer (Cont'd)

4.3.3 Jurisdictional Determination (Cont'd)

(B) To determine the jurisdiction of FGA, FGB, BSA-A and BSA-B Switched Access traffic and that traffic placed on a 1+ basis in conjunction with FGA or BSA-A, the following criteria will apply:

(1) Traffic that enters a customer's network at a point within the same state as that in which the station designated by dialing is situated will be considered intrastate. All intrastate usage will be reported as such whether or not the customer has the proper state certification or an effective intrastate tariff.

(a) All usage which originates on the customer's network in the Missouri portion of a LATA and terminates at a telephone number in the same LATA in Missouri will be reported as intrastate.

(b) All usage which originates on the customer's network in the Missouri portion of a LATA and terminates at a telephone number in a different LATA in Missouri will be reported as intrastate.

(2) Traffic that enters a customer's network at a point in a state other than that in which the station designated by dialing is situated will be considered interstate.

(C) (Reserved for Future Use)

(D) If the customer provides jurisdictional information, the following requirements apply:

(1) The customer will provide quarterly reports indicating the percent of total Telephone Company provided Switched Access usage that is interstate and intrastate. The reports may aggregate usage at a statewide, LATA, BAN (Billing Account Number) or end office level.

(2) The reports will be based on the calendar year and will be due within fifteen days after the end of the quarter beginning with the completion of the first full quarter of service.

(3) The customer will maintain records of call detail from which the jurisdictional determination is made. For verification purposes the Telephone Company may request that these records be made available for inspection and audit on not more than an annual basis. Such audit may be conducted by independent auditors if the Telephone Company and the customer, or the customer alone is willing to pay the expense.

The quarterly reports will be used as the basis for prorating charges to the interstate and intrastate jurisdictions for the next three month's billing and will be effective on the first day of the next monthly billing period which begins at least 15 business days after the day on which the customer reports the revised jurisdictional information to the Telephone Company.

In the event the customer fails to provide a report for one or more quarters, the Telephone Company will use the most recently provided quarterly report for subsequent bills until the customer provides an updated report.

No revisions to bills preceding the effective date of the revised jurisdictional information will be made based on this report.

FACILITIES FOR INTRASTATE ACCESS

4. SWITCHED ACCESS (Cont'd)

4.3 Obligations of the Customer (Cont'd)

4.3.3 Jurisdictional Determination (Cont'd)

(B) To determine the jurisdiction of FGA, FGB, BSA-A and BSA-B Switched Access traffic and that traffic placed on a 1+ basis in conjunction with FGA or BSA-A, the following criteria will apply:

(1) Traffic that enters a customer's network at a point within the same state as that in which the station designated by dialing is situated will be considered intrastate. All intrastate usage will be reported as such whether or not the customer has the proper state certification or an effective intrastate tariff.

(a) All usage which originates on the customer's network in the Missouri portion of a LATA and terminates at a telephone number in the same LATA in Missouri will be reported as intrastate.

(b) All usage which originates on the customer's network in the Missouri portion of a LATA and terminates at a telephone number in a different LATA in Missouri will be reported as intrastate.

(2) Traffic that enters a customer's network at a point in a state other than that in which the station designated by dialing is situated will be considered interstate.

(3) A floor of 7% will be set for a customer's switched access Feature Group D terminating access minutes when they are lacking originating number information needed to determine the jurisdiction. The 7% floor will be applied as follows: (N)

(a) When the percentage of terminating traffic without sufficient call detail to determine the jurisdiction does not exceed the sum of the floor plus a 2% grace threshold or 9%, the Telephone Company will apply the PIU factor as set for the in 4.3.3(D) following; or (N)

Certain material omitted from this page now appears on Original Sheets 127.1, 127.6 and 127.7.

FACILITIES FOR INTRASTATE ACCESS

4. SWITCHED ACCESS (Cont'd) (N)

4.3 Obligations of the Customer (Cont'd)

4.3.3 Jurisdictional Determination (Cont'd)

(B) (Cont'd)

(3) (Cont'd)

(b) When the percentage of terminating traffic without sufficient call detail to determine the jurisdiction is greater than 9%, the Telephone Company will assess rates from the state jurisdiction on all minutes exceeding the floor.

For all other minues of use for which the Telephone Company is unable to develop the PIU from actual usage data, the Telephone Company will apply the customer's projected PIU factor, provided as set forth in (C) following, to apportion the usage between interstate and intrastate.

(C) Jurisdictional Report Requirements

(1) Percent Interstate Usage (PIU)

(a) Pursuant to Federal Communications Commission order FCC 85-145 adopted April 16, 1985, interstate usage is to be developed as though every call that enters a customer network at a point within the same state as that in which the called station (as designated by the called station number) is situated is an intrastate communication and every call for which the point of entry is in a state other than that where the called station (as designated by the called station number) is situated is an interstate communication.

(b) The projected interstate percentages will be used by the Telephone Company to apportion the usage between interstate and intrastate until a revised report is received as set forth in (D) following. (N)

FACILITIES FOR INTRASTATE ACCESS

4. SWITCHED ACCESS (Cont'd) (N)

4.3 Obligations of the Customer (Cont'd)

4.3.3 Jurisdictional Determination (Cont'd)

(C) Jurisdictional Report Requirements (Cont'd)

(2) Jurisdictional Reports

When the Telephone Company receives sufficient call detail to permit it to determine the jurisdiction of originating and terminating access minutes of use, the Telephone Company will bill using the call detail record and will not use the customer provided PIU factors provided as set forth in (a) through (c) following.

The Telephone Company developed PIU for access minutes of use will be determined at a company level within the state. When the access minutes are measured, the interstate percentage will be developed on a quarterly basis by dividing the measured interstate originating or terminating access minutes (the access minutes where the calling number is in one state and the called number is in another state) by the total measured originating or terminating access minutes. The Telephone Company will begin to utilize the Telephone Company developed PIU factor as soon as sufficient call detail is available and will implement subsequent Telephone Company developed PIU factors on a quarterly basis in accordance with the provisions set forth in (D) following. (N)

CenturyTel of Missouri, LLC's "Facilities for Intrastate Access" tariff
Sections 4.6.2 to 4.6.7

and

Spectra Communications Group, LLC's "Facilities for Intrastate Access" tariff
Section4.6.2 to 4.6.8

FACILITIES FOR INTRASTATE ACCESS

4. SWITCHED ACCESS (Cont'd)

4.6 Rates and Charges (Cont'd)

4.6.2 Switched Transport

(A) Switched Transport Facility

Rates for each Access Minute, per airline mile.

Switched Transport Facility	Premium Rates Per Access Minute Per Airline Mile
	$.00052785 (I)

(B) Switched Transport Termination

Rates for each Access Minute, for each termination.

Switched Transport Termination	Premium Rates Per Access Minute Per Termination
	$.00487683 (I)

FACILITIES FOR INTRASTATE ACCESS

4. SWITCHED ACCESS (Cont'd)

4.6 Rates and Charges (Cont'd)

4.6.3 End Office Services

(A)

Basic 800/888/877 Data Base Query Charge	Premium 800/888/877 Data Base Query Charge
Rate Per Query	Rate Per Query
$ .00992551 (I)	$ .00992551 (I)

(B) End Office Switching - Bundled (EOSB)

The bundled rates for End Office Switching are based on originating and terminating Access Minutes.

Premium EOS1 Rate EOSB Per Access Minute	PremiumEOS2 Rate EOSB Per Access Minute
$ .02542121 (I)	$ .02794254 (I)

(C) End Office Switching Unbundled (EOSU) - Circuit Switched Line

The unbundled rates for End Office Switching are based on originating and terminating Access Minutes.

Premium EOS1 Rate EOSU Per Access Minute	Premium EOS2 Rate EOSU Per Access Minute
$ .02542101 (I)	$ .02794244 (I)

(D) End Office Switching - Unbundled (EOSU) - Circuit Switched Trunk

The unbundled rates for End Office Switching are based on originating and terminating Access Minutes.

Premium EOS1 Rate EOSU Per Access Minute	Premium EOS2 Rate EOSU Per Access Minute
$ .02542101 (I)	$ .02794244 (I)

(E) Alternate Traffic Routing - BSE
Premium Nonrecurring Charge Per Trunk Group Equipped (CF3AR)

$ 68.33 (I)

FACILITIES FOR INTRASTATE ACCESS

4. SWITCHED ACCESS (Cont'd)

4.6 Rates and Charges (Cont'd)

4.6.3 End Office Services (Cont'd)

(F) Automatic Number Identification (ANI) - BSE

Rate Per ANI Attempt
$ .00014257 (I)

(G) User Transfer - BSE

Monthly Rate Per Line Arranged (EO3)
$ 1.50 (I)

(H) Hunt Group Arrangement - BSE

Premium Monthly Rate Per Line Equipped (CF3HG)
$ .05

(I) Queuing - BSE

Premium Monthly Rate Per Group Equipped (CF3QU)
$ 15.26 (I)

(J) Uniform Call Distribution - BSE

Premium Monthly Rate Per Line Equipped (CF3UD)
$ 5.08 (I)

(K) (Reserved for Future Use)

FACILITIES FOR INTRASTATE ACCESS

4. SWITCHED ACCESS (Cont'd)

4.6 Rates and Charges (Cont'd)

4.6.3 End Office Services (Cont'd)

(L) Remote Call Forwarding - BSE

Premium Monthly Rate Per Line (FOMPX)
$ 16.28 (I)

(M) Direct Inward Dialing (DID) - BSE

Monthly Rate Per DID Term (NDT)	Monthly Rate Per Block of 20 Numbers (ND4)
$ 35.64 (I)	$ 18.33 (I)

(N) Billed Number Screening (BNS) - BSE

Monthly Rate Per Lines Screened (RTVXQ)
$ 4.16 (I)

FACILITIES FOR INTRASTATE ACCESS

4. SWITCHED ACCESS (Cont'd)

4.6 Rates and Charges (Cont'd)

4.6.4 Information Surcharge

The rates for Information Surcharge are based on originating and terminating Access Minutes.

