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September 7, 2011

Via Electronic Filing

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street, 2nd Floor
Harrisburg, PA 17120

**Re: Pennsylvania Public Utility Commission v. Verizon Pennsylvania Inc.
Pennsylvania Telephone Association v. Verizon Pennsylvania Inc.
Pennsylvania Public Utility Commission v. Verizon North LLC
Pennsylvania Telephone Association v. Verizon North LLC
Docket Nos., R-2011-2234464, C-2011-2237456, R-2011-2234462, C-2011-2237496**

Dear Secretary Chiavetta:

Enclosed please find two unreported cases that are cited in Verizon's Reply Brief, which is being filed today by Verizon Pennsylvania Inc. and Verizon North LLC, in the above captioned matter. These cases are being submitted pursuant to ALJ Buckley's request.

Please do not hesitate to contact me if you have any questions.

Very truly yours,

A handwritten signature in black ink, appearing to read "Suzan D. Paiva".

Suzan D. Paiva

SDP/slb
Enc.

Via E-Mail and Federal Express Delivery
cc: The Honorable Dennis J. Buckley

Via E-Mail and First Class U.S. Mail
cc: Herbert Nurick, Mediation Coordinator
Attached Certificate of Service


CERTIFICATE OF SERVICE

I, Suzan D. Paiva, hereby certify that I have this day served a copy of the Verizon Companies' Reply Brief, upon the participants listed below in accordance with the requirements of 52 Pa. Code Section 1.54 (related to service by a participant) and 1.55 (related to service upon attorneys).

Dated at Philadelphia, Pennsylvania, this 7th day of September, 2011.

VIA E-MAIL and FIRST CLASS U.S. MAIL

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**UNREPORTED CASES
REFERENCED IN
VERIZON'S REPLY BRIEF**

STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

At a session of the Public Service
Commission held in the City of
Albany on October 11, 2000

COMMISSIONERS PRESENT:

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

CASE 00-C-0789 - Proceeding on Motion of the Commission
Pursuant to Section 97(2) of the Public
Service Law to Institute an Omnibus
Proceeding to Investigate the Interconnection
Arrangements Between Telephone Companies

ORDER ESTABLISHING REQUIREMENTS FOR
THE EXCHANGE OF LOCAL TRAFFIC

(Issued and Effective December 22, 2000)

BY THE COMMISSION:

This proceeding was initiated to resolve a dispute by carriers regarding treatment of competitive local exchange carrier (CLEC) telephone numbers assigned to a central office (NXX) code¹ within an established local calling area, but used by customers located beyond the local calling area of the designated NXX code.

BACKGROUND

Department Staff (staff) investigated complaints by customers of independent telephone companies (Independents)

¹ In a seven digit local phone number, the first three digits identify the specific telephone company central office which serves that number.

regarding calls that failed to reach their destination or were unexpectedly billed at toll rates. Staff found that in nearly all of the situations examined, the calls in question had been made to an Internet service provider (ISP) served from a CLEC network. In all instances, both the CLEC switch and the ISP customer for whom the calls were destined were located outside the Independent's local service area. The CLEC used an NXX code within the Independent's established local calling area to provide locally-rated calling to customers located outside the geographic area associated with the assigned NXX code.

Calls failed to reach their destination because no provision had been made for physical interconnection between CLECs and Independents. Toll charges were imposed when the Independent's only available transmission path for routing the call was the toll network. In all cases, Staff found that no interconnection arrangements/agreements had been made between the CLECs and the Independents to handle these calls, unlike the situation between Independents and Verizon New York, Inc. (Verizon) where transport arrangements are in place to handle calls to a customer outside the geographic area associated with the assigned NXX.

After Staff-facilitated negotiations between the Independents and CLECs reached impasse, this proceeding was begun and on May 16, 2000 a Notice Inviting Comments was issued. The Notice sought comments regarding these questions:

- (1) How to treat calls from telephone exchanges to CLEC phone numbers within that company's local calling area?
- (2) Whether there were any unique costs incurred by originating carriers who transported calls to a requesting CLEC?
- (3) Whether there were any unique costs incurred when a third party transported calls between the originating carrier and the requesting CLEC and

if there were, how such costs should be compensated?

- (4) What generic principles should be established as guidance for interconnection agreements and inter-carrier compensation?

Comments² and reply comments³ were filed. A Petition for Clarification or Rehearing was also filed by the Independents' Small Company Group (Small Companies).⁴ AT&T Communications of New York and ACC Corp. responded. A summary of comments submitted appears in Appendix D.

DISCUSSION

Rating of Calls

According to the Small Companies, a customer should not be considered "within" a local calling area if that customer is actually located in a different geographic area. Instead, the Small Companies recommended that CLECs be required to assign telephone numbers in a manner that makes it technically feasible to identify, switch, and deliver calls according to whether a call is inter-exchange or local. CLECs maintained that the calls at issue in this proceeding should be considered local.

