pricing. The Public Staff noted that in making this argument, the CLPs essentially recommend that the Commission reject its prior approach to TELRIC pricing and adopt a *hybrid approach in which TELRIC prices apply to some rate elements while market-based* prices apply to other rate elements.

The Public Staff argued that what the CLPs seem to ignore with their approach is that market-based pricing is in constant flux and noted that the CLPs have not, of course, proposed that the ILECs be given any flexibility to modify the market-based prices that were proposed for floor spacing when market conditions change. Nor, the Public Staff noted, have they indicated whether the market-based prices recommended in this docket are based on an equilibrium between supply and demand, an excess of supply, or even an excess of demand. The Public Staff recommended that the Commission find that long-run incremental cost pricing, which is the basis of TELRIC studies, relies upon the premise that costs are calculated for a period long enough to smooth out any period differences in costs over time. The Public Staff noted that beginning with the cost studies filed in Docket No. P-100, Sub 133b, through the studies filed in Docket No. P-100, Sub 133d, the Commission has found that rates should reflect costs using the TELRIC approach. The Public Staff maintained that the CLPs have not presented sufficient evidence to reject TELRIC-based rates for floor space.

The Public Staff also noted that BellSouth has completely revised the methodology used in its calculation of the proposed rates for floor space. The Public Staff argued that the RS Means cost data used by BellSouth in its original collocation cost study is the reasonable level of building investment for BellSouth and, accordingly, the Commission should order that the building investment used by BellSouth in its September 1999 cost study should be substituted for the building investment reflected in the September 2000 cost study for calculating the floor space costs for physical collocation, virtual collocation, and adjacent collocation.

Also, the Public Staff indicated that Sprint's workpaper notes that the rate for floor space includes the costs of security and that this cost is recovered in the building ACF and should not be included separately. The Public Staff noted that Sprint used an unusable space factor of 25% which it then compounded by an egress factor of 25% and further with an unoccupied space factor of 80%. The Public Staff commented that witness Feldman testified that these factors will cause Sprint to overrecover the costs associated with common spaces. The Public Staff agreed with witness Feldman that the egress and unoccupied space factors should be excluded from the calculation of floor space investment. The Public Staff also agreed with witness Feldman that a common space (or unusable space) factor of 20% rather than 25% should be applied to Sprint's investment amounts. The Public Staff argued that the 20% factor appears to be more reflective of the actual amount of common space.

Sprint noted in its Proposed Order that the second greatest cost to collocate in a central office is floor space. Sprint maintained that there are two correct ways for recovering costs for floor space. Sprint stated that it uses the RS Means Cost

Works 2000, a nationally recognized construction estimator, to determine these costs. Sprint maintained that these costs include any collocation site preparation, and all of the costs are recovered on a monthly recurring basis. Sprint also noted that another acceptable method, which Verizon used, is to base the monthly recurring charge on the current booked investment of the building and then charge a make ready nonrecurring fee for upgrade of the central office where the CLP will be located.

Sprint argued that a third, but incorrect method, was used by BellSouth. Sprint stated that BellSouth's methodology is not reasonable because a building addition inherently costs more per square foot than construction of a new building. Sprint maintained that even though BellSouth uses forward-looking building costs, it adds site preparation fees when, based upon FCC Rule 51.323(f)(3), the cost of construction projects should already have been taken into consideration.

Sprint argued that clearly the preferred manner of determining floor space rates is Sprint's methodology because it is based on reconstruction costs recovered over a period of time, thus allowing for lower up-front costs to CLPs.

Sprint witness Mitus agreed on cross-examination that Sprint leases central office space in five locations in North Carolina. Witness Mitus also agreed that one of the leases in Fayetteville is $3,000 per month for 9,701 square feet of space which calculates out to $0.32 per square foot per month. Witness Mitus noted that Sprint is responsible for upgrading the building, preparing all maintenance costs, preparing all janitorial services, and all leasehold improvements. Witness Mitus stated that he did not know how much leasehold improvement was put into that office but that the cost would have to be added to the monthly rental fee.

Verizon maintained in its Proposed Order that floor space costs are incurred to provide environmentally conditioned floor space to the collocator, based on an average cost per square foot, plus costs to account for shared floor space. Verizon stated that it developed its average floor space costs per square foot of $2.02 by calculating the building investment amounts, square footage, and monthly maintenance/utility expenses of a selected sample of central offices by varying switching technology and size utilized by Verizon across the state of North Carolina. Verizon explained that the representative sample of central offices was selected based on line size, wire center, and whether the building was purchased or built after 1945. Witness Richter stated in direct testimony that Verizon used index factors from RS Means, "Building Construction Cost Data 55 Annual Edition 1997", an industry publication on building construction cost data, to bring the original building investments and subsequent investments in the building to present value, and then divided the present value by the total square footage of the building to determine the cost per square foot.

Verizon argued that New Entrants witness Birch's use of Class B office space costs as a proxy for central office space costs is completely unfounded. Verizon noted that witness Birch admitted that most, if not all, Class B office space does not have 12 foot ceilings, generators, trickle charge batteries, reinforced floors, or can be rented out in nine square foot increments. Verizon also stated that witness Birch admitted that he only examined Class B office space in Raleigh, ignoring admittedly different market rates in other North Carolina cities. Verizon asserted that witness Birch's suggestion that office space for lawyers is comparable to collocation space for telephone equipment for the purposes of determining a market rate for floor space is utter nonsense.

Verizon maintained that in developing their floor space costs, the New Entrants have failed to recognize that the specialized market for telecommunications space transcends the traditional real estate categories familiar to witness Birch. Verizon concluded that collocation floor space is not comparable to typical commercial real estate space and should not be priced in the same way.

Verizon also argued that witness Feldman's adjustments to Verizon's floor space costs are also unrealistic and unsupported. Verizon noted that witness Feldman suggested a 56% reduction in Verizon's per square foot cost for floor space without offering any credible support for this reduction. Verizon concluded that witness Feldman's proposed cost adjustments, based in part on witness Birch's flawed market analysis and other, unsupported assumptions, should be rejected in favor of the costs and prices Verizon has submitted in this proceeding.

Verizon witness Ellis noted in direct testimony that Verizon's cost study develops an average floor space cost based on the existing central offices in North Carolina using a forward-looking methodology. Witness Ellis explained that since the real estate market varies considerably within a state or town, obtaining current market information for each central office is difficult. Therefore, witness Ellis noted, central office investments were brought to current dollars by adjusting for inflation and other factors through the use of the RS Means Index.

In rebuttal testimony, witness Ellis noted that New Entrants witness Birch's testimony was based on a review of two BellSouth central offices, his research on tenant installation costs for Class B office space, and his experience in the Raleigh real estate market. Witness Ellis argued that none of those factors justify revisions to Verizon's company-specific figures on floor space costs.

Witness Ellis agreed on cross-examination that according to a lease Verizon has for central office space in Durham, the monthly rental rate is $375.50 for 468 square feet of space which calculates to a rental rate of $0.80 per square foot per month. However, witness Ellis maintained that she does not know what type of equipment Verizon places in the leased space and stated that the leased buildings are not central offices. After being presented with evidence from counsel for the New Entrants, witness Ellis agreed that the leased Durham building is used for switching equipment and that switching equipment typically is mounted on racks. Witness Ellis also noted that the leased space is unconditioned space and that any upfits or construction required for the equipment would have to be done by Verizon.

Further, witness Ellis agreed that the Verizon lease of office space in Fontana Village of $250 per month calculates out to $0.48 per square foot per month, however, she indicated that she did not know whether switching equipment was placed there.

The Commission notes that this issue considers a significant cost for collocation. The Commission notes the following after a review of the record of evidence:

□ The ILEC cost studies from 1999 to 2000 show wide variances in the proposed cost for floor space.

□ The Commission does not believe that market rates can be considered TELRIC.

□ It is concerning that the market rate for Class B office space in Raleigh is $1.00 per square foot and BellSouth and Sprint especially are proposing rates **many times** that amount.

□ There is evidence in the record that the ILECs lease central office space for $0.20 to $0.80 per square foot per month.

□ It is also concerning that BellSouth is proposing $7.26 per square foot, Carolina is proposing $5.94 per square foot, and Central is proposing $6.00 per square foot while Verizon is proposing $2.02 per square foot. BellSouth is proposing a rate almost three times as much as Verizon and Carolina and Central are proposing rates around two times as much as Verizon.

The Commission believes that there is adequate evidence to conclude that BellSouth's proposed rate of $7.26 per square foot and Carolina and Central's proposed rates of $5.94 and $6.00, respectively, are overstated and unreasonable. However, the Commission does not believe that it is appropriate to apply the $1.00 market rate proposed by the CLPs since that is a market rate and is not in conformity with a TELRIC methodology. The Commission also believes that it is reasonable to have differences in the floor space rates depending upon the ILEC. Therefore, the Commission finds it appropriate to instruct BellSouth and Carolina/Central to re-examine their floor space cost studies and re-file proposed rates that are more aligned with (1) the market rate of $1.00, (2) the rates the ILECs themselves receive for leased central office floor space, and (3) Verizon's proposed floor space rate of $2.02 per square foot. The Commission finds it appropriate to approve and adopt Verizon's proposed floor space rate for Verizon.

COMMISSION CONCLUSIONS - Rate Issue No. 1 - Rate for Floor Space: The Commission finds it appropriate to instruct BellSouth and Carolina/Central to re-examine their floor space cost studies and re-file proposed rates that are more aligned with (1) the market rate of $1.00, (2) the rates the ILECs themselves receive for leased central office floor space, and (3) Verizon's proposed floor space rate of $2.02 per square foot. Further, the Commission hereby approves and adopts Verizon's proposed floor space rate for Verizon.

Rate Issue No. 2 - Availability Fee/Application Fee for Collocation

BellSouth witness Hendrix stated in his cost issue rebuttal testimony that BellSouth cannot find any reason why the recent FCC Order on Reconsideration would require a different rate structure (i.e., separate rate elements for an application and for project management as proposed by CLP witness Feldman) and since no cites were provided to support this statement, BellSouth cannot agree.

Witness Hendrix noted that BellSouth currently does have separate application fees and space preparation fees. Witness Hendrix maintained that even though witness Feldman considered BellSouth's categories of rate elements as outdated, the only change he made was to change.the name of the term "firm order processing" to "project management." Witness Hendrix also noted that witness Feldman removed the rate element that recovers the cost for the optional space availability report and did not give a reason for such removal.

BellSouth witness Caldwell maintained that witness Feldman did not offer detailed information on his statement that BellSouth's rate structure reflects "outdated ideas of collocation" and that BellSouth witness Hendrix did support the rate structure that BellSouth is proposing. Witness Caldwell also noted that witness Feldman proposed substantial reductions in the work times BellSouth proposed and that the reductions should be ignored because they were not supported by any evidence, nor reflective of the costs BellSouth incurs.

On cross-examination, witness Caldwell explained that the application fee consists of more than just looking to see if there is space available in any given central office.

The New Entrants argued that a fee for determining whether collocation space is available defies common sense because it is widely known that space is available in most central offices. Also, the New Entrants asserted, to attempt to charge a fee in the few cases where space is not available is most inequitable, because ILECs are already required by FCC Order to maintain a document on their websites indicating all premises that are full.

The New Entrants noted that the ILECs argue that their space availability fees include certain engineering expenses. However, the New Entrants argued, those engineering expenses should be included as part of an engineering fee during construction and not an application fee to determine whether space is available.

The New Entrants argued that application fees for the leasing of office space do not exist in the real estate market. The New Entrants noted that the ILECs admit that they are not aware of any such availability fee being charged when they lease central office and switching equipment space.

New Entrants witness Birch stated in rebuttal testimony that he has never heard of landlords demanding nonrefundable application fees before advising prospective tenants whether space is available for lease. Witness Birch stated that advising a prospective tenant as to what space is available in a building is a function provided by management without any specific charge to that prospective tenant and that such application fees simply do not exist in the Raleigh office market.

New Entrants witness Feldman stated in rebuttal testimony that under Paragraphs 13-26 of the FCC's Order on Reconsideration, there are two distinct functions relating to the application for and project management of collocation in an ILEC's central offices. One function, he explained, relates to the initial application. Witness Feldman stated that the work performed in processing the application to obtain a firm order is appropriate for inclusion in an application fee. Witness Feldman maintained that the work that occurs after a firm order for collocation has been made is appropriate for inclusion in a project management fee. Witness Feldman argued that the reason for separating out the two fees is that if a CLP cannot place a firm order or decides not to place a firm order, that CLP should not have to pay for costs associated with project management.

Witness Feldman stated that he proposed two distinct fees and adjusted the time estimates by the ILECs to remove overstatements. Witness Feldman proposed the following rates:

Rate Element	ILEC Rate	New Entrants Rate
Application Fee - Sprint	$3,789.60	$136.91
Augment Application Fee - Sprint	$1,292.92	$82.97
Project Management Initial - Sprint	None proposed	$2,574.15
Project Management Augment - Sprint	None proposed	$266.52
Application Fee - Verizon	$1,217.52	$338.20
Project Management - Verizon	$1,128.53	$602.76
Application Fee - BellSouth	$3,741.00	$157.19
Augment Application Fee - BellSouth	$1,920.31	$110.12
Project Management Initial - BellSouth	$1,196.00	$1,445.11
Project Management Augment - BellSouth	None proposed	$305.88

The CLPs included a proposed Finding of Fact No. 5 — ILECs should not charge an availability fee for collocation space. They may, however, impose a fee for reasonable engineering costs that are incurred in connection with the construction of collocation space — in their Joint Proposed Order.

The CLPs argued that availability fees have no place in the leasing of office space, and availability fees for the leasing of office space do not exist in the real estate market. The CLPs maintained that the ILECs must not be allowed to impose an onerous and inequitable term on CLPs making lawful requests to collocate. The CLPs contended that a fee for determining whether space is available defies common sense because it is widely known that space is available in most central offices. The CLPs also maintained that to attempt to charge a fee in the few cases where space is not available is most inequitable, especially in view of the fact that ILECs are already required to maintain a publicly available document on their websites indicating all premises that are full and must update such a document within 10 days of the date at which a premises runs out of physical collocation space.

The CLPs argued that advising a prospective tenant as to what space is available in a building is a function provided by management without any specific charge to that prospective tenant. The CLPs maintained that imposing such fees as part of the application process, before the CLP is told whether space is available, would serve as a barrier to entry. The CLPs noted that while the ILECs argue that their space availability fees include certain engineering expenses, this engineering should be included as part of an engineering fee during construction, not an application fee to determine whether space is available. The CLPs maintained that it is illogical to require a CLP to pay a fee to determine if space is available when, as Verizon admitted, space is available in every one of its central offices in North Carolina.

The CLPs recommended that the Commission conclude that engineering expenses associated with the construction of collocation space should be recovered as part of an engineering fee during construction, not an application fee to determine whether space is available.

The Public Staff noted in its Proposed Order that some of the proposed changes, such as witness Feldman's proposal to require the application fee to be broken into two components and charged separately, completely change the manner in which the ILECs calculated their cost studies. However, for the most part the Public Staff commented, the reasoning given by the CLPs for these changes is to be consistent with the Texas collocation tariff. The Public Staff stated that it does not believe that being consistent with the Texas collocation tariff is a sufficient reason to require a modification of the ILECs' cost studies. The Public Staff stated that it agrees that CLPs need to be aware of the manner in which they incur charges for collocation services, however requiring the ILECs to provide a clear explanation and description of each of the rate elements should be sufficient. Therefore, the Public Staff recommended that the Commission find that the collocation rate elements as proposed by the ILECs are appropriate.

The Public Staff noted that witness Feldman testified that BellSouth had included excessive labor hours in its application fee costs, however, a review of the cost study for the application fee shows more than 51 hours of labor costs plus an additional nonrecurring rate additive of over $1,000. The Public Staff stated that although the application rate is considerably less than the rate produced in the September 1999 cost study, the hours reflected in the application fee are excessive. The Public Staff stated that it agrees, in part, with witness Feldman's position that BellSouth has reflected too much labor cost in its application fee.

The Public Staff noted that a review of Sprint's workpapers indicates that the cost in calculating the application fee for Carolina reflects 77 hours of labor and that the Public Staff believes that this represents an excessive amount of labor and does not reflect an on-going level. The Public Staff argued that Sprint should be capable of processing an application fee using much less labor. The Public Staff recommended that the Commission conclude that Sprint should recalculate the application fee with one-half of its proposed NASC and Administrative labor and that engineering labor should not exceed 10 hours and Legal labor should not exceed two hours. The Public Staff maintained that this provides Sprint sufficient time to process Application filings made by CLPs.

Verizon maintained in its Proposed Order that New Entrants witness Birch opined that application fees are not charged to evaluate typical office space and therefore such fees should not be assessed for collocation analysis. Verizon argued that witness Birch ignored the fact that providing traditional office space and providing collocation space are very distinct undertakings. Verizon maintained that provision of collocation space not only involves a market quite different from that of providing traditional office space, it entails engineering analysis of the collocator's special needs and additional costs. Verizon noted that even witness Birch admitted as such. Verizon argued that as such, application fees are standard in collocation agreements and tariffs, sanctioned by both the FCC and state commissions.

Verizon also noted that it incurs costs to plan and engineer CLPs' requests for collocation space within a central office. Verizon noted that engineering costs are recovered through the application fee.

Verizon witness Ellis agreed on cross-examination that Verizon is proposing that a $1,200 application fee be paid in North Carolina even though space is available in every Verizon central office at least in some amount.

The Commission notes that in Finding of Fact No. 21 of this Order, the Commission concluded that it is appropriate to alter Section 2.6 of the CLP Standard Offering to require the ILECs to provide additional information on their websites. Among the requirements of revised Section 2.6 is for the ILECs to post a document which lists all premises that are without available space. Therefore, the Commission believes that the CLPs' statement that the ILECs are already required to maintain a publicly available document on their websites indicating all premises that are full and must update such a document within 10 days of the date at which a premises runs out of physical collocation space is reasonable. However, the Commission also agrees with Verizon that providing collocation space is distinctly different than providing traditional office space. Further, the Commission is concerned about the labor hours reflected in the cost studies (51 hours for BellSouth and 77 hours for Sprint) as noted by the Public Staff. The Commission believes that 24 hours (or three, eight-hour days) is a reasonable level of labor hours for ILECs to process collocation applications. Therefore, the Commission concludes that the ILECs should revise their cost studies for application fees to reflect no more than 24 labor hours.

COMMISSION CONCLUSIONS - Rate Issue No. 2 - Availability Fee/Application Fee for Collocation: The Commission concludes that the ILECs should revise their cost studies for application fees to reflect no more than 24 labor hours.

Rate Issue No. 3 - Construction of Cage

The CLPs included a proposed Finding of Fact No. 6 — The rates for the construction of cage enclosures should be those proposed by Sprint — in their Joint Proposed Order.

The CLPs noted that they advocate the application to all ILECs of Sprint's proposed charge of $1,584.61 for ILEC construction of a cage enclosure for a 10 foot by 10 foot space.

The CLPs proposed that the Commission find that if Sprint can contract with an outside vendor to construct a cage for a nonrecurring cost of less than $1,600, it is not credible that Verizon's proposed rate of more than $4,000 and BellSouth's proposed recurring rate of $192.79 per month represent properly calculated TELRIC costs. The CLPs noted that BellSouth witness Caldwell even admitted that it was possible that the physical life of the cage might be as long as 10, 20, or even 30 years, and that if the monthly recurring rate proposed by BellSouth remained in effect for even 10 years, BellSouth would receive approximately $23,000 in revenues for the cage construction. The CLPs argued that there is no basis for the Commission to believe that the contractors that will build a cage for Sprint at a cost of less than $1,600 would charge appreciably more to construct a cage for BellSouth or Verizon. Therefore, the CLPs recommended that the Commission find it appropriate to apply Sprint's proposed nonrecurring costs of $559.81 per cage and $25.37 per linear foot to all three ILECs.

The New Entrants noted in their Brief that Sprint is proposing a rate of approximately $1,600 to install a collocation cage that is 10 feet long on each side of a square space. The New Entrants stated that the rate includes engineering fees and costs for construction of the wire mesh and is a one-time, nonrecurring charge. The New Entrants noted that BellSouth is proposing a recurring charge which may well result in costs of $10,000 to $25,000 per cage and Verizon is proposing a nonrecurring charge of over $4,000. The New Entrants maintained that both of these charges are unreasonable and reflect the inflated nature of the rates being proposed in this proceeding.

The New Entrants asserted that in the face of Sprint's $1,600 charge and in the absence of evidence showing that Sprint's costs are lower than the other ILECs, the costs proposed by BellSouth and Verizon reflect inefficient practices and should be rejected.

Verizon maintained that its Collocation Cost Study examines the two elements necessary to build a collocator's cage: the cage enclosure itself and the cage gate providing access and security to the cage. Verizon noted that its cost for the cage enclosure, including the fencing, poles, and the other items necessary to build a cage, is between $7.66 per square foot for a 100 square foot cage or larger and $10.93 per square foot for the smallest cage; Verizon's cost for the cage gate is $471.53. Verizon explained that these costs were derived by averaging contractor invoices for collocation jobs in Verizon central offices in Texas and California. Verizon maintained that by representing a number of different collocation jobs, the invoices provide a representative sample of the costs likely to be incurred for cage enclosures and gates going forward. Verizon noted that the costs from the contractor invoices were adjusted through an area modification factor obtained from National Construction Estimator to provide a North Carolina-specific cost.

The Commission agrees with the New Entrants that in the face of Sprint's proposed nonrecurring costs of $559.81 per cage and $25.37 per linear foot and in the absence of evidence showing that Sprint's costs are lower than BellSouth's and Verizon's, the costs proposed by BellSouth and Verizon reflect inefficient practices and should be rejected. Therefore, the Commission finds it appropriate to apply to BellSouth and Verizon, Sprint's proposed nonrecurring charge of $559.81 per cage and $25.37 per linear foot for ILEC construction of a cage enclosure.

COMMISSION CONCLUSIONS - Rate Issue No. 3 - Construction of a Cage: The Commission concludes that it is appropriate to apply Sprint's proposed nonrecurring charge of $559.81 per cage and $25.37 per linear foot for construction of a cage to BellSouth and Verizon.

Rate Issue No. 4 - DC Power

BellSouth next addressed witness Feldman's allegations that there are flaws in BellSouth's method of developing the costs associated with power. BellSouth noted that MCIm witness Bomer was also critical of BellSouth's power cost development. BellSouth recommended that the Commission disagree with the allegations by witnesses Feldman and Bomer.

BellSouth alleged that witness Feldman was incorrect in his statement on the power issue that BellSouth applied power costs as a loading to all rates elements. BellSouth stated that there is no support for his statement in BellSouth's cost study. BellSouth noted that the supporting equipment and power loading is only applied to those elements that involve central office equipment, not all elements.

BellSouth noted that witness Feldman also suggested that BellSouth consider some revenue offset in its loading factor development. BellSouth stated that its witness Caldwell noted that witness Feldman's suggestion is mixing apples with oranges. BellSouth maintained that the loading factor was designed by BellSouth to identify investments and that clearly revenues are not investments and, therefore, a one-to-one relationship between the two does not exist. BellSouth argued that it makes no sense to subtract the revenues from the power investment.

BellSouth also commented that witness Feldman further adjusted BellSouth's cost per fused amp to account for the error in usage versus billed per amp fuse charge. BellSouth argued that its cost study reflects the costs incurred in order to provide the incremental power drawn by the CLP's equipment. BellSouth noted that the redundant power leads are required to do this and, therefore, the investment for the two leads is appropriately considered in BellSouth's cost study. However, BellSouth maintained, it only applies the charges on a per fused amp basis, not twice the fused amp amount as witness Feldman implied.

BellSouth noted that witness Feldman also made other adjustments to BellSouth's power calculations, and BellSouth argued that those too are invalid. BellSouth maintained that witness Feldman's reduction in the cost per kilowatt hour and change in efficiency factor appear arbitrary and do not reflect the costs BellSouth will incur in order to provide power to CLP's on a going-forward basis.

BellSouth also argued that witness Feldman's proposed annual cost factor of .20 is not appropriate. BellSouth stated that as witness Caldwell observed, in the calculation of BellSouth's Plant Specific factor, expenses related to the maintenance of power equipment are normally considered for central office equipment and this expense identifies the costs related to the transmission of power for the central office equipment.

BellSouth noted that witness Feldman's Exhibit LF-6.3 concerns power calculations. BellSouth argued that the information labeled "BellSouth's Proposal" is not BellSouth's calculation and witness Feldman should not have presented it as such. BellSouth contended that witness Feldman evidently took certain outputs from BellSouth's cost study and forced them into a spreadsheet, thus distorting the other values not obtained from BellSouth's study. BellSouth also questioned witness Feldman's representations of BellSouth's annual charge factor and common cost factor.