Premium Rates Information Surcharge Per Access Minute
$ .00000000

4.6.5 FGA or BSA-A Usage Sensitive Credit Allowance

Usage Sensitive Service Credit Allowance Credit Per Originating FGA or BSA-A Access Minute #
$ .00049351 (I)

4.6.6 Assumed Minutes of Use Monthly Surrogate

Per Two Way Line/Trunk		Per One Way Line/Trunk			
		Originating Only		Terminating Only	
FGA or BSA-A	FGB or BSA-B	FGA or BSA-A	FGB or BSA-B	FGA or BSA-A	FGB or BSA-B
2451	(1)	(1)	(1)	(1)	(1)

4.6.7 Carrier Identification Parameter (CIP)

Non-Recurring Charge-Per CIC. Per End Office Direct Trunk Group	Non-Recurring Charge Per CIC. Per Access Tandem Direct Trunk Group	Monthly Recurring Charges Per Trunk
$80.00	$1,120.00	$ .45657589 (I)

* The Equal Access Cost Recovery Charge has been eliminated.
\# The credit is applied to the End Office Switching rate element.
(1) These jurisdictions either have all existing services measured or have no customers at this time. In the event an ASR is received for a new customer and there is no measurement capability for the office requested, a traffic study will be made to establish a surrogate and such surrogate will be tariffed.

4. SWITCHED ACCESS (Cont'd)

4.6 Rates and Charges (Cont'd)

4.6.2 Switched Transport

(A) Switched Transport Facility

Rates for each Access Minute, per airline mile.

Premium Rates Switched Transport Facility Per Access Minute Per Airline Mile
$.00052841 (I)

(B) Switched Transport Termination

Rates for each Access Minute, for each termination.

Premium Rates Switched Transport Termination Per Access Minute Per Termination
$.00488735 (I)

4. SWITCHED ACCESS (Cont'd)

4.6 Rates and Charges (Cont'd)

4.6.3 End Office Services

(A)

Basic 800/888/877 Data Base Query Charge Rate Per Query	Premium 800/888/877 Data Base Query Charge Rate Per Query
$ .00994629 (I)	$ .00994704 (I)

(B) End Office Switching - Bundled (EOSB)

The bundled rates for End Office Switching are based on originating and terminating Access Minutes.

Premium EOS1 Rate EOSB Per Access Minute	Premium EOS2 Rate EOSB Per Access Minute
$ .02547585 (I)	$ .02800266 (I)

(C) End Office Switching Unbundled (EOSU) - Circuit Switched Line

The unbundled rates for End Office Switching are based on originating and terminating Access Minutes.

Premium EOS1 Rate EOSU Per Access Minute	Premium EOS2 Rate EOSU Per Access Minute
$ .02547585 (I)	$ .02800266 (I)

(D) End Office Switching - Unbundled (EOSU) - Circuit Switched Trunk

The unbundled rates for End Office Switching are based on originating and terminating Access Minutes.

Premium EOS1 Rate EOSU Per Access Minute	Premium EOS2 Rate EOSU Per Access Minute
$ .02547585 (I)	$ .02800266 (I)

(E) Alternate Traffic Routing - BSE

Premium Nonrecurring Charge Per Trunk Group Equipped (CF3AR)
$ 68.35 (I)

4. SWITCHED ACCESS (Cont'd)

4.6 Rates and Charges (Cont'd)

4.6.3 End Office Services (Cont'd)

(F) Automatic Number Identification (ANI) – BSE

Rate Per ANI Attempt
$ .00014257 (I)

(G) User Transfer – BSE

Monthly Rate Per Line Arranged (EO3)
$ 1.50 (I)

(H) Hunt Group Arrangement – BSE

Premium Monthly Rate Per Line Equipped (CF3HG)
$ .05

(I) Queuing – BSE

Premium Monthly Rate Per Group Equipped (CF3QU)
$ 15.26 (I)

(J) Uniform Call Distribution – BSE

Premium Monthly Rate Per Line Equipped (CF3UD)
$ 5.08 (I)

(K) (Reserved for Future Use)

4. SWITCHED ACCESS (Cont'd)

4.6 Rates and Charges (Cont'd)

4.6.3 End Office Services (Cont'd)

(L) Remote Call Forwarding – BSE

Premium Monthly Rate Per Line (FOMPX)
$ 16.28 (I)

(M) Direct Inward Dialing (DID) – BSE

Monthly Rate Per DID Term (NDT)	Monthly Rate Per Block of 20 Numbers (ND4)
$ 35.64 (I)	$ 18.33 (I)

(N) Billed Number Screening (BNS) – BSE

Monthly Rate Per Lines Screened (RTVXQ)
$ 4.16 (I)

4. SWITCHED ACCESS (Cont'd)

4.6 Rates and Charges (Cont'd)

4.6.4 Information Surcharge

The rates for Information Surcharge are based on originating and terminating Access Minutes.

Premium Rates Information Surcharge
Per Access Minute
$ .00008429 (I)

4.6.5 FGA or BSA-A Usage Sensitive Credit Allowance

Usage Sensitive Service Credit Allowance
Credit Per Originating FGA or BSA-A Access Minute #
$ .00049351 (I)

4.6.6 (Reserved For Future Use)*

4.6.7 Assumed Minutes of Use Monthly Surrogate

Per Two Way Line/Trunk Originating Only		Per One Way Line/Trunk Terminating Only			
FGA or BSA-A	FGB or BSA-B	FGA or BSA-A	FGB or BSA-B	FGA or BSA-A	FGB or BSA-B
2451	(1)	(1)	(1)	(1)	(1)

4.6.8 Carrier Identification Parameter (CIP)

Non-Recurring Charge-Per CIC. Per End Office Direct Trunk Group	Non-Recurring Charge Per CIC. Per Access Tandem Direct Trunk Group	Monthly Recurring Charges Per Trunk
$80.00	$1,120.00	$0.45657581 (I)

* The Equal Access Cost Recovery Charge has been eliminated.
\# The credit is applied to the End Office Switching rate element.
(1) These jurisdictions either have all existing services measured or have no customers at this time. In the event an ASR is received for a new customer and there is no measurement capability for the office requested, a traffic study will be made to establish a surrogate and such surrogate will be tariffed.

EXHIBIT 2

759 F.Supp.2d 789
(Cite as: 759 F.Supp.2d 789)

H

United States District Court,
E.D. Virginia,
Richmond Division.
CENTRAL TELEPHONE CO. OF VIRGINIA, et al., Plaintiffs,
v.
SPRINT COMMUNICATIONS CO. OF VIRGINIA, INC., et al., Defendants.

Civil No. 3:09cv720.
March 2, 2011.

Background: Incumbent local exchange carriers (ILEC) brought action against competing local exchange carrier (CLEC) for breach of the parties' interconnection agreement (ICA).

Holdings: Following a bench trial, the District Court, Robert E. Payne, Senior District Judge, held that
(1) the CLEC had a legal duty under the ICA to pay access charges to ILECs for voice over internet protocol (VoIP) originated calls, and
(2) tariffs and access rates, that were part of a separate document, were incorporated into the ICA.

Ordered accordingly.

West Headnotes

[1] Contracts 95 326

95 Contracts
95VI Actions for Breach
95k326 k. Grounds of action. Most Cited Cases

Contracts 95 350(1)

95 Contracts
95VI Actions for Breach
95k347 Evidence
95k350 Weight and Sufficiency
95k350(1) k. In general. Most Cited Cases

Under Virginia law, a plaintiff must prove three elements by a preponderance of the evidence to prevail on a breach of contract claim: (1) a legally enforceable obligation existed between the defendant and plaintiff; (2) the defendant breached its obligation; and (3) the plaintiff incurred injury or damage stemming from the breach of the obligation.

[2] Contracts 95 14

95 Contracts
95I Requisites and Validity
95I(B) Parties, Proposals, and Acceptance
95k14 k. Intent of parties. Most Cited Cases

Under Virginia law, whether a legally enforceable agreement exists hinges on the objectively manifested intentions of the parties.

[3] Contracts 95 147(2)

95 Contracts
95II Construction and Operation
95II(A) General Rules of Construction
95k147 Intention of Parties
95k147(2) k. Language of contract. Most Cited Cases

Under Virginia law, where an agreement has been memorialized in writing, as in this action, the clearest manifestation of the parties' intent is the contract's plain language.

[4] Contracts 95 152

95 Contracts
95II Construction and Operation
95II(A) General Rules of Construction
95k151 Language of Instrument
95k152 k. In general. Most Cited Cases

Under Virginia law, where written language in a contract is clear and unambiguous, the proper interpretation is that which assigns the plain and ordinary meaning to the contract terms.

[5] Contracts 95 147(2)

95 Contracts
95II Construction and Operation
95II(A) General Rules of Construction
95k147 Intention of Parties
95k147(2) k. Language of contract. Most Cited Cases

Under Virginia law, courts may not look beyond the four corners of the written instrument when the contractual language is unambiguous on its face.

[6] Telecommunications 372 864(2)

372 Telecommunications
372III Telephones
372III(F) Telephone Service
372k854 Competition, Agreements and Connections Between Companies
372k864 Reciprocal Compensation
372k864(2) k. Internet service providers. Most Cited Cases

Telecommunications 372 866

372 Telecommunications
372III Telephones
372III(F) Telephone Service
372k854 Competition, Agreements and Connections Between Companies
372k866 k. Pricing, rates and access charges. Most Cited Cases

Under Virginia law, interconnection agreement (ICA) entered into between incumbent local exchange carriers (ILEC) and competing local exchange carrier (CLEC) created a legal duty on the part of CLEC to pay access charges to ILECs for voice over internet protocol (VoIP) originated calls; ICA directed that VoIP calls "shall" be compensated in the same manner as voice traffic, and directed that voice traffic be subject to reciprocal compensation for local calls and tariff-based compensation for non-local calls, based on tariff rates which were incorporated by reference into the ICA.

[7] Contracts 95 166

95 Contracts
95II Construction and Operation
95II(A) General Rules of Construction
95k166 k. Matters annexed or referred to as part of contract. Most Cited Cases

Under Virginia law, in order to incorporate a secondary document into a primary document, the identity of the secondary document must be readily ascertainable, and it must be clear that the parties to the primary agreement had knowledge of, and assented to, the incorporated terms.

[8] Contracts 95 166

95 Contracts
95II Construction and Operation
95II(A) General Rules of Construction
95k166 k. Matters annexed or referred to as part of contract. Most Cited Cases

Under Virginia law, in order to incorporate a secondary document into a primary document, it is not necessary that the primary document provide explicitly that it "incorporates" the secondary document.

[9] Telecommunications 372 866

372 Telecommunications
372III Telephones
372III(F) Telephone Service
372k854 Competition, Agreements and Connections Between Companies
372k866 k. Pricing, rates and access charges. Most Cited Cases

Under Virginia law, interconnection agreement (ICA), entered into between incumbent local exchange carriers (ILEC) and competing local exchange carrier (CLEC), incorporated ILECs' tariffs and access rates that were part of a separate document not attached to the ICA; the ICA provided that voice over internet protocol (VoIP) originated traffic "shall" be compensated in the same manner as voice calls, and provided that voice traffic be based on "applicable access charges," and the only possible way to calculate the applicable access charges would be by reference ILECs' separate listing of tariffs and access rates.