No Commission or FCC rules or policies prohibit a CLEC from activating a telephone number in an exchange where it has no physical presence. A CLEC may obtain an NXX or central office code in any existing rate center in order to establish a presence or a "footprint." These number assignments are then listed in the Local Exchange Routing Guide (Routing Guide),

² Parties who filed comments are listed in Appendix A.

³ Parties who filed reply comments are listed in Appendix B.

⁴ The member Independents comprising the Small Company Group are listed in Appendix C.

recognized by the industry as the source for instructions on how to route calls, and other industry databases.

Currently, Independents rate customer calls to Verizon NXX numbers that are within the Independent's defined local calling area as local calls, even if the called party is outside the geographic area. Treating similar calls to a CLEC NXX code within the Independent's established local calling area as toll calls would be problematic. Therefore, calls to an NXX code within an established local calling area, but used by customers located outside the local calling area of the designated NXX code, will be considered local for rating purposes. This treatment assumes that the CLEC has established the appropriate fundamental network and service arrangements with all incumbent carriers consistent with the requirements of this Order.

Foreign exchange service also allows customers to obtain local service in an exchange where the customer has no physical presence. Independents do not treat calls destined for foreign exchange service any differently than calls terminating within the physical boundaries of the rate center. This is precisely the service CLECs offer their ISP customers, i.e., telephone numbers that can be called on a local basis in exchanges where the ISP has no physical presence, and this approach of rating those calls as local is consistent with the way Independents treat foreign exchange service calls.

Rating these calls as local, however, will not by itself ensure completed calls and proper billing. A fundamental network and service arrangement with Independents is an essential element in accomplishing that goal. Therefore, CLECs will be required to enter into an agreement establishing fundamental network and service arrangements prior to activating a code that can be accessed on a local basis by an Independent's

customer.⁵ The FCC's Numbering Resource Optimization Order (NRO Order)⁶ requires code applicants to provide the North American Numbering Plan Administrator (NANPA) with appropriate evidence that it will be ready to provide service within 60 days of the activation date. Responsibility for defining the readiness of facilities has been delegated by the FCC to the state commissions⁷ and a pre-existing network and service arrangement will be an element of facilities readiness. Staff will advise NANPA that no NXX codes should be issued until the requesting CLEC has documented that it has interconnection agreements in place with all incumbent carriers within the local calling area where the code is sought. This requirement also applies to carriers seeking thousand-blocks in areas where pooling has begun.

Unique Routing Costs Incurred By Independent Companies

Independent companies connect to other incumbent carriers such as Verizon via two methods: (1) local trunks between their central office and the adjacent incumbent's central office, or (2) toll trunks to Verizon's tandem. In either case, the Independent's responsibility is limited to bringing its facilities to its boundary with the adjacent

⁵ The Central Office Code (NXX) Assignment Guidelines note that interconnection arrangements need to be in place prior to the activation of a code. Carriers may apply for a code six months prior to activation and may ask for an activation date no sooner than within sixty-six days of the request.

⁶ Numbering Resource and Optimization Report and Order and Further Notice of Proposed Rulemaking, 15 FCC Rcd 7545 (March 2000).

⁷ Id., para.97; Common Carrier Bureau Responses to Questions in the Numbering Resource Optimization Proceeding, CC Docket No. 99-200 (July 2000)

incumbent. The incumbent's responsibility is to provide connecting facilities within its territory to the boundary.

If the CLEC has facilities built out to the Independent's end office or has a meet-point somewhere in the Independent's territory, costs associated with completing calls from Independent exchanges to CLEC numbers within the Independent's local calling area should be, based on comments received, inconsequential. Nonetheless, Independents argued that the costs of originating and transporting these calls should be subject to access charges assessed to the carrier to which the call is delivered. The Independents were concerned that facilities could become overloaded and additional costs would be incurred to reinforce the network. However, no facts were provided to substantiate these concerns.

CLECs share in the obligation to allow efficient interconnection to the Independents. As previously noted, Independents are currently responsible for bringing meet-point facilities to their borders only, the long-standing arrangement in place today for trunks used in the provision of local calling between the Independents and Verizon. Because Independent responsibility is limited to delivering traffic to its service area borders, CLECs must either provide their own interconnection facilities or lease facilities to the meet-point. With this obligation placed on CLECs, no unique costs would be incurred by the Independents in transporting calls to CLECs.