BellSouth maintained that MCIm witness Bomer also had criticisms of BellSouth's proposed power costs. BellSouth noted that witness Bomer testified that power should be charged "on a per fused ampere basis, taking into account the rated capacity of the equipment actually installed." BellSouth stated as witness Caldwell testified that fused refers to the protection device rating and that protection devices are fuses or circuit breakers, with fuses being the most common. BellSouth maintained that rated indicates the amount of current the equipment is expected to draw during normal operating conditions and that protection devices are selected at 1.5 times the power drain for fuses.

BellSouth observed that telecommunications equipment requires power in much the same way that the television in one's home does - when it is on, it pulls about the same amount of power all the time. Therefore, BellSouth maintained, if the telecommunications equipment were rated at 20 amps, it would be protected at 30 amps.

BellSouth noted that its witness Caldwell testified that BellSouth developed the recurring costs for power based on the assumption that the charge would be per fused amp and, therefore, BellSouth's cost study accounts for the difference between fused capacity and rated capacity.

Witness Caldwell explained that BellSouth developed the recurring costs for power based on the assumption that the charge would be per fused amp. Witness Caldwell noted that BellSouth's costs study accounts for the difference between fused capacity and rated capacity. Witness Caldwell maintained that BellSouth's cost study contains a Protection Device Adjustment factor of 67% which reflects the relationship between fused and rated capacities (Fused = 1.5 x Rated). Witness Caldwell asserted that by multiplying the Average Monthly Cost per kilowatt hour by the 67% (1/1.5), this relationship is recognized and ensures that the CLP is not overcharged.

Witness Caldwell also addressed the comments of witness Feldman concerning BellSouth's power cost.

The CLPs included a proposed Finding of Fact No. 7 — The nonrecurring and monthly recurring rates for DC power should be adjusted in accordance with the testimony of the New Entrants witness Feldman, and should be based upon amps used, rather than amps fused — in their Joint Proposed Order.

The CLPs noted that witness Feldman identified and corrected a number of errors in each of the ILECs' cost studies regarding power.

The CLPs noted that for Sprint, witness Feldman identified the following errors:

(1) Double charging for the establishment of leads to the battery distribution fuse bay (BDFB).

(2) Circularly including the recovery of power costs to provide power, resulting in an excessive ACF.

(3) Overstating investment costs for the power plant.

(4) Charging for power on the basis of amps fused, rather than amps used.

(5) Limiting the increments of power to 50, 100, and 200 amp leads, instead of more standard increments, such as 20, 40, and 60 amps.

(6) Using an excessive ACF to establish its monthly rate.

The CLPs further noted that witness Feldman identified in Verizon's power cost studies the following errors:

(1) An error in its formula used to calculate per amp investment.

(2) Use of excessive installation times for DC power cable pulls.

(3) Use of excessive installation times to install the power facility at a central office.

(4) Circularly including the recovery of power costs to provide power, resulting in an excessive ACF.

(5) Failing to provide for the purchase of DC power in increments of less than 40 amps.

Finally, the CLPs also noted that witness Feldman identified the following errors in BellSouth's power cost studies:

(1) Use of embedded, rather than forward-looking, investments.

(2) Application of power costs as a loading to all rate elements without any offset for anticipated revenues derived through power charges.

(3) Charging for power supplied through both the primary and secondary lead, even though only one lead will be used at a time.

(4) Use of an excessive cost for commercial AC power.

The CLPs maintained that the issue of what rates should apply to the provision of DC power by BellSouth to MCIm's collocation space was transferred from the Parties' arbitration to this proceeding. The CLPs stated that the Parties' original Interconnection Agreement which was approved by the Commission contemplates pricing power on a per used ampere basis and, thus, the rate to be applied should apply on a per used ampere basis, taking into account the rated capacity of the equipment actually installed in the collocation space. The CLPs noted that BellSouth concedes that the rate for DC power was established by the Commission on a per ampere basis, but argues that MCIm should not be assessed based on what amperes MCIm uses. Instead, the CLPs maintained, BellSouth would include additional language, taken from its internal, self-serving procedures, into the original Interconnection Agreement between MCIm and BellSouth. The CLPs noted that BellSouth has proposed rates on a per fused ampere capacity basis. The CLPs also maintained that BellSouth proposes to charge a large up-front nonrecurring charge for construction of power supply plus a recurring rate that also will reflect the cost of the power supply. The CLPs argued that this method represents a double recovery of the costs by BellSouth, is obviously inconsistent with the approach taken by the Commission in establishing rates, and would allow BellSouth to recover from MClm more than MClm's share of the costs. The CLPs concluded that BellSouth should bill MClm a recurring rate per amp equal to the forward-looking cost of power supply times the number of amps consumed by MClm.

The CLPs maintained that BellSouth is mistaken when it argues that power costs, like floor space costs, must be calculated by reference to the cost that the ILEC actually will incur, without reference to any efficiency requirement. The CLPs asserted that BellSouth is apparently operating on the premise that the Eighth Circuit's decision is effective.

The CLPs alleged that BellSouth's proposal charges for power usage on the premise that 67% of the fused amperage will be used and that this accounts for the fact that the actual drain on a fuse will not exceed 67% of the fuse's amperage rating. However, the CLPs contended, this factor does not account for the fact that two redundant power leads and fuses are used to deliver power to each equipment item. The CLPs maintained that it is appropriate to measure the power consumption of the CLP by taking 67% of the amperage of one of the two fuses which amounts to 33% of the combined amperage rating of the two fuses.

The CLPs stated that a similar adjustment should also be made for Verizon, which also conceded that it was charging for power for both of two redundant leads. The CLPs noted that while Verizon contended that the CLP has the option not to order the second lead, the fact that the CLP has this option does not entitle Verizon to charge an above-TELRIC price if the CLP, in fact, orders redundant leads.

The CLPs recommended that the Commission conclude that power should be charged for on the basis of per amps used, rather than amps fused. The CLPs noted that this is how power is calculated by the Texas Public Service Commission. The CLPs asserted that the Parties all recognize that fuses are installed that significantly exceed the power actually drawn by the CLP's equipment. The CLPs maintained that BellSouth acknowledges this fact by employing a 67% adjustment factor which would result in a charge for 40 amps of power even though the fuse was rated at 60 amps. The CLPs noted that Verizon charges on the basis of amps used. The CLPs stated that while recognizing that its fuses exceed the power of the CLP's equipment, Sprint seeks to justify charging for fused amps by calling the excess amperage a "fill factor." The CLPs argued that they do not agree that this concept has validity here. The CLPs contended that if a CLP installs equipment that draws at a maximum 40 amps of power, and Sprint chooses to install a 60 amp fuse, the fuse may provide a desirable safety margin, but Sprint is not required to provide 60 amps of power. Rather, the CLPs maintained, Sprint is only required to provide 40 amps of power and should not be permitted to charge a CLP for providing an additional 20 amps of power that the CLP does not want and cannot use.

The CLPs also argued that power should be offered in single amp increments. The CLPs noted that BellSouth and Sprint offered to do so in their original proposals and that while Verizon originally offered 40 amp increments, in rebuttal it agreed to offer single amp increments.

The CLPs also noted that Verizon stated that its allegedly excessive work times are valid because they were provided by subject matter experts (SMEs). The CLPs argued that there is a conflict as to the appropriate times between Verizon's unsworn SMEs, who did not submit testimony and were not available for cross-examination, and New Entrants witness Feldman.

In conclusion, the CLPs recommended that the Commission should adopt the monthly recurring and nonrecurring rates for DC power costs proposed by witness Feldman but with a correction of BellSouth's common cost factor, and that the DC power rates should be based on amps used, rather than amps fused.

The New Entrants also argued in their Brief that the ILECs' proposed power costs are unreasonable. The New Entrants stated that AC power costs the ILECs approximately $2.18 per amp. The New Entrants argued that the ILECs convert this power to DC power and then transmit this electricity to CLPs through batteries. The New Entrants maintained that for this conversion and transmission, the ILECs propose rates that are many multiples of their power costs.

The New Entrants argued that the cost-based rate for DC power is approximately $3.50 per amp. The New Entrants also maintained that power should be charged on the basis of electricity used, not on the size of multiple fuses or redundant lines. The New Entrants stated that although hesitant to admit it, Verizon itself charges for power based on amps used. The New Entrants further noted that power costs are recovered in several network elements and, hence, the rates for power to collocation equipment are just one of the ways in which the ILECs are compensated for power.

New Entrants witness Feldman stated in rebuttal testimony that Sprint used RS Means estimated costs, as well as equipment prices from vendors and estimated costs from subject matter experts, to tabulate power related to investment within a central office. Then, witness Feldman maintained, Sprint went through a series of calculations to come up with rates for both AC power and DC Power on a nonrecurring and recurring basis. Witness Feldman proposed corrections which would have the rates for collocation power of $4.48 per used amp rather than $17.41 proposed by Sprint.

The Public Staff recommended in its Proposed Order that the Commission reject witness Feldman's proposal to require ILECs to charge DC power based on the amount of amps used. The Public Staff maintained that if costs are calculated on a basis of fused amps, then it is appropriate to reflect fused amps as the rate element. The Public Staff commented that if the DC power costs are calculated on a basis of used amps, then used amps are appropriate to use as the rate element. In either case, the Public Staff asserted, there should be no difference to CLPs as to whether the proposed rates are based on per fused or per used amps, so long as the costs are reflected appropriately for each in the cost study. The Public Staff maintained that with the charges required by its other recommendations, it believes that the costs and rate elements are appropriately matched for the ILECs' cost studies.

The Public Staff noted that witness Feldman did point out one problem with the ILECs' studies that BellSouth at least partially corrected. The Public Staff explained that the problem is the inclusion of costs associated with DC power in the annual charge factors (ACF) used to calculate the rates for collocation. The Public Staff commented that as witness Feldman pointed out, since DC power is charged for separately in the collocation studies, the ACF for calculating DC power should properly exclude any expense associated with DC power. The Public Staff commented that witness Feldman noted that BellSouth has appropriately excluded the expense associated with DC power from the ACF used to calculate its DC power rate element.

The Public Staff argued that since DC power is recovered in a specific rate element, there appears to be no basis for any collocation rate elements reflecting costs associated with DC power. The Public Staff noted that it is unclear whether costs associated with DC power are included in any ACF other than the digital switching ACF, which was used to calculate the specific DC power rate elements. However, the Public Staff believes that it is prudent for the ILECs to review the calculation of ACFs and remove, to the extent necessary, any costs associated with DC power, as BellSouth did for its digital switching ACF.

Concerning power costs, the Public Staff recommended that the Commission decline to adjust the investment per amp used by BellSouth in its study and note that the rate element proposed by BellSouth for DC power reflects fused amps, not used amps.

The Public Staff also stated that it concurs with witness Feldman's assessment that BellSouth's input amount for AC power cost is excessive and recommended that the Commission find that based upon tariffed rates for commercial power in North Carolina, BellSouth's cost of power should not exceed $.06 per kilowatt hour.

The Public Staff maintained that it is unpersuaded by witness Feldman's arguments concerning Sprint's proposed rates for DC power. The Public Staff commented that a review of the workpapers filed by BellSouth, Verizon, and Sprint, shows comparable per amp investment amounts for the ILECs' studies.

The Public Staff also noted that Sprint failed to make an adjustment to its investment per amp, as was done by BellSouth, to reflect the use of rate elements on a per fused basis instead of a per used basis. The Public Staff commented that since Sprint proposes to charge for DC power on a fused amp basis, an adjustment to its DC power investment per amp is necessary. The Public Staff stated that the adjustment should divide the per amp investment contained in Sprint's workpapers by 1.5 to recognize this standard engineering practice.

The Public Staff maintained that Sprint appears to have slightly overstated a reasonable rate for its cost of commercial power, and the Commission should require Sprint to revise its cost study to reflect a cost per kilowatt-hour that does not exceed $0.06.

Concerning witness Feldman's criticisms of Sprint's proposed rates for AC outlets and overhead lighting, the Public Staff stated that it believes that the costs for AC outlets and overhead lighting are included in the building ACF. The Public Staff maintained that Sprint is recovering these costs in its floor space rate elements.

Sprint explained that telecommunications equipment runs on DC power and that different ILECs do not have the same DC power costs because DC power costs vary based on the sizes of central offices. Sprint maintained that BellSouth enjoys economies of scale as BellSouth serves more densely populated urban areas while Sprint serves more sparsely populated rural areas. Logically, Sprint asserted, BellSouth's DC power costs should be lower than Sprint's. Sprint argued that care must be taken in comparing costs from company to company and even greater care must be taken with costs from country to country. Sprint argued that New Entrants witness Feldman's testimony on the appropriate cost per amp figure was based on price quotes from a company in Canada and is not useful in this proceeding in North Carolina for obvious reasons.

Sprint maintained that other errors in witness Feldman's testimony included his allegations that Sprint is double charging for DC power redundancy and that Sprint double recovers for DC power. Sprint argued that its cost studies for DC power were conformed with real world experience and that Sprint built each element of its power cost analysis from the ground up using Sprint's current engineering standards as they are the best predictors of forward-looking costs.

Verizon contended in its Proposed Order that collocation equipment runs off of DC power. Verizon noted that the DC power facility is comprised of material and labor costs incurred to provide DC power to the collocator's area. Verizon stated that the power plant cost to provide DC power for a central office was calculated using central office switch requirements based on the line size of the central office. Verizon also explained that the DC power facility costs to be recovered through nonrecurring charges are those for installing the power cables that run from the battery distribution fuse bay (BDFB) to the collocator's individual location. Verizon noted that the hours reflected in Verizon's power plant model are those necessary to provision the type of power plant needed to furnish power for various size switches.

Verizon argued that New Entrants witness Mitus incorrectly contended that Verizon is double recovering for power by grossing up power investment and charging on a per fuse amp basis. Verizon stated that although he correctly stated that the cost per amp for the DC power plant is developed using an 80% operating capacity, he apparently misunderstood Verizon's DC power provisioning and billing practices. Verizon explained that under its practices, CLPs are not billed at the fuse rate even though the fuse placed at the BDFB is larger than necessary to provide the amps requested by the CLP. Verizon noted that this larger fuse is installed to compensate for the peaks experienced in provisioning power. However, Verizon contended, it is receptive to providing and billing in smaller amp increments or even single amp increments.

Verizon also argued that New Entrants witness Feldman provides no substantive evidence for his claims that Verizon's costs are overstated and does not appear to grasp the complexities of pulling, wrapping, and tying down power cables. Verizon maintained that without conducting any studies of his own, witness Feldman arbitrarily reduces Verizon's hours required to install various power facilities such as cables. Verizon contended that power cables, unlike flexible voice transmission cables, are very rigid and heavy, and thus difficult to handle. Verizon maintained that they cannot be pulled but must be slowly passed often from floor to floor, and placed in relay racks 10 feet off the floor. Verizon also noted that normally power cables are not placed in a straight line, but must be bent around central office structures and equipment. Verizon argued that it may take five to 10 people to complete these tasks and not just one or two as witness Feldman implied. Verizon asserted that its cost estimates are provided by subject matter experts who are engaged in power cable placement and have extensive experience in performing the tasks at issue. Verizon concluded that there is no reason to supplant the Verizon experts' well-considered estimates with witness Feldman's own unsubstantiated opinions.

In direct testimony, Verizon witness Richter explained that the DC power facility includes the power cables run from the BDFB to the collocator's individual location. Witness Richter noted that the size of the cables will be engineered in accordance with the requested amps, the voltage drop, and the distance to the collocator's area and that the cables can be provided by the collocator or purchased from Verizon. Witness Richter maintained that the cost of installing the required power cables is based on the loaded labor rate for a Central Office Equipment (COE) Installer in North Carolina and the hours-per-unit to perform this activity.

Witness Richter also explained that the costs associated with the DC power facility element is comprised of material and labor costs incurred to provide DC power to the collocator's area. Witness Richter noted that costs also will be incurred to extend power from the power plant to the collocator's area BDFB, including material and labor costs for the associated power cable, fuse panels, relay racks, and distribution bays.

On cross-examination, witness Richter agreed that it is the norm in the industry to have two sets of power leads to central office equipment. He also stated that witness Mitus' testimony that Verizon is double recovering for DC power by both grossing up the DC power investment and charging on a per fuse amp basis is in error. Witness Richter explained that witness Mitus misinterpreted Verizon's cost study and that Verizon does not bill on the fuse of the amp and that Verizon bills based on the CLPs requested amperage.

On cross-examination, Verizon witness Steele agreed that Verizon is proposing to charge on per amps used as opposed to per amps fused.

The Commission, after reviewing the record of evidence, has the following comments and conclusions:

□ It appears that all of the Parties agree to provide power in single amp increments if so desired by the CLPs.

□ The Commission does not believe that it is appropriate to reflect power costs separately in the ACF and therefore the Commission will require each ILEC to review its calculation of the ACF and remove any power expense from the ACF.

□ The Commission notes that Verizon argued that its cost estimates are provided by subject matter experts who are engaged in power cable placement and have extensive experience in performing the tasks at issue. The Commission agrees with Verizon that there is no reason to supplant the Verizon experts' well-considered estimates since the evidence presented by the CLPs was unpersuasive. However, the Commission notes that as the ILECs have significant knowledge to develop cost studies, they also have significant incentive to overstate proposed rates.

□ The Commission concludes that the ILECs should input AC power costs from the applicable electric tariffs.

□ The Commission notes that BellSouth and Sprint reflect power of per fused amp and Verizon reflects power based on amps used. It is the Commission's understanding that the term "per fused amp" means that the collocator's equipment has a protection device rating and more amps are used to provide this protection. The Commission also believes that there is credible evidence that the protection device rating is necessary. Therefore, the Commission agrees with BellSouth and Sprint that power costs should be based on "per fused amp" rather than "per amp used."

COMMISSION CONCLUSIONS - Rate Issue No. 4 - DC Power: The Commission finds it appropriate to:

(1) require the ILECs to provide power in single amp increments if requested by a CLP to do so;

(2) require each ILEC to review its calculation of the ACF and remove any power expenses from the ACF;

(3) require the ILECs to use AC power costs from the applicable electric tariffs; and

(4) require ILECs to charge power costs on a "per fused amp" basis.

Rate Issue No. 5 - Rates for Cross-connects

The CLPs included a proposed Finding of Fact No. 8 — The rates for cross-connects should be those proposed by the New Entrants — in their Joint Proposed Order.

The CLPs noted that there are two types of cross-connects at issue in this case: (1) a cross-connect that includes the cost of both the common frame and a POT bay, and (2) a cross-connect that connects a CLP appearance to the appearance of another CLP. The CLPs alleged that none of the ILECs properly prepared a cost study for the nonrecurring cost of such cross-connects, the cost of both types of which should be equal. The CLPs noted that Sprint prepared no cost study at all, and Verizon submitted a study of the installation of a fiber optic cable across an office from one location to another. The CLPs stated that BellSouth provided a cost study for cross-connects to an intermediate distribution frame but not to a main distribution frame. The CLPs alleged that BellSouth's study is irrelevant since the FCC has ruled that an ILEC cannot require a CLP to use an intermediate distribution frame.

The CLPs asserted that the requirement of Section 251(c)(6) of TA96 that ILECs provide physical collocation of equipment necessary for interconnection at the premises of the LEC should be read to require an ILEC to afford a CLP interconnection at the ILEC central office with other CLPs' networks as well as with the ILEC network, provided the other CLPs have interconnection points at the premises of the LEC. The CLPs maintained that under the literal definition of the statutory language, cross-connection between CLPs is interconnection at the premises of the LEC.

The CLPs argued that requiring ILECs to provide CLP-to-CLP cross-connection under Section 251(c)(6) is consistent with the structure of the statute.

The CLPs recommended that the Commission adopt the costs of MDF, DSX-1, DSX-3, and Optical cross-connects as calculated by witness Feldman and also permit the CLPs to perform their own cross-connects.

The ILECs presented rates for cross-connects in their cost studies but their prefiled testimony does not address the rate element specifically.

The Commission does not believe that adequate evidence was presented on the appropriate rates for cross-connects. Therefore, the Commission finds it appropriate to instruct the Parties to attempt to negotiate rates for cross-connects. The Commission directs the Parties to file negotiated rates for cross-connects for inclusion in the Standard Offering by January 28, 2002 and if such rates are not negotiated, directs the Parties to instead file Supplemental Briefs discussing this issue in more depth by February 11, 2002.

COMMISSION CONCLUSIONS - Rate Issue No. 5 - Rates for Cross-connects: The Commission hereby instructs the Parties to attempt to negotiate rates for cross-connects. The Commission directs the Parties to file negotiated rates for cross-connects for inclusion in the Standard Offering by January 28, 2002 and if such rates are not negotiated, directs the Parties to instead file Supplemental Briefs discussing this issue in more depth by February 11, 2002.

Rate Issue No. 6 - Cable Installation

BellSouth argued that New Entrants witness Feldman's corrections and recalculation of BellSouth's proposed collocation rates should not be adopted by the Commission. BellSouth contended that witness Feldman's corrections to Section 6.5 should be rejected since the record reflects that the CLPs and the ILECs have met several times to discuss the processes associated with physical collocation in the central office. BellSouth noted that neither the Parties nor the Commission listed this cabling issue as an issue that needed resolution and that it would be inappropriate to add another issue at this late date. BellSouth also argued that witness Feldman's rationale that the FCC's *Order on Reconsideration* obligates ILECs to provide cabling and connections is simply not based on any language that BellSouth finds in that Order. BellSouth argued that there are no words in the paragraphs referenced by witness Feldman which state that ILECs are obligated to install connections to the distribution frame. Therefore, BellSouth noted that it did not develop and propose rate elements for this purpose.

The CLPs included a proposed Finding of Fact No. 9 — Cable installation shall be made available at the rates proposed by the New Entrants in Exhibit LF-4.0 — in their Joint Proposed Order.

The CLPs maintained that Sprint's proposed costs for cable installation which Sprint referred to as cross-connects when installed by Sprint are reasonable. The CLPs argued that it is important to have a rate for the installation by the ILEC of a cable from the CLP's collocation to the main distribution frame. The CLPs asserted that since BellSouth and Verizon failed to submit cost studies for these rate elements, Sprint's costs should be applied to cable installation when installed by the other ILECs as well.

The CLPs noted that neither Sprint, BellSouth, nor Verizon presented testimony on this issue.

The CLPs maintained that it is important to have a rate for the installation by the ILEC of a cable from the CLP's collocation to the MDF. The CLPs recommended that the Commission conclude that Sprint's costs for the installation of such cable by Sprint is reasonable and that since BellSouth and Verizon did not submit cost studies for these rate elements, that the Commission should apply Sprint's costs to cable installation when installed by the other ILECs as well.

The Commission notes that as with cross-connects, insufficient evidence was presented on this issue. The Commission also questions whether there is a difference between cross-connects and the issue of cable installation. Therefore, the Commission finds it appropriate to instruct the Parties to attempt to negotiate rates for cable installation. The Commission directs the Parties to file negotiated rates for cable installation for inclusion in the Standard Offering by January 28, 2002 and if such rates are not negotiated, directs the Parties to instead file Supplemental Briefs discussing this issue in more depth by February 11, 2002.

COMMISSION CONCLUSIONS - Rate Issue No. 6 - Cable Installation: The Commission hereby instructs the Parties to attempt to negotiate rates for cable installation. The Commission directs the Parties to file negotiated rates for cable installation for inclusion in the Standard Offering by January 28, 2002 and if such rates are not negotiated, directs the Parties to instead file Supplemental Briefs discussing this issue in more depth by February 11, 2002.

Rate Issue No. 7 - Security Costs

BellSouth also addressed the issue of security costs. BellSouth noted that MCIm witness Bomer testified that "security charges should not be assessed for collocation in central offices with existing card key systems." BellSouth commented that apparently MCIm believes that if a card reader already exists, then assessment of security charges in these offices has no basis in cost. BellSouth recommended that the Commission not endorse MCIm's position on security costs. BellSouth also recommended that the Commission not adopt witness Bomer and witness Mitus' proposal of recovering security costs based on square footage.

BellSouth proposed that the Commission find that the correct allocator should be one that bears some relationship to what caused the cost to be incurred. BellSouth argued that clearly there is no direct relationship between security access costs and the square footage occupied.

BellSouth also maintained that its proposal to pro-rate the cost of the security system based on the number of providers in the central office is consistent with rulings of the FCC.