[10] Contracts 95 176(2)

95 Contracts
95II Construction and Operation
95II(A) General Rules of Construction
95k176 Questions for Jury
95k176(2) k. Ambiguity in general. Most Cited Cases

Under Virginia law, whether a contract is ambiguous is a question of law for the court's determination.

[11] Contracts 95 143(2)

95 Contracts
95II Construction and Operation
95II(A) General Rules of Construction
95k143 Application to Contracts in General
95k143(2) k. Existence of ambiguity. Most Cited Cases

Under Virginia law, the mere fact that parties disagree over a contract's terms does not equate to ambiguity; in order for contract language to be ambiguous, it must be capable of two reasonable interpretations.

[12] Contracts 95 108(1)

95 Contracts
95I Requisites and Validity
95I(F) Legality of Object and of Consideration
95k108 Public Policy in General
95k108(1) k. In general. Most Cited Cases

Under Virginia law, it is axiomatic that contracts are void to the extent that they impose duties inconsistent with the law.

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MEMORANDUM OPINION

ROBERT E. PAYNE, Senior District Judge.

This matter is before the Court after a bench trial addressed to whether Sprint Communications Company LP ("Sprint") breached nineteen contracts it has with the Plaintiff telephone companies.[FN1] The Plaintiffs are Central Telephone Company of Virginia; United Telephone Southeast, LLC; Embarq Florida, Inc.; United Telephone Company of Indiana, Inc.; United Telephone Company of Kansas; United Telephone Company of Eastern Kansas; United Telephone Company of Southcentral Kansas; Embarq Missouri, Inc.; Embarq Minnesota, Inc.; United Telephone Company of the West; Central Telephone Company; United Telephone Company of New Jersey, Inc.; Carolina Telephone and Telegraph Company, LLC; United Telephone of Ohio; United Telephone Company of the Northwest; United Telephone Company of Pennsylvania, LLC; United Telephone Company of the Carolinas LLC; United Telephone Company of Texas, Inc.; and Central Telephone Company of Texas (collectively "CenturyLink" or "the Plaintiffs"). Sprint and each of the Plaintiffs entered into Interconnection Agreements ("ICAs") from 2004 to 2005 pursuant to the Telecommunications Act of 1996 ("the Act"). The ICAs required Sprint to pay certain charges for so-called Voice-over Internet Protocol ("VoIP") telephone calls. Those charges were due under a contract provision that was in each ICA:

> FN1. Sprint Communications Company of Virginia, Inc. is also a named defendant in this action. However, given that this company is a smaller offshoot of Sprint Communications Company LP, and the fact that Sprint Communications Company LP received near exclusive attention at trial, the Defendants will be referred to collectively as simply "Sprint."

> Voice calls that are transmitted, in whole or in part, via the public Internet or a private IP network (VoIP) shall be compensated in the same manner as voice traffic (e.g., reciprocal compensation, interstate access and interstate access).[FN2]

> FN2. Pl. Ex. 25 is the Virginia ICA which the parties agree is identical to the other eighteen ICAs at issue.

Pl. Ex. 25 § 38.4. From the time the ICAs were executed until June 2009, Sprint paid those charges in response to monthly bills sent by the Plaintiffs. Then, in the summer of 2009, Sprint, like many companies ***792** at the time, was in considerable need of cutting costs. As part of that endeavor, Sprint, in June 2009, for the first time, disputed the Plaintiffs' charges for VoIP traffic, contending, also for the first time, that the ICAs did not authorize the VoIP traffic charges which, for years, it had paid pursuant to the above-quoted provision.

Quite frankly, Sprint's justifications for refusing to pay access on VoIP-originated traffic, and its underlying interpretation of the ICAs, defy credulity. The record is unmistakable: Sprint entered into contracts with the Plaintiffs wherein it agreed to pay access charges on VoIP-originated traffic. Sprint's defense is founded on post hoc rationalizations developed by its in-house counsel and billing division as part of Sprint's cost-cutting efforts, and the witnesses who testified in support of the defense were not at all credible.

For the reasons set forth below, the Court finds that in refusing to pay the access charges as billed, Sprint breached its duties under the ICAs, which clearly included paying access charges for VoIP-originated traffic according to the jurisdictional endpoints of calls. Hence, judgment will be entered for the Plaintiffs.

BACKGROUND FACTS

1. Origins of the Dispute

The parties' contract dispute traces in large portion to their rather peculiar relationship. When the ICAs at issue in this action were executed, the Plaintiffs and Sprint were effectively the same company, with the former falling under the common ownership and control of the latter. Joint Stipulation of Uncontroverted Facts ("Joint Stipulation") ¶ 6; *see also* Trial Transcript ("Trial Tr.") 18:17–20:3 (Cheek). The Plaintiffs were part of Sprint's so-called "local telephone division." Trial Tr. 16:16–17:20 (Cheek). Sprint also had long distance, wireless, and corporate services divisions, with the last of these providing common corporate services to Sprint's various divisions. *Id.* at 17:15–20, 19:14–17 (Cheek), 320:1–4 (Sichter).

The multi-divisional structure of Sprint generated a number of internal complexities. Chief among them was managing the disparate, and oftentimes conflicting, business and regulatory objectives of Sprint's separate divisions. *Id.* at 19:14–20 (Cheek). To solve this difficulty, Sprint developed a guiding framework for its business operations called the "One Sprint Policy," the aim of which was to advance the overall interests of Sprint and its shareholders. *Id.* at 20:7–8. In practice, the Policy had Sprint's divisions take consistent public positions on telecommunications matters. Inevitably, the policy to opt for company-wide uniformity worked to the detriment of one division over another in certain industry matters. Nonetheless, the One Sprint Policy was thought to benefit the parent corporation on the whole by avoiding inter-divisional strife that might cripple the company or damage its public image, thereby permitting Sprint's divisions to complement one another to the maximum extent possible. *Id.* at 19:14–20:12.

In 1996, after the development of the One Sprint Policy, but before the ICAs were executed, Congress enacted the Telecommunications Act. Among its myriad features, the Act requires that, upon request, all incumbent local exchange carriers ("ILECs"), such as the Plaintiffs, must interconnect their networks with those of competing local exchange carriers ("CLECs"), such as Sprint. *See* 47 U.S.C. § 251(c)(2). Interconnection allows a customer of one carrier to call a customer of another carrier. When this happens, the carrier whose customer initiated the call must compensate the receiving carrier for transporting and terminating the call ***793** through its network. The Act also requires ILECs and CLECs to negotiate ICAs to establish the terms by which they will compensate one another for use of the other's network. *Id.* § 251(b), (c)(1). All ICAs must be approved by a state regulatory commission before they become effective. *Id.* § 252(e).

In April 2004, Sprint requested negotiation of new ICAs with the Plaintiffs in accordance with the Act. Sprint's request led to the execution, between 2004 and 2005, of the ICAs at issue here. These ICAs supplanted the older ICAs to which Sprint and the Plaintiffs formerly were parties. Trial Tr. 32:2–23 (Cheek). Sprint was prompted to seek renegotiation of its ICAs in 2004 because, around that time, Sprint executed wholesale agreements with various cable companies obligating Sprint to provide for termination of cable customers' VoIP-originated traffic. *Id.* at

32:2–23; *see also* Pl. Ex. 14 (email speaking to urgency of renegotiating ICAs). Sprint's status as a "telecommunications carrier" under the Act was a boon to the cable companies because the latter could rely on Sprint's standing as both a long distance carrier and CLEC to obtain local interconnection under the Act. Without Sprint, the cable companies likely would not have been able to terminate their customers' traffic efficiently. *See* Trial Tr. 34:25–35:15 (Cheek). Notably, in partnering with Sprint, the cable companies did not seek means by which to terminate their customers' local calls only; rather, the cable companies sought means by which to terminate their customers' local and long distance calls. Not surprisingly, and as will be explored further, the ICAs reflect the cable companies' objectives of providing for termination of both local and long distance traffic. *Id.* at 35:21–36:4.

2. Contract Language at Issue

The parties agreed that the Master Interconnection Agreement for the State of Virginia, executed December 1, 2004 ("Virginia ICA"), Pl. Ex. 25, is a representative example of all ICAs in dispute. Joint Stipulation ¶ 34. The Virginia ICA is identical in all material respects to the other ICAs. Hereafter, the contract will be referred to as the ICA.

A. Section 38.4 of the ICA (VoIP Compensation Provision)

Section 38.4 of the ICA speaks directly to payment of access charges for termination of VoIP-originated traffic. Section 38.4 is part of Section 38 which is entitled "INTERCARRIER COMPENSATION." Section 38.4 reads: "Voice calls that are transmitted, in whole or in part, via the public Internet or a private IP network (VoIP) shall be compensated in the same manner as voice traffic (e.g., reciprocal compensation, interstate access and intrastate access)." Pl. Ex. 25 § 38.4.

The language of Section 38.4 is clear on its face. It provides in no uncertain terms that calls originating in VoIP format "shall be compensated in the same manner as voice traffic." The testimony of Mr. Hunsucker, a former Sprint employee once responsible for Sprint regulatory policy, confirms that, at time of the ICAs' execution, the parties understood the language to mean exactly what it says: access charges apply to VoIP-originated traffic in the same manner as any other voice call. Trial Tr. 228:14–16, 21 (Hunsucker). Indeed, this reflected Sprint's official position on VoIP traffic at the time the ICAs were executed. Under the One Sprint Policy then in place, VoIP-originated calls, like voice traffic, were subject to the appropriate intercarrier compensation rates. *Id.* at 227:12–228:3; *see also* Pl. Ex. 16. Jim Burt, Sprint's current Directory of Policy, articulated this position shortly before the ICAs were signed when he submitted sworn, prepared testimony to the ***794** Florida Public Service Commission in a regulatory proceeding. Respecting a VoIP compensation provision identical to the one in issue here, Mr. Burt testified,

> [i]t is Sprint's position that a VoIP call that originates or terminates on Sprint's network should be subject to the jurisdictionally appropriate inter-carrier compensation rates. In other words, if the end points of the call define the call as an interstate call, interstate access charges apply. If the end points define the call as intrastate, intrastate access charges apply. If the end points of the call define the call as local traffic, reciprocal compensation charges apply.

Pl. Ex. 16 at 7:13–18. That, of course, is what Section 38.4 explicitly provides.

Though the One Sprint Policy cut against the interest of Sprint's long distance division, which, as a result of this policy, had to pay more for intercarrier connection than it otherwise would have, it protected the access revenue of carriers in Sprint's local telephone division. *See* Trial Tr. 225:7–19 (Hunsucker). Sprint considered that its local carriers' access revenues were more important to the overall profitability of the company than the added expense the company incurred on the long distance end. In line with this calculus, Sprint treated VoIP-originated traffic no differently than voice calls, and it memorialized this in Section 38.4 of the ICA.