Third-Party Carriage of Independent-CLEC Calls

All parties agreed that a need exists for third-party transport of low volume calls between Independents and CLECs. CLECs stated that it would be inefficient for them to physically interconnect with Independents for the exchange of relatively

small amounts of traffic and proposed instead that calls between an Independent and a CLEC should be carried initially by an incumbent local exchange carrier (ILEC). Verizon, recognizing that it would most often be the third party involved in transporting such calls⁸, offered to provide existing services for the exchange of Independent-CLEC traffic in return for reasonable compensation. Tandem switching rates are available in Verizon's 914 tariff but rates for traffic carried via shared common transport and using tandem switching are not tariffed and need to be developed. Verizon will be directed to file a tariff for delivery of traffic from the Independent's meet point to the Verizon tandem. Interested parties will have an opportunity to comment on the proposed rates.

If call volumes between an Independent and a CLEC go beyond the small volume level, the CLEC should be responsible for establishing direct trunking. The DS-1 or T-1 level (24 voice grade channels) recommended by both Verizon and Time-Warner is a reasonable standard for triggering dedicated transport since it represents a standard unit of network capacity, is an efficient network design, and is generally acceptable to most parties. Parties may, of course, decide a different level is appropriate in a negotiated agreement. Rates for dedicated transport facilities are available in Verizon's 900 tariff.

Fiber Tech proposed that Independents offer a service similar to Verizon's Competitive Alternative Transport Terminal which allows competitive fiber providers a means to interconnect with CLECs collocated in a central office. While recognizing

⁸ Other Independents could also be involved in transporting these calls.

the competitive benefits offered by competitive fiber providers, Fiber Tech's proposal is beyond the scope of this proceeding.

Inter-Carrier Compensation

The Independents and Verizon currently have a "bill and keep"⁹ arrangement for the exchange of local traffic. The calls at issue closely resemble those that are currently handled in local calling arrangements between the Independents and Verizon and, therefore, it is appropriate to handle these calls on the same "bill and keep" basis. In addition, since the CLEC is not located within the same geographic territory as the Independent and is not directly competing with the Independent for local customers, treatment of the call as local for the purpose of reciprocal compensation does not appear warranted. It should also be recognized that if a third-party ILEC (e.g., Verizon) transports a call between the originating and terminating carriers, it should have no responsibility to pay for its completion.

Procedural Matters

The Small Company Group petitioned for clarification or in the alternative, rehearing, of the May 5 Order based on (1) potential displacement of long-standing legal requirements and regulatory policies; (2) possible prejudgment of issues; (3) a potential due process violation absent rehearing and modification of the May 5 Order; and (4) potential violations of Commission and federal policy based on the statement in the May 5 Order "that carriers are reminded of their legal obligation to complete customer calls regardless of disputes over intercarrier

⁹ "Bill and keep" is a compensation method whereby each carrier is responsible for its own costs and recovers those costs from its end users.

compensation or call rating designations, and to bill such calls appropriately."

AT&T and ACC opposed the petition, arguing that there was no potential violation of Commission, federal, or public policy, and that the Commission's reminder of a carrier's legal obligation to compete calls was consistent with law.

The May 5 Order instituting this proceeding posited issues for comment which arose from previous discussions with Small Companies, AT&T, and ACC. A Notice Inviting Comment was issued on May 16, 2000 and parties were given the opportunity to submit initial and reply comments.

Clarification and/or rehearing is appropriate when ordered action is ambiguous or based on an error of fact or law. The Small Companies' petition was based not on Commission ordered action, but potential or possible action. At the time the Small Companies' petition was interposed, no action had been ordered. The statement regarding a common carrier's obligation to complete calls was merely a reminder of pre-existing duties. The Small Companies have failed to demonstrate any action that is ambiguous or erroneous. Therefore, the Small Companies' petition for clarification and/or rehearing was premature and is denied.

The Commission orders:

1. Prior to activating an NXX code that can be accessed on a local basis by an independent telephone company's customer, CLECs must enter into an arrangement establishing fundamental network and service arrangements. CLECs must make arrangements for interconnection facilities to a meet-point designated as the Independent Telephone Company boundary. Independent Telephone Companies are responsible for delivering traffic to their own service area borders.

2. Calls to an NXX code that is within an established local calling area and that is used by customers located beyond the local calling area shall be rated as local for the purpose of customer billing.

3. Verizon New York, Inc. shall file with the Secretary (5 copies) a tariff for shared transport, as discussed in this Order, within 30 days of issuance of this Order and also serve the proposed tariff on parties on the service list for this case.

4. Parties will have 20 days from Verizon New York, Inc.'s filing to submit comments. Comments shall be served on parties on the service list for this case.