BellSouth witness Caldwell stated in rebuttal testimony that WorldCom witness Messina incorrectly implied that if a card reader already exists, then assessment of security charges in these offices has no basis in cost. Witness Caldwell maintained that the development of forward-looking economic costs is not dependent on an analysis of when something has actually been deployed. Instead, witness Caldwell maintained, economic costs are based on long-run incremental costs that identify the forward-looking replacement cost of the equipment.

Witness Caldwell stated that she did not agree with witnesses Messina and Mitus that security costs should be recovered based on square footage. Witness Caldwell argued that cost methodology dictates that the costs should bear some relationship to the action that caused the costs to be incurred, not based on the relationship of the benefits derived by each party. Witness Caldwell questioned whether a CLP who occupies 500 square feet "benefits" more than another CLP who occupies 100 square feet. Witness Caldwell asserted that BellSouth's proposal to pro-rate the cost of the security system based on the number of providers in the central office is consistent with rulings of the FCC.

The CLPs included a proposed Finding of Fact No. 12 — ILECs may recover forward-looking costs for security pro rata on a per square foot basis across all usable space in the central office, as part of the recurring floor space charge — in their Joint Proposed Order.

The CLPs noted that MCIm proposed that the following language be added to Attachment 5, Section 7.3 of its Interconnection Agreement with BellSouth:

> BellSouth shall recover the costs for security for the Premises pro rata on a per square foot basis across all usable space in the Premises.

The CLPs noted that BellSouth has been upgrading its security systems for its own purposes throughout its network, and now seeks to recover costs from CLPs for having previously installed card reader systems in central offices. The CLPs alleged that when BellSouth or any other ILEC decides to install a new card reader system, it does so mainly because it has chosen to protect its equipment, not to protect collocators' equipment. The CLPs conceded that to the extent that both BellSouth and the collocators benefit from reasonable security measures, a reasonable allocation of the forward-looking costs between them should be developed and a reasonable allocation must bear some relationship to the benefits derived by each party. The CLPs asserted that BellSouth's preferred allocation method based on a per capita allocation is not reasonable and is arbitrary because it bears no relationship to the different level of benefits derived by each carrier which is related to the area occupied from a security system.

The CLPs maintained that to the extent that ILECs are permitted to assess CLPs for security costs, those costs should be part of the recurring monthly space charges, and should be based on forward-looking principles rather than the retrofitting of existing central office configurations. The CLPs asserted that a carrier that occupies a good deal of space and protects a large amount of telecommunications equipment should be assessed a greater share of the security costs than a carrier that occupies a small space and is protecting only a small amount of equipment. Therefore, the CLPs maintained, a pro rata allocation of security costs based on the square footage occupied by the ILEC and each collocator in the central office is reasonable.

The CLPs noted that the FCC has ruled in its Advanced Services Order that an ILEC may adopt reasonable security measures to protect their central office equipment and that, hence, the FCC expects that state commissions will permit ILECs to recover the costs of implementing these security measures from collocating carriers in a reasonable manner. The CLPs asserted that these FCC provisions support MCIm's position that the costs of new security card systems should be allocated on a pro-rata basis, based on the square footage that the new entrant occupies relative to the total space that the card system is designed to secure.

The CLPs noted that the Florida Public Service Commission ruled in support of the position advocated by MCIm on the issue of compensation for security measures. The Florida Commission ruled as follows:

> First, we are persuaded and so find that the costs of security arrangements, site preparation, and other costs necessary to the provisioning of collocation space incurred by the ILEC that benefit only a single collocating party in a central office should be paid for by that collocating party . . . (R)ecovering costs only from the party that benefits will eliminate the burden on ILECs and other collocators of paying for costs of collocation they did not cause to be incurred.
>
> Second, we find it appropriate that the costs of security arrangements, site preparation, and other costs necessary for the provisioning of collocation space incurred by the ILEC that benefit both current and future collocating parties shall be recoverable by the ILEC from current and future collocating parties. In this case, these costs shall be allocated based on the amount of floor space occupied by a collocating party, relative to the total collocation space for which site preparation was performed.
>
> Third, we find that the costs of security arrangements, site preparation, and other costs necessary for the provisioning of collocation space incurred by the ILEC that benefit current or future collocating parties and the ILEC shall be recoverable by the ILEC from current and future collocating parties, and a portion shall be attributed to the ILEC itself. We note that the ALEC's addressed their concerns over security issues that not only benefit collocating parties, but also benefit the ILEC. Acknowledging those concerns, we shall require that when multiple collocators and the ILEC benefit from modifications or enhancements, the cost of such benefits or enhancements shall be allocated based on the amount of square feet used by

> the collocator or the ILEC, relative to the total usable square footage in the central office.

The CLPs concluded by recommending that the Commission find that assuming that an ILEC's security enhancements provide benefits to both the ILEC and the CLPs, the forward-looking costs should be allocated to parties on a per square foot of occupancy basis, as part of the recurring floor space charge. Further, the CLPs proposed that the Commission conclude that a pro-rata cost-based rate adequately allows ILECs to recover the costs of a security system.

The Public Staff noted in its Proposed Order that another area of contention concerns security costs. The Public Staff commented that testimony was submitted on the appropriate methodology to allocate these costs as well as when the costs should be recovered by the CLPs.

The Public Staff argued that with regard to the manner in which security costs should be recovered, when considered in a vacuum, the BellSouth and Verizon proposals provide for a reasonable approach to allocating security costs. However, the Public Staff stated that the Commission would be remiss if it failed to recognize the tremendous difference in square footage used by the CLPs versus the space used by the ILECs. The Public Staff maintained that this vast difference makes the per capita proposals of BellSouth and Verizon considerably less reasonable than the allocation per square foot used and recommended by Sprint.

The Public Staff stated that it does not necessarily question the costs for security included in the studies filed by the ILECs, however, to the extent that security costs are recovered through the building ACF when calculating the cost of floor space, adding a separate rate element for assessing security costs would constitute double recovery of this cost item. The Public Staff noted that it is persuaded that security costs, which are a necessary part of the cost of central offices, have long been incurred by the ILECs in the normal course of business and will be recovered by the ILECs through the floor space rate element and included in the building ACF. Therefore, the Public Staff maintained, having separate rate elements for assessing security costs constitutes a double recovery of these costs.

The Public Staff also noted that Verizon included numerous costs associated with security and that these items range from costs associated with securing cabinets, which are used wholly by Verizon, to the installation of card readers and cameras in the central offices. The Public Staff stated that it is not convinced by Verizon's arguments that securing cabinets which Verizon only uses is a cost that should be borne by CLPs. In any event, the Public Staff argued that security costs are normal costs of operating a central office and should be included in the building ACF used to calculate the floor space cost.

The Public Staff also recommended that the Commission find that the cost of providing security cards or keys to the CLPs should not be included in the normal security costs. The Public Staff proposed that the Commission find that the cost of security cards or keys is a cost incremental to the provision of collocation spaces and should be recovered by the ILECs through a separate rate element.

The Public Staff noted that it already proposed that, in general, security costs are covered in the common and shared factors that are applied to the collocation rate elements. However, the Public Staff stated, CLPs should be assessed an amount for security cards or keys which they obtain for entry into the ILECs' central offices or remote terminals. The Public Staff commented that in reviewing the proposed rates of BellSouth for security cards and keys, it concluded that the rate for these items are excessive. The Public Staff noted that in reviewing the workpapers filed by BellSouth, there are three areas in which the costs appear to be overstated:

(1) The material cost of the card or key should be reviewed. Any cost exceeding $2.00 for a card or key appears to be excessive on its face and the Public Staff has seen no justification presented by BellSouth for the higher costs included in its study.

(2) The postage costs included by BellSouth, which exceed $3.00 for both the card and key, also appear to be excessive. The Public Staff believes that a more reasonable on-going postage cost would not exceed $2.00.

(3) BellSouth has vastly overstated the labor cost.

The Public Staff recommended that the Commission have BellSouth review the support for the nonrecurring rates for security cards and keys, for activation, administrative changes, and replacement and make appropriate modifications to ensure that these rates do not exceed $20.00. The Public Staff noted that this is comparable to the $15.00 per security card rate recommended by Sprint.

The Public Staff recommended that the Commission conclude that costs exceeding $20.00 for security cards and keys are excessive and do not reflect long run incremental costs. Therefore, the Public Staff proposed, Verizon should be required to review the support for the nonrecurring rates for security cards and keys, for activation, administrative changes, and replacement and make appropriate modifications to ensure that these rates do not exceed $20.00. Also, the Public Staff noted that its recommendation is comparable to the $15.00 rate recommended by Sprint.

Sprint maintained in its Proposed Order that security measures should be calculated on a per square foot basis, not on the per capita basis argued by BellSouth and Verizon. Sprint noted that this is in line with the Florida Commission's and Sprint's methodology.

The Commission notes that BellSouth stated in its Opening Statement at the hearing

> . . . [central] offices are really, truly the nerve centers of networks that incumbent companies like BellSouth have built over many, many decades. Needless to say, not just anyone can walk off the street and stroll through one of our central offices. Security is very tight, access is guarded, and people really who are the folks that work on this equipment are highly trained and highly skilled.

Therefore, it appears that at least for BellSouth, security measures have been implemented in central offices long before TA96 was enacted.

The Commission notes that there are both recurring and nonrecurring charges to address for security costs. For recurring costs, the Commission agrees with the CLPs and Sprint that it is appropriate to pro rate security costs on the basis of square footage. The Commission believes that this is a reasonable and appropriate methodology to allocate costs and ensures that carriers pay costs based on the amount of square footage that is protected by these security measures.

Concerning nonrecurring charges, the Commission agrees with the Public Staff that the cost of security cards or keys is a cost incremental to the provision of collocation spaces and should be recovered by the ILECs through a separate rate element. The Commission also finds credible the Public Staff's analysis of how the security card and key charges for BellSouth and Verizon appear overstated. The Commission believes that security card and key charges should be uniform among the ILECs and that there is no reason such costs should vary. Therefore, the Commission concludes that the appropriate nonrecurring rate for security cards and keys is $15.00 as proposed by Sprint.

The Commission is also persuaded, as is the Public Staff, that security costs, which are a necessary part of the cost of central offices, have long been incurred by the ILECs in the normal course of business and will be recovered by the ILECs through the floor space rate element and included in the building ACF. Therefore, the Commission agrees with the Public Staff that having separate rate elements for assessing security costs constitutes a double recovery of these costs. The Commission finds it appropriate to require the ILECs to review the calculations of the ACF and remove security costs from that calculation. The Commission notes that since it is ordering separate rate elements for security costs it would be inappropriate to allow the ILECs to also include security costs in their calculations of the ACF.

COMMISSION CONCLUSIONS - Rate Issue No. 7 - Security Costs: The Commission:

(1) concludes that it is appropriate to allocate security costs to carriers based on square footage occupied in the central office as a recurring charge;
(2) concludes that the appropriate nonrecurring rate for security cards and keys is $15.00 per card or key issued; and

(3) concludes that the ILECs should review their calculations of the ACF and remove any security costs.

Rate Issue No. 8 - Augmenting

The Public Staff noted that it previously recommended adding the appropriate rates to charge for augmenting collocation spaces and modifying application and that the ILECs should revise their proposed rates accordingly.

The Commission notes that as with cross-connects and cable installation, insufficient evidence was presented on this issue. Therefore, the Commission finds it appropriate to instruct the Parties to attempt to negotiate rates for augmenting. The Commission directs the Parties to file negotiated rates for augmenting for inclusion in the Standard Offering by January 28, 2002 and if such rates are not negotiated, directs the Parties to instead file Supplemental Briefs discussing this issue in more depth by February 11, 2002.

COMMISSION CONCLUSIONS - Rate Issue No. 8 - Augmenting: The Commission hereby instructs the Parties to attempt to negotiate appropriate rates for augments. The Commission directs the Parties to file negotiated rates for inclusion in the Standard Offering by January 28, 2002 and if such rates are not negotiated, directs the Parties to instead file Supplemental Briefs discussing this issue in more depth by February 11, 2002.

Rate Issue No. 9 - Adjacent Collocation

The Public Staff noted that Sprint proposed to set rates on a case-by-case basis for adjacent onsite costs, asserting that it has received no requests for adjacent collocation. The Public Staff commented that this lack of demand should not excuse Sprint from the need to file rates for adjacent collocation as neither Verizon nor BellSouth have received much demand, if any, for adjacent collocation but they have proposed rates as required by the FCC. The Public Staff argued that Sprint should do so as well.

The Commission again notes that insufficient evidence was presented on this issue. Therefore, the Commission finds it appropriate to direct the Parties to file negotiated rates for adjacent collocation for inclusion in the Standard Offering by January 28, 2002 and if such rates are not negotiated, directs the Parties to instead file Supplemental Briefs discussing this issue in more depth by February 11, 2002.

COMMISSION CONCLUSIONS - Rate Issue No. 9 - Adjacent Collocation: The Commission finds it appropriate to instruct the Parties to attempt to negotiate appropriate rates for adjacent collocation. The Commission directs the Parties to file negotiated rates for inclusion in the Standard Offering by January 28, 2002 and if such rates are not negotiated, directs the Parties to instead file Supplemental Briefs discussing this issue in more depth by February 11, 2002.

Rate Issue No. 10 - Premises Space Report

Verizon noted that a CLP that has been denied collocation space in a central office may require Verizon to prepare a Premise Space Report for any specific office. Verizon contended that in compiling the Premise Space Report, Verizon incurs costs for the engineers to visit a particular central office and to create a detailed report explaining the space availability in that central office. Verizon maintained that its costs of providing such a report were determined by examining the estimated amount of time that it would take the Network Designer and Building Services and the Local Network Designer to complete the comprehensive evaluation necessary to produce the report. Verizon contended that the amount of time was multiplied by the appropriate employee's North Carolina labor rate to determine the cost. Verizon maintained that for a comprehensive evaluation, the costs is $5,411.20. Verizon noted that the rate for the report takes into account that additional collocators could request the report and the price is $1,217.52. Verizon argued that once again, witness Feldman inappropriately reduced the hours necessary to produce the Premises Space Report and that his arbitrary cost reductions fail to account for the effort required for that task.

The Commission notes that no other Party presented evidence concerning this issue. The Commission also questions what additional information would be provided in the Premises Space Report that the ILEC would not already be required to provide in Sections 2.3.1 and 2.3.2 (See Finding of Fact No. 22) and Section 2.2 (See Finding of Fact No. 24). With this observation, the Commission finds it appropriate to direct the Parties to file negotiated rates for a Premises Space Report for inclusion in the Standard Offering by January 28, 2002 and if such rates are not negotiated, directs the Parties to instead file Supplemental Briefs discussing this issue in more depth by February 11, 2002.

COMMISSION CONCLUSIONS - Rate Issue No. 10 - Premises Space Report: The Commission hereby instructs the Parties to attempt to negotiate appropriate rates for a Premises Space Report. The Commission directs the Parties to file negotiated rates for inclusion in the Standard Offering by January 28, 2002 and if such rates are not negotiated, directs the Parties to instead file Supplemental Briefs discussing this issue in more depth by February 11, 2002.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 48

ISSUE 50: What are the appropriate terms and conditions for shared collocation, including allocation of indemnities?

ISSUE 75 (Sprint 1): Whether ILECs should be required to accept payment from the Guest CLP for charges applicable to collocation space?

POSITIONS OF PARTIES

ALLTEL: ALLTEL did not address this issue.

AT&T: AT&T stated that terms and conditions should be: (1) Both CLPs must have interconnection agreements with the ILEC, (2) the ILEC may not increase the cost of site preparation or nonrecurring charges above the cost of provisioning a cage of similar dimension for a single party, (3) the Standard Offering should provide for shared collocation based on FCC rules, (4) ILECs should not enter into leases purporting to prohibit federally-protected activity, (5) actual problems with ILEC leases should be addressed through the waiver process, and (6) there should be reciprocal language concerning liability for shared collocation space. ILECs should be required to accept payment directly from the Guest CLP in a shared arrangement, but the Host CLP remains the ultimate responsible party.

BELLSOUTH: The appropriate terms and conditions are those as set forth in Section 3.3 of BellSouth's Standard Offering. This allows for shared collocation arrangements but places primary responsibility on the Host, including an indemnity provision regarding Guests except in case of ILEC gross negligence or willful misconduct.

MCIm: MCIm did not address this issue in its Brief.

NEW ENTRANTS: New Entrants took the same position as AT&T.

PUBLIC STAFF: The Host CLP should be responsible for payment to the ILEC of all charges associated with rental of a shared collocation space. Application and site preparation charges should be prorated and billed separately to each CLP based on the percentage of shared space that is used by the CLP. ILECs are prohibited from signing leases that would keep them from fulfilling their collocation obligations. BellSouth's proposed language limiting liability to gross negligence and willful misconduct is inequitable and unnecessary.

SPRINT: Sprint believed that the Host collocator should be the sole interface and responsible party to the ILEC for the purpose of submitting applications for initial and additional equipment placements for all CLPs in a shared space, for assessment and payment of all rates and charges for the space, and for the purpose of safety and security requirements.

VERIZON: A CLP Host may share caged collocation arrangements with other CLPs, but the Host is sole interface with the ILEC for applications, payments, and safety and security arrangements. However, the Guest may arrange directly with the ILEC for provision of interconnecting facilities, provision of services, access to UNEs and the ILEC will bill the Guest for these services.

WORLDCOM: WorldCom took the same position as AT&T.

DISCUSSION

Sections 3.5, 3.5.1, 3.5.2, and 3.5.3 of the Standard Offering set forth provisions for shared caged collocation. These address (1) procedures for giving notice to the ILEC concerning the sharing of collocation space; (2) the responsibilities of the "Host" and "Guest" collocators and ILEC; and (3) total and prorated costs for shared space.

BellSouth witness Hendrix testified: "The appropriate terms and conditions for shared collocation are set forth in Section 3.4 of the standard [BellSouth physical collocation] agreement." The BellSouth agreement would allow shared collocation unless the BellSouth premises were located in leased space where the lease prohibited such sharing of space. CLP witness Gillan suggested that ILECs should simply avoid entering into leases that "prohibit activity that is expressly provided for under federal law."

Witness Gillan testified that BellSouth had not indicated that it was willing to prorate charges, particularly application fees, for shared collocation spaces. Such proration is consistent with the FCC's requirement that "the ILEC may not increase costs above the cost of provisioning space for a single party." He also recommended that ILECs be required to accept separate payments from the host CLP and each guest CLP for its portions of the shared collocation space, with the host CLP retaining overall responsibility for ensuring that all floor space charges are paid. Mr. Gillan further argued that the administrative burdens CLPs would face in accepting and accounting for payments from guest CLPs were unreasonable and should be borne by the ILECs.

Sprint witness Hunsucker described the CLP proposal as "the insertion of an ILEC into a commercial arrangement (i.e., subleasing of floor space) that has been voluntarily entered into by two CLPs," adding that:

> the host collocator should be the sole interface and responsible party to the ILEC for the purpose of submitting applications for initial and additional equipment placements for all CLPs collocated in the shared space, for assessment and payment of rates and charges applicable to collocation space (e.g., floor space) and for purposes of ensuring that all applicable safety and security requirements are met.

Witness Hunsucker contended that the CLPs' position on accepting payments from shared collocators failed to take into account the inconveniences that this arrangement would place on ILECs. He illustrated his argument with the following example:

> Let's assume that the Host CLP originally places a collocation order for 300 square feet of collocation space. Subsequently, the Host CLP enters into a voluntary commercial arrangement with three guest CLPs -- Guest 1, Guest

> 2 and Guest 3 for 20 square feet, 30 square feet and 50 square feet respectively. In this example, Sprint would require the Host CLP to provide payment for all 300 square feet of floor space on a monthly basis, while the CLPs would (at the CLP option), require Sprint to accept payment from four CLPs, track and match the payments to the 300 square feet of space originally requested and provided to the Host CLP and perform bill validations to ensure that all of the floor space has been paid for. To complicate matters even more, the CLPs are free to change their subleasing arrangements on a daily basis by modifying existing Guest CLP space or by adding new Guest CLPs to the equation. Each and every time, the ILEC would have to be notified to ensure that its internal tracking systems are modified to ensure proper matching of payments to the exact floor space being utilized by each CLP. This is clearly burdensome to the ILEC. The practical result of such an arrangement is to place the ILEC in the position of being the billing and audit agent for the Host CLP. . . ."

The Public Staff's view was that the Host CLP should be responsible for payment to the ILEC of all charges associated with rental of shared collocation space. Application and site preparation changes should be prorated and billed separately to each CLP based on the percentage of shared space used by the CLPs. The ILECs should be prohibited from signing leases that would keep them from fulfilling their collocation obligations, and BellSouth's proposed language limiting liability to gross negligence and willful misconduct goes too far.

The Commission agrees with Sprint and BellSouth that the CLPs' proposal to require ILECs to accept payments from individual CLPs for floor space charges related to shared collocation could pose significant administrative burdens for the ILECs. While Paragraph 41 of the *Advanced Services Order* requires ILECs to "permit each competitive LEC to order UNEs and to provision service from that shared collocation space, regardless of which competitive LEC was the original collocator," it does not obligate ILECs to bill each individual CLP for the fraction of shared collocation space that it uses. As Sprint suggested, such an arrangement could easily be interpreted as requiring the ILECs to painstakingly measure the space occupied by each CLP in a shared collocation space every month, and to calculate, bill, and collect the monthly charges without receiving any compensation for these services. Accordingly, the Commission finds it appropriate to require the Standard Offering to be revised to require the host CLP to pay the ILEC directly for all charges associated with the rental of a shared collocation space, unless the host CLP and the ILEC work out another mutually acceptable arrangement.

Paragraph 41 of the *Advanced Services Order* does, however, require ILECs to prorate other charges for construction and conditioning of shared collocation space. It says, in part:

> In addition, the incumbent must prorate the charge for site conditioning and preparation undertaken by the incumbent to construct the shared collocation

> cage or condition the space for collocation use, regardless of how many carriers actually collocate in that cage, by determining the total charge for site preparation and allocating that charge to a collocating carrier based on the percentage of the total space utilized by that carrier. In other words, a carrier should be charged only for those costs directly attributable to that carrier.

Accordingly, ILECs and CLPs should be directed to develop Standard Offering language consistent with this requirement. For example, CLPs that apply for a single caged collocation space as a group should be billed individually for their application and site preparation costs, prorated in proportion to the relative amount of collocation space they are requesting. With respect to the CLPs' concern regarding leases, the Commission believes that ILECs should forbear from signing any leases that would keep them from fulfilling the collocation obligations imposed on them by the FCC.

Turning to the issue of allocation of indemnities, BellSouth proposed that the host indemnify and hold BellSouth harmless from all claims, actions, causes of action, of whatever kind or nature arising out of the presence of the guest in the collocation space except if caused by BellSouth's gross negligence or willful misconduct. The CLPs oppose BellSouth's proposal because it is inconsistent with Section 17 of the Standard Offering and would absolve BellSouth in some instances when its negligence does not rise to the level of gross misconduct. Witness Hendrix admitted on cross-examination that the current BellSouth collocation attachment does include reciprocal language as to the allocation of indemnities, but that its proposed language is not reciprocal.

BellSouth has not explained why it should not be liable for negligence that is not gross or for misconduct that is not willful. It is unclear why the ordinary rules regarding liability for negligence and misconduct should not apply. It troubles the Commission that under BellSouth's proposal the allocation of indemnities will not be reciprocal, but will only accrue to the benefit of BellSouth. The Commission finds it appropriate to reject BellSouth's proposed language that limits its liability only to acts of gross negligence or willful misconduct regarding guest collocators because it is inequitable and unnecessary. Thus, no change is necessary to the Standard Offering in regard to allocation of indemnities for Guest/Host collocation arrangements.

CONCLUSIONS

The Commission concludes that the Host CLP in a shared collocation arrangement is responsible for the payment to the ILEC of all changes associated with the removal of a shared collocation space. However, application and site preparation changes should be prorated and billed separately to each CLP based upon the CLPs' percentage of shared space used. ILECs should not be allowed to sign leases that would impair them in fulfilling their collocation obligations and proposed language limiting liability of ILECs only to acts of gross negligence or willful misconduct regarding Guest collocators should be rejected.

No change is necessary to the Standard Offering regarding the allocation of indemnities *for Guest/Host collocation arrangements.*

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 49

ISSUE 51: *Under what circumstances may the ILEC designate the location of an adjacent* collocation arrangement such that the arrangement will not interfere with access to existing or planned structures?

POSITIONS OF PARTIES

ALLTEL: ALLTEL did not take a position on this issue in its Brief.

AT&T: The ILEC may only designate the location of an adjacent collocation arrangement if the placement requested by the CLP would not be technically feasible. The ILEC has the burden of demonstrating that such location is not technically feasible. Also, zoning and municipal (state or local) regulations may give the ILEC certain rights or obligations to control the construction and location of adjacent collocation space. But the ILEC may not reserve space or plan uses for adjacent space without taking collocation demand into account.