B. Section 38.4's Compensation Framework

The requirement of Section 38.4 (that VoIP-originated traffic shall be compensated in the same manner as voice traffic) is supported by other provisions in Section 38. For instance, Section 38.1 provides:

> The Parties agree to "Bill and Keep" for mutual reciprocal compensation for the termination of Local Traffic on the network of one Party which originates on the network of another Party. Under Bill and

> Keep, each Party retains the revenues it receives from end user customers, and neither Party pays the other Party for terminating Local Traffic which is subject to the Bill and Keep compensation mechanism....

Pl. Ex. 25 § 38.1. This section establishes the method of compensation for local voice calls. Under it the parties would not exchange access payments, but would interconnect the other party's local traffic without charge on the condition that the other party would do the same when roles were reversed. *See* Trial Tr. 228:17–18, 243: 2–4 (Hunsucker).

The mechanism of compensation for interconnection of long distance traffic is provided for in Section 38.2 of the Virginia ICA:

> Compensation for the termination of toll traffic and the origination of 800 traffic between the interconnecting parties shall be based on the applicable access charges in accordance with FCC and Commission Rules and Regulations and consistent with the provisions of Part F of this Agreement [relating to "Interconnection"].

Pl. Ex. § 38.2.

The compensation provisions in Section 38 do not set forth the specific rate at which compensation for termination of long distance traffic is due. Trial Tr. 228:22–229:1 (Hunsucker). Instead, the ICA incorporates by reference the applicable tariffs which, in turn, provide the applicable rates. That makes sense because the tariffs are voluminous and, because the tariffs are controlled by regulatory entities, they change from time to time. For those reasons, it is common practice in the industry to incorporate applicable tariffs by reference.

Long distance calls can take at least two forms: *intrastate* long distance calls and *interstate* long distance calls. *Id.* at ***795** 227:12–228:3, 228:16–18, 236:16–24, 279:10–12. The former category is subject to intrastate tariff rates, and the latter category is subject to interstate tariff rates. *Id.* at 280:22–25.

Section 38.4's directive is readily discernible when coupled with Sections 38.1 and 38.2. Section 38.4's mandate that VoIP traffic "shall be compensated in the same manner as voice traffic (e.g., reciprocal compensation, interstate access and intrastate access)" simply applies the same compensation mechanisms outlined in Sections 38.1 and 38.2 for voice traffic—that is, reciprocal, "bill and keep" compensation for local traffic and either intrastate or interstate compensation based on the applicable tariff rates for long distance traffic—to traffic originating in VoIP format.

C. The Parties' Understanding of Section 38.4

Like the Plaintiffs, Sprint understood this to be Section 38.4's effect when the ICAs were executed. Sprint, after all, paid the Plaintiffs for termination of VoIP-originated traffic in accordance with the compensation framework laid out in Section 38.4. In fact, Sprint did this without protest for the better part of five years. It was not until 2009, years after the execution of the ICAs, that Sprint first began disputing the Plaintiffs' access charges for VoIP-originated traffic. *Id.* at 83:23–84:20 (Cheek), 242:23–243:14, 244:11–15 (Hunsucker), 379:14–380:8 (Glover), 614:9–615:5 (Roach), 729:10–20 (Morris); *see also* Joint Stipulation ¶ 37.

Sprint even paid access under the terms of the ICAs after its corporate relationship with the Plaintiffs changed in 2006. Trial Tr. 729:16–20 (Morris). During and approaching 2006, Sprint perceived that the local telephone business was in a state of decline. Having recently acquired Nextel Corporation, Sprint decided that it was in the company's best interest to jettison its local telephone division, which housed the Plaintiffs, and to spin that division off into a separate company, Embarq Corporation. *Id.* at 85:10–23 (Cheek); *see also* Joint Stipulation ¶ 7. The spin off occurred in May 2006. Joint Stipulation ¶ 8. In July 2009, CenturyTel, Inc., a Louisiana corporation, acquired Embarq and its subsidiaries, thereafter operating under the moniker "CenturyLink." *Id.* ¶ 9. The Plaintiffs presently fall under CenturyLink's corporate umbrella.

At trial, Sprint attempted to explain its willing payment of the Plaintiffs' access charges for VoIP-originated traffic in the years both before and after the Plaintiffs exited the company via the 2006 spinoff. Before the spinoff, but after the execution of the ICAs in 2004 and 2005, Sprint attributed its payment of the Plaintiffs' access bills to the parties' status as corporate affiliates. According to Sprint, it was not

company practice to dispute bills from affiliated entities. As Mr. Morris, Sprint's senior counsel, characterized the situation, Sprint's payment of access to the Plaintiffs was like "taking money out of [Sprint's] left pocket and putting it in [Sprint's] right pocket. It all went to Momma, 'Big Sprint.' " Trial Tr. 728:9–15 (Morris). As to why Sprint continued to pay access in accordance with the Plaintiffs' bills after the Plaintiffs were spun off into Embarq in 2006, and thus no longer part of Sprint, the Sprint witnesses based its three year acquiescence largely on Sprint's dependence on the Plaintiffs' billing systems and certain "transitional services," as well as significant financial commitments still pending among the parties. *Id.* at 729:16–731:10. In other words, Sprint considered its best interests to be served by paying the charges that it now says it did not owe.

According to the head of Sprint's billing division, the effect on Sprint of the global economic downturn that temporally ***796** aligned with Sprint's 2009 decision to dispute the Plaintiffs' access charges played no role in the company's abrupt change in posture in June 2009. *Id.* at 587:8–13 (Roach). The evidence, however, reveals that adverse economic conditions did drive Sprint to dispute the access charges that, for years, it had paid without protest. In the summer of 2009, Sprint, like many companies at the time, embarked on company-wide cost-cutting efforts. Notably, during this time period, Sprint launched a coordinated effort to contest access charges on VoIP-originated traffic with other carriers across the telecommunications industry. *See id.* 618:19–24; Pl. Exs. 61–62, 67.[FN3] In addition to disputing VoIP charges under Section 38.4 for the first time in the history of the ICAs with CenturyLink, Sprint sent notices to AT & T, Verizon, Qwest, ComPartners, and One Communications, among others. Trial Tr. 618:19–24 (Roach); Pl. Exs. 61–62, 67.

> FN3. Sprint also sought to cut costs in a wide range of other areas beyond VoIP compensation. Trial Tr. 648:19–24 (Roach); *see also* Pl. Ex. 61.

The broad stroke of Sprint's refusal to pay access charges undermines its argument that it continued to pay access to the Plaintiffs after the spinoff on account of continuing dependencies and obligations peculiar to the Plaintiffs. For, if this contention is to be believed, the Court would also have to accept that Sprint's willing payment of access with these other telephone companies up until 2009 was the result of similar enduring dependencies and obligations. That scenario is neither probable, nor is it supported by the record which showed no dependencies on any of those other carriers. Also instructive is that Sprint's disputes with these other companies did not all implicate ICAs. Trial Tr. 627:16–21 (Roach). As will be discussed in detail later, a substantial part of Sprint's argument for refusing to pay the Plaintiffs' access charges is that Sprint drafted the ICAs to permit it flexibility on VoIP compensation. However, the fact that Sprint has disputed access charges with other carriers, whether or not it had executed ICAs with them, warrants the inference that, in reality, Sprint's decision to dispute access charges emanated, not from any understanding the company may have had of the ICAs' text, but from the company's decision to reduce costs.

Why Sprint would want to reduce costs—even apart from the general malaise that beset the economy in and around 2009—is apparent from internal email correspondence. That correspondence reveals that Sprint's wholesale ventures with cable companies were floundering—"tanking" in the words of one Sprint employee. Pl. Ex. 67 (email from Lisa A. Jarvis to Diane M. Heidenreich, Sept. 11, 2009). Sprint determined that disputing access charges on VoIP-originated traffic would be a step in the direction of making its relations with cable companies profitable. *Id.*

Further evidencing Sprint's motivation in contesting the Plaintiffs' access charges is the fact that Sprint challenged the Plaintiffs' bills in stages, progressively lowering the rate at which it was willing to compensate the Plaintiffs. In June 2009, early on in Sprint's efforts to dispute VoIP access charges, Sprint conveyed to the Plaintiffs that "the most that [it] can be charged for VoIP traffic is interstate access," because, in Sprint's estimation, the FCC had determined that VoIP traffic is interstate in nature. Pl. Ex. 54. In this way, Sprint attempted to re-rate the traffic that the Plaintiffs had billed at intrastate rates to comparably lower interstate rates. Trial Tr. 636:1–10 (Roach). Shortly thereafter, however, Sprint reached the conclusion that even re-rating traffic billed at intrastate rates to interstate rates did not produce***797** the cost savings that it sought to realize. In consequence, Sprint decided that it would only pay the Plaintiffs $.0007 per minute for termination of VoIP-originated

traffic, a rate even lower than the Plaintiffs' interstate rates. *Id.* at 639:11–640:19; 642:7–17; *see also* Def. Ex. 133–34.

Sprint says that it settled on that rate because the FCC had established the $.0007 per-minute rate for another type of VoIP traffic. Trial Tr. 642:7–17 (Roach). But, as the record leaves no doubt, the motivating force in selecting that rate was not that Sprint honestly perceived the $.0007 rate more appropriate than the rates at which it had been billed by the Plaintiffs. What mattered for Sprint, to the exclusion of all other considerations, was that the $.0007 rate permitted the greatest savings for the company. Sprint therefore had no qualms overlooking the inconvenient detail that the $.0007 rate it chose did not apply to the type of VoIP traffic for which Sprint had received the Plaintiffs' termination services.

The fact that Sprint so cavalierly has shifted its position on the rates it is now willing to pay for VoIP-originated traffic further illustrates that its disputes were based on efforts to cut costs, rather than on a legitimately held belief that Section 38.4 did not require Sprint to pay at the levels which, for years, it had paid without protest.

Sprint did more than protest the Plaintiffs' current bills; it also demanded that the $.0007 rate be applied retroactively for the preceding twenty-four months. *Id.* at 643:18–25. In line with this stance, Sprint sought return of the portion of access charges that it had paid the Plaintiffs during that period in excess of the $.0007 rate. *Id.* at 644:23–25. But, rather than following the ICAs' "DISPUTE RESOLUTION" provisions, which specify procedures for resolving "bona fide disputes" between the parties, *see* Pl. Ex. 25 § 23, Sprint unilaterally took credits against its other bills with the Plaintiffs. *Id.* at 645:1–648:6.