5. The Petition for clarification and/or rehearing is denied.

6. This proceeding is continued.

By the Commission,

(SIGNED)

JANET HAND DEIXLER
Secretary

APPENDIX A

INITIAL COMMENTS

ACC Corp. (ACC)

AT&T Communications of New York, Inc. (AT&T)

Adelphia Business Solutions, Inc. (Adelphia)

Verizon-New York (Verizon, formerly Bell Atlantic)

CTSI, Inc. (CTSI)

Fiber Technologies, LLC (Fiber Tech)

Focal Communications Corp. of New York, Inc. (Focal)

Mid-Hudson Communications, Inc. (Mid-Hudson)

Northland Networks, Ltd. (Northland)

RCN Telecom Services of New York, Inc. (RCN)

Small Company Group (Small Companies)

TC Systems, Inc. (TC)

Time-Warner Telecom, Inc. (Time Warner)

WorldCom, Inc. (WorldCom)

APPENDIX B

REPLY COMMENTS

ACC Corp. (ACC)
AT&T Communications of New York, Inc. (AT&T)
Adelphia Business Solutions, Inc. (Adelphia)
Bell Atlantic-New York (BA-NY or Bell Atlantic)
CTSI, Inc. (CTSI)
Cablevision Lightpath, Inc.
Fiber Technologies, LLC (Fiber Tech)
Focal Communications Corp. of New York, Inc. (Focal)
Frontier Telephone of Rochester, Inc.
Mid-Hudson Communications, Inc. (Mid-Hudson)
Northland Networks, Ltd. (Northland)
RCN Telecom Service of New York, Inc. (RCN)
Small Company Group (Small Companies)
TC Systems, Inc. (TC)
Time-Warner Telecom, Inc. (Time-Warner)
WorldCom, Inc. (WorldCom)

APPENDIX C

SMALL COMPANY GROUP

Armstrong Telephone Company
Berkshire Telephone Company
Cassadaga Telephone Corporation
Champlain Telephone Company
Chautauqua & Erie Telephone Corporation
Chazy & Westport Telephone Corporation
Citizens Telephone Company of Hammond
Crown Point Telephone Corporation
Delhi Telephone Company
Dunkirk & Fredonia Telephone Company
Edwards Telephone Company
Empire Telephone Corporation
Fishers Island Telephone Company
Germantown Telephone Company
Hancock Telephone Company
Margaretville Telephone Company
Middleburgh Telephone Company
Newport Telephone Company
Nicholville Telephone Company
Ontario Telephone Company
Oriskany Falls Telephone Corporation
Pattersonville Telephone Company
Port Byron Telephone Company
State Telephone Company
TDS Telecom of Deposit
Township Telephone Company
Trumansburg Home Telephone Company
Vernon Telephone Company

SUMMARY OF COMMENTS RECEIVED

1. Treatment of calls between telephone company exchanges to CLEC numbers assigned to NXX code within that company's local calling area.

The positions of the parties are generally divided between the incumbents (small companies and Verizon) and the CLECs.

The Small Companies argue that assigning a number associated with one geographic area to a customer located in a different geographic area does not mean that the customer should be considered "within" the local calling area associated with the number. As such, the Small Companies request that the Commission require all LECs to divulge their NPA-NXX code assignment practices and the manner in which telephone numbers are assigned to actual customers premises and LEC-designated rate centers. These arbitrary number assignment practices are not in keeping with the point-to-point nature of calls, according to the Small Companies. The Small Companies state that CLECs fail to recognize the rights of its members and that other carriers cannot be forced to concede to these arbitrary practices. The Small Companies recommend that CLECs be required to deploy numbers in a manner that makes it technically feasible to identify, switch, and deliver calls according to whether a call is interexchange or local. Absent these practices, Small Companies state that calls to these numbers must be treated as interexchange/toll and subject to proper intrastate access changes. Finally, the Small Companies note that a continuation of the current practices will harm independent company customers.

Verizon posits that if a CLEC wants to have the call rated as a local call, the CLEC should either extend its

facilities into the local calling area or pay for transport of the call from the local area to its switch.¹

CLEC respondents agree that the calls at issue in this proceeding should be considered local. Focal believes customer confusion would be encountered if these calls were treated as anything other than local. Likewise, Mid-Hudson and Northland, filing jointly, argue that independent customers, CLEC customers, and CLECs would all suffer severe and irreparable harm if the calls were not treated as local. AT&T states that there is no basis for discriminating between local and toll calls since independent companies make no distinction in routing and rating calls to incumbent customers (e.g., Verizon), some of which terminate to customers physically located outside of the local calling area, through the use of foreign exchange and remote call forwarding services.² Time-Warner concludes that the calls at issue are local; therefore, carriers should honor rate center assignments with their end-users. Worldcom states the physical location of the called party has no relevance on how a call is rated and billed. Worldcom also states that the location of calling and called parties is irrelevant and notes a California Commission ruling that determined the rating of calls is based on the NXX prefix of calling and called parties even if called party is located in different exchange.³ RCN, CTSI, and Adelphia, filing jointly, state that there is no economic, technical or policy reason for different treatment to calls to the same rate center. RCN/CTSI/Adelphia note a Michigan PSC order rejecting the argument that an ISP did not have a physical presence in the exchange, that this was not a prerequisite under the tariff, and

¹ A CLEC's switch may also be located some distance away from the exchange where the code is assigned.