BELLSOUTH: The ILEC should retain sole discretion to designate the location of an adjacent collocation arrangement because only the ILEC can determine if the location may interfere with access to existing or planned structures or facilities on the premises property.

MCIm: MCIm did not take a position on this issue in its Brief.

NEW ENTRANTS: The New Entrants supported the position taken by AT&T on this issue.

PUBLIC STAFF: The ILEC may not unfairly discriminate between itself and CLPs or between distinct CLPs; however, the ILEC ultimately has the right to designate the site of adjacent collocation arrangements, subject to the FCC's revised rules governing space designation. The Commission should encourage the parties to negotiate these details. If the CLP believes that the ILEC has unreasonably refused to honor its reasonable request, the CLP may file a complaint with the Commission.

SPRINT: Sprint accepted the position taken on this issue by the CLPs to the extent it is consistent with the terms and conditions of the Standard Offering filed with the direct testimony of Sprint witness Hunsucker, it is included in the Standard Offering, and the Standard Offering is made applicable to all parties in its entirety.

VERIZON: The ILEC shall designate the location of an adjacent collocation arrangement such that the arrangement will not interfere with access to existing or planned structures.

Adjacent arrangements shall be available only where space within the central office is legitimately exhausted, subject to technical feasibility. The ILEC and CLP shall mutually agree on an adjacent location, but agreement is conditioned on zoning or other state and local regulations, as well as reasonable safety and maintenance requirements.

WORLDCOM: WorldCom supported the AT&T position on this issue.

DISCUSSION

The CLPs contended that the parties should mutually agree on the placement of an adjacent collocation arrangement, unless it is technically infeasible, and that the ILEC bears the burden of proving technical infeasibility. The CLPs acknowledged that zoning and municipal regulations may give an ILEC some control over the construction and location of adjacent collocation space. The CLPs also contended that the ILECs should not be allowed to reserve or plan uses for adjacent collocation space without taking the demand for collocation into account.

BellSouth contended that the ILECs should have the sole discretion of determining where adjacent collocation will be sited, because only the ILECs can determine whether the site will interfere with access to existing or planned structures or facilities on the premises.

Verizon asserted that the CLPs' proposal that the ILECs may designate the locations of adjacent arrangements only when the CLPs' requests are technically infeasible is far too restrictive. Verizon explained that the ILECs designate all collocation spaces on their property, including spaces adjacent to central offices.

In its Proposed Order, the Public Staff contended that the ILECs may not unfairly discriminate between themselves and CLPs or between distinct CLPs; however, the ILECs ultimately have the right to designate the site of adjacent collocation arrangements, subject to the FCC's revised rules governing space designation. According to the Public Staff, the Commission should encourage the parties to negotiate these details. If a CLP believes that an ILEC has unreasonably refused to honor its reasonable request, the CLP may file a complaint with the Commission.

Based on the language from the *GTE* case cited in the discussion of Issue No. 2 *supra,* the Commission determines and concludes that the ILECs may choose where to establish collocation on their own property. It is impermissible for the ILECs to discriminate unfairly between themselves and CLPs or between distinct CLPs; however, the ILECs ultimately have the right to designate the sites of adjacent collocation arrangements, subject to the FCC's revised rules governing space designation. The Commission also encourages the Parties to negotiate these details and state that if a CLP believes that an ILEC has inappropriately refused to honor its reasonable request, the CLP may file a complaint with this Commission. The Commission finds it appropriate to require the Parties to negotiate mutually agreeable language for Section 3.6 of the Standard *Offering to reflect these conclusions.*

CONCLUSIONS

The Commission concludes that the ILECs ultimately have the right to designate the sites of adjacent collocation arrangements, subject to the FCC's revised rules governing space designation; i.e., 47 CFR 51.323(f)(7). The Commission also encourages the Parties to negotiate these details and state that if a CLP believes that an ILEC has inappropriately refused to honor its reasonable request, the CLP may file a complaint with this Commission. Further, the Commission requires the Parties to negotiate mutually agreeable language for Section 3.6 of the Standard Offering to reflect these conclusions.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 50

ISSUE 52: Under what circumstances may the ILEC designate the location of the cageless collocation arrangement within the central office?

POSITIONS OF PARTIES

ALLTEL: ALLTEL did not take a position on this issue in its Brief.

AT&T: The ILEC may designate the location of cageless collocation equipment in its central office. When a CLP has a virtual collocation arrangement and wants to convert it to physical cageless collocation, however, the ILEC's right to designate is limited. Moreover, the sole purpose of requiring a separate entrance is to increase the CLPs' costs. Verizon has not justified the need categorically for a separate entrance.

BELLSOUTH: The ILEC should designate the location of the cageless collocation arrangement within its central office premises in all cases. There is nothing in the Act or the FCC rules that allows the CLP to designate the location. Further, the D.C. Circuit Court and the FCC have ruled that the ILEC, rather than the CLP, shall determine where the CLP's physical collocation equipment should be placed within a central office. Removing such control from the ILEC would result in a chaotic use of available space, as each CLP would make decisions in its best interest without regard to the interests of the ILEC or other CLPs.

MCIm: MCIm did not take a position on this issue in its Brief.

NEW ENTRANTS: The New Entrants supported the position taken by AT&T on this issue.

PUBLIC STAFF: The ILEC has the right to designate the placement of cageless collocation space in its central office. The ILEC may separate a CLP's collocation equipment from its own equipment only if the proposed separated space is: (a) available in the same or shorter time frame as nonseparated space; (b) at a cost not materially higher than the cost of nonseparated space; and (c) is comparable, from a technical and engineering standpoint, to nonseparated space. The ILEC may require such separation measures only when warranted by legitimate security concerns, or operational constraints unrelated to the competitive concerns of the ILEC or its affiliates or subsidiaries.

SPRINT: Sprint accepted the position taken on this issue by the CLPs to the extent it is consistent with the terms and conditions of the Standard Offering filed with the direct testimony of Sprint witness Hunsucker, it is included in the Standard Offering, and the Standard Offering is made applicable to all parties in its entirety. In consideration of the FCC's *Collocation Remand Order*, Sprint proposed to revise the first sentence of Paragraph 3.1 of the Standard Offering to read as follows:

> The ILEC shall offer Collocation Space to allow the CLP to collocate the CLP's equipment and facilities, without requiring the construction of a cage or similar structure, and without requiring the creation of a separate entrance to the Collocation Space that would add delays or materially higher costs than an arrangement without a separate entrance.

VERIZON: The ILEC shall designate the location of cageless collocation within a central office, including prohibiting commingling of CLP equipment with existing ILEC lineups. The ILEC shall assign collocation space to CLPs in a just, reasonable, and nondiscriminatory manner. In consideration of the FCC's *Collocation Remand Order*, the ILEC shall assign cageless collocation space in accordance with the provisions of 47 CFR 51.323(f)(7)(A)-(D) and 47 CFR 51.323(i)(4)(i)-(v). The ILEC shall allow the CLP direct access to its equipment and facilities 24 hours a day, seven days a week without need for a security escort. The ILEC may require the CLP's employees and contractors to use a central or separate entrance, so long as the employees and contractors of the ILEC's affiliates and subsidiaries will be subject to the same restriction. The ILEC should designate the space available for cageless collocation in single bay increments.

WORLDCOM: WorldCom supported the AT&T position on this issue.

DISCUSSION

On this issue, the CLPs contended that they may designate the location of cageless collocation equipment within the central offices. Verizon, BellSouth, and, ultimately, the Public Staff contended that the *GTE* decision gave ILECs the right to designate the placement of caged and cageless equipment in their central offices.

Pursuant to the remand, the FCC revised its rules regarding designation of the location of cageless collocation and arrangement within the ILECs' central offices. The provisions of 47 CFR 51.323(f)(7)(A)-(D) and 47 CFR 51.323(i)(4)(i)-(v) govern the circumstances under which an ILEC may designate the location of cageless collocation arrangements within central offices. An ILEC must assign collocation space to requesting carriers in a just, reasonable, and nondiscriminatory manner, according to the following principles: (1) an ILEC's space assignment policies and practices must not materially increase a requesting carrier's collocation costs; (2) an ILEC's space assignment policies and practices must not materially delay a requesting carrier's occupation and use of the ILEC's premises; (3) an ILEC must not assign physical collocation space that will impair the quality of service or impose other limitations on the service a requesting carrier wishes to offer; and (4) an ILEC's space assignment policies and practices must not reduce unreasonably the total space available for physical collocation or preclude unreasonably physical collocation within the ILEC's premises.[8] To be consistent with the *GTE* decision, and to balance the ILECs' security concerns with the CLPs' competition concerns, the FCC further concluded that an ILEC may require the separation of equipment from its own equipment only if each of the following conditions is met: (1) either legitimate security concerns, or operational constraints unrelated to the ILEC's or any of its affiliates' or subsidiaries' competitive concerns, warrant such separation; (2) any physical collocation space assigned to an affiliate or subsidiary of the ILEC is separated from space housing the ILEC's equipment; (3) the separated space is available in the same or shorter time frame as nonseparated space; (4) the cost of the separated space to the requesting carrier will not be materially higher than the cost of the nonseparated space; and (5) the separated space is comparable, from a technical and engineering standpoint, to nonseparated space.[9] The issue raised by the CLPs as to what happens when a CLP has a virtual collocation arrangement which it wants to convert to physical collocation has been addressed and decided in conjunction with Issue No. 39. If a CLP believes that it is being treated in a discriminatory manner by an ILEC in the siting of its collocation equipment, it may file a complaint with the Commission. The Commission finds it appropriate to require the Parties to negotiate mutually agreeable language for Section 3.1 of the Standard Offering to reflect these conclusions.

CONCLUSIONS

The Commission concludes that the ILECs have the right to designate the placement of cageless collocation equipment in their central offices; provided, however, that such designation is done in a just, reasonable, and nondiscriminatory manner which is consistent with the provisions of 47 CFR 51.323(f)(7)(A)-(D) and 47 CFR 51.323(i)(4)(i)-(v). The Commission also encourages the Parties to negotiate these details. The Commission reaffirms the decision previously reached in conjunction with Issue No. 39 on the issue raised by the CLPs as to what happens when a CLP has a virtual collocation arrangement which it wants to convert to physical collocation; i.e., the appropriate terms and conditions for conversion from virtual collocation to physical collocation. If a CLP believes that it is being treated in a discriminatory manner by an ILEC in the siting of its collocation equipment, the CLP may file a complaint with this

[8] 47 CFR 51.323(f)(7)(A)-(D)

[9] 47 CFR 51.323 (i)(4)(i)-(v)

Commission. The Commission also requires the Parties to negotiate mutually agreeable language for Section 3.1 of the Standard Offering to reflect these conclusions.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 51

ISSUE 53: What are the appropriate terms and conditions for the placement of entrance facilities?

POSITIONS OF PARTIES

ALLTEL: ALLTEL did not take a position on this issue in its Brief.

AT&T: The collocator will place its entrance facilities (copper or fiber) at a point (cable vault or manhole) that is mutually agreeable to the parties and physically accessible by the ILEC and CLP. The cable will be spliced into fire-retardant riser cable and connected to the collocator's equipment. The ILECs have not explained why the Standard Offering is not reasonable. Microwave facilities may be used for interconnection where technically feasible.

BELLSOUTH: CLPs may elect to place CLP-owned or CLP-leased fiber entrance facilities into the collocation space but they may not place nonfiber optic cable entrance facilities. Some copper cables currently enter BellSouth central offices. These older cables are associated with BellSouth's loop facilities. Entrance facilities for CLPs, on the other hand, are a form of interconnection. All of BellSouth's interconnection trunk cables entering BellSouth central offices are optical fiber facilities. The rules regarding an ILEC's collocation obligation under the Act established by the FCC in its First Report and Order clearly state that the ILEC has no obligation to accommodate nonfiber optic entrance facilities (that is, copper entrance facilities) unless and until such interconnection is first ordered by the state commission. This analysis should be done on a case-by-case basis by the Commission after the Commission has had an opportunity to review the CLP's need for copper facilities at a particular premises.

MCIm: MCIm and the other CLPs are entitled to use any technically feasible entrance cable, including copper facilities.

NEW ENTRANTS: The New Entrants supported the position taken by AT&T on this issue.

PUBLIC STAFF: The CLPs may place their owned or leased entrance facilities into the collocation space, but they are required to provide entrance facilities that meet the ILEC's standards. The FCC only requires ILECs to allow fiber optic cable for interconnection. Copper and coaxial cable are limited to adjacent collocation situations and are otherwise left to the discretion of the state commissions.

SPRINT: Sprint accepted the position taken on this issue by the CLPs to the extent it is consistent with the terms and conditions of the Standard Offering filed with the direct testimony of Sprint witness Hunsucker, it is included in the Standard Offering, and the Standard Offering is made applicable to all parties in its entirety.

VERIZON: The CLPs may elect to place CLP-owned or leased entrance facilities into the collocation space. The parties will mutually designate points of interconnection in close proximity to the building housing the collocation. The CLPs will provide and place fiber cable at the point of interconnection of sufficient length to be pulled through conduit, cable vault, and through the central office to the collocator's equipment location. A CLP may request that either the ILEC or a vendor authorized by the ILEC install fiber entrance facility cable.

WORLDCOM: WorldCom supported the AT&T position on this issue.

DISCUSSION

Section 5.2 of the Standard Offering describes the CLPs' position concerning the use of entrance facilities:

> Entrance Facilities. The CLP may elect to place CLP-owned or CLP-leased entrance facilities into the Collocation Space. The CLP will designate the point of interconnection in close proximity to the building housing the Collocation Space, such as an entrance manhole or a cable vault which are physically accessible by both parties. The CLP will provide and place fiber cable at the point of interconnection of sufficient length to be pulled through conduit and into the splice location with the ILEC inspector present. The CLP will provide fire retardant fiber cable, at parity with the ILEC's practices, that is approved for inside and outside use per manufacturers specifications at the point of interface (manhole) of sufficient length to be pulled through the conduit and cable vault to the CLP's equipment in the collocation space. If the CLP's cable is not fire retardant, the ILEC will install a fire retardant riser cable from the cable vault to the CLP's equipment in the collocation space. The CLP will splice the entrance cable to the fire retardant riser cable in the cable vault with an ILEC inspector present. If the cable has a metallic member, at the ILEC's option, either the ILEC or the CLP will ground the metallic member. If Fiber Optic Cable (FOC) is routed into the switching and/or transmission environment and the FOC is provisioned with a metallic shield or with metallic strength member, such metallic shield/strength members must be isolated and bonded to the designated OSP ground at the point of entry into the office environment (cable vault). Placement of the cable will be at the discretion of the ILEC. The CLP must contact the ILEC for instructions prior to placing the entrance facility cable in the manhole. The CLP is responsible for maintenance of the entrance facilities. At the

> CLP's option, the ILEC will accommodate where technically feasible a microwave entrance facility pursuant to separately negotiated terms and conditions. The ILEC will permit copper or coaxial cable as the transmission medium except where the ILEC can demonstrate to the CLP that use of such cable will impair the ILEC's ability to service its own customers or subsequent CLPs.

In response to Verizon's statement that it is the obligation of the CLP rather than the ILEC to install fire retardant riser cable from the cable vault to the CLP's equipment, CLP witness Gillan stated that "the CLPs do not necessarily disagree with this statement, as a general matter, however, the CLPs note that Verizon has not articulated why the Standard Offering is unreasonable in this respect." Witness Gillan further testified that CLPs are generally entitled to use any technically feasible entrance cable, including copper facilities. Copper facilities are necessary to provide xDSL when adjacent or offsite collocation is employed. Furthermore, the CLPs remarked that BellSouth acknowledged that copper cables enter ILEC central offices today, and this clearly demonstrates technical feasibility. Hence, the CLPs believe that there should be a presumption that copper cables should be allowed.

BellSouth witness Milner contended that the FCC's *Advanced Services Order* states that "[t]he ILEC has no obligation to accommodate non-fiber optic entrance facilities (that is, copper entrance facilities) unless and until such interconnection is first ordered by the state commission." He pointed out that, while some copper cables currently enter BellSouth central offices, "going forward our technology choice is fiber optic cable, so for our -- both for our interconnection trunking we use fiber optics as well as for our loop facilities. In other words, we don't place new copper loops. We use fiber optic cable out to a midpoint, digital loop carrier equipment, and then copper loop distribution that goes onto the premises." Witness Milner asserted that no CLP should be permitted to place copper entrance facilities, except to adjacent collocation arrangements, since this would accelerate the exhaust of entrance facilities at BellSouth's offices at an unacceptable rate.

Verizon witness Ries raised two objections to the Standard Offering's language concerning the placement of entrance facilities. First, the proposal specifies that if the CLP's fiber cable is not fire retardant, the ILEC will install a fire retardant riser cable from the cable vault to the CLP's equipment room in the collocation space. It is not the ILEC's obligation to satisfy this requirement for the CLP. Second, Section 5.2 of the Standard Offering would permit the use of copper entrance facilities. The diameter of equivalent copper cable is much larger than fiber cable and this inefficiently would require additional conduit and subduct space. The ILEC should allow copper entrance facilities only for onsite adjacent collocation, and only when sufficient duct space is available to accommodate the request, the arrangement is technically feasible and the arrangement meets ILEC safety requirements.

In its Proposed Order, the Public Staff took the position that the CLPs may place their owned or leased entrance facilities into the collocation space, but they are required to provide entrance facilities that meet the ILEC's standards. According to the Public Staff, the FCC only requires ILECs to allow fiber optic cable for interconnection. Copper and coaxial cable are limited to adjacent collocation situations and are otherwise left to the discretion of the state commissions.

47 C.F.R. Section 51.323(d)(3) requires an ILEC providing physical collocation, virtual collocation, or both, to allow for the interconnection of copper or coaxial cable if the state commission first approves such interconnection. This point was addressed as follows in the Florida Public Service Commission's (Florida PSC's) *Order for Reconsideration:*

> In its Motion, BellSouth seeks clarification of our decision to allow ILECs to require alternative local exchange companies (ALECs) to use fiber entrance cabling only after the ILEC proves that the entrance capacity is near exhaustion at a particular central office. BellSouth seeks clarification to the extent that it believes that we intended to limit situations in which an ALEC could use copper entrance cabling to those in which the ALEC is using a controlled environmental vault (CEV) or some similar type of structure on the same land where BellSouth's central office is located, a collocation arrangement referred to by BellSouth as adjacent collocation. BellSouth explains that only in adjacent collocation arrangements is an ALEC unable to use fiber. BellSouth further explains that in ¶ 44 of the FCC's Advanced Services Order, FCC Order 99-48, the FCC stated that adjacent collocation is available when the space inside the central office (CO) is exhausted. In collocation situations within the CO, BellSouth maintains that fiber optic entrance cabling must be connected to a fiber optic terminal, or multiplexer, inside the CO in order to connect to the network. However, in adjacent collocation situations, BellSouth contends that there is no room for the fiber optic connection, and therefore, copper should be allowed between the CO and the ALEC's CEV.
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> * * *
>
> Upon consideration of the foregoing, we make the requested clarifications regarding the use of copper entrance cabling. We find that the Order could be misconstrued, as the parties have indicated. As such, we clarify our decision in that it only addresses the use of copper entrance cabling within the context of collocation outside of a CO, but does not reach the issue of copper cabling in other situations. In rendering this clarification, we also clarify that only collocation between an ALEC's CEV and an ILEC CO was considered in our decision.

The Commission believes the Standard Offering generally provides a good format for achieving guidelines that meet the administrative, technical and safety issues associated with collocation. However, the CLPs have failed to provide sufficient evidence that copper cable should generally be allowed other than in an adjacent collocation situation. The Florida PSC's *Order For Reconsideration* clarifies that the use of copper entrance facilities only addressed situations where collocation was outside of a central office, and did not reach the issue of copper cabling in other situations.

The Commission believes that the unfettered use of copper entrance facilities, as requested by the CLPs, would accelerate the exhaust of ILEC central office entrance conduit and subduct. There are no FCC rules regarding fire retardant cable, but the CLPs are aware that they are required to meet the same safety standards that apply to ILECs. Thus, the burden should be on the CLPs to provide and install fire retardant riser cable. Central office entrance facilities should be limited to fiber optic cable unless the ILEC and CLP mutually agree to placement of copper entrance facilities or the CLP can convince the Commission, in a complaint proceeding, to authorize such placement at a particular premises on a case-by-case basis.

CONCLUSIONS

The Commission concludes that the CLPs have failed to provide sufficient evidence that copper cable should generally be allowed other than in an adjacent collocation situation. Thus, central office entrance facilities should be limited to fiber optic cable unless the ILEC and CLP mutually agree to placement of copper entrance facilities or the CLP can convince the Commission, in a complaint proceeding, to authorize such placement at a particular premises on a case-by-case basis. Further, the Commission finds it appropriate to require the CLPs to provide and install fire retardant riser cable. The Commission also requires the Parties to negotiate mutually agreeable language for Section 5.2 of the Standard Offering to reflect these conclusions and those subsequently addressed in conjunction with Issue No. 70.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 52

ISSUE 54: What are the appropriate terms and conditions for the placement of dual entrance facilities?

POSITIONS OF PARTIES

ALLTEL: ALLTEL did not take a position on this issue in its Brief.

AT&T: Dual entrances provide an opportunity to prevent some network failures. Section 5.2 of the Standard Offering does not require dual entrances. It requires parity. If multiple entry points are available, and if the collocator desires, multiple entry points will be made available. The collocator will use the ILEC's certified vendor for engineering and installation. All shared cost incurred by the CLP will be prorated, based upon the number of cables placed in the entry points by the involved parties.

BELLSOUTH: BellSouth will provide at least two interconnection points at each premises where there are at least two such interconnection points available and where capacity exists.

MCIm: MCIm did not take a position on this issue in its Brief.

NEW ENTRANTS: The New Entrants supported the position taken by AT&T on this issue.

PUBLIC STAFF: The ILECs shall provide two interconnection points for each ILEC premises where there are at least two entry points for the ILEC's cable facilities and where space is available.

SPRINT: Sprint accepted the position taken on this issue by the CLPs to the extent it is consistent with the terms and conditions of the Standard Offering filed with the direct testimony of Sprint witness Hunsucker, it is included in the Standard Offering, and the Standard Offering is made applicable to all parties in its entirety.

VERIZON: The ILEC will permit two interconnection points at each premise whenever there are two such interconnection points available for the ILEC cable.

WORLDCOM: WorldCom supported the AT&T position on this issue.

DISCUSSION

Section 5.2.1 of the Standard Offering provides the proposed conditions under which ILECs shall provide dual entrance facilities:

> Dual Entrance. The ILEC will permit the CLP to designate and the ILEC will provide at least two interconnection points at each Premise wherever there are at least two such interconnection points for the ILEC cable. The ILEC will also provide nondiscriminatory access to any entry point into the Premises in excess of two points in those locations where ILEC also has access to more than two such entry points. Where such dual points of entry are not immediately available, the ILEC shall perform work as is necessary to make available such separate points of entry for the CLP at the same time that it makes such separate points of entry available for itself. In each instance where ILEC performs such work in order to accommodate its own needs and those specified by the CLP in the CLP's written request, the CLP and the ILEC shall share the costs incurred by pro-rating those costs using the number of cables to be placed in the entry point by both the ILEC and the CLP(s) in the first twelve (12) months.

CLP witness Gillan asserted that "Whenever multiple entry points are available to the ILEC, they must similarly be available to the CLP." In his rebuttal testimony, witness Gillan pointed out that physically diverse entrances into a wire center provide redundancy and survivability in case of network failures (e.g., if there is a cable cut at one entrance, the overall service is not affected). He also pointed out that Section 5.2.1 does not require that there be dual entrances, but merely requires parity; i.e., if there are multiple entry points then the ILEC must provide access to those points to CLPs.

BellSouth witness Milner stated in his rebuttal testimony that:

> BellSouth has no obligation to provide for second entrances to its central office buildings where only one exists. BellSouth will provide at least two points at each premise where there are at least two such interconnection points available and where capacity exists. Upon receipt of a request for physical collocation, BellSouth will provide the CLP with information regarding BellSouth's capacity to accommodate dual entrance facilities. If conduit in the serving manhole(s) is available and is not reserved for another purpose for utilization within 12 months of the receipt of an application for collocation, BellSouth will make the requested conduit space available for installing a second entrance facility to CLP's arrangement. The location of the serving manhole(s) will be determined at the sole discretion of BellSouth. Where dual entrances are not available due to lack of capacity, BellSouth will so state in its response to the CLP's application.