On the whole, Sprint's conduct from mid–2009 onward reveals a company less concerned with meeting its contractual obligations than meeting its bottom line. For years before mid–2009, Sprint paid the Plaintiffs' VoIP-originated traffic charges under the ICAs. Thereafter Sprint found the same duties distasteful. The company sought to cut costs, and it expected to save at least $80 million by contesting carriers' access charges on VoIP-originated traffic. So essential to its cost-cutting initiatives were such savings that Sprint designated a group to monitor the realized savings and keep the company on track to meet its savings target. *Id.* at 649:5–651:21.

D. Summary

The factual background of this action could occupy many more pages. However, rather than presenting the facts entirely as a preface to the legal principles raised by this dispute, the more sensible approach is to address additional facts as they become relevant to the legal discussion of the post-hoc rationalizations which Sprint has offered in an effort to escape its contractual obligations. The next section will thus make findings of fact as appropriate in deciding the proper application of the controlling law.

LEGAL DISCUSSION

[1] Under Virginia law,[FN4] a plaintiff must prove three elements by a preponderance of the evidence to prevail on a ***798** breach of contract claim: (1) a legally enforceable obligation existed between the defendant and plaintiff; (2) the defendant breached its obligation; and (3) the plaintiff incurred injury or damage stemming from the breach of the obligation. *Sunrise Continuing Care, LLC v. Wright*, 277 Va. 148, 671 S.E.2d 132, 135 (2009) (citing *Filak v. George*, 267 Va. 612, 594 S.E.2d 610, 614 (2004)). Because the Plaintiffs have satisfied their burden as to all three elements, they are entitled to judgment on their breach of contract claims.

> FN4. The parties agree that Virginia law and federal Fourth Circuit common law are representative of other states' law and other circuits' law on contract interpretation. Thus, they have argued and briefed this case on the basis that Virginia law controls the outcome.

This opinion will not separately address the issue of damages. By stipulation of the parties, the Plaintiffs established compensatory damages in the amount of $18,249,647.47 ($2,031,524.01 for CLEC local and $16,218,123.46 for Feature Group D Trunks) through the date of July 12, 2010. Joint Stipulation ¶ 44, "Attachment 1 of Damages Stipulation"; *see also* Pl. Ex. 84. The Plaintiffs also stipulated, in accordance with Sections 7.2 and 7.4 of the ICA and the terms and conditions of the Plaintiffs' tariffs, late charges in the amount of $2,416,254.74 through the date of July 12, 2010. Trial Tr. 247:17–248:3, 251:9–252:4, 260:7–14, 261:3–17, 293:7–14 (Hunsucker), 402:19–24, 403:13–20, 403:24–404:5 (Glover); Pl. Ex. 84. The

Plaintiffs are entitled to both amounts.[FN5]

> FN5. The parties will be required to provide current numbers for use in the final judgment.

Of the three breach-of-contract elements, this dispute most implicates the first—whether a legally enforceable obligation existed between the parties. The bulk of this opinion will address why this question must be answered in the affirmative.

1. The ICAs Establish a Legally Enforceable Obligation between Sprint and the Plaintiffs

[2][3][4][5] Whether a legally enforceable agreement exists hinges on the "objectively manifested intentions of the parties." *Moore v. Beaufort County N.C.*, 936 F.2d 159, 162 (4th Cir.1991) (citing *Piver v. Pender County Bd. Of Educ.*, 835 F.2d 1076 (4th Cir.1987)). Where an agreement has been memorialized in writing, as in this action, "[t]he clearest manifestation of [the parties'] intent is the contract's plain language." *Silicon Image, Inc. v. Genesis Microchip, Inc.*, 271 F.Supp.2d 840, 850 (E.D.Va.2003) (citing *Providence Square Assoc., L.L.C. v. G.D.F., Inc.*, 211 F.3d 846, 850 (4th Cir.2000)). Furthermore, where such written language is "clear and unambiguous, the proper interpretation is that which assigns the plain and ordinary meaning to the contract terms." *Silicon Image*, 271 F.Supp.2d at 850 (citing *Providence Square*, 211 F.3d at 850). In fact, courts may not look beyond the four corners of the written instrument when the contractual language is unambiguous on its face. *Trex Co., Inc. v. ExxonMobil Oil Corp.*, 234 F.Supp.2d 572, 575 (E.D.Va.2002) ("Virginia law specifically requires that, if the contract is plain and unambiguous in its terms, the court is not at liberty to search for its meaning beyond the instrument itself" (internal quotation marks omitted)); *see also Ross v. Craw*, 231 Va. 206, 343 S.E.2d 312, 316 (1986) ("[The court] adhere[s] to the view that contracts must be construed as written"); *Langley v. Johnson*, 27 Va.App. 365, 499 S.E.2d 15, 16 (1998).

A. Section 38.4 Unambiguously Provides that Access Charges Are Due for VoIP–Originated Traffic

[6] Application of these legal principles evinces a legal duty on the part of Sprint to pay access charges on VoIP-originated calls. The ICA memorializes the parties' agreement on matters relating to interconnection generally. Section 38 of the ICA controls "Intercarrier Compensation." ***799** Section 38.4, specifically, memorializes the parties' agreement on termination of VoIP-originated traffic, the precise issue disputed in this action. That section, as already found, could not be any clearer. It directs that VoIP calls are to be compensated in the same manner as voice traffic. Pl. Ex. 25. That the compensation called for in Section 38.4 is obligatory, rather than optional or conditional on some later event, is clear from that section's unqualified use of "shall." Section 38.4's explanatory clause—"(e.g., reciprocal compensation, interstate access and intrastate access)"—only makes the section's mandate more apparent: Sprint's payment of access charges for VoIP traffic were to mirror its payment of access for voice traffic under Sections 38.1 and 38.2, which respectively establish reciprocal compensation for local calls and tariff-based compensation for non-local calls. It being the case that the parties memorialized their agreement on VoIP-related access charges in Section 38.4, and it also being the case that Section 38.4 is unambiguous on its face, the contract language is dispositive of the Plaintiffs' breach of contract claim. The dispute turns on the parties' objective intent, as unambiguously expressed in Section 38.4.

Sprint argues correctly that the ICAs themselves do not contain the tariff rates at which Sprint has been billed. Instead, the ICAs incorporate tariff rates by reference.[FN6] Trial Tr. 539:25–546:18 (Roach). This is significant, according to Sprint, because the ICA did not incorporate the rates at which it was billed, meaning that Sprint never agreed to them when executing the ICAs with the Plaintiffs. Sprint's position can be distilled to the contention that the ICAs do not incorporate the Plaintiffs' tariffs, wherein the access rates, as actually billed, are located.

> FN6. The first-order question of whether, as a matter of law, ICAs can incorporate tariffs is not in dispute. The parties concur that it is permissible for ICAs to incorporate tariffs, a position confirmed by federal precedent. *See U.S. West Commc'ns, Inc. v. Sprint Commc'ns Co., L.P.*, 275 F.3d 1241 (10th Cir.2002) (holding that a CLECs decision to purchase services under the ILEC's tariff did not constitute abandonment of an ICA, but rather amended the ICA to incorporate the tariff's terms).

In furtherance of this proposition, Sprint contends, among other things, that the tariffs are defined in the ICAs as standalone documents. Pl. Ex. 25 § 1.63. Sprint also argues that the ICAs' integration clause, set forth in Section 29.1, bars incorporation of the Plaintiffs' tariffs in making references to external documents "subject only to the terms of any applicable tariff on file with the State Commission or the FCC." *Id.* § 29.1.

Notwithstanding Sprint's protestations, the ICAs' clearly incorporate the Plaintiffs' tariffs by reference. Sprint's arguments on the subject lack merit. The fact that "tariff" is separately defined in the ICAs is irrelevant to the ability of the ICAs to incorporate the Plaintiffs' tariffs. And Section 29.1 says nothing that bars incorporation of the Plaintiffs' tariffs. At most, that section prevents the ICAs from incorporating tariffs inconsistent with tariffs filed with state commissions and the FCC.

[7][8] The law does not set a particularly high threshold for incorporation of extrinsic documents. In *Hertz Corp. v. Zurich Amer. Ins. Co.*, 496 F.Supp.2d 668 (E.D.Va.2007), the court explained that: "[i]t is axiomatic in the law of contracts that, in order to incorporate a secondary document into a primary document, the identity of the secondary document must be readily ascertainable." *Hertz*, 496 F.Supp.2d at 675 (citing *Standard Bent Glass Corp. v. Glassrobots Oy*, 333 F.3d 440, 447 (3d Cir.2003)); *see also* ***800***Bd. of Trs., Sheet Metal Workers' National Pension Fund v. DCI Signs & Awnings, Inc.*, No. 1:08cv15, 2008 WL 640252, at *3 (E.D.Va. Mar. 5, 2008) (citing *Hertz* for same proposition). Moreover, it must be clear that the parties to the primary agreement had knowledge of, and assented to, the incorporated terms. *Hertz*, 496 F.Supp.2d at 675 (citing *PaineWebber Inc. v. Bybyk*, 81 F.3d 1193, 1201 (2d Cir.1996)); *see also Cary v. Holt's Exam'rs*, 120 Va. 261, 91 S.E. 188, 191 (1917). Notably, however, it is not necessary that the primary document provide explicitly that it "incorporates" the secondary document. *Hertz*, 496 F.Supp.2d at 675; *Bd. of Trs., Sheet Metal Workers' National Pension Fund*, 2008 WL 640252 (stating that the exact language used is not important provided that the primary document plainly refers to another document).

[9] From the text of the ICAs it is apparent that they incorporate the Plaintiff's tariffs, and the access rates provided therein. Section 38.4 provides that VoIP-originated traffic shall be compensated in the same manner as voice calls. Pl. Ex. 25 § 38.4. Section 38.2, in turn, establishes that compensation for long distance voice traffic "shall be based on applicable access charges." *Id.* § 38.2. The corollary is that, in calculating the compensation for VoIP-originated traffic, the parties would have to reference the Plaintiffs' tariffs, first, to locate the applicable access rate, and, second, to use that rate to calculate the access charges due. The ICAs' text can support no other reasonable interpretation. The ICAs, after all, do not contain a list of access rates upon which access charges can be calculated. If the ICAs' repeated references to "tariffs" and "access charges" are to have any meaning, the ICAs must incorporate the Plaintiffs' tariffs by reference.