² The Small Companies and Verizon have argued that foreign exchange calls are interexchange in nature and not an appropriate example.

³ Order Instituting Rulemaking on the Commission's own Motion, Decision No. 99-09-029, Interim Opinion at 31-32 (California Public Utility Commission September 2, 1999).

that rating and routing need not be the same.^{1,2} They also argue for FX service, claiming it is a time-honored service which allows businesses to expand their presence.

2. Unique Costs incurred by Independent companies

Almost all parties (with the exceptions of Verizon and the Small Companies) deem the costs associated with completing calls from independent exchanges to CLEC numbers within that company's local calling area to be inconsequential. This includes those calls that must be completed to an end user located outside of that local exchange.

However, Small Companies assert that these types of calls are interexchange calls, and that the costs of originating and transporting these calls should be subject to access charges which, in turn, should be assessed to the carrier to which the call is delivered. The Small Companies state that these calls are toll calls that will be converted to lower-priced local calls by not assessing an additional charge for these types of calls. The Small Companies argue that their local facilities may become overloaded as the demand for these types of calls increase, and that independent companies will incur additional costs to reinforce its system. The Small Companies argue that, while a CLEC can request interconnection, a CLEC cannot declare or demand that other carriers accommodate the CLEC's practices.

Verizon states that third party costs would occur if it were to carry traffic between an independent and a CLEC, and that Verizon would expect full recovery of any costs. Verizon argues that it should be compensated for the use of its network.

Time-Warner states that it is possible that some additional costs may be incurred by independent companies

¹ In the Matter of the Complaint of Glenda Bierman against Centurytel of Michigan, Inc d/b/a/ CenturyTel, April 12, 1999.

² In reply comments, the Small Companies notes an order issued by the Maine Commission which reclaimed a CLEC's NXX codes that did not have facilities nor was serving customers in the exchange where the codes were assigned.

depending on 1) call volumes, 2) location of the interconnection points and 3) current capacity of the system. However, Time-Warner also states if the CLEC has built out to the independent's end office or has a meet-point somewhere in the Independent Carrier's territory, there should be few recurring costs.

WorldCom claims that each carrier has its own costs for originating telecommunications, and that generally the recovery of costs associated with originating calls are the responsibility of the originating carrier. RCN/CTSI/Adelphia believe that no additional costs would be incurred if traffic were routed the same way for both Verizon and CLEC customers.

Focal states that some costs to build out the network may be necessary, but that these costs should not be extraordinary. Mid-Hudson/Northland note that it makes no difference to the independent whether its customers dial the "phantom NXX" or any other NXX; the costs for handling each call are the same. All calls from the independent to the CLEC NXX code can be delivered in the same manner at the same cost to the independent. Accordingly, the charge to the caller should be the same.

3. Third-party carriage of independent-CLEC calls

AT&T, Focal, Mid-Hudson/Northland, RCN/CTSI/Adelphia, Time Warner, and Worldcom basically agree that it would be inefficient for them to physically interconnect with independents for the exchange of relatively small amounts of traffic immediately. Calls between an independent and a CLEC should, therefore, be initially carried by a third-party ILEC, most often Verizon. The parties offer comments on shared and dedicated transport, the costs incurred and reimbursement of the third-party carrier for those costs.

Verizon, recognizing that it would most often be the third party involved in such calls¹, offers to provide existing services and to develop new services for the exchange of

¹ Other larger independents could be involved in these calls.

independent-CLEC traffic. Fiber Tech states that it intends to enter the market as a competitive fiber provider. AT&T holds that an Incumbent local exchange carrier (ILEC) must provide shared transport as an Unbundled Network Element (UNE) on its network between its meet point with a CLEC and its meet point on an independent-ILEC EAS trunk group¹. Focal states that ILECs should act as aggregators of traffic and be prohibited from limiting use of interconnected trunks to independents. Mid-Hudson/Northland want ILECs to offer both shared and dedicated transport. RCN/CTSI/Adelphia feel that independent-CLEC traffic flow will be minimal and exchanged via ILEC facilities. Time-Warner and WorldCom both indicate it is more efficient for the ILEC to transit relatively low volumes of independent-CLEC traffic. The Small Companies state that calls terminating beyond the local calling area are actually interexchange and that "legitimate" local calling arrangements involving third-party carriers should remain subject to negotiation among the parties.

Some parties recommend or suggest that limits be placed on shared transport. Verizon and Time-Warner expect that dedicated facilities are appropriate for traffic requiring one DS-1 (T-1)². Focal recommends that 200,000 minutes of use per month for two consecutive months should require a CLEC to establish its own direct trunk group connection with an independent. Focal also states that CLECs will evaluate whether or not to build direct trunks if ILECs are allowed to increase their shared transport rates for legitimate costs such as tandem additions. RCN/CTSI/Adelphia want the independent-CLEC traffic threshold triggering a direct connection to be set by the parties.