Verizon witness Ries testified that dual entrances are usually defined as two entry points for cable facilities, which allow a carrier to have diversity with its cable routes. However, the CLPs suggest in Section 5.2.1 of the Standard Offering that if an ILEC has additional entry points to a central office, the CLP should have access to all those multiple points. Witness Ries goes on to say that entry for the CLPs at all these points is unnecessary for any legitimate purpose. The ILEC may have multiple entry points to connect to multiple destinations within its network, as well as to fulfill multiple interconnection requirements with various carriers. The CLP does not require multiple points to connect to its single collocation node. Under FCC Rules, the ILEC will provide two entry points, when two points are available.

In its Proposed Order, the Public Staff took the position that the ILECs must provide two interconnection points for each ILEC premises where there are at least two entry points for the ILEC's cable facilities and where space is available.

47 C.F.R. Section 51.323(d)(2) states that an ILEC must:

> Provide at least two such interconnection points at each incumbent LEC premises at which there are at least two entry points for the incumbent LEC's cable facilities, and at which space is available for new facilities in at least two of those entry points.

The Commission is of the opinion that ILECs are required by FCC rules to provide at least two interconnection points for each ILEC premises where there are at least two entry points for the ILEC's cable facilities and where space is available. If the ILEC's central office has at least two entry points and space is available, the Commission believes that this will allow for redundancy and survivability and will provide for parity between the requesting CLP and the ILEC. If there are less than two entry points available or if there is no entry space available, the ILEC shall provide the requesting CLP a tour of the entry facilities only (cable vault, manhole, etc.). Should the ILEC's central office require additional entry facilities and construction, then the ILEC shall consider the CLP's request for additional entry facilities in its planning and design of the new entry facilities. Costs for these new facilities should be shared by the ILEC and requesting CLP on a use cost basis determined by negotiations between the two companies.

CONCLUSIONS

The Commission concludes that ILECs are required by FCC rules to provide at least two interconnection points for each ILEC premises where there are at least two entry points for the ILEC's cable facilities and where space is available. If there are less than two entry points available or if there is no entry space available, the ILEC shall provide the requesting CLP a tour of the entry facilities only (cable vault, manhole, etc.). Should the ILEC's central office require additional entry facilities and construction, then the ILEC shall consider the CLP's request for additional entry facilities in its planning and design of the new entry facilities. Further, the Commission concludes that the costs for these new facilities should be shared by the ILEC and requesting CLP on a use cost basis determined by negotiations between the two companies. The Commission also requires the Parties to negotiate mutually agreeable language for Section 5.2.1 of the Standard Offering to reflect these conclusions and those subsequently addressed in conjunction with Issue No. 71.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 53

ISSUE 55: What are appropriate terms and conditions for additions and/or augmentations for requested or in-place collocation space?

ISSUE 81 (Sprint 7): What are the appropriate provisioning intervals for the Augments contained in Sections 9.2 - 9.5?

POSITIONS OF PARTIES

AT&T: AT&T took the same position as the New Entrants and WorldCom.

ALLTEL: The terms and conditions for augmentation of existing collocation agreements reasonably should provide for shorter provisioning intervals, and lower prices, as the intervals and costs associated with applications for augmentations may be less than the time and cost required for establishment of entirely new collocation arrangements.

BELLSOUTH: The same terms and conditions that apply for an initial collocation request should apply for additions and/or augmentations to requested or in-place collocation space. An application by the CLP is the appropriate method to request any modifications to a collocation space. The application will provide all of the CLP's equipment and service specifications that would allow BellSouth to provision or augment the collocation space. This is necessary because it is BellSouth, rather than the CLP, that must determine the sufficiency of infrastructure systems.

MCIm: This issue was not addressed in MCIm's Brief.

NEW ENTRANTS: It is not reasonable to treat additions or augmentations the same as initial requests for space. An application fee, in particular, is not invariably appropriate, because provisioning for space has already occurred.

PUBLIC STAFF: If a CLP augments its equipment within the initial forecast and no space preparation is required, then no fees or additional intervals should apply. The categories detailed by Sprint are the most reasonable divisions of the different types of augments, as well as the proposed intervals if the CLP submits a blind firm order confirmation and an augment application with the appropriate fees for the requested augment. If a CLP uses a third-party vendor, the interval for administrative work will be 20 days, the same interval as for a minor augment. An ILEC may request an extension of the interval from the Commission within 30 days of the receipt of the firm order.

SPRINT: An addition or augmentation to requested and/or in-place collocation space should adhere to the same equipment standards (NEBS and NEC) that other collocation arrangements include and that augmentations must adhere to appropriate environmental and safety guidelines. Proposed provisioning intervals for augmentations and additions are as follows: (a) 30 days for administrative work, (b) 20 days for simple augments, (c) 45 days for minor augments, (d) 60 days for intermediate augments, and (e) 90 days for major augments.

VERIZON: Verizon proposed that when initial forecasted demand parameters with no additional space preparations are required, no additional charges or additional intervals should apply. When space preparation work (e.g., increase in AC or DC power, generation of additional BTUs, increases in floor space requirements over additional applications) is involved, complete application and engineering fees would apply.

WORLDCOM: WorldCom took the same position as AT&T and the New Entrants.

DISCUSSION

ALLTEL commented in its Brief that the majority of augmentation requests involve less work than requests for initial establishment of a collocation arrangement. ALLTEL stated that BellSouth is unwilling to agree to any provisioning interval shorter than the same 90-day interval it advocates for establishing an entirely new collocation. In concluding its comments, ALLTEL commented that the terms and conditions for augmentation should reasonably and rationally recognize the difference between augmentation of existing arrangements and establishment of entirely new collocations.

BellSouth stated that the same terms and conditions that apply for any collocation request should apply for additions and/or augmentations to requested or in-place collocation space and that an application by the CLP is the appropriate method to request any modifications to a collocation space. BellSouth commented that having all of the CLPs service and equipment information on the augmentation request would allow the ILEC to provision or augment the collocation space. According to BellSouth, it is the ILEC, rather than the CLP, that must determine the sufficiency of infrastructure systems. These infrastructure systems (for example, the power plant) must accommodate all the equipment in the central office, both the ILECs and all collocators. BellSouth further commented, that since a CLP could not know an ILEC's need in this regard, the CLP is not in a position to determine the sufficiency of those infrastructure systems.

In its Brief, BellSouth stated that the ILECs are in a significantly more knowledgeable position than any of the CLPs with respect to the mechanics of the collocation process, because it is the ILEC, obviously, that must administer the space available for collocation in its central offices in a way that is as fair as possible for all parties. Furthermore, BellSouth stated that its central offices are in greater demand because BellSouth serves the larger, more urban areas of North Carolina where competition has emerged and is growing at a rapid rate. BellSouth commented that ILECs like BellSouth have considerably greater experience/responsibility in managing the collocation process than does any particular CLP and, for this reason, have a more realistic grasp of what constitutes safe, efficient collocation and what are the appropriate time frames for provisioning physical collocation requests. BellSouth also stated that it had met current provisioning intervals it had promised to CLPs through individual interconnection agreements. BellSouth stated that the CLPs have not used a significant amount of the space to begin offering competitive services.

The New Entrants commented in their Proposed Order in the Proposed Finding of Fact No. 2 that, Verizon and BellSouth have taken the position that even the simplest augments to collocation space should be treated from a provisioning perspective as though they were a new collocation arrangement. Additionally, the New Entrants stated that augmentations are generally shorter than the standard physical collocation interval because power and permit requirements are not needed. The New Entrants stated that plainly augmentation does not require as much time to provision as a full collocation. Furthermore, the New Entrants commented that augments come in varying sizes and levels of complexity, and as such, should be treated differently from new applications for collocation space. The New Entrants proposed that the Commission adopt the standards of the Texas PUC which require that small augments be provisioned in 15 days, medium augments be provisioned in 30 days, and larger augments be provisioned in 45 days.

In their Brief, the New Entrants stated that augments to existing collocations typically involve attaching equipment to existing structures with bolts and attaching prepared cables. Accordingly, the New Entrants commented that such augments do not require as much time to provision as a new collocation. However, the New Entrants commented, that the incumbents take the position that even the smallest augment should be treated from a provisioning perspective as though it is a new collocation. The New Entrants concluded that this position is unreasonable and should be rejected.

In the New Entrants' Issues Matrix, the New Entrants stated that it is not reasonable to treat additions or augmentations the same as initial requests for space. Furthermore, the New Entrants commented that unlike other arrangements (caged, cageless, virtual and adjacent) an augmentation should have a shortened interval. The New Entrants also stated that Sprint had proposed 20-30 days for administrative, 45 days for small, 60 days for medium and 60-90 days for large. The New Entrants concluded their comments by stating that it is just as important to standardize the augmentation process as it is to standardize the initial collocation process, to reduce cost and delay. Lastly, the New Entrants stated that unusual circumstances that may necessitate an increased period for provisioning may be processed through a waiver.

In its Brief, Sprint proposed the following intervals for augmentations and additions: (a) 30 days for administrative work, (b) 20 days for simple augments, (c) 45 days for minor augments, (d) 60 days for intermediate augments, and (e) 90 days for major augments. Sprint commented that these intervals afford CLPs meaningful opportunity to compete while still allowing ILECs a reasonable time period for provisioning of augments and additions.

On behalf of Sprint, witness Hunsucker's Rebuttal Testimony provided the following definition of varying augmentations:

> Simple Augments, such as the placement of additional AC convenience outlets, or only a fuse change for additional DC power, should be provided within 20 days of receipt of a complete augment application.
>
> Minor Augments, consisting primarily of interconnection cabling arrangements where the panels, relay racks, and other infrastructure exist should be provided within 45 days of receipt of a complete augment application.
>
> Intermediate Augments, consisting of additional interconnection panels/blocks, cabling, DC power arrangements, where minor infrastructure work is required, should be provided within 60 days of receipt of a complete augment.

> Major Augments, requiring major infrastructure work (e.g., cage expansion, power cabling) should be provided within 60-90 days of receipt of a complete augment application.

Verizon stated that the terms and conditions for additions and augmentations to collocation space depend on the nature of the change to the space. Verizon commented that application fees for additions and/or augmentations are applicable where the collocation arrangement has been inspected and turned over to the CLP. The amount of such fees would depend on the magnitude of the requested change. Verizon commented that major augments (e.g., those requiring AC or DC power, adding equipment that generates more BTUs of heat, or increasing caged floor space beyond the CLP's original application) require a complete application and an engineering fee. Verizon further commented that a minor augment fee would apply when a request requires the ILEC to perform certain services or functions on behalf of the CLP, including but not limited to requests to pull cable for CLP to CLP interconnects, DS0, DS1, and DS3 facility terminations.

Verizon in its Brief stated that augmentation requests may or may not require less work than the initial provisioning, and one cannot assume that the interval for an augmentation always will be shorter than the initial setup. Verizon commented that ALLTEL witness Caldwell acknowledged that simply because the request is an augmentation rather than a new request does not by definition decrease the amount of work that an ILEC might have to perform and that work may be greater for an augmentation than it is for an initial request. Verizon further commented that the amount of work required to handle augmentations will vary depending upon the nature of the augment and may cause major modifications in existing HVAC, power, or other infrastructure requirements. Verizon concluded that augment requests should be treated using the standard intervals for collocation provisioning.

Verizon commented that the CLPs attempted to identify a myriad of augments and then pre-determine specific intervals for completing these types of augments. Verizon stated that this recommendation should be rejected in favor of a more realistic and flexible case-by-case process by which augments would be addressed and completed for the CLPs. Verizon stated the augments suggested by the New Entrants do not permit case-by-case analysis of augments and inevitably would be out-of-date quickly given the ever-changing dynamics in the telecommunications industry.

The Public Staff stated that the time to complete augments indeed will vary widely, just as will the time to complete an initial collocation arrangement. Nonetheless, the Public Staff commented that augments will require less time for completion than requests for collocation. The Public Staff stated that it agreed with the CLPs that if a CLP augments its equipment within its initial forecast and no space preparation is required, then no fees or additional intervals should apply. Further, the Public Staff stated that the categories detailed by Sprint are the most reasonable divisions of the different types of augments. The Public Staff commented that if a CLP used a third-party vendor, the interval for administrative work will be 20 days, the same interval as for a simple augment. The Public Staff concluded its comments stating that it agreed with BellSouth that an ILEC may request an extension of the interval within 30 days of the receipt of the firm order.

The Commission agrees with the Public Staff, in that, the positions of the parties varied widely on the terms and conditions for augments to existing collocation space. Also, the Commission agrees that the categories of augments proposed by Sprint are the most reasonable. The Commission believes that augments, as a practical matter, will be required from time to time and that CLPs should not be unduly delayed in having reasonable requests completed in a timely manner.

CONCLUSIONS

The Commission concludes that if a CLP augments its equipment within the initial forecast and no space preparation is required, then no fees or additional intervals should apply. The categories detailed by Sprint are the most reasonable divisions of the different types of augments, as well as the proposed intervals if the CLP submits a blind firm order confirmation and an augment application with the appropriate fees for the requested augment. If a CLP uses a third-party vendor, the interval for administrative work will be 20 days, the same interval as for a simple augment. An ILEC may request an extension of the interval from the Commission within 30 days of the receipt of the firm order.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 54

ISSUE 56: Should augmentations to existing collocation space be treated differently from new applications for collocation space?

POSITIONS OF PARTIES

AT&T: AT&T took the same position as the New Entrants and WorldCom.

ALLTEL: Procedures for augmentation of existing arrangements should be flexible, should recognize that augmentation of existing arrangements can involve less effort and cost than establishment of a new arrangement. Thus, intervals for augmentation should necessarily be less than intervals for new collocation applications, due to the less demanding tasks and construction requirements involved.

BELLSOUTH: Equipment augmentations should be treated the same as new applications. The amount of work performed by BellSouth in response to the collocator's applications depends on the nature and scope of the request and the particular premises involved rather than whether the equipment will be placed in a "new" collocation arrangement or an augmentation rather than a new request does not necessarily decrease the amount of work that will need to be done to provision the request. In fact, in some cases, the work may be greater than that initially required.

MCIm: This issue was not addressed in MCIm's Brief.

NEW ENTRANTS: There will be variations (less engineering/installation versus more) as to the degree of difficulty and work required of some augmentations. Accordingly, augmentations should be treated differently from new applications for collocation space. Generally, augmentations should be processed and provisioned more quickly and at less cost than new application for collocation space.

PUBLIC STAFF: As discussed in Issue No. 55, if a CLP augments its equipment within the initial forecast and no space preparation is required, then no fees or additional intervals should apply. The categories detailed by Sprint are the most reasonable divisions of the different types of augments, as well as the proposed intervals if the CLP submits a blind firm order confirmation and an augment application with the appropriate fees for the requested augment. If a CLP uses a third-party vendor, the interval for administrative work will be 20 days, the same interval as for a minor augment. An ILEC may request an extension of the interval from the Commission within 30 days of the receipt of the firm order.

SPRINT: Sprint's position pertaining to augmentation and provisioning intervals for augmentation is set forth under Issue No. 55.

VERIZON: Verizon proposes that augmentations to existing collocation space should be treated as follows: 1) if the CLP requests a change in the physical environment, space preparation or an increase in power, the CLP should pay an engineering fee and submit an application; 2) if the CLP requests an augment where the ILEC does some work but the request does not impact the size requirements of the space or require an increase in power supplied, the CLP should pay a minor augment fee and submit an application; and 3) if an augment request does not require additional space preparation by the ILEC and does not result in the original specifications of the CLP's previously filed application being exceeded, such as CLP to CLP connections, the CLP should submit an application with no fee.

WORLDCOM: WorldCom took the same position as AT&T and the New Entrants.

DISCUSSION

ALLTEL commented in its Brief that collocation procedures should establish intervals for augmentation of existing collocations that are rationally related to the nature and extent of the work required by the augmentation. ALLTEL commented that an ILEC should have a shorter provisioning interval for a simple augmentation and a longer interval for a complex augmentation. Furthermore, less demanding tasks and construction requirements are typically involved in augmenting existing collocation arrangements. ALLTEL stated that, therefore less time should be allowed for completion of these tasks.

ALLTEL stated that BellSouth takes the position that augmentations should be treated the same as establishments of new collocation arrangements, with a 90-day interval under ordinary circumstances and a 130-day interval in extraordinary cases. ALLTEL commented that in taking this position BellSouth ignores the fact that augmentation of existing arrangements will generally involve less effort and cost than establishment of a new arrangement. ALLTEL concluded its remarks stating that to rigidly require identical intervals for augmentation and establishment of an entirely new collocation is to arbitrarily and unnecessarily impede the growth of local competition.

BellSouth stated that equipment augmentations should be treated the same as new applications. As stated by BellSouth, the amount of work performed in response to the collocator's application depends on the nature and scope of the request and the particular premises involved rather than whether the equipment will be placed in a "new" collocation arrangement or an augmentation to an existing collocation arrangement. BellSouth commented that simply because a request is an augmentation rather than a new request does not necessarily decrease the amount of work that will need to be done to provision the request. In fact, in some cases, the work may be greater than that initially required.

In the New Entrants' Issues Matrix, the New Entrants stated that BellSouth and Verizon fail to recognize the difference between leasing new space and improving space that is already subject to an existing arrangement. The New Entrants commented that augmentations should be treated differently from new applications for collocation space. As stated by the New Entrants, an augment should be treated differently from a new application because it may not require items such as power and special permits. The New Entrants commented that generally augmentations should be processed and provisioned more quickly and at less cost than new applications for collocation space. Furthermore, the New Entrants stated that it was just as important to standardize the augmentation process as it is to standardize the initial collocation process to reduce cost and delay. The New Entrants further commented that unusual circumstances that may necessitate an increased period for provisioning may be processed through a waiver.

In its Proposed Order, Sprint stated that its position pertaining to augmentation and provisioning was set forth under Issue No. 55. As discussed under Issue No. 55, Sprint agreed with the New Entrants that a request for an addition or augmentation to requested and/or in-place collocation space should adhere to the same equipment standards (NEBS and NEC) that other collocation arrangements include and that augmentations adhere to appropriate environmental and safety guidelines. Because Sprint did not agree with the New Entrants' provisioning intervals, Sprint laid out its proposed provisioning intervals under Issue No. 55.

Verizon stated that the terms and conditions for additions and augmentations to collocation space depend on the nature of the change to the space. Verizon's comments on this issue were presented previously in Verizon's discussion of Issue No. 55. Verizon in its Brief stated that augmentation requests may or may not require less work than the initial provisioning, and one cannot assume that the interval for an augmentation always will be shorter than the initial setup. Verizon concluded that augment requests should be treated using the standard intervals for collocation provisioning.

Verizon commented that the CLPs attempted to identify a myriad of augments and then pre-determine specific intervals for completing these types of augments. Verizon stated that this recommendation should be rejected in favor of a more realistic and flexible case-by-case process by which augments would be addressed and completed for the CLPs. As presented in the discussion of Issue No. 55, Verizon stated the augments suggested by the New Entrants do not permit case-by-case analysis of augments and inevitably would be out-of-date quickly given the ever-changing dynamics in the telecommunications industry.

The Public Staff combined its discussion of Issue Nos. 55 and 56. As presented in the discussion of Issue No. 55, the Public Staff stated that the time to complete augments indeed will vary widely, just as will the time to complete an initial collocation arrangement. Nonetheless, the Public Staff commented that augments will require less time for completion than requests for collocation. The Public Staff stated that it agreed with the CLPs that if a CLP augments its equipment within its initial forecast and no space preparation is required, then no fees or additional intervals should apply. Further, the Public Staff stated that the categories detailed by Sprint are the most reasonable divisions of the different types of augments. The Public Staff commented that if a CLP used a third-party vendor, the interval for administrative work will be 20 days, the same interval as for a simple augment. The Public Staff concluded its comments stating that it agreed with BellSouth that an ILEC may request an extension of the interval within 30 days of the receipt of the firm order.

As presented in the discussion of Issue No. 55, the Commission agrees with the Public Staff, in that, the positions of the Parties varied widely on the terms and conditions for augments to existing collocation space. Also, the Commission agrees that the categories of augments proposed by Sprint are the most reasonable. The Commission believes that augments, as a practical matter, will be required from time to time and that CLPs should not be unduly delayed in having reasonable requests completed in a timely manner.

CONCLUSIONS

The Commission concludes that if a CLP augments its equipment within the initial forecast and no space preparation is required, then no fees or additional intervals should apply. The categories detailed by Sprint are the most reasonable divisions of the different types of augments, as well as the proposed intervals if the CLP submits a blind firm order confirmation and an augment application with the appropriate fees for the requested augment. If a CLP uses a third-party vendor, the interval for administrative work will be 20 days, the same interval as for a simple augment. An ILEC may request an extension of the interval from the Commission within 30 days of the receipt of the firm order.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 55

ISSUE 57: *What are the proper levels of insurance for a CLP to obtain prior to occupying* collocation space?

POSITIONS OF PARTIES

ALLTEL: ALLTEL did not address this issue in its Brief.

AT&T: Reasonable and standard amounts of insurance set forth as a compromise in Section 8 of the Standard Offering should be provided by CLPs. Insurance should be provided by an insurer with a Best rating of A- or above who is licensed to do business in all jurisdictions covered by the agreement.

BELLSOUTH: At its sole cost and expense, the CLP must procure, maintain, and keep in force insurance underwritten by insurance companies licensed to do business in the states applicable to the agreement between BellSouth and the CLP and having a Best rating of A- at levels set forth in BellSouth's standard collocation attachment.

MCIm: *MCIm did not address this issue in its Brief.*

NEW ENTRANTS: The New Entrants agreed with AT&T's position on this issue.

PUBLIC STAFF: The Public Staff stated that the insurance requirements in Section 8 of the Standard Offering are satisfactory.

SPRINT: Subject to the provision that a CLP seeking to self-insure must have adequate net worth (equal to or not less than five times the liability to be self-insured) to cover any liability, Sprint agreed with the position taken by the New Entrants.

VERIZON: A CLP shall carry, and cause subcontractors to carry insurers with a Best rating of not less than A- and licensed to do business in jurisdictions covered by the Standard Offering. Verizon supports the following levels of insurance: workers compensation-$1,000,000; commercial general liability-$1,000,000; business auto-$1,000,000; umbrella or excess liability amounts-$10,000,000; all risk property insurance-full replacement cost. CLPs requesting to self-insure should be reviewed on a *case-by-case basis.*

WORLDCOM: WorldCom agreed with AT&T's position on this issue.

DISCUSSION

Section 8 of the Standard Offering provides that the CLP and its subcontractors shall carry insurance from an insurer with a Best rating of A- or above who is licensed to do business in all jurisdictions covered by the agreement.

CLP witness Gillan stated that the following provisions should be included in the Standard Offering: the insurance must include workers' compensation insurance with an employer's liability limit of no less than $1,000,000; commercial general liability insurance with coverage for contractual liability and products/completed operations liability of not less than $1,000,000 combined single limit per occurrence; business auto insurance with a limit of no less than $1,000,000 combined single limit per accident; umbrella or excess liability insurance not less than $5,000,000 combined single limit per occurrence and aggregate in excess of the other insurance; and all risk property insurance on a full replacement cost basis. In addition, the CLPs' liability will not be limited to the policy limits, and the CLP must furnish the ILEC with certificates of insurance. The insurance policies will all be primary policies. Finally, a CLP may self-insure if its net worth is at least five times greater than the liability it is self-insuring. According to witness Gillan, these amounts are standard in the industry.

BellSouth proposed that a CLP maintain insurance underwritten by insurance companies licensed to do business in the applicable states and with a Best rating of A-. BellSouth proposed that the coverage must include $10,000,000 of commercial general liability coverage or a combination of $10,000,000 of commercial general liability insurance and excess/umbrella coverage with BellSouth named as an additional insured; workers' compensation and employers' liability coverage of $100,000 per accident, $100,000 per disease, and $500,000 policy limit by disease; and all risk property coverage on a full replacement cost basis insuring all of the CLP's real and personal property in the central office. If the CLP's net worth exceeds $500,000,000, the CLP may be self-insured. According to BellSouth, the CLP may opt to obtain business interruption and contingent business interruption insurance with the understanding that BellSouth assumes no liability for loss of profit or revenues if interruption occurs. Certificates of insurance should be submitted 10 days before commencement of work in the collocation space. The CLP must conform to recommendations made by BellSouth's fire insurance company.

Verizon recommended that CLPs and their subcontractors carry insurers with a Best rating of no less than A- and with a license to do business in the jurisdictions covered by the agreement. They must have $1,000,000 coverage each for workers' compensation, commercial general liability, and business auto coverage, and $10,000,000 coverage for umbrella or excess liability amounts and all risk property insurance (full replacement cost). Verizon also proposed reviewing requests for self-insurance on a case-by-case basis.