Trial testimony confirmed this common-sense construction of the ICAs. For example, Mr. Hunsucker, who had intimate knowledge of the ICAs owing to his many years as a Sprint executive, explained that he and Sprint clearly understood that Section 38.4's reference to "interstate access and intrastate access" incorporated the Plaintiffs' tariffs. *See* Trial Tr. 228:12–229:8 (Hunsucker). Mr. Hunsucker noted that it was common among the Plaintiff telephone carriers to have their tariffs incorporated by reference. *Id.* at 229:14–24. He explained that incorporation made sense from a logistical standpoint, given that the tariffs typically run thousands of pages and contain rates that regularly vary. *See id.* at 231:5–15; *see also id.* at 375:4–12 (Glover). Additionally, he explained that parties have an incentive to incorporate tariffs by reference, rather than attaching them to, or printing them in, ICAs, because tariff rates generally have been decreasing over time, meaning that parties to be billed generally stand to pay less by agreeing to tariff rates as opposed to static rates contained in ICAs. *See id.* 231:11–15 (Hunsucker); *see also id.* at 375:12–17 (Glover).

And, while the ICAs' language, standing alone, is adequate to show that the ICAs incorporate the Plaintiffs' tariffs by reference, Sprint's own conduct in the wake of executing the ICAs is highly probative on the issue of incorporation. Sprint paid the Plaintiffs' access charges, for years and without protest, even though those access charges had been calculated using incorporated tariff rates. Sprint was fully aware of the basis of the charges it was billed and which it paid,

raising the issue of the whether the ICAs incorporated the tariffs only after years of paying those bills. Sprint continued to pay access charges pursuant to the Plaintiffs' tariffs even after the 2006 spinoff. It was not until the economy took a drastic downturn, and Sprint's cable ventures faltered, that Sprint chose to dispute the Plaintiffs' tariff-based access charges. The fact that ***801** Sprint willingly paid the Plaintiffs' access charges for so long, and only contested them when faced with financial hardship, is convincing evidence that, when Sprint executed the ICAs it understood them to incorporate the tariffs.

In sum, Section 38.4 is dispositive of this dispute in the Plaintiffs' favor. As stated, that section's language clearly provides that VoIP traffic shall be compensated in the same fashion as voice traffic, and it incorporates the Plaintiffs' tariffs to make calculation of such compensation possible. Technically, the Court's analysis need proceed no further, for once it is found that an agreement is in writing and its terms are unambiguous, the law directs that the inquiry is at an end. The unambiguous written instrument controls. Nevertheless, there is utility in considering the rest of Sprint's arguments, notwithstanding their misplaced disposition.

B. The ICAs' Scope is Not Limited to Interconnection of Local Traffic

Perhaps the closest Sprint comes to tying any of its arguments to the language of the ICAs is in arguing that various provisions of the ICAs (excluding Section 38.4) evidence that the parties never intended the ICAs to apply to the non-local traffic for which the Plaintiffs seek access charges. Toward this point, Sprint proffers a variety of arguments rooted in the ICAs' text. Sprint, for example, notes that the ICAs do not define or refer to Sprint as a long distance carrier, or "IXC" in industry shorthand. Rather, as Sprint asserts, the ICAs refer to Sprint only as a "CLEC," a competitive local exchange carrier. Pl. Ex. 25 (Preamble). Sprint also draws attention to the fact that, when the abbreviation for interexchange carrier, "IXC," is used in the ICAs, it refers only to non-parties. *Id.* §§ 47.5.4, 54.1, 57.9. Here, Sprint's logic is that the ICAs do not contemplate Sprint terminating long distance traffic over the Plaintiffs' networks.

Further significant for Sprint is that the ICAs' make reference to "Local Interconnection" repeatedly. Sprint finds those references in the ICAs' Preamble, *id.* (defining "Local Interconnection" as the parties' desire, under the ICAs, "to interconnect their local exchange networks for the purposes of transmission and termination of calls"), and in substantive provisions of the ICAs, such as Section 2.1, which speaks to the rights and obligations of the parties "with respect to the establishment of 'Local Interconnection,' " *id.* § 2.1.

In an attempt to bolster its contention that the parties never envisioned the ICAs reaching non-local traffic, Sprint suggests that Section 37 describes the intended scope of the ICAs as "Local Interconnection Trunk Arrangements." *Id.* § 37. According to Sprint, that terminology removes from the ICAs' ambit Feature Group D Trunks ("FGD Trunks"), or traffic delivered over FGD Trunks, since FGD Trunks connect long distance networks to local networks, and not local networks to other local networks. Citing the pricing tables referred to in Section 7.1, Sprint also makes the related argument that the pricing tables in the ICAs nowhere reference FGD Trunks by name. For Sprint, this means that the parties never intended Section 7.1's payment obligations to extend to long distance traffic delivered over FGD Trunks.

Sprint's narrow interpretation of the ICAs' scope suffers from numerous infirmities. First and foremost, only so much can be gained from Sprint referencing other provisions in the ICAs, but ignoring the one provision, Section 38.4, that speaks directly to the issue in dispute-compensation for termination of VoIP-originated traffic. That Sprint relies on textual subtleties and nuances to support its position while failing to address the clear text of ***802** Section 38.4 in any meaningful way discloses the frailty of Sprint's position.

Second, the narrow meaning to which Sprint ascribes the ICAs' use of "Local Interconnection" is implausible in the extreme. As that term is used in the ICAs, it refers to *all* types of calls—both local and non-local—terminated over a local exchange network. Trial Tr. 223:24–224:7 (Hunsucker). A local exchange network, after all, is capable of receiving both local and non-local calls. *Id.* 235:25–236:6. Sprint, in essence, argues that the "Local" in "Local Interconnection" confines the origination of calls covered by the ICAs to local calling areas only. Were this true, though, the ICAs would have little practical signifi-

cance for the parties. This is because Sprint does not even have local networks that serve VoIP customers in the calling areas covered by the Plaintiffs. *Id.* 523:25–524:4 (English). The VoIP-originated calls from Sprint that the Plaintiffs terminate over their local exchange networks all travel through switches in states and calling areas different from those of the Plaintiffs. Consequently, the VoIP traffic at issue in this action could not possibly travel directly from a Sprint local exchange network to one of the Plaintiffs' local exchange networks. Sprint's interpretation of ICAs' scope thus does not comport with the actual alignment of the parties' grids insofar as VoIP traffic is concerned. Notice, too, based on the foregoing, that Sprint's reading would make all provisions speaking to VoIP in the ICAs, such as Section 38.4, invalid as beyond the ICAs' scope, since the termination of VoIP-originated traffic would never follow a direct local-exchange-to-local-exchange network path for the parties.

Third, other portions of the ICAs disclose the incredulity of Sprint's novel interpretation of the ICAs' scope. The ICAs, for example, define "access services" in their definitional section. *See* Pl. Ex. 25 § 1.3. If the ICAs were intended only to terminate local calls, there would be no need to define this phrase. Trial Tr. 236:16–24 (Hunsucker). Additionally, another section in the ICAs distinguishes between local traffic and non-local toll calls. *See* Pl. Ex. 25 § 37.1; Trial Tr. 237:7–19, 241:18–242:22 (Hunsucker). That same section also references "interexchange traffic" that, by common understanding in the industry, encompasses long distance traffic. Pl. Ex. 25 § 37.1.2; Trial Tr. 237:7–19. Section 38.4, as well, requires the payment of "interstate access" and "intrastate access" on calls in VoIP format. Those requirements would have no place in the ICAs were they limited in scope to local traffic. *See* Trial Tr. 77:16–21 (Cheek). These features of the ICAs leave no doubt that the parties intended the ICAs to govern more than just local traffic.

Fourth and finally, Sprint's interpretation of Section 7.1 ignores other provisions in the ICAs addressing tariff-based payment for traffic delivered over FGD Trunks. Section 38.2, for example, provides that "[c]ompensation for the termination of toll traffic ... between the interconnecting parties shall be based on the *applicable access charges.*" Pl. Ex. 25 § 38.2 (emphasis added). Further, Section 38.3 provides that "[c]alls terminated to end users physically located outside of the local calling area ... are not local calls for the purposes of intercarrier compensation and *access charges shall apply.*" *Id.* § 38.3 (emphasis added). Lastly, Section 38.4, the VoIP Compensation Provision, requires that VoIP traffic shall be compensated "in the same manner as voice traffic (e.g., reciprocal compensation, *interstate access and intrastate access*)." *Id.* § 38.4 (emphasis added). Section 7.1 is not a basis to read FGD Trunks out of the scope of the ICAs.

***803** In sum, Sprint's arguments do not withstand scrutiny. Not only do they conflict with other provisions of the ICAs, which clearly contemplate a scope beyond local traffic, but they also conflict with the operation of the parties' grids. A contract's scope is not determined by a handful of its terms taken in isolation; a contract's scope is determined by its overall structure and content. The overall structure and content of the ICAs leads to the firm conclusion that the parties intended the ICAs' scope to extend to the interconnection of both local and non-local traffic.[FN7]

> FN7. In addition to finding support in the ICAs' text for its contention that the parties understood the ICAs to apply only to local traffic, Sprint finds support for this contention in an agreement it reached with the Plaintiffs in 2003, prior to the execution of the ICAs in dispute. Sprint attempts to offer this so-called "Access Billing Agreement" as evidence that the parties never intended the subsequently executed ICAs to govern traffic delivered over FGD Trunks. *See* Def. Ex. 110.
>
> Once again, Sprint's argument does not survive examination. First, the parties to this agreement were not limited to the Plaintiffs and Sprint. This agreement involved entities comprising Sprint's *wireless division.* Second, this agreement was not intended to serve as a comprehensive billing agreement. It merely set terms for the escalation of billing disputes. Trial Tr. 175:14–17 (Cheek), 566:12–20 (Roach). Third, this agreement did not apply exclusively to FGD Trunk accounts. Def. Ex. 110 (obligating Sprint to pay "all local service minute of use ... bills"); *see also*

> Trial Tr. 180:4–6 (Cheek). This agreement is not even of marginal relevance to the parties understanding of the ICAs' scope.

C. Section 38.4 Was Not Written to Be Intentionally Ambiguous

In an effort to justify its interpretation of Section 38.4, Sprint argues that, in its mind, Section 38.4 was deliberately drafted to be "ambiguous." Trial Tr. 817:21–818:2 (Luehring).