Verizon states that rates for the type of shared common transport used for independent-CLEC calls are not tariffed and

¹ Verizon replies that EAS routes have been constructed to carry traffic between independent and ILEC end offices and do not extend to tandems.

² Verizon New York's rates for dedicated transport are available in its P.S.C. 900 Tariff.

would have to be developed¹. Focal states that the compensation level should be at the ILEC's existing transit rates, adjustable for additional costs incurred to meet traffic requirements. AT&T, citing the FCC's UNE Remand Order², maintains that shared transport is a UNE and should be provided at total element long run incremental cost (TELRIC). Mid-Hudson/Northland recognize the need for tandem switching costs but do not address common transport. RCN/CTSI/Adelphia would compensate the ILEC at agreed-upon or Commission-approved rates provided the ILEC has demonstrated it has incurred incremental costs carrying independent-CLEC traffic. Time-Warner would compensate an ILEC with a network capable of exchanging traffic with an independent at that ILEC's established rate. If the independent does not subtend the ILEC's tandem, Time-Warner would have the Commission establish a default point of interconnection from which the CLEC could purchase transport from either the independent or ILEC for no greater than the ILEC's UNE price for interoffice transport. WorldCom would compensate the ILEC at its TELRIC-based transit charge. Cablevision urges that ILECs not be allowed to impose interexchange access fees or toll charges. The Small Companies would have the ILEC charge either for interexchange access or at a negotiated EAS rate.

AT&T, Focal, Time-Warner would have the CLEC pay the ILEC for transporting calls to it. Mid-Hudson/Northland would have the originating carrier pay the ILEC to deliver a call to the receiving carrier's point of interconnection with the ILEC. WorldCom would also have the originating carrier pay the ILEC's TELRIC-based charge. RCN/CTSI/Adelphia do not specify who should pay the ILEC, indicating only that, in the absence of an agreement, cost recovery over a de minimus amount should be in accordance with Commission guidelines. Verizon expects the party requesting dedicated transport to pay for it. Verizon stresses

¹ Verizon New York's rates for tandem switching that do not include common transport are available in its P.S.C. 914 Tariff.

² CC Docket No. 96-98, FCC 99-238, Third Report and Order released November 5, 1999.

that it is not the originating carrier for independent-CLEC traffic and should not have to pay reciprocal compensation for its termination.

4. Intercarrier compensation

In its Notice Inviting Comments, the Commission asked what generic principles regarding compensation should be established as guidance for interconnection agreements between carriers. The independent companies and Verizon currently have a "bill and keep" arrangement for exchange of local traffic. CLECs and Verizon, on the other hand, have reciprocal compensation agreements in which each carrier pays the other to complete calls.

The Small Companies state that their member companies are willing to discuss terms and conditions for local calling if customers are physically located in neighboring exchanges but opine that most traffic discussed in this proceeding is not "local". The Small Companies also note that bilateral agreements between Verizon and CLECs cannot be forced on small company group members.¹ Rather, the calls in question are interexchange in nature and access charges should apply to these calls. Verizon is concerned that agreements should specify who is responsible for new and additional transport facilities and services in third-party circumstances. AT&T and Focal state that the Commission must make sure that compensation is not discriminatory for calls terminating in same exchange. Similarly, Worldcom and Mid-Hudson/Northland note that the provisions of the 1996 Telecom Act are the governing policy, which dictates that each party should pay to terminate calls; therefore, the traffic should be treated no differently than Verizon to CLEC traffic. Mid-Hudson/Northland also note that CLECs, to date, have refrained from collecting reciprocal compensation from independents even though CLECs are entitled to it under S251 (b) (5) of Act. Time-

¹ Verizon's interconnection agreements with CLECs allow for meet-point billing at Verizon's tandem within a LATA.

Warner is most concerned that disputes over compensation should not interfere with call completion. Several parties address the level of traffic and the need for compensation.

RCN/CTSI/Adelphia state that bill and keep should be used if traffic is balanced; otherwise, each carrier should bill the other for terminating traffic. However, if traffic is negligible, no payment should be required. Focal suggests that interconnection agreements not be require until the traffic reaches a threshold level, which it recommends to be 200,000 minutes per month for two consecutive months. Focal also notes that the independent company and CLEC should determine a technically feasible point of interconnection. Cablevision states that outcome of this proceeding should not limit CLEC's ability to design and operate an efficient network.