The Public Staff stated its support for Section 8 of the Standard Offering as proposed by the CLPs. It reasoned that the CLPs' proposal was the result of negotiations by the CLPs and Sprint and that the insurance provisions should be reasonable to provide proper insurance coverage for damages by collocators. The Public Staff also supported inclusion in the Standard Offering BellSouth's proposed wording in the section on workers' compensation insurance, the addition of language informing the CLP of its right to procure business interruption and contingent business interruption insurance, the inclusion of a requirement that certificates of insurance be submitted 10 days prior to the commencement of work in the collocation space, and a requirement that the CLP must conform to the recommendations made by an ILEC's fire insurance company.

The major difference in the Parties' proposals is that BellSouth and Verizon are seeking an umbrella policy of at least $10,000,000 and the CLPs recommend that the limits of the policy be no less than $5,000,000. According to BellSouth, it has assessed the level of risk posed by collocators in central offices and the appropriate amount is $10,000,000. BellSouth has also suggested changes to the wording of Section 8 on workers' compensation insurance, the addition of language informing the CLP of its right to procure business interruption and contingent business interruption insurance, the inclusion of a requirement that certificates of insurance be submitted 10 days prior to the commencement of work in the collocation space, and the inclusion of a requirement that a CLP must conform to recommendations made by an ILEC's fire insurance company.

None of the Parties presented the Commission with any data to support either a $5,000,000 or $10,000,000 umbrella policy limit. The CLPs maintained that their proposal is standard in the industry, and BellSouth and Verizon contended that the possible harm caused by collocators is more likely to be covered by $10,000,000 rather than $5,000,000. The Commission notes, as does the Public Staff, that the CLPs' proposal was the result of negotiation by CLPs and Sprint, and is of the opinion that the insurance provisions should be reasonable to provide proper insurance coverage for damages by collocators. Thus, the CLPs' proposed Section 8.1.4 should be included in the Standard Offering.

In addition, the Commission agrees with the Public Staff's position that the Standard Offering should include BellSouth's proposed changes to the wording of the section on workers' compensation insurance (BellSouth's Section 8.2.2) as discussed herein, the addition of language informing the CLP of its right to procure business interruption and contingent business interruption insurance (BellSouth's Section 8.2.4), the inclusion of a requirement that certificates of insurance be submitted 10 days prior to the commencement of work in the collocation space (BellSouth's Section 8.5), and a requirement that the CLP must conform to the recommendations made by an ILEC's fire insurance company (BellSouth's Section 8.6).

CONCLUSIONS

The Commission concludes that the CLPs' proposed Section 8.1.4 should be included in the Standard Offering along with BellSouth's proposed changes to the wording of the section on workers' compensation insurance (BellSouth's Section 8.2.2) as discussed herein, the addition of language informing the CLP of its right to procure business interruption and contingent business interruption insurance (BellSouth's Section 8.2.4), the inclusion of a requirement that certificates of insurance be submitted 10 days prior to the commencement of work in the collocation space (BellSouth's Section 8.5), and a requirement that the CLP must conform to the recommendations made by an ILEC's fire insurance company (BellSouth's Section 8.6).

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 56

ISSUE 58: What obligations does the ILEC have to notify CLPs with respect to conditions in the central office?

POSITIONS OF PARTIES

ALLTEL: ALLTEL did not address this issue.

AT&T: The ILEC should notify the CLP regarding all service affecting conditions in the central office. The notification should recognize that time is of the essence and should be made by expeditious means and confirmed in writing.

BELLSOUTH: BellSouth is agreeable to informing the CLP by telephone of an emergency related activity that BellSouth or its subcontractors may be performing that may substantially affect the CLPs collocation space or supporting circuits. BellSouth will give three calendar days notice before access is required for making BellSouth equipment and building modifications and five business days where BellSouth or its subcontractors are performing non-emergency work that could affect CLP space or circuits.

MCIm: MCIm did not address this issue in its Brief.

NEW ENTRANTS: New Entrants took the same position as AT&T.

PUBLIC STAFF: Section 16.3 of the Standard Offering should be revised to require the ILECs to give CLPs seven calendar days' notice prior to undertaking construction activities which may pose risks to the CLPs service.

SPRINT: Sprint was generally agreeable to the New Entrants position.

VERIZON: For construction activities within the central office for which the ILEC takes or would take action to protect its own equipment, it should notify affected CLPs in the same manner and at the same time that it notifies ILEC personnel.

WORLDCOM: WorldCom took the same position as AT&T.

DISCUSSION

This issue concerns Section 16.3 of the Standard Offering:

> Construction Notification. The ILEC will notify the CLP prior to the scheduled start dates of all construction activities (including power additions or modifications) in the general area of the CLP's Collocation Space with potential to disrupt the CLP's services. The ILEC will provide such notification to the CLP at least twenty (20) calendar days before the scheduled start of such construction activity. The ILEC will inform the CLP as soon as practicable by telephone of all emergency-related activities that the ILEC or its subcontractors are performing in the general area of the CLP's Collocation Space, or in the general area of the AC and DC power plants which support the CLP's equipment. If possible, notification of any emergency-related activity will be made immediately prior to the start of the activity so that the CLP may take reasonable actions necessary to protect the CLP's Collocation Space.

In his direct testimony, CLP witness Gillan proposed adding to Section 16.3 the requirement that notifications of service-affecting conditions be "confirmed in writing." He objected to Verizon's proposal to give only 24 hours' notice prior to "starting construction activities that could potentially cause service outage," and to BellSouth's proposal to provide 48 hours' notice prior to making equipment and building modifications in a CLP's collocation space. He also recommended that ILECs be required to provide notice of possible service-affecting conditions "in a manner that gets to the CLPs immediately."

BellSouth witness Hendrix suggested the following arrangements for alerting CLPs to potential service-disrupting activities:

1. At least 48 hours notice before BellSouth requires "access to the collocation space for purposes of making BellSouth equipment and building modifications (e.g., running, altering or removing racking, ducts, electrical wiring, HVAC, and cables)."

2. Five business days' notice prior to those instances where BellSouth or its subcontractors may be performing non-emergency work that has a substantial likelihood of directly affecting the collocation space occupied by the CLP, or that is directly related to circuits that support CLP equipment.

3. Telephone notification "as soon as practicable" of any "emergency-related activity that BellSouth or its subcontractors may be performing that has a substantial likelihood of directly affecting the collocation space occupied by the CLP, or is directly related to circuits that support CLP equipment."

Witness Hendrix criticized the 20-calendar day notice requirement set forth in Section 16.3, and the provision that requires notice, if possible, prior to any emergency-related activity, as being "totally unreasonable." He also opposed witness Gillan's suggestion that ILECs should be required to provide written notice to the CLPs of possible service-affecting conditions.

The Public Staff's view was that Section 16.3 of the Standard Offering should be revised to require ILECs to give the CLPs seven calendar days notice prior to undertaking construction activities which may pose risks to CLP service.

Verizon witness Ries testified that "Verizon's practice requires that Central Office Engineering and Installation employees notify Central Office personnel at least 24 hours prior to starting construction activities that could potentially cause service outages" and suggested that the same standard that applies to Verizon personnel should apply to CLP personnel. He argued that the 20-day period proposed in Section 16.3 was "entirely too long."

After examining Section 16.3 and evaluating the Companies' testimonies presented on this issue, the Commission concludes that Section 16.3 is acceptable as written, with the sole exception of the 20-calendar day notice requirement for scheduled construction activities that may pose risks to the CLPs' service. We believe that BellSouth's proposal to give five business days notice strikes a reasonable balance between the ILECs' scheduling needs and the CLPs' service concerns. However, we choose to substitute an interval of "seven calendar days" because of the ambiguity of the term "business days" as it is applied to various organizations. A seven-day notice period should allow the CLP adequate time to take measures to protect its equipment, if necessary.

The Commission will not require ILECs to contact CLPs in writing concerning possible service-affecting conditions in the central office. However, ILECs should take care to maintain records which show the dates and times that CLP representatives were contacted and which furnish basic details concerning these contacts.

Accordingly, Section 16.3 should be modified to change the phrase "at least twenty (20) calendar days" to "at least seven (7) calendar days."

CONCLUSIONS

The Commission concludes that Section 16.3 of the Standard Offering should be revised to require the ILECs to give CLPs seven calendar days' notice prior to undertaking construction activities which may pose risks to the CLPs' service.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 57

ISSUE 59: What security measures and safety requirements are reasonable to protect the ILEC premises and the ILEC personnel?

POSITIONS OF PARTIES

ALLTEL: ALLTEL did not address this issue in its Brief.

AT&T: Reasonable security measures have been addressed in the FCC's *Advanced Services Order* regarding an ILEC□s protection of its equipment and assets. The use of equipment such as cameras, monitoring systems, badges and badges with computerized tracking systems are reasonable. The proposed Standard Offering contains reasonable security measures.

BELLSOUTH: BellSouth will impose additional specific security and safety measures that are no more stringent than those imposed by BellSouth on its own employees or for authorized contractors.

MCIm: MCIm did not address this issue in its Brief.

NEW ENTRANTS: New Entrants took the same position as AT&T.

PUBLIC STAFF: The *Advanced Services Order* clearly gives each ILEC the right to impose security measures upon the CLPs as long as they are reasonable and no more stringent than the measures it imposes upon itself or its contractors. The Standard Offering should be changed to allow each ILEC to impose additional security requirements on CLP personnel that it feels are necessary to ensure the security and safety of the ILEC premises. These requirements will be no more stringent than the requirements the ILEC places on its own employees or authorized contractors who are allowed access to these premises.

SPRINT: Sprint was willing to accept AT&T's position on this Issue to the extent it is consistent with the terms and conditions of the Standard Offering filed with the direct testimony of Sprint witness Hunsucker, it is included in the Standard Offering, and the Standard Offering is made applicable to all parties in its entirety.

VERIZON: Only ILEC employees, ILEC certified vendors and authorized employees, authorized Guests, or authorized agents of the CLP will be permitted on the ILEC□s premises. Verizon will require picture identification and background checks of all CLP employees and agents.

WORLDCOM: WorldCom took the same position as AT&T.

DISCUSSION

This issue concerns the extent to which an ILEC can require a CLP to comply with the ILEC's security standards. The FCC made the following determination regarding security standards in Paragraph 47 of the *Advanced Services Order:*

> We [FCC] conclude, based on the record, that incumbent LECs may impose security arrangements that are as stringent as the security arrangements that incumbent LECs maintain at their own premises either for their own employees or for authorized contractors. To the extent existing security arrangements are more stringent for one group than for the other, the incumbent may impose the more stringent requirements. Except as provided below, we conclude that incumbent LECs may not impose more stringent security requirements than these. Stated differently, the incumbent LEC may not impose discriminatory security requirements that result in increased collocation costs without the concomitant benefit of providing necessary protection of the incumbent LEC's equipment.

Section 12 of the Standard Offering addresses security measures. The CLPs believe that the security measures outlined in the Standard Offering are reasonable. CLP witness Gillan opined that BellSouth's measures are unnecessary, and BellSouth has not shown any justification to impose additional measures.

BellSouth witness Hendrix testified as to several areas in Section 12 of the Standard Offering that BellSouth feels are inadequate. Verizon, similarly, argued that the language in the Standard Offering requires less comprehensive background checks than Verizon conducts on its own employees and, therefore, is inadequate.

The Public Staff argued that the *Advanced Services Order* clearly gives each ILEC the right to impose security measures upon the CLPs as long as they are reasonable and no more stringent than the measures it imposes upon itself or its contractors. The Standard Offering should be changed to allow each ILEC to impose additional security requirements on CLP personnel that it feels are necessary to ensure the security and safety of the ILEC premises. These requirements will be no more stringent than the requirements the ILEC places on its own employees or authorized contractors who are allowed access to these premises.

The Commission agrees that the *Advanced Services Order* clearly gives each ILEC the right to impose security measures upon the CLPs as long as they are reasonable and no more stringent than the most stringent measures it imposes upon itself or its contractors. The Commission does not believe that any of BellSouth's or Verizon's additional measures are unreasonable or discriminatory to the CLPs under the FCC's standard. Both companies assert that these requirements are the same measures that they impose on themselves. The Commission concludes that the Standard Offering should be modified to allow each ILEC to impose additional security requirements on CLP personnel that it feels are necessary to ensure the security and safety of the ILEC premises so long as these requirements are no more stringent than the requirements the ILEC places on its own employees or authorized contractors who are allowed access to its premises.

The Commission does not believe that it is necessary to impose a common set of security measures on all ILECs. To be enforceable, however, an ILEC's security policies (e.g., requirements for background check, etc.) for its own employees or for authorized contractors sought to be imposed on CLPs must be set out in writing to be provided to the CLP. Section 12 of the Standard Offering, therefore, should be rewritten to incorporate by reference the respective ILEC's security policy document.

CONCLUSIONS

The Commission concludes that each ILEC may impose additional security requirements on CLP personnel that it believes are necessary to ensure the security and safety of the ILEC premises so long as these requirements are no more stringent than the requirements the ILEC places on its own employees or authorized contractors who are allowed access to its premises and that Section 12 of the Standard Offering should be amended accordingly.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 58

ISSUE 60: It is appropriate to include an expedited dispute resolution (EDR) procedure in the Standard Offering or should disputes be handled by the Commission according to the Commission-established procedures?

POSITIONS OF PARTIES

ALLTEL: ALLTEL did not address this issue.

AT&T: When adopted, such procedure should be included in the Standard Offering. Given the number of issues in this proceeding, as well as use of EDR in other contexts, the form and extent of EDR procedures should be dealt with in a separate proceeding.

BELLSOUTH: Inclusion of EDR is unnecessary and inappropriate. Current Commission standards are already sufficient.

MCIm: MCIm did not address this issue in its Brief

NEW ENTRANTS: New Entrants took the same position as AT&T.

PUBLIC STAFF: The Commission should not require the inclusion of a provision requiring EDR in the Standard Offering. BellSouth's proposed language is adequate if the language referring to the reservation of the right to seek judicial review is removed. The parties may agree to use some form of EDR, however.

SPRINT: Sprint was generally agreeable to the New Entrants' position.

VERIZON: Disputes should be handled through normal dispute resolution procedures as identified within the interconnection agreements.

WORLDCOM: WorldCom took the same position as AT&T.

DISCUSSION

In CLP witness Gillan's direct testimony, he proposed that the parties develop an expedited dispute resolution procedure outside of the Standard Offering negotiations and reference it in the Standard Offering to handle disputes arising over collocation. In his rebuttal testimony, he advocated that the Commission establish alternative dispute resolution procedures. BellSouth instead proposed that the Commission hear the disputes with each party reserving its right to seek judicial review of the Commission's decision. Verizon recommended that any dispute be handled by the dispute resolution mechanism set out in the interconnection agreement. The Public Staff opposed the mandatory inclusion of a provision requiring EDR. It endorsed BellSouth's proposed language as adequate if the language referring to the right to seek judicial review is removed.

As an initial matter, the Commission notes that a collocation arrangement may exist prior to an interconnection agreement. Consequently, Verizon's proposal that the dispute resolution mechanism provided in the interconnection agreement should be used to resolve collocation disputes is inadequate. Moreover, the Commission has considered the issue of expedited or alternative dispute resolution previously in the context of arbitration. Although we have not rejected the idea of mandatory EDR per se, we have declined to mandate that the parties resolve disputes through private adjudication and forego the right to seek Commission review of an issue due to lack of record explaining and supporting the process. Accordingly, we will not at this time require the inclusion of a provision requiring alternative or expedited dispute resolution in the Standard Offering. BellSouth's proposed language is adequate if the language referring to the reservation of the right to seek judicial review is removed. It is unclear why such language preserving appeal rights is necessary, when the law already provides such appeal rights. Finally, the Parties are encouraged to mutually agree to use some form of alternative dispute resolution. The Standard Offering should be modified to reflect these conclusions.

In addition, it should be emphasized that in Issue No. 1 it was stated that the Commission would not arbitrate as to the terms which deviate from the Standard Offering. This remains true. The disputes which the Commission might entertain with respect to collocation generally will relate to compliance with the Standard Offering or mutually agreed-upon amendments thereto.

CONCLUSIONS

The Commission concludes that the inclusion of a provision requiring alternative or expedited dispute resolution in the Standard Offering not be required, but that the Parties are strongly encouraged to agree to use some form of alternative dispute resolution.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 59

ISSUE 61: Is it appropriate to include adjacent off-site collocation terms and conditions in the Standard Offering?

POSITIONS OF PARTIES

ALLTEL: ALLTEL did not address this issue in its Brief.

AT&T: Yes. AT&T stated that ILECs should provide both adjacent (on-site) collocation and off-site arrangements when space legitimately exhausts within an ILEC's premises, subject to technical feasibility. Off-site arrangements include CLP-owned or leased structures in proximity (i.e., generally within a city block) to the ILEC central office. The ILEC should perform cabling from the ILEC's premises to the CLP's facilities, prices would be at UNE costs, and ILECs would not be required to provide power to the off-site arrangement. The Texas PUC recognized that if space for physical collocation is legitimately exhausted, the ILEC must offer both adjacent on-site collocation and adjacent off-site arrangements. A collocation method mandated by a state commission is presumptively technically feasible for any other ILEC. Without the requirement to include off-site arrangements, CLPs would be precluded from providing competitive services where physical collocation is not possible at the central office or in an adjacent facility. State commissions have the flexibility to respond to specific issues by imposing additional requirements.

BELLSOUTH: No. It is not appropriate to include terms and conditions for off-site adjacent collocation in the Standard Offering because such "off-site" collocation is neither required nor permitted by the FCC. BellSouth should not be required to provide adjacent collocation in locations that are not on its premises.

MCIM: MCIm took the same position as AT&T.

NEW ENTRANTS: The New Entrants took the same position as AT&T.

PUBLIC STAFF: The Public Staff stated that it agrees with the ILECs that they are not required to provide collocation arrangements for off-site collocation. While the FCC does mandate adjacent collocation in certain circumstances, adjacent collocation differs from off-site collocation. The ILECs are required to interconnect with such facilities. The Commission should decline to go beyond the requirements of the FCC and the Act and set terms and conditions for off-site collocation at this time. However, the Commission could revisit this issue if a party can demonstrate there is a significant need for off-site collocation.

SPRINT: Sprint stated that this issue has been resolved between Sprint and the New Entrants by adoption of the following language as Section 3.6.6 of the Standard Offering:

> CLP off-site Equipment Arrangement: The CLP shall have the responsibility for the provisioning of all aspects of collocation in their off-site arrangement. The ILEC and the CLP shall have mutual responsibility for the provisioning of interconnection facilities between the ILEC's premises and the CLP's off-site arrangement subject to the terms and conditions of the interconnection agreement between the two parties.

Sprint accepted this resolution of this issue contingent upon inclusion of this provision in the Standard Offering made applicable to all parties.

VERIZON: No. Verizon stated that off-site arrangements are not collocation and should be handled within an interconnection agreement or through a sub-loop unbundling contract.

WORLDCOM: WorldCom took the same position as AT&T.

DISCUSSION

CLP witness Gillan testified that adjacent collocation is one of the required forms of collocation and, as such, the terms and conditions concerning adjacent collocation should be included in the Standard Offering. According to his testimony, when space is legitimately exhausted within an ILEC's premises, ILECs should provide both adjacent (on-site, i.e., under the control of an ILEC) collocation and off-site arrangements. He elaborated that off-site arrangements include CLP-owned or leased structures within a city block of the ILEC central office. He stated that the ILEC should perform cabling from the ILEC's premises to the CLP's premises, while the CLPs were willing to agree that the facilities provided by the ILEC would be subject to UNE pricing considerations and that ILECs would not be required to provide power to the off-site arrangement. In response to an ILEC contention that off-site arrangements constitute interconnection rather than collocation, he argued that the need for off-site arrangements may occur only if space within a central office is legitimately exhausted and there is no adjacent collocation space available. This situation may occur with respect to those central offices that are most in demand for collocation and without an off-site arrangement CLPs could not provide some services. He believed that an interconnection arrangement would be "besides the point" if the absence of an off-site arrangement foreclosed competition in areas served by wire centers that are most attractive to new entrants.

As authority for this request, witness Gillan cited two Texas Public Utility Commission Orders which required an ILEC to provide off-site collocation arrangements as a condition to obtain a recommendation of Section 271 authority. He also noted that the FCC's rule on adjacent collocation, 47 C.F.R. 51.323(k)(3), does not expressly limit its terms to on-site arrangements. In addition, he cited Paragraph 558 of the *Local Competition Order*, which allows states to impose additional collocation requirements. Finally, he quoted 47 C.F.R. 51.321(c), which provides that a presumption exists of technical feasibility if an ILEC has deployed a certain collocation arrangement in another ILEC's premises.

BellSouth witness Hendrix stated that the FCC limited adjacent collocation to those premises in which the ILEC has an ownership interest and excluded land and buildings in which the ILEC has no ownership interest. Therefore, in his opinion, it is not appropriate to include terms and conditions for off-site adjacent collocation in the Standard Offering because such so-called "off-site" collocation is neither required nor permitted by the FCC and BellSouth should not be required to provide adjacent collocation in locations that are not on its premises. He cited Paragraph 42 of the Advanced Services Order, wherein the FCC stated that Section 251(c)(6) requires physical collocation at the premises of the local exchange carrier encompassing land owned, leased, or controlled by an ILEC as well as any ILEC network structure on such land.

Verizon witness Ries also testified that it was not appropriate to include adjacent off-site collocation terms and conditions in the Standard Offering. He stated that terms and conditions for off-site arrangements should be handled as a sub-loop unbundling request and such arrangements do not constitute collocation at the ILEC's "premises" as required by the TA96 and as confirmed by the FCC.

Sprint witness Hunsucker testified at the hearing that the ILECs should not be required to provide off-site arrangements. As noted above, following the hearing Sprint and the New Entrants resolved this issue by adoption of the following language as Section 3.6.6 of the Standard Offering:

> CLP Off-site Equipment Arrangement: The CLP shall have sole responsibility for the provisioning of all aspects of collocation in their off-site arrangement. The ILEC and the CLP shall have mutual responsibility for the provisioning of interconnection facilities between the ILEC's premises and the CLP's off-site arrangement subject to the terms and conditions of the interconnection agreement between the two parties.

In its Proposed Order, the Public Staff agreed with the ILECs that they are not required to provide collocation arrangements for off-site collocation. The Public Staff stated that while the FCC mandates adjacent collocation in certain circumstances, adjacent collocation differs from off-site collocation and ILECs are required to interconnect with such facilities. The Public Staff recommended that the Commission should decline to go beyond the FCC and the Act and set terms and conditions for off-site collocation at this time and noted that the Commission may revisit this issue if a party can demonstrate there is a significant need for off-site collocation.

The Commission finds it appropriate to decline to set the terms and condition for off-site arrangements for inclusion in the Standard Offering at this time. While the FCC does mandate adjacent collocation in certain circumstances, the FCC has not directly addressed off-site arrangements in terms of collocation and it is not clear what obligations, if any, ILECs have with regard to collocation on premises not owned or controlled by ILECs. Further, as a practical matter, there is no evidence which clearly demonstrates that a need currently exists for collocation on premises not owned or controlled by ILECs. However, if a party can demonstrate a significant need for an off-site arrangement, the Commission may be willing to revisit this issue pursuant to FCC requirements as they then exist.

CONCLUSIONS

The Commission concludes that it should decline to set terms and conditions for off-site arrangements for inclusion in the Standard Offering at this time. However, if a party can demonstrate a significant need for an off-site arrangement, the Commission may be willing to revisit this issue pursuant to FCC requirements as they then exist.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 60

ISSUE 69: Should BellSouth be required to provision caged collocation space (including provision of the cage itself) within 90 days and virtual and cageless collocation within 60 days?

ISSUE 74: Is it appropriate for BellSouth to exclude permit time from its physical caged collocation interval the time required to secure the necessary building licenses and permits?

ISSUE 82 (Sprint 8): Should an ILEC be able to exclude from its collocation provisioning interval the time that is required to secure building licenses and permits?

POSITIONS OF PARTIES

ALLTEL: ALLTEL did not address this issue in its Brief.

AT&T: BellSouth should be required to provision caged collocation space within 90 calendar days and virtual and cageless collocation within 60 calendar days of an application for collocation.

BELLSOUTH: BellSouth has proposed that it be required to provision caged and cageless collocation space within 90 calendar days for ordinary conditions and 130 calendar days for extraordinary conditions upon receipt from the CLP of a bona fide firm order. BellSouth believes that it should be allowed to exclude permit time from its physical caged collocation interval required to secure the necessary building licenses and permits.