[10][11] That argument conflates "ambiguous" with "broad." Whether a contract is ambiguous is a question of law for the court's determination. *Wilson v. Holyfield*, 227 Va. 184, 313 S.E.2d 396, 398 (1984). Ambiguity has a particular meaning under Virginia law; the mere fact that parties disagree over a contract's terms does not equate to ambiguity. *Id.* ("Contracts are not rendered ambiguous merely because the parties disagree as to the meaning of the language employed by [the parties] in expressing their agreement."). In order for contract language to be ambiguous, it must be capable of two reasonable interpretations. *Silicon Image*, 271 F.Supp.2d at 850 (citing *Metric Constructors, Inc. v. NASA*, 169 F.3d 747, 751 (Fed.Cir.1999); *Aetna Cas. & Sur. Co. v. Fireguard Corp.*, 249 Va. 209, 455 S.E.2d 229, 232 (1995)). In assessing whether an interpretation is reasonable, a court is to consider the context and intent of the contracting parties. *Silicon Image*, 271 F.Supp.2d at 851 (citing *Metric Constructors*, 169 F.3d at 752; *Hunt Constr. Group v. United States*, 281 F.3d 1369, 1372 (Fed.Cir.2002)).

As a matter of law, Section 38.4 is not ambiguous. It is immaterial that Sprint now objects to the plain meaning of that provision. And, it is immaterial that Sprint believes Section 38.4 lends itself to multiple interpretations. *See* Trial Tr. 817:19–20 (Luehring). The issue is whether Section 38.4's language is capable of two reasonable interpretations. And, simply put, it is not. At the risk of being redundant, that section's message is patently clear: VoIP calls must be compensated in the same manner as voice traffic, meaning reciprocal compensation or compensation based on interstate or intrastate access rates. No other reasonable interpretation has been presented.

Also instructive is that none of Sprint's in-house lawyers ever told the business ***804** people involved in the preparation of the ICA template for Section 38.4 that the provision was ambiguous. *Id.* at 785:13–18 (Morris), 867:1–871:2 (Luehring), 985:18–878:7 (Cowin). To the extent that these lawyers—Messrs. Morris and Cowin and Ms. Luehring—now claim that Section 38.4 was drafted to be ambiguous, the Court rejects their testimony as not believable.[FN8]

> FN8. In so doing, the Court followed the guide of the standard credibility jury instruction. 1A O'Malley, Grenig & Lee, *Federal Jury Practice and Instructions*, § 15.01 (5th ed. 2000).

But even assuming for argument's sake that Section 38.4 was ambiguous, the result would still not augur a Sprint victory. Sprint seems to be of the opinion that, to the extent Section 38.4 is subject to multiple interpretations, the company is free to choose the one that most suits its fancy. Lost on Sprint is the fundamental tenet of contract law that ambiguity is construed against the drafter. *Williston on Contracts* § 32:12 (4th ed.) ("Since the language is presumptively within the control of the party drafting the agreement, it is a generally accepted principle that any ambiguity in that language will be interpreted against the drafter."); *see also Martin & Martin, Inc. v. Bradley Enters., Inc.*, 256 Va. 288, 504 S.E.2d 849 (1998); *Mahoney v. NationsBank of Virginia, N.A.*, 249 Va. 216, 455 S.E.2d 5, 9 (1995). The record shows that Sprint drafted the standard template language that became Section 38.4 of the ICA. Trial Tr. 808:25–809:5 (Luehring). Moreover, the in-house counsel who advised the parties regarding the ICAs were, and remain today, Sprint employees. *See id.* at 690:25–691:1 (Morris), 805:16–17 (Luehring), 960:3–4 (Cowin). For sure, the parties' status at the time the ICAs were executed as entities of the same parent corporation complicates the application of the ambiguity rule. After all, the Plaintiffs might be considered "drafters" of the ICAs as well, since they fell under Sprint's umbrella when the parties entered into the ICAs. However, the dominant influence that Sprint employees outside the company's local telephone division wielded respecting the ICAs' terms, for all practical purposes, made Sprint the singular drafter of Section 38.4. Thus, the Plaintiffs' construction of Section 38.4 would prevail even in the event that provision were ambiguous (which it is not).

D. Section 38.4 Was Not Written to Be Intentionally Broad

Perhaps, Sprint meant to argue that Section 38.4 was intended to be "broad," not "ambiguous." One of Sprint's witnesses used the two words interchangeably in describing Section 38.4. *See id.* 816:22–817:1 (Luehring). Obviously, broad and ambiguous have two different meanings in everyday usage; and this distinction is only amplified in the legal setting, where, as explained, the term "ambiguous" has a particular meaning borne out by caselaw. It follows that, if Section 38.4 was intended to be broad, a separate legal issue is presented.

Sprint offers several reasons as to why the parties understood Section 38.4 to stop short of requiring payment of access charges on VoIP-originated traffic. Perhaps most conspicuous of these reasons was Sprint's insistence that VoIP's tenuous status under the Telecommunications Act of 1996 at the time of the ICAs' execution bore substantially on the parties' understanding of Section 38.4. *See id.* at 344:13–19 (Sichter), 909:23–910:19 (Burt); Pl. Ex. 8 at 7. Sprint even went so far as to claim that, had Section 38.4 definitively required access charges for VoIP traffic, that section—and, by extension, the ICAs—would have violated federal law. *See* Trial Tr. 818:7–819:22 (Luehring).

***805** The latter contention carries no weight at all. Sprint itself admits that the FCC has yet to rule on the propriety of access charges for the type of VoIP traffic at issue in this action. *Id.* at 818:11–14. It goes without saying that a party cannot violate federal law in an area when no federal law exists. Absent an FCC ruling on the VoIP traffic in dispute, Sprint and the Plaintiffs were free to craft an agreement dealing with such traffic as they saw fit. *See id.* at 150:2–10 (Cheek).

And, Sprint's other contention, that the precarious nature of VoIP traffic under the Act somehow determined the meaning of Section 38.4 for the parties, is also unpersuasive. First, and most fundamentally, the uncertain status of the FCC's classification of VoIP traffic does not foreclose parties from agreeing, such as they did in the ICAs, to a method of payment for the termination of VoIP-originated traffic. The only scenario in which federal regulations would bear on a contract dispute such as this one were if FCC rules expressly prohibited payment of access charges on the VoIP traffic at issue, which, by Sprint's own admission, is not the case here.

Second, Section 38.4's language does not support Sprint's assertion that the provision was intended to be broad. One need look no further than Sprint's own arguments to appreciate this point. Recognizing that Section 38.4 contains no terms that, either on their face or inferentially, support the notion that Sprint had the option of paying access charges on VoIP traffic, Sprint directs the Court to divine such an option from other provisions of the ICAs. Sprint, for example, cites a paragraph in the ICAs' Preamble which reads:

> WHEREAS, the Parties intend the rates, terms and conditions of this Agreement, and their performance of obligations thereunder, to comply with the Communications Act of 1934, ... the Rules and Regulations of the Federal Communications Commission ..., and the orders, rules, and regulations of the Commission.

Pl. Ex. 25 (Preamble). Sprint further cites Section 4.2, stating, "The Parties acknowledge that the respective rights and obligations of each Party as set forth in this Agreement are based on the texts of the Act and the orders, rules, and regulations promulgated thereunder by the FCC and the Commission...." *Id.* § 4.2. Finally, Sprint offers Section 38.2, which relates to access charges generally: "Compensation for the termination of toll traffic and its origination of 800 traffic between the interconnecting parties shall be based on the applicable access charges in accordance with FCC and Commission Rules and Regulations...." *Id.* § 38.2. As to Section 38.2, Sprint argues that it was meant to work in conjunction with Section 38.4 such that Section 38.4 only imposed an obligation to pay access charges *as was required by law for VoIP traffic*. And, it appears that Sprint also intends to say that the quoted portions of the ICAs' Preamble and Section 4.2 worked to similar effect, creating an obligation only insofar as the law required.

Those arguments do little to advance Sprint's position, however. Recall that, absent ambiguity, the ICAs' language is the Court's first and only inquiry. And nothing in the text of Section 38.2—or, for that matter, the Preamble or Section 4.2—directs that Section 38.4 be modified in the manner advocated by Sprint. Sprint, in effect, asks the Court to read the word "shall," which conveys a clear command, out of Section 38.4 on account of language in other provisions of the ICAs, two of which do not even pertain to access charges. The Court declines that invitation, for

it would be a bizarre path to modify the provision most on point with general language in peripheral, if not irrelevant,***806** provisions. It also merits noting that, even if the above sections worked in conjunction with Section 38.4, they would not modify it in the way contemplated by Sprint. At most, the Preamble and Section 4.2's references to federal rules and regulations state the obvious, that the ICAs, and the parties' resulting obligations, are to comply in every respect with federal law. The same is true of Section 38.2. The most plausible interpretation of that section's reference to "FCC and Commission Rules and Regulations" is that, whatever access charges were to be billed, they were to comport with federal law on the subject. These references to federal rules and regulations on which Sprint relies, in other words, do not operate to relieve Sprint from all duties not imposed by federal law.

To appreciate the frailty of Sprint's argument one need only take it to its illogical conclusion. Sprint's contention, in short, is that the ICAs' repeated statements that the agreements were to operate within the boundaries of federal law meant that Sprint's obligations under the ICAs' extended only to the requirements of federal law. This outcome should be resisted for the singular reason that it obviates the parties' need for the ICAs. What purpose would the ICAs, and Section 38.4, in particular, serve in the realm of VoIP traffic if Sprint's argument were to prevail? The answer is none. The Court refuses to embrace an interpretation of a contract that would render irrelevant its material terms.

[12] Viewed as part of the whole, the language in the ICAs referencing federal law, in which Sprint vests so much significance, constitutes nothing more than boilerplate language with little, if any, substantive import. It is axiomatic that contracts are void to the extent that they impose duties inconsistent with the law. *See, e.g.*, *Shuttleworth, Ruloff and Giordano, P.C. v. Nutter*, 254 Va. 494, 493 S.E.2d 364, 366 (1997); *Cohen v. Mayflower Corp.*, 196 Va. 1153, 86 S.E.2d 860, 864 (1955); *Wallihan v. Hughes*, 196 Va. 117, 82 S.E.2d 553, 558 (1954). This argument made by Sprint would transform the ICA's innocuous references to federal law into text that renders Section 38.4, and, indeed the ICAs as a whole, meaningless. The ICAs' requirements that the parties comply with federal law in one area or another certainly do not eviscerate clearly stated obligations established in other provisions of the ICAs.