BEFORE

THE PUBLIC SERVICE COMMISSION OF

SOUTH CAROLINA

DOCKET NO. 2005-63-C - ORDER NO. 2006-199

MARCH 28, 2006

IN RE: BellSouth Telecommunications, Inc. – Transit) ORDER
Traffic Tariff 2005-50) DISMISSING
) COMPLAINTS
)

I. INTRODUCTION

This matter comes before the Public Service Commission of South Carolina on the complaints of various parties pursuant to the filing of Transit Traffic Tariff 2005-50 by BellSouth Telecommunications, Inc. (BellSouth) under S.C. Code Ann. Section 58-9-576 (Supp. 2005).

Transit Traffic Tariff 2005-50 was filed with the Commission on February 2, 2005. Subsequently, various Petitions to Intervene and/or Complaints were filed by the South Carolina Telephone Coalition (SCTC), United Telephone of the Carolinas (United), Sprint Spectrum, L.P, Sprint Communications L.P., AT&T Communications of the Southern States, LLC (AT&T), South Carolina Cable Television Association (SCCTA), Southeastern Competitive Carriers Association (SECCA), and ALLTEL South Carolina, Inc. (ALLTEL). The Complaints were noticed in accord with the instructions of the Commission's Docketing Department. Order No. 2005-269 allowed the withdrawal of the Petition and Complaint filed by the Southeastern Competitive Carriers Association.

Subsequently, a hearing was held on August 22, 2005, in the offices of the Commission, with the Honorable Randy Mitchell, Chairman, presiding. M. John Bowen, Jr., Esquire, and Margaret M. Fox, Esquire, represented the South Carolina Telephone Coalition, John J. Pringle, Jr., Esquire, and Gene Coker, Esquire, represented AT&T. Robert D. Coble, Esquire, represented ALLTEL. Frank Ellerbe, Esquire, represented the SCCTA. Benjamin P. Mustian, Esquire, represented the Office of Regulatory Staff (ORS). Patrick Turner, Esquire, represented BellSouth. It was announced at the beginning of the hearing that BellSouth had reached agreements with all parties, except for ALLTEL, regarding the issue of transit traffic. Accordingly, the only parties who presented witnesses in the case were ALLTEL and BellSouth. ALLTEL presented the testimony of Jayne Eve. BellSouth presented the testimony of Kenneth Ray McCallen.

II. DISCUSSION

Transit Traffic Tariff 2005-50 was filed under the provisions of S.C. Code Ann. Section 58-9-576 (Supp. 2005), which provides for an alternative regulation plan for an electing company. Under the provisions of this plan, an electing local exchange carrier (LEC) files tariffs which are presumed valid and, for price increases and new services, become effective fourteen days after filing. Section 58-9-576 (B) (6). Further, another part of this section states that “The LECs shall set rates for all other services on a basis that does not unreasonably discriminate between similarly situated customers. All of these rates are subject to a complaint process for abuse of market position...” Section 58-9-576 (B) (5). Accordingly, the burden of proof in this process falls on the complainant to show unreasonable discrimination and/or an abuse of market position. ALLTEL did

not meet its burden of proof in this case, so its complaint must be dismissed under the statutory standard. Further, all remaining complaints against BellSouth in this matter should also be dismissed, since the complainants and BellSouth were able to negotiate commercial agreements.

Transit traffic is traffic that neither originates nor terminates on BellSouth's network, but that is delivered to BellSouth by a telecommunications service provider (TSP) that originated the traffic so that BellSouth can deliver the traffic to the TSP that will terminate the traffic. Tr., McCallen at 75. The tariff provisions apply only in the absence of a commercial agreement between the TSP and BellSouth. Tr., Eve at 34.

ALLTEL presented the testimony of Jayne Eve, Director-State Government Affairs. Ms. Eve testified that the proposed tariff is discriminatory between similarly situated customers, and that the Commission should reject the proposed transit rate, or, in the alternative, require that the Proposed Tariff be modified to reflect the Intrastate Access Tandem Switching rate of \$.00074 per minute of use. Further, Ms. Eve stated that the tariff should not be applicable to Internet Service Provider (ISP) traffic. Tr. at 32-26.

In rebuttal testimony, Ms. Eve asserted that this matter should be the subject of commercial negotiations between BellSouth and ALLTEL and that ALLTEL would continue to negotiate with BellSouth on this matter, although ALLTEL is concerned that approval of this tariff will end any chance of fair negotiations. Ms. Eve further states that the BellSouth Transit rate does not compare to rates that BellSouth charges the interexchange carriers. Ms. Eve noted that companies such as ALLTEL are similarly

situated to the IXCs with respect to the network elements required to deliver transit traffic. Tr. at 38-44.

Kenneth R. McCallen testified on behalf of BellSouth. McCallen stated that BellSouth's transit tariff provides a service option for TSPs that do not have a contractual agreement addressing transit service in place with BellSouth and that do not have direct interconnection for exchanging traffic with other TSPs. McCallen testified that BellSouth does have a tariffed service known as Access Tandem Switching, but that service only provides a switching function. He further stated that in contrast, BellSouth's transit service provides transport, and that an originating TSP using BellSouth's transit service also uses port/termination and switching functions at BellSouth's tandem switch. McCallen went on to describe the mechanics of how BellSouth provided transit service under different scenarios. Tr. at 72-91.