MCIm: In its Brief, MCIm stated that the issue of intervals in which collocation requests will be provisioned is a key issue for collocators and ILECs. MCIm advocated a provisioning period of 90 days for caged collocation, commencing with the collocation application; and a provisioning period of 60 days for cageless and virtual collocation, again commencing with the application. MCIm argued that it is reasonable to expect that BellSouth should be required to provision caged collocation space within those periods.

NEW ENTRANTS: The New Entrants filed a Joint Proposed Order with AT&T and WorldCom. Therefore, the position as outlined for AT&T above represents the New Entrants' position on this issue.

PUBLIC STAFF: The appropriate construction and provisioning intervals for caged space, from receipt of a complete application by the ILEC is 90 calendar days. The appropriate construction and provisioning intervals for cageless space, from receipt of a complete application by the ILEC is 75 calendar days. The Public Staff did not address the issue of permit time.

SPRINT: Sprint was willing to accept the New Entrants' position on this Issue to the extent that it is consistent with the terms and conditions of the Standard Offering filed with the direct testimony of Sprint witness Hunsucker, it is included in the Standard Offering, and the Standard Offering is made applicable to all parties in its entirety.

Sprint argued that an ILEC should not be allowed to stop and restart the provisioning clock based on its submission of permit requests. Sprint believes that it is not appropriate to exclude permit-processing times from the ILEC's collocation provisioning interval. Sprint maintained that the ILEC should be required to manage the provisioning of collocation so the permitting process runs concurrently with other work activity the ILEC performs in order to complete the collocation provisioning process as expeditiously as reasonably possible. Sprint stated that if the ILEC is held accountable for the entire collocation provisioning interval, the ILEC will be properly motivated to better manage its work activities and concurrent processes.

VERIZON: Space preparation for cageless, caged, and virtual collocation should be within 76 business days if the application was forecasted properly and the request is made for a standard collocation arrangement. A "standard collocation arrangement" means that the collocation request does not require the ILEC to undertake extraordinary conditioning, remove asbestos, or other special construction activities to implement the arrangement. Virtual collocation has the added requirement for the ILEC to install, test, and turn-up CLP equipment. This should take place within 30 days after the receipt of the equipment.

WORLDCOM: WorldCom filed a Joint Proposed Order with AT&T and the New Entrants. Therefore, the position as outlined for AT&T above represents WorldCom's position on this issue.

DISCUSSION

BellSouth noted in its Brief that one of the major themes in the testimony in this case concerns the provisioning intervals for caged and cageless collocation. BellSouth noted that even AT&T witness Gillan for the CLP Coalition conceded that the Commission can lengthen the "default" intervals adopted by the FCC for collocation provisioning. BellSouth noted that the FCC stated in Paragraph 29 of its Order on Reconsideration:

> *We recognize, however, that a state may establish different* provisioning intervals, either shorter or longer than the national default standard, based on the facts before that state, which may differ from our record here.

BellSouth argued that its witness Milner provided ample justification for the provisioning intervals recommended by BellSouth based upon BellSouth's real world experience in North Carolina and elsewhere in its region.

BellSouth maintained that two compelling facts were elicited in connection with the testimony concerning provisioning intervals. First, BellSouth noted, no CLP showed that BellSouth was missing current provisioning intervals it had promised to the CLP through individual interconnection agreements. Second, BellSouth commented, even when BellSouth has provisioned collocation space in a good faith, timely manner, the CLPs have not used a significant amount of that space to begin offering competitive services. BellSouth noted that witness Milner's undisputed testimony was that, as of September 2000, almost 38% of the CLPs' physical collocation arrangements in North Carolina did not have service working on their collocated equipment/facilities. BellSouth argued that far from being presented with a record showing that local competition is being harmed by BellSouth's delay in provisioning collocation requests, the Commission is presented with a record that shows that many CLPs are in a "hurry up and wait" mode - they "hurry up" BellSouth to provision their space and then wait until it suits them to begin offering competitive services through that space.

BellSouth stated that in its Advanced Services Order, the FCC declined to adopt provisioning intervals within which ILECs would have to provide collocation. BellSouth maintained that the FCC encouraged state commissions to ensure the ILECs were given specific time intervals within which to respond to collocation requests. BellSouth also specified that the FCC stated in its Order on Reconsideration that it

> should adopt national standards for physical collocation provisioning that will apply when the state does not set its own

> standards or if the requesting carrier and incumbent LEC have not mutually agreed to alternative standards. A state could set its own standards by statute, through an existing or future rulemaking order, by enforcing a state tariff, or by applying the precedent of a state arbitration decision.

BellSouth noted that with respect to provisioning physical collocation arrangements, the FCC concluded that an ILEC should be able to complete any technically feasible physical collocation arrangement, whether caged or cageless, no later than 90 calendar days after receiving an acceptable collocation application. BellSouth stated that the FCC recognized that its 90-day calendar interval was "somewhat tighter than those that certain State commissions have set for caged physical collocation." In fact, BellSouth maintained, the FCC recognized that the New York Public Service Commission, for example, required Bell Atlantic in New York to provide caged and cageless collocation within 76 business days (roughly 105 calendar days) and virtual collocation within 105 business days (roughly 147 calendar days) of receiving a collocation request. BellSouth noted that this interval can be extended by 60 days whenever a CLP does not provide a specific collocation forecast within 90 days prior to the CLP submitting its application.

BellSouth maintained that consistent with the FCC's view as expressed in its Order on Reconsideration, the Commission should engage in a "balancing of competing considerations" when it addresses these two provisioning intervals. BellSouth recommended that the Commission recognize the potential benefits from timely deployment by CLPs of advanced services and other telecommunications services that will compete with ILEC offerings. On the other hand, BellSouth proposed that the Commission ensure that any provisioning intervals it adopts are grounded in reality and recognize that ILECs are not in total control of the processes that result in a completed physical collocation arrangement. BellSouth proposed that the Commission establish provisioning intervals for North Carolina based on the record developed in this state which would be consistent with the FCC's Order on Reconsideration. BellSouth noted that the FCC stated in its Order on Reconsideration that a state commission may establish different provisioning intervals, either shorter or longer than the national default standards, based on the facts before that state which may differ from the record before the FCC.

BellSouth argued that an ordinary condition would exist when the space within an ILEC's premises has sufficient telecommunications infrastructure to house the telecommunications equipment the CLP intends to place and preparation of collocation space under these conditions does not involve any environmental work, shipping intervals, removal of equipment, or other conditions outside an ILEC's control that negatively impact the provisioning interval. BellSouth maintained that infrastructure systems include floors capable of supporting equipment loads, heating, ventilating and air conditioning systems, and electrical systems. BellSouth noted that if an ILEC encounters any conditions not expressly provided for in its definition that it considers to be an extraordinary condition, in the absence of agreement between the parties, BellSouth proposed that the ILEC be allowed to petition the Commission for any extension of the provisioning interval to 130 calendar days.

BellSouth noted that its witness Milner testified that there are three critical phases that BellSouth must complete to provide space for collocation in North Carolina: (1) design; (2) building construction; and (3) telecommunications power and infrastructure completion. BellSouth argued that it cannot commence any building construction activities until necessary North Carolina building permits have been obtained. BellSouth stated that witness Milner strongly disagreed with the CLPs' suggestion that provisioning intervals could be shortened by requiring ILECs to "pre-condition" collocation space, first because such a practice unfairly puts financial risk on an ILEC by having to prepare space in case a CLP may at some point in the future want to use that space and second because it would be impossible to execute effectively. BellSouth stated that witness Milner maintained that no ILEC could reasonably possess all of the needed information and would sometimes guess wrong and the result would be that the ILEC would make expenditures for collocation that would never be recovered. BellSouth recommended that the Commission find that it is not reasonable to require ILECs to precondition collocation space.

BellSouth further noted that witness Milner testified that another factor controlling overall provisioning intervals is the time required for ILECs to obtain building permits. BellSouth argued that the interval for obtaining required building permits is in most cases out of an ILEC's control and that BellSouth has experienced permitting intervals that range from 15 days to 60 days. BellSouth maintained that witness Milner testified that exclusion of permit time from the provisioning interval by the Commission would not encourage BellSouth to be less diligent in managing the permitting process.

BellSouth recommended that the Commission find that the permit interval should be excluded from provisioning intervals because the permit interval is in the critical path for provisioning collocation space, yet is not under the ILEC's control. Further, BellSouth proposed that the Commission conclude that the appropriate construction and provisioning intervals for caged and cageless collocation space in North Carolina are 90 calendar days for ordinary conditions and 130 days for extraordinary conditions from receipt of a bona fide firm order.

BellSouth witness Hendrix stated on cross-examination that BellSouth's proposed interval is longer than what the FCC has established in its Order but argued that BellSouth is wanting to do what is appropriate for this state. Witness Hendrix testified that ". . . the FCC strongly urged [was for] the states to look at the issues for their states and make some judgement as to what is appropriate."

Further on cross-examination, witness Hendrix agreed that BellSouth's Interconnection Agreement with ITC^DeltaCom presented as New Entrants Cross-Examination Exhibit 8 stated that a request for cageless physical collocation will be made available within 30 days after receipt by BellSouth of a complete and accurate bona fide firm order. However, witness Hendrix stated, he does not believe BellSouth would have entered voluntarily into this agreement and believes that it may be the result of an arbitration order in one of the BellSouth states. Witness Hendrix stated that inserting this language would not be something that BellSouth would have just done without being obligated to do so by a state commission order.

Addressing permits, BellSouth witness Milner agreed on cross-examination that of 28 collocations at the BellSouth Morgan Street central office, only three permits were required. When asked whether he was familiar with the City of Raleigh's express permitting where you can make an appointment and get a permit issued within two days after the review of the filing, witness Milner stated that he was not aware of that and that he personally does not submit requests for permits.

In addressing the MCIm/BellSouth arbitration issue concerning provisioning intervals deferred to this docket, the CLPs noted in their Joint Proposed Order that BellSouth is advocating 90 calendar days for physical collocation and not to exceed 60 days for virtual collocation, commencing in either instance from the firm order. The CLPs argued that cageless collocation, by definition, should be easier to provision than caged collocation and that BellSouth has given no justification as to why cageless collocation cannot be accomplished in less than 90 days. The CLPs maintained that cageless and virtual collocation are set up physically the same way and, thus, any time frame in which cageless collocation can be provisioned is also appropriate for virtual collocation. The CLPs argued that because certain considerations related to space availability and configuration, as well as not having to construct a cage, are different for cageless and virtual collocation than for caged collocation, cageless and virtual collocation should be subject to a shorter interval. The CLPs maintained that given these points and the FCC's Collocation Reconsideration Order, MCIm, like the New Entrants, advocates: (1) a provisioning period of 90 days for caged collocation, commencing with the collocation application; and (2) a provisioning period of 60 days for cageless and virtual collocation, also commencing with the application.

The CLPs noted that the FCC's Collocation Reconsideration Order, consistently with paragraph 55 of the FCC's Advanced Services Order, sets a national maximum standard, to the extent a state commission does not otherwise set its own deadlines, of 10 calendar days for an ILEC to accept or deny a collocation application. The CLPs also commented that the FCC set default national standards of 90 days from the initial application for both cageless and caged collocation.

The CLPs further maintained that although the FCC established a default national standard for collocation provisioning intervals, the FCC also determined that state commissions have authority to establish these provisioning intervals. The CLPs noted that the Commission has the authority to establish maximum collocation provisioning intervals for North Carolina that are different from the 90-day default national interval established by the FCC.

The CLPs argued that the ILECs have presented no persuasive evidence in this proceeding that should prompt the Commission to enlarge the 90-calendar day standard set by the FCC. The CLPs maintained that while the ILECs set forth their positions requesting several more weeks for collocation, they provided no specific evidence as to why they cannot meet the FCC's default national standard in North Carolina. In fact, the CLPs noted, several other states have set shorter intervals thereby demonstrating the feasibility and reasonableness of provisioning intervals of 90 days or less. The CLPs specifically noted that the Washington Utilities and Transportation Commission established rules which require ILECs to complete construction of and deliver collocation space and related facilities within 45 calendar days after the CLP's acceptance of the written quote and payment of one-half of the nonrecurring charges. The CLPs also commented that Qwest has voluntarily agreed to a 45-day provisioning interval for cageless collocation provided a forecast has been given by the CLP, thereby proving that relatively short provisioning intervals are practical.

The CLPs noted that they presented evidence that the ILEC performance in provisioning collocation space in North Carolina has often been slow. The CLPs also argued that they have demonstrated that physical collocation is a relatively routine activity and that the CLPs estimate that the on-site work by ILECs takes three to four days for caged collocation space.

The CLPs further commented that New Entrants witness Wagoner provided a demonstration during the hearing using typical CLP equipment and a standard rack that underscored the routine nature of collocation tasks. The CLPs maintained that the demonstration showed that many collocation engineering and installation tasks are simplified through the common CLP practice of preinstalling CLP equipment in standard rack sizes. The CLPs noted that BellSouth and Verizon provided no convincing evidence as to why collocation provisioning intervals should not be standardized and shortened so that carriers can plan their market entry and order these arrangements without experiencing the unnecessary delay and costs inherent in the current ILEC approach which presumes that collocation must be a highly customized offering justifying lengthy provisioning intervals.

The CLPs noted that BellSouth's most recent position is that the collocation provisioning intervals should be no greater than 90 calendar days for caged and cageless collocation under "ordinary" conditions, and 130 calendar days under all other conditions. The CLPs maintained that BellSouth proposed that ordinary conditions exist when the ILEC premises have sufficient telecommunications infrastructure and the collocation space does not involve any environmental work, shipping intervals, or other conditions outside of BellSouth's control that may negatively impact the provisioning interval. Also, the CLPs noted, BellSouth claimed that obtaining local building permits can take 15 to 60 days and is the "critical path" for provisioning collocation space because BellSouth cannot commence any building construction activities until the permits have been obtained. The CLPs stated that BellSouth concluded that because the permit interval is outside of its control, the permit interval should be excluded from its proposed provisioning intervals.

The CLPs noted that BellSouth's unsupported assertion that 60 days is routinely required for local permits in Raleigh, Charlotte, and other areas in North Carolina was proven incorrect by the CLPs at the hearing. The CLPs noted that they presented evidence that local permits are rarely, if ever, required for collocation. The CLPs noted that they demonstrated that at BellSouth's central office on Morgan Street in Raleigh, BellSouth produced only three permits for 28 collocations and that it is not clear that any of those permits relate directly to those collocations. Further, the CLPs maintained, the evidence reveals that even if permits were required under some extraordinary circumstances, the required permits can be obtained in eight days as opposed to the 60 days alleged by BellSouth. The CLPs also noted that Verizon and Sprint both agreed with the CLPs that local permitting is generally not required for collocation. Based on the foregoing, the CLPs recommended that the Commission conclude that the need.to obtain local permits, if any, does not justify extending the FCC's default provisioning intervals.

The CLPs further commented that BellSouth and Verizon both contended that provisioning intervals for cageless collocation should be the same as for caged collocation. The CLPs noted that they advocated that while 90 days from the application is reasonable for caged collocation, 60 days is more appropriate for cageless collocation. The CLPs noted that they presented evidence that cageless collocation takes less time because the cage does not have to be installed and grounded, and the CLP is responsible for cabling and equipment installation. The CLPs argued that since cageless collocation involves less work by the ILEC, the provisioning interval for cageless collocation should be shorter. The CLPs noted that other states have imposed shorter intervals and that BellSouth has contracted with ITC^DeltaCom to provide a 30-day interval for cageless collocation. The CLPs recommended that based on the evidence presented, the Commission conclude that the provisioning interval for cageless collocation in North Carolina should be 60 days from the collocation application date.

In conclusion, the CLPs recommended that the Commission find that the maximum provisioning intervals should begin at the time that the ILEC receives a collocation application and that collocation space must be ready for CLP occupancy by the expiration of the interval. The CLPs proposed that the Commission adopt the following provisioning intervals for insertion in the Standard Offering:

Caged collocation	90 calendar days
Cageless collocation	60 calendar days

The CLPs maintained that MCIm's proposal of 90 calendar days from the application to provision caged collocation, and 60 calendar days from the application to provision cageless and virtual collocation, is consistent with these intervals. The CLPs further argued that MCIm's proposed contract language with regard to the response to an application, including a firm price quote, is also consistent with these intervals. The CLPs maintained that the intervals for provisioning caged and cageless collocation should assume that the CLP will respond within seven days of receiving a firm price quote; if the CLP does not respond within the seven days, any additional days used by the CLP to respond to a firm price quote should be added to the total provisioning interval (i.e., if the CLP takes 10 days to respond to the firm price quote, then the overall provisioning interval should be 90 days plus an additional 3 days (10 days - 7 days) or 93 days).

CLP Coalition witness Gillan stated in rebuttal testimony that he chose to address the issue of provisioning intervals separately from the other issues since intervals are a very important competitive dimension of collocation and addressing the issue separately would give the issue the prominence it deserves. Witness Gillan also observed that the FCC has now set national maximum intervals that should be reflected in the Standard Offering wherever the interval in the Standard Offering would otherwise exceed the national maximum.

Concerning cageless collocation, witness Gillan maintained that cageless collocation should be subject to a shorter interval because it should be no more complicated to provide than making available space for the ILECs' own equipment. Witness Gillan noted that the Georgia Public Service Commission recognized that it is practical to have a significantly shorter interval for cageless collocation when compared with caged collocation.

During cross-examination, witness Gillan stated that the CLPs' primary recommendation is to adopt a 90-calendar day provisioning interval for caged collocation and a 60-calendar day interval for cageless collocation. He explained that the CLPs do not care about the designation or distinction between active and inactive space [**COMMISSION NOTE:** See Issue No. 19] as long as the provisioning intervals are established at 90 and 60 calendar days. Witness Gillan stated that if BellSouth would agree to the CLPs' proposed provisioning intervals then the CLPs would agree to remove Section 3.2 concerning active collocation space from the Standard Offering. However, BellSouth counsel stated that BellSouth cannot agree to remove the Section concerning active collocation space.

CLP witness Wagoner stated in his summary at the hearing that Mpower, his employer, has 11 collocation sites in Charlotte in BellSouth central offices. Witness Wagoner stated that Mpower began submitting applications in the January 2000 time frame and that actual space ready dates for those collocations were at the end of July 2000, with acceptance in early August 2000. Witness Wagoner stated that Mpower received a response from BellSouth to its applications on March 22, 2000 and Mpower submitted its firm order with payment in April 2000. Witness Wagoner noted that the collocations were not completed until August 4, 2000 which was 115 days later. Witness Wagoner testified that the long time frames for collocation "definitely hinder our ability to enter into a new market."

During cross-examination, witness Wagoner agreed that Mpower has an Interconnection Agreement with BellSouth in which collocation terms and conditions are set out. Witness Wagoner further stated that he was not aware that Mpower revised its January 2000 applications for collocation in Charlotte on February 21, 2000. Witness

Wagoner admitted that under the Interconnection Agreement, BellSouth has 30 business days to respond to a revised collocation application. He also agreed that if Mpower revised its application on February 21, 2000, then BellSouth's response on March 22, 2000 was within the allowed interval. Also, witness Wagoner admitted that under the Interconnection Agreement, BellSouth has 120 days from the receipt of a firm order to provision collocation space. Witness Wagoner agreed that August 4, 2000 (the date the collocation space was completed) was within the 120 days of the April 10, 2000 firm order date.

Witness Wagoner did concede on cross-examination that collocation arrangements can vary from CLP to CLP.

Concerning building permits, witness Wagoner stated on cross-examination that he does not know what permits BellSouth would need to install a cage in its own space. Witness Wagoner stated that the only permitting issues he has experienced were with Sprint in Florida where they were building a brand new building, not constructing in an existing building.

MCIm stated in its Brief that the issue of intervals in which collocation requests will be provisioned is a key issue for collocators and ILECs. MCIm noted that BellSouth initially proposed an ICB basis with regard to provisioning but later changed its position to advocate intervals based on business days. Now, MCIm asserted, BellSouth advocates 90 calendar days for physical collocation and "not to exceed" 60 days for virtual collocation, commencing in either instance from the firm order. MCIm stated that Verizon seeks to provide physical collocation in 76 business days, commencing upon the application (i.e., about 107 calendar days from the application, if there are no holidays). MCIm noted that Sprint requests 90 days and 60 days, respectively, for provisioning caged and cageless collocation, commencing with the firm order, and applicable to conditioned space only (which amounts to 112 calendar days from the application).

MCIm stated that initially it advocated a provisioning period of 45 days for cageless, as well as for virtual collocation, with a provisioning interval of 90 days for caged collocation. MCIm maintained that these periods were to have commenced from the date BellSouth would receive the firm price order. MCIm stated that in the wake of the Order on Reconsideration, MCIm advocates for the purposes of this proceeding a provisioning period of 90 days for caged collocation, commencing with the collocation application and a provisioning period of 60 days for cageless and virtual collocation, again commencing with the application. MCIm noted that its proposed intervals are approximately equivalent to 15 days for a firm price quote, followed upon acceptance by a 45-day provisioning period for cageless or virtual collocation, which was MCIm's initial proposal.

MCIm noted that under the FCC's Order on Reconsideration, the ILEC should complete any technically feasible physical collocation arrangement, whether caged or cageless, no later than 90 calendar days after receiving a collocation application, where space, whether conditioned or unconditioned, is available in the ILEC's premises and the state commission does not set a different interval or the ILEC and the requesting carrier have agreed to a different interval. MCIm contended that the FCC's 90-day interval is a maximum standard that the FCC presumes ILECs are capable of meeting. Further, MCIm pointed out, the FCC specifically noted that states have the authority to establish collocation provisioning intervals that are different from the national standard established by the FCC.

MCIm explained that cageless and virtual collocation are set up physically the same way. MCIm noted that the main difference between the two is that, with a physical (cageless) arrangement, tape is placed on the floor around a collocator's equipment to identify it, and the collocator itself is allowed access to the equipment; whereas, in a virtual arrangement the ILEC maintains the CLP's equipment. .Therefore, MCIm contended, any time frame in which cageless collocation can be provisioned is also appropriate for virtual collocation.

MCIm noted that Alabama requires cageless collocation to be provisioned in 60 calendar days of "a request for cageless collocation." Consequently, MCIm maintained, the interval for cageless collocation should be 60 days, commencing with the application.

The New Entrants stated it their Brief that collocation is a routine activity involving (a) identification of space, and if necessary, (b) installation of a grounded cage. The New Entrants argued that in cageless collocation, the ILEC just identifies space to be made available and provides overhead racking for that space. The New Entrants explained that for caged collocation, the ILEC may also be requested to install a cage, although overhead racking need not be installed within the caged area. The New Entrants maintained that for provisioning of collocation space there are no complex activities, and the process involves just a small amount of work. The New Entrants noted that the FCC has set default standards of 90 days from the initial application for both cageless and caged collocation and encouraged the states to adopt shorter intervals where appropriate.

The New Entrants argued that while 90 days from the application is reasonable for caged collocation, 60 days is appropriate for cageless collocation. The New Entrants argued that cageless collocation involves less work by the ILECs and, therefore, the provisioning interval should be shorter.

The New Entrants noted that although the ILECs set forth their positions requesting several more weeks for collocation, they failed to provide specific evidence as to why they need additional time in North Carolina. The New Entrants stated that US West has agreed throughout virtually all of its region to provide cageless collocation space within 45 days after receiving a requesting telecommunications carrier's deposit when space and power are available. Further, the New Entrants noted, BellSouth has contracted with ITC^DeltaCom for a 30-day interval for cageless collocation.

The Public Staff noted in its Proposed Order that the FCC's Order on Reconsideration mandates that an ILEC should complete any technically feasible collocation arrangement in 90 calendar days after receiving the collocation application.

Sprint did not provide extended discussion on this issue in its Proposed Order and all of its comments are reflected under the Positions of Parties - Sprint.

Sprint witness Hunsucker stated in rebuttal testimony that an ILEC should not be allowed to stop and restart the provisioning clock based on its submission of permit requests. Witness Hunsucker maintained that ILECs should be held accountable for the time required to complete all of the necessary tasks related to the provisioning of physical collocation which includes the time required to obtain necessary building permits. Witness Hunsucker argued that Sprint believes that it is not appropriate to exclude permit-processing times from the ILEC's collocation provisioning interval and that the ILEC should be required to manage the provisioning of collocation so that the permitting runs concurrently with other work activity the ILEC performs in order to complete the collocation provisioning process.

Witness Hunsucker noted that while an ILEC does not have specific control over the actions of permitting officials, it does have complete control over the extent to which it compresses its provisioning processes so that work activities run as concurrently as possible. Further, witness Hunsucker testified that BellSouth asserts its lack of control, but that it possesses substantially more control over the situation than the CLP, who is entirely dependent on the ILEC to provision physical collocation arrangements in a timely manner.