The topic of the asserted breadth of Section 38.4 cannot be left without remarking on the testimony of the witnesses on which that notion (and the related notion of deliberate ambiguity) depends.[FN9] Central to Sprint's contention that Section 38.4 was drafted broadly or ambiguously so as to permit Sprint flexibility in paying access charges for VoIP traffic was the testimony of Janette Luehring, a Sprint in-house attorney. At trial, she testified that she had authored Section 38.4, the ICAs' VoIP Compensation Provision, and that she intended it to be "written broadly" or "ambiguously." Trial Tr. 816:22–818:22 (Luehring). On cross-examination, however, it came out that less than two months earlier at her deposition Ms. Luehring could not even remember who had authored Section 38.4. *Id.* at 848:2–849:5. Supposedly, two emails with which she was later presented helped to refresh her memory on the subject such that, by trial, she could clearly remember not only writing***807** Section 38.4, the key provision in this contract dispute, but also writing it to be deliberately broad or ambiguous so that Sprint could avoid paying the charge governed by the section if it so desired. *See id.* at 848:14–22. That revision is not supported by the emails which Luehring says prompted her recollection. The emails, from Ms. Luehring to Jim Burt, dated September 19, 2003, merely state the language that became Section 38.4. *See generally* Pl. Exs. 5–6. They do not contain language suggesting that Ms. Luehring, or anyone else in Sprint, intended Section 38.4 to be broad or ambiguous.

> FN9. The Court considers such testimony aware that parole evidence regarding the parties' intent is superfluous given the Court's determination that Section 38.4 is unambiguous on its face. The witnesses' testimony is nevertheless worth examining because it further illustrates the baseless nature of Sprint's assault on the plain meaning of Section 38.4.

Further undermining her testimony, Ms. Luehring conceded that she had never conveyed to any of her corporate clients (neither Sprint nor the once-affiliate Plaintiffs) that Section 38.4 was broad or ambiguous, notwithstanding her own recognition that she might have had an obligation to do so under principles of ethics and/or federal securities law. Trial Tr. 865:15–869:23. Ms. Luehring's demeanor while tes-

tifying also undercut her veracity. When pressed by opposing counsel on the crucial issues in this action, she was unresponsive and evasive. Simply put, on the record as a whole, Ms. Luehring's testimony is not credible.

Sadly, the testimony of other Sprint witnesses is no more trustworthy. Jim Burt, who, it may be recalled, is Sprint's current Director of Policy, said that the written testimony submitted to the Florida Public Service Commission in 2004 (in which he stated that a VoIP provision identical to Section 38.4 required payment of access charges according to "the jurisdictionally appropriate inter-carrier compensation rates"), Pl. Ex. 16 at 7:13–18, had no bearing on Sprint's understanding of the ICAs presently in dispute, *see* Trial Tr. 941:19–942:14 (Burt). That claim defies credibility. Moreover, the testimony of James Sichter, Mr. Burt's former boss, recounted a significantly different story. Mr. Sichter made clear that, pursuant to the One Sprint Policy, Sprint took the singular position that access charges were due and payable on VoIP-originated traffic in the manner set out in Section 38.4. Mr. Burt would not have been allowed to advocate a contrary position before the Florida Public Service Commission. *Id.* at 324:15–326:15 (Sichter). Hence, to the extent that Mr. Burt characterized his testimony in Florida as an isolated occurrence, wholly dependent on the context of that individual proceeding, he misled the Court. Had Mr. Burt been forthright, he would have conceded that the position he articulated to the Florida Public Service Commission was consistent with Sprint's company-wide position on VoIP access charges. He also would have conceded that Sprint did not understand Section 38.4 to be ambiguous when it was written. Sprint knew then, as it does now, that Section 38.4 requires payment of access charges for VoIP-originated traffic according to the jurisdictional endpoints of calls.

Joseph Cowin, a senior Sprint in-house attorney, was similarly misleading. When presented with Mr. Burt's 2004 testimony before the Florida Public Service Commission, attesting that Sprint believed access charges to be due and payable on VoIP-originated traffic in the same manner required by Section 38.4, Mr. Cowin denied the accuracy of Mr. Burt's statement. Dep. Tr. 19:11–16 (Cowin). When pressed to explain his answer, Mr. Cowin expressed that he did not understand Mr. Burt's use of the word "believe." *Id.* at 20:10–21:4. Apparently, for him, that word has some definition that escapes basic understanding. When further pressed, Mr. Cowin pled ignorance, stating that he really knew nothing about the particulars of the proceedings before the Florida regulatory commission. *Id.* at 21:21–22:2.

***808** Third, and in a parting attempt to change the meaning of Section 38.4 to something other than what that provision says, Sprint argues that, in 2004 and 2005 when the ICAs were executed, it would not have given its competitors better terms on VoIP compensation than it gave the then-affiliate, and now Plaintiff, local telephone carriers. Toward this point, Sprint notes that it signed ICAs with non-affiliate competitors of Sprint explicitly recognizing that the applicability of access charges on VoIP-originated traffic was an unsettled issue. *See* Pl. Ex. 10 § 37.3 (agreement between Sprint and Level 3 Communications LLP) ("The Parties further agree that this Agreement shall not be construed against either party as a 'meeting of the minds' that VoIP traffic is or is not local traffic subject to reciprocal compensation in lieu of intrastate or interstate access."); Pl. Ex. 11 § 4.4 (similar agreement between Sprint and MCI). Sprint contends that it would not have done this had the ICAs entered into with the then-affiliate Plaintiffs not also worked to the same effect, stopping short of imposing a requirement to pay access charges for VoIP traffic. In this way, Sprint invites the Court to read into Section 38.4 the notion that Sprint had an option, rather than an obligation, to pay access charges on VoIP-originated traffic.

Sprint's third argument falls flat because the record does not establish that the ICAs noted above would have given Sprint's competitors more favorable contract terms. Sprint assumes that its non-affiliate competitors stood to benefit by terms that did not lock parties into paying access charges for VoIP traffic. This may have been the case. But, it is equally plausible, in the absence of evidence to the contrary, that Sprint's competitors stood to lose by such terms. Sprint's competitors, for example, might have been in a position to collect more access charges from Sprint than they paid Sprint in return for termination of their customers' traffic. Such a scenario would have made contractual language facilitating disputation of access charges a hindrance rather than a boon for them. This same point can be made from the perspective of the Plaintiffs. Section 38.4's language, obligating payment

of access charges, might have been advantageous to the Plaintiffs if they were positioned to collect more access charges than they were to pay out. Because these possibilities are unaccounted for in the evidence, the accuracy of Sprint's claim that contractual language leaving open the issue of VoIP access charge benefited its competitors is tenuous at best. And, with this proposition in question, Sprint's entire argument—that Section 38.4 should be read to mirror its other agreements with non-affiliate competitors, lest the Court conclude that Sprint gave better terms to non-affiliates—rests on an unstable foundation.

If these other ICAs prove anything, it is that Sprint certainly knew how to draft a VoIP provision that stopped short of obligating the parties to pay access charges on VoIP-originated traffic, and the company made a conscious decision not to include such language in the ICAs entered into with the Plaintiffs. The VoIP provision in the ICA that Sprint executed with Level 3 Communications Company LLC is illustrative.[FN10] *See* Pl. Ex. 10 § 37.3. This ICA was agreed to in March 2004, before the effective dates of any of the ICAs involved in this action. Trial Tr. 863:10–13 (Luehring). Its VoIP provision, Section 37.3, departs markedly from Section 38.4. Section 37.3, for instance, begins, "Neither Party ***809** will knowingly send voice calls that are transmitted by a Party or for a Party at that Party's request ... via the public Internet or a private IP network over local interconnection trunks for termination as local traffic until a mutually agreed Amendment is effective." Pl. Ex. 10 § 37.3. It also states, "The Parties further agree that this Agreement shall not be construed against either Party as a 'meeting of the minds' that VoIP traffic is or is not local traffic subject to reciprocal compensation in lieu of intrastate or interstate access." *Id.*

> FN10. Though illustrative, this ICA is not exhaustive of instances in which Sprint agreed to disagree on VoIP compensation. *See, e.g.*, Pl. Ex. 11 § 4.4; *see also* Trial Tr. 863:9–11 (Luehring).

That Sprint agreed to an ICA containing such verbiage, before it negotiated the ICAs in this dispute, demonstrates convincingly that Sprint well knew how to draft language "agreeing not to agree" on VoIP compensation when the ICAs with the Plaintiffs were executed. Furthermore, that such verbiage is absent from the ICAs here at issue, Trial Tr. 864:1–6 (Luehring), is strong evidence that Sprint did not intend to leave the issue of VoIP compensation unresolved with the Plaintiffs. Thus, in sum, the antecedent ICAs that Sprint signed with its competitors, such as the one executed with Level 3, rather than counseling for reading language into Section 38.4, counsel for reading Section 38.4 just as it is written, to require compensation for the termination of VoIP-originated traffic.

E. Section 38.4 Means What It Says

If there is a common thread to Sprint's arguments, it is obfuscation. Sprint attempts to steer this action away from the basic contract principles on which it is properly to be decided and toward issues that, to put it charitably, are extraneous. Sprint's conduct cannot be explained by novel interpretations of the ICAs or subtleties pertaining to the parties' purportedly unique relationship, as Sprint would have this Court believe. These explanations represent nothing more than smoke and mirrors, proffered to conceal the straightforward nature of this contract dispute. The record does not reveal a company that carefully drafted the ICAs' VoIP Compensation Provision—Section 38.4—to permit Sprint flexibility to compensate the Plaintiffs as it saw fit. The record reveals, instead, a company that, years after signing the ICAs and performing them as written, has attempted to graft onto them an interpretation that helps its cost-cutting initiatives. The bottom line is that Section 38.4 means what it says: VoIP traffic shall be compensated in the same manner as voice traffic, meaning intrastate and interstate access charges where appropriate.

2. Sprint Breached Its Obligation To The Plaintiffs

There being no doubt that Section 38.4 of the ICA—and, by extension, the VoIP compensation provisions of the other ICAs—require payment of access charges for VoIP-originated traffic according to the jurisdictional endpoints of calls, the only question remaining is whether Sprint breached its contractual mandate. [FN11] Clearly it did. By refusing to pay the Plaintiffs' access charges as billed, Sprint violated the terms of the ICAs. By incorporating the Plaintiffs' tariffs, the ICAs plainly establish interconnection rates higher than the $.0007 per-minute rate Sprint now offers the Plaintiffs.

> FN11. The issue of damages was resolved by stipulation of the parties. *See* introduction to

"LEGAL DISCUSSION," *supra.*

CONCLUSION

For the reasons set forth above, judgment will be entered for the Plaintiffs for compensatory damages and late charges in stipulated amounts or pursuant to decision ***810** based on briefs to be filed as required by the Order entered on February 18, 2011; prejudgment interest in an amount to be determined by the Court upon submission of briefs or agreement as to the appropriate rate and the actual calculation of the prejudgment amount; and for post-judgment interest at the federal judgment rate or other rate, if applicable, after submission of briefs or agreements as to the applicable post judgment rate; and for reasonable attorneys' fees, if any be awardable, in an amount to be determined by the Court upon submission of briefs and evidence.

It is SO ORDERED.

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