An examination of the entire record in this case reveals that ALLTEL simply did not meet its burden in this case. ALLTEL alleges that BellSouth's proposal would establish a default rate that would only be applicable to ALLTEL. The rates in the tariff were \$.003 per minute initially, and \$.006 per minute as of January 2006. ALLTEL cites a similar docket in Louisiana in which the resultant transit rates were set at \$.001 for the first year of the agreement, increasing gradually to \$.002 in the fifth year. Posthearing Brief of ALLTEL at 7. Although a copy of the Louisiana Commission's Order was attached to ALLTEL's Brief, we were not able to determine how that Commission's reasoning was applicable to the case before us.

No “unreasonable discrimination” was shown by ALLTEL. Our Order No. 2002-2 held that if a Company can state a good reason for a pricing differential on a service between similarly situated customers, then the different rates are reasonable. BellSouth presented evidence to show that ALLTEL is different from other carriers, and therefore, may not necessarily be entitled to the same rates. BellSouth notes that ALLTEL does not act as an IXC in South Carolina. Therefore, it is not entitled to the same transit rate as an IXC. BellSouth asserted that ALLTEL charges different rates for the same services, citing specifically the areas of residential and business telecommunications services. ALLTEL also attempted to show unreasonable discrimination by stating that BellSouth’s transit service is not priced identically to what ALLTEL views as BellSouth’s analogous access service. BellSouth points out that the difficulty is that when access charges have been lowered, BellSouth usually derives another benefit therefrom, such as a Universal Service Fund (USF) withdrawal or other offset. No such offset is present here. See Post-Hearing Brief of BellSouth Telecommunications, Inc. Although ALLTEL makes a number of points, it makes no attempt to address the cost of the service in an attempt to show that the pricing constitutes unreasonable discrimination. Without this information, this Commission cannot make a determination that the pricing involved in the transit traffic tariff constitutes unreasonable discrimination.

Further, although ALLTEL suggests that BellSouth’s pricing of the transit service constitutes an “abuse of market position” under S.C. Code Ann. Section 58-9-576 (Supp. 2005), BellSouth points out that a recent amendment to that statute states that “[r]ates that exceed the [TSLRIC] of an offering...do not constitute an abuse of market position.”

ALLTEL has offered no evidence to show that the price of the transit traffic tariff is below TSLRIC. In fact, ALLTEL's witness specifically admitted that it was not. Tr. at 49. Lastly, ALLTEL states that the transit tariff should not apply to ISP-bound traffic, because this traffic is interstate in nature. BellSouth asserts that this should not stop BellSouth from being able to charge for the intrastate portion of the call. We agree with BellSouth's position on this last issue.

III. FINDINGS OF FACT AND CONCLUSIONS OF LAW

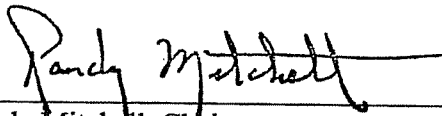
1. BellSouth operates under the alternative form of regulation set forth in S.C. Code Ann. Section 58-9-576 (Supp. 2005).
2. This statute provides that BellSouth's tariffs are presumed valid and become effective seven days after filing for price decreases and fourteen days after filing for price increases and new services.
3. BellSouth filed its transit tariff on February 2, 2005. The tariff was presumed valid as of February 16, 2005.
4. As a party challenging the tariff, ALLTEL (or any other Intervenor-Complainant) bears the burden of overcoming the statutory presumption of validity.
5. All Intervenor-Complainants were able to reach a commercial agreement on this issue at the time of the hearing on this matter, except ALLTEL.
6. ALLTEL failed to meet the burden of proof mandated by S.C. Code Ann. Section 58-9-576 (Supp. 2005), in that it did not show unreasonable discrimination, nor did it show an abuse of market position.
7. ALLTEL's complaint should be dismissed.

8. All other remaining complaints in this matter should be dismissed, in that the other parties came to agreements on the transit traffic matter with BellSouth.

IV. ORDER

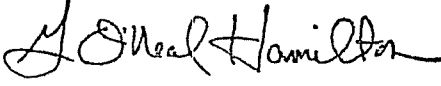
1. ALLTEL's complaint in this matter is dismissed.
2. All remaining complaints in this matter are dismissed.
3. This Order shall remain in full force and effect until further Order of the Commission.

BY ORDER OF THE COMMISSION:



Randy Mitchell, Chairman

ATTEST:



G. O'Neal Hamilton, Vice-Chairman

(SEAL)