Witness Hunsucker noted that the Louisiana Public Service Commission ordered that BellSouth should not be allowed to exclude permit time from the collocation arrangement time.

On cross-examination, witness Hunsucker agreed that Sprint is not required in many cases to get building permits for collocation.

In answering a question from the Commission, witness Hunsucker stated that Sprint does not believe that the Commission should automatically extend the provisioning interval for permits since ILECs are not required to get building permits in a lot of situations to do collocation. Witness Hunsucker explained that in those instances where permits are required, the ILEC can do a lot concurrently with a lot of the collocation work that the ILEC is required to do. Witness Hunsucker stated that in his opinion, permit time is not a hindrance to the time frames.

Verizon maintained in its Brief that determining the time required to provision collocation space is a continual challenge and that national demand for collocation has doubled each year for the past few years and shows no sign of abating. Verizon stated that it proposes a forecasting process that would define standard parameters for collocation arrangements and would help assure that collocation space will be provided in a timely manner, assuming the collocation requests align with the CLPs' forecasts. Verizon proposed that CLPs would submit semiannual forecast for future requirements on a rolling two-year period so Verizon and its vendors can proactively identify any spatial problems. Verizon maintained that if it augments it workforce based on these forecasts and after discussions with the CLPs, the CLP should be held accountable for the accuracy of their forecasts.

For unforecasted collocation applications, Verizon proposed that they may cause provisioning delays, but they should not exceed 60 calendar days. Verizon recommended that for forecasts received less that two months prior to the application date, the interval may be postponed as follows:

Forecast Received	Interval Start Date Commences
No Forecast	2 months after application date
Forecast received 1 month prior to app. date	2 months after application date
Forecast received 2 months prior to app. date	1 month after application date

Verizon maintained that each application requires a site visit and a complete review of all forecasted growth requirements as well as pending activity. Verizon noted that given these tasks, Verizon's proposal to respond to a collocation request within eight business days is very reasonable. Verizon stated that its response will include a schedule describing Verizon's ability to meet the collocation request and also include a space assessment and a price quote. Verizon maintained that if the application is deficient, Verizon will ask the CLP for additional information within the eight-day response period. Verizon also proposed that if the CLP applies for space that was previously forecasted, Verizon will provision the collocation space within 76 business days, as opposed to the New Entrants' proposal of 90 calendar days. Verizon stated that although the FCC has recently prescribed that the default measurement should be 90 calendar days from the application date if a state has not established provisioning intervals, as the CLPs admitted at the hearing, "when it comes to intervals, . . . the FCC decision is not a minimum. In other words, states could make the intervals shorter; they could make the intervals longer."

Verizon asserted that its proposed 76-business day interval is a measurement that the FCC has supported on a statewide basis for Verizon unless the New York Public Service Commission chooses to adopt a different interval - which it has not. Verizon argued that the biggest constraint on provisioning collocation space is the time it takes to order and receive material from manufacturers and for vendors to complete installation work. Verizon maintained that given the sharp increase in collocation requests and the resulting difficulty for suppliers and contractors to meet demand timely, a 45 calendar day schedule has become typical just for the engineering, ordering, and receiving of cabling materials necessary for a collocation request. Verizon stated that, in fact, according to its equipment vendor, current projects requiring iron work used for overhead superstructure and cable racking can have lead times of 63 to 84 calendar days to receive material.

Verizon concluded that its proposed 76-business day interval for standard collocation arrangements is reasonable and should be adopted.

Verizon argued that the CLPs' proposed 60-calendar day provisioning interval for cageless collocation is unrealistic. Verizon maintained that space assessments and engineering are required for cageless collocation, just as they are for caged arrangements. Verizon asserted that the only difference between cageless and caged collocation is the construction of the cage and that is neither a critical path item nor a particularly lengthy undertaking. Verizon noted that New Entrants witness Wagoner acknowledged that intervals are determined by considerations that apply equally to caged and cageless arrangements and that vendor delays in processing and shipping material to the ILEC, as well as the availability of contractors to provision the request, can further extend the interval process. Verizon commented that the Florida Public Service Commission acknowledged this basic similarity and required one construction and provisioning interval for all physical collocation.

Verizon maintained that virtual collocation is distinguished from physical collocation (caged or cageless) because the CLP equipment is not segregated from the ILEC's equipment. Therefore, Verizon argued, the time interval for providing virtual collocation (30 days) should be tied to receipt of the equipment, which is typically under the CLP's control.

Verizon stated in its Proposed Order that for Standard Arrangements where the request was properly forecasted six months prior to the application date, the ILEC should provision the caged space and turn over the multiplexing node to the CLP within 76 business days from receipt of the CLP application and associated fee. Verizon maintained that a standard arrangement means that the collocation request does not require the ILEC to conduct.extraordinary conditioning, remove asbestos, or undertake special construction activities in order to implement the arrangement. Verizon argued that the provisioning intervals for these more complex projects will likely fall outside the normal interval and are negotiated on an individual case basis. Verizon stated that the ILEC will use its best efforts to minimize the time required to condition collocation space and will inform the CLP of the time estimates as soon as possible.

Verizon commented that the biggest constraint on determining the appropriate provisioning interval is external - the time it takes to order and receive material from manufactures and for vendors to complete installation work. Verizon maintained that it has been standard to experience a 45-calendar day window just for the engineering, ordering, and receiving of cabling materials required for a collocation request. Verizon noted that it has been informed by its equipment vendor that current projects that require iron work, which is used in overhead superstructure and cable racking, can have lead times of 63 to 84 calendar days to receive material. Verizon stated that as for contractors, ILECs compete with other telecommunications carriers, including the same CLPs, to obtain these services. Verizon noted that during a recent three month period, vendors turned down 150 collocation contracts that Verizon put out for bid in Pennsylvania. Verizon stated that the 76-business day window proposed by Verizon is the interval that has been approved by the New York State Commission and despite the unrelenting pace of collocation orders, Verizon has been able to meet those intervals with an average of 95% on-time performance and better in New York.

Verizon stated that the construction and provisioning intervals for cageless collocation should be the same as caged collocation because the tasks required to prepare the space are not significantly different. Verizon maintained that the requirements shown under the caged provisioning for the CLP to submit forecasts and meet critical interval dates would apply for cageless collocation as well. Verizon proposed that the appropriate interval for construction and provisioning of cageless space is 76 business days if the application is for a standard arrangement that was properly forecasted and other requests should be negotiated.

The Commission will address (1) the provisioning issue *(Issue No. 69) and (2) the* issue of building permits (Issue Nos. 74 and 82) separately.

ISSUE 69: The Commission believes that the language in the FCC's Order on Reconsideration is clear - that the national default interval is 90 calendar days, however, states are encouraged to set intervals, **either longer or shorter**, as they see fit. The Commission notes that BellSouth witness Hendrix implied on cross-examination that BellSouth's proposed interval of 127 calendar days is appropriate for North Carolina. The Commission does not believe that the record of evidence supported either a longer or a shorter interval than the FCC's national default interval of 90 calendar days.

Addressing BellSouth's arguments, the Commission does not believe that it is relevant that BellSouth is not missing current provisioning intervals that it had promised CLPs through individual interconnection agreements. Those interconnection agreements were developed through negotiations while this proceeding represents an ongoing generic process with evidentiary evidence on the issue. Therefore, the Commission does not believe that there is any relevancy to the fact that BellSouth apparently has been meeting its current provisioning intervals as outlined in its interconnection agreements.

Second, the Commission does not believe that BellSouth's arguments that many of the collocation spaces that it has provisioned are not being used to offer competitive services hold any merit. BellSouth noted that as of September 2000, almost 38% of the CLPs' physical collocation arrangements in North Carolina did not have service working on their collocated facilities/equipment. The Commission believes that the purpose of this proceeding is to develop a comprehensive and fair collocation Standard Offering which will allow CLPs to obtain collocation space. TA96 requires ILECs to provide the collocation space, period.

In addition, the Commission believes that there was persuasive evidence that the provisioning of cageless collocation should require less time than caged collocation.

Therefore, the Commission finds it appropriate to adopt a 90-calendar day provisioning interval from the collocation application date for caged collocation and a 60-calendar day provisioning interval from the collocation application date for cageless collocation.

The Commission also notes that Paragraph 26 of the FCC's Collocation Reconsideration Order states:

> . . . We believe that the requesting carrier should be able to inform an incumbent LEC that physical collocation should proceed within seven calendar days after receiving the incumbent LEC's price quotation. If the requesting carrier meets this deadline, the incumbent LEC must comply with the 90 calendar day provisioning interval set forth in paragraph 27, below, or any alternative interval set by a state commission or agreed to by the requesting carrier and the incumbent LEC. If the requesting carrier fails to meet this deadline, the provisioning interval will begin on the date the requesting carrier informs the incumbent LEC that physical collocation should proceed (i.e., makes clear its intent to obtain a particular collocation arrangement from the incumbent) or any alternative date set by a state commission or agreed to by the parties. Restarting the collocation interval when the requesting carrier fails to respond to a price quotation within seven calendar days will facilitate the incumbent LEC's collocation provisioning operations and will prevent the requesting carrier from imposing unnecessary burdens on those operations to the potential detriment of other requesting carriers. [emphasis added]

The Commission finds it appropriate to conclude that if a CLP fails to meet the seven calendar day deadline for a bona fide firm order as outlined in Issue No. 18(m), the overall provisioning intervals of 90 calendar days for caged collocation and 60 calendar days for cageless collocation will be extended by the additional days the CLP takes to place a bona fide firm order. For example, if a CLP takes 10 calendar days to place a bona fide firm order for caged collocation, then the overall provisioning interval will be extended to 93 calendar days (10 days - 7 days = 3 days + 90 days = 93 calendar days).

COMMISSION CONCLUSIONS: The Commission finds it appropriate to establish a provisioning interval of 90 calendar days from the collocation application date for caged collocation and 60 calendar days from the collocation application date for cageless collocation. The provisioning intervals for caged and cageless collocation will be extended for any additional time taken by a CLP beyond the seven calendar day interval established for the CLPs to place a bona fide firm order.

ISSUE 74 AND ISSUE 82: The Commission notes that BellSouth is advocating that the time required to obtain building permits be excluded from the provisioning interval. Further, the Commission notes that both Sprint and Verizon maintained that permits are ***not required for collocation***.

The Commission also notes the evidence presented that in BellSouth's Morgan Street *central office, only three building permits were produced for 28 collocations and it was not* clear that any of those permits related directly to those collocations.

The Commission believes that the record of evidence indicates that the need, if any, to obtain building permits should not extend the collocation provisioning interval, i.e., the time required to obtain a permit should not be excluded from the provisioning interval. However, if an intractable timing problem does in fact exist, then an ILEC may seek a waiver from the Commission upon a showing of extraordinary circumstances.

COMMISSION CONCLUSIONS: The Commission finds it appropriate to generally **not** allow the ILECs to exclude time required to obtain building permits from the provisioning intervals. Thus, the need, if any, to obtain building permits should generally not extend the collocation provisioning interval. If an intractable timing problem does in fact exist, *then an ILEC may seek a waiver from the Commission upon a showing of extraordinary* circumstances.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 61

ISSUE 70: Are MCIm and other CLPs entitled to use any technically feasible entrance cable, including copper facilities?

POSITIONS OF PARTIES

ALLTEL: ALLTEL did not take a position on this issue in its Brief.

AT&T: AT&T supported the position taken by MCIm on this issue.

BELLSOUTH: CLPs may elect to place CLP-owned or CLP-leased fiber entrance facilities into the collocation space but they may not place nonfiber optic cable entrance facilities. Some copper cables currently enter BellSouth central offices. These older cables are associated with BellSouth's loop facilities. Entrance facilities for CLPs, on the other hand, are a form of interconnection. All of BellSouth's interconnection trunk cables entering BellSouth *central offices are optical fiber facilities. The rules regarding an ILEC's* collocation obligation under the Act established by the FCC in its First Report and Order clearly state that the ILEC has no obligation to accommodate nonfiber optic entrance facilities (that is, copper entrance facilities) unless and until such interconnection is first ordered by the state commission. This analysis should be done on a case-by-case basis by the Commission after the Commission has had an opportunity to review the CLP's need for copper facilities at a particular premises.

NEW ENTRANTS: The New Entrants supported the position taken by MCIm on this issue.

MCIm: MCIm and the other CLPs are entitled to use any technically feasible entrance cable, including copper facilities. The FCC allows collocators to use copper cable. A significant amount of copper cable owned by BellSouth certainly enters the BellSouth central offices, and BellSouth does not categorically reject its installation. Thus, the issue is one of parity; the CLPs must be able to bring copper cable into the central offices. The Florida Commission has approved the use of copper entrance cable. The North Carolina Commission should approve the use of copper cable. If BellSouth does not believe that copper cable is feasible in a given instance, it should file an appropriate waiver petition.

PUBLIC STAFF: There is no federal law or rule that requires ILECs to allow CLPs to place copper as an entrance facility. Copper and coaxial cable are limited to adjacent collocation situations and are otherwise left to the discretion of the state commissions.

SPRINT: Sprint accepted the position taken on this issue by the CLPs to the extent it is consistent with the terms and conditions of the Standard Offering filed with the direct testimony of Sprint witness Hunsucker, it is included in the Standard Offering, and the Standard Offering is made applicable to all parties in its entirety.

VERIZON: Other than for an adjacent collocation arrangement, fiber must be used for entrance facilities. Use of other types of entrance facilities would have to be reviewed on a case-by-case basis.

WORLDCOM: WorldCom supported the position taken by MCIm on this issue.

DISCUSSION

Section 5.2 of the Standard Offering describes the CLPs' position concerning the use of entrance facilities. The corresponding provision in the MCIm/BellSouth Interconnection Agreement is Section 7.21.1.

WorldCom witness Bomer testified that MCIm is entitled to use any technically feasible entrance cable, including copper facilities. BellSouth has many copper cables that enter its central offices. Therefore, as a matter of parity and nondiscriminatory treatment, witness Bomer testified that MCIm should be allowed to bring copper cable into the central offices. Copper entrance ducts merely present another factor in considering what space and facilities are available for collocation. Hence there should be a presumption that copper entrance facilities should be allowed. If BellSouth alleges space exhaustion, it may request the Commission to find that copper should not be placed. If copper were eliminated as an entrance facility, CLPs would be forced to install more expensive fiber optic systems, which would raise everyone's costs, and may cause undue financial burden on a new entrant. Some start-up CLPs could be forced out of business.

CLP witness Gillan stated that CLPs are entitled to use any technically feasible entrance cable, including copper facilities. Since BellSouth acknowledges that copper cables enter ILEC central offices today, that demonstrates technical feasibility. Hence, there should be a presumption that copper entrance facilities are allowed. Witness Gillan further testified: "If BellSouth alleges space exhaustion, it may request the Commission to find that copper should not be permitted. Therefore, as a matter of parity and nondiscriminatory treatment, CLPs should be entitled to bring copper into the central office."

BellSouth witness Milner testified that currently some copper cables enter BellSouth central offices, but these are older cables associated with BellSouth's loop facilities, and all of BellSouth's interconnection trunk cables entering BellSouth central offices are optical fiber facilities. Witness Milner also testified that "the FCC rules regarding an ILEC's collocation obligation under the Act established by the FCC state that the ILEC should only accommodate non-fiber optic entrance facilities if such interconnection is first ordered by the state commission." Witness Milner asserted that no CLP should be permitted to place non-fiber optic (copper) entrance facilities in a premises until the state commission has reviewed the particular circumstances of the premises and the specific needs of the requesting CLP at that location, and has determined that the CLP's needs override BellSouth's and other CLPs' concerns, if any, with entrance space availability in those premises. Witness Milner further asserted that "going forward, our technology choice is fiber optic cable, so for our -- both for our interconnection trunking we use fiber optics as well as for our loop facilities. In other words, we don't place new copper loops. We use fiber optic cable out to a midpoint, digital loop carrier equipment, and then copper loop distribution that goes onto the premises."

Verizon witness Ries testified that a CLP is required to use fiber entrance facilities unless they are being served through an adjacent on-site collocation arrangement. Any requests to use other types of entrance facilities would have to be carefully reviewed on a case-by-case basis to determine technical feasibility and space availability requirements.

In its Proposed Order, the Public Staff took the position that there is no federal law or rule that requires ILECs to allow CLPs to place copper as an entrance facility. According to the Public Staff, copper and coaxial cable are limited to adjacent collocation situations and are otherwise left to the discretion of the state commissions.

47 C.F.R. Section 51.323(d)(3) requires an ILEC providing physical collocation, virtual collocation, or both, to allow for the interconnection of copper or coaxial cable if such interconnection is first approved by the state commission.

The matter of whether CLPs are entitled to use any technically feasible entrance cable, including copper facilities, was previously addressed in conjunction with

Issue No. 53, as well by the Florida PSC in its *Order For Reconsideration*. The Commission believes that the CLPs, including MCIm, have failed to provide sufficient evidence that copper cable should generally be allowed other than in an adjacent collocation situation. The Florida *Order For Reconsideration* clarifies that the use of copper entrance facilities only addressed situations where collocation was outside of a central office, and did not reach the issue of copper cabling in other situations.

As previously stated in conjunction with Issue No. 53, the Commission believes that the unfettered use of copper entrance facilities, as requested by the CLPs, would accelerate the exhaust of ILEC central office entrance conduit and subduct. Central office entrance facilities should be limited to fiber optic cable unless the ILEC and CLP mutually agree to placement of copper entrance facilities or the CLP can convince the Commission, in a complaint proceeding, to authorize such placement at a particular premises on a case-by-case basis.

CONCLUSIONS

The Commission concludes that the CLPs, including MCIm, have failed to provide sufficient evidence that copper cable should generally be allowed other than in an adjacent collocation situation. Thus, central office entrance facilities should be limited to fiber optic cable unless the ILEC and CLP mutually agree to placement of copper entrance facilities or the CLP can convince the Commission, in a complaint proceeding, to authorize such placement at a particular premises on a case-by-case basis. The Commission also requires the Parties to negotiate mutually agreeable language for Section 5.2 of the Standard Offering and Section 7.21.1 of the MCIm/BellSouth Interconnection Agreement to reflect these conclusions.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 62

ISSUE 71: Is MCIm entitled to verify BellSouth's assertion, when made, that dual entrance facilities are not available? Should BellSouth maintain a waiting list for entrance space and notify MCIm when space becomes available?

POSITIONS OF PARTIES

ALLTEL: ALLTEL did not take a position on this issue in its Brief.

AT&T: AT&T supported the position taken by MCIm on this issue.

BELLSOUTH: The FCC's Rule requires BellSouth to provide at least two interconnection points at a premises "at which there are at least two entry points for the incumbent LEC's cable facilities, and at which space is available for new facilities in at least two of those entry points." 47 C.F.R. 51.323(d)(2). The right to tour a premises only applies when an ILEC "contends space for physical collocation is not available" in a given central office.

BellSouth is not denying physical collocation when it does not have dual entrance facilities available. BellSouth should not be required to incur the time and expense of maintaining a waiting list simply because dual entrance facilities may not be available.

NEW ENTRANTS: The New Entrants supported the position taken by MCIm on this issue.

MCIm: MCIm is not requesting a "formal tour" of the central offices; instead, a limited inspection of entrance facilities is what is required, and BellSouth has acceded to that request. MCIm has a right to verify, and should be permitted to verify, BellSouth's assertion that dual entrance facilities are not available. BellSouth should maintain a waiting list for entrance space and notify MCIm when space becomes available.

PUBLIC STAFF: While ILECs are not required to provide central office tours when access to dual entrance facilities has been denied, the Commission should encourage the parties to negotiate this issue. At least two entrance facilities are required, if available, when collocation space is requested by a CLP. If no entrance facility or only one is available when collocation space is requested, then the requesting CLP will be provided *documentation (central office floor plans, etc.) on what facilities exist. No federal law or* rule requires ILECs to maintain a waiting list for collocation space or entrance facilities.

SPRINT: Sprint accepted the position taken on this issue by the CLPs to the extent it is consistent with the terms and conditions of the Standard Offering filed with the direct testimony of Sprint witness Hunsucker, it is included in the Standard Offering, and the Standard Offering is made applicable to all parties in its entirety.

VERIZON: A CLP may request supporting documentation from the ILEC when it asserts that dual entrance facilities cannot be accommodated, but the CLP is not entitled to visit the central office for such verification. As addressed under Issue No. 54, requests for dual entry should be handled by the ILEC on an individual case basis. The ILEC should not be required to maintain a waiting list.

WORLDCOM: WorldCom supported the position taken by MCIm on this issue.

DISCUSSION

Section 5.2.1 of the Standard Offering provides the conditions under which an ILEC deals with dual entrances to its central offices in a competitive environment. The corresponding provision in the MCIm/BellSouth Interconnection Agreement is Section 7.21.2.

WorldCom witness Bomer, who adopted and sponsored the direct testimony prefiled by *witness Messina, testified that a CLP should be permitted to verify, through physical* inspection, an ILEC's assertion that dual entrances are not available. This is particularly true when the ILEC is claiming a lack of capacity, and it is a reasonable requirement, particularly in light of the FCC's similar, but even more expansive rule allowing CLPs to tour an incumbent's premises in order to verify an assertion that physical collocation space is not available. MCIm is not asking for such a tour, but should be allowed to verify a claim that dual entrances are not available by inspecting the entrance locations. Witness Bomer also testified that since the FCC has declared that a denial of space triggers a requirement that an inspection be permitted, it is a reasonable conclusion that a denial of dual entrances, which permit the necessary diversity that a CLP needs, triggers the requirement of permitting verification of that claim.

Addressing whether ILECs must maintain a waiting list for entrance space, WorldCom witness Bomer pointed out that the lack of dual entrances will determine whether collocation is advisable at a given location, and thus maintenance of a waiting list is a reasonable requirement for the ILEC. This Commission has the authority to require ILECs to engage in practices that supplement the minimal standards that the federal rules require.

WorldCom witness Bomer, who also adopted and sponsored the testimony prefiled by witness Lathrop, further stated that, in many instances, a physical inspection is not necessary when dual entrances are lacking. Instead, a visual inspection from the street or drawings provided by the ILEC will document any exhausted entrance facilities at a central office. Witness Bomer remarked that physical inspection is necessary when the entrance facilities are underground and no documented floor plan is available. MCIm is not seeking a formal tour of the entire office, only an inspection of the ducts entering the cable vaults.

BellSouth witness Milner contended that when there is only one entrance point, a CLP can visually verify that another entrance point does not exist by a cursory review of the central office building floor plan; a tour is not necessary. BellSouth has agreed to provide documentation to MCIm verifying the lack of dual entrance facilities. Witness Milner also testified that the FCC rules which obligate an ILEC to provide a tour of its facilities in order to prove that physical collocation space is not available have absolutely nothing to do with the situation where space is available, but dual entry points do not exist. He stated that BellSouth was agreeable if all MCIm wants is a cursory inspection of the cable vault, but BellSouth was not amenable to a tour of the entire building when the purpose of that tour was to verify the existence of two entrance facilities.

Witness Milner further testified that aside from the time and expense associated with maintaining a waiting list for each central office in which dual entrance facilities are not available, there is no reason for BellSouth to maintain such a list when BellSouth has space available for CLP collocation, but does not have dual entrance facilities available. He maintained that if the FCC had intended for the ILECs to maintain a waiting list for dual entrance facilities (as it did for physical collocation space), it would have so stated.

Verizon witness Ries stated that the ILEC should provide supporting documentation when a dual entrance is not available. However, an inspection of the facilities should be required only if the ILEC asserts that there is no entrance space for any cable facility. Witness Ries testified that the CLP always has the option of leasing facilities from the ILEC in lieu of constructing its own to the ILEC premises. Establishing and maintaining a waiting list is of little benefit and would be unnecessarily burdensome for the ILEC, especially when entrance facility augmentations are an infrequent occurrence.

In its Proposed Order, the Public Staff took the position that while ILECs are not required to provide central office tours when access to dual entrance facilities has been denied, the Commission should encourage the parties to negotiate this issue. According to the Public Staff, at least two entrance facilities are required, if available, when collocation space is requested by a CLP. If no entrance facility or only one is available when collocation space is requested, then the requesting CLP will be provided documentation (central office floor plans, etc.) on what facilities exist. No federal law or rule requires ILECs to maintain a waiting list for collocation space or entrance facilities.

47 C.F.R. Section 51.323(d)(2) states that an ILEC must:

> Provide at least two such interconnection points at each incumbent LEC premises at which there are at least two entry points for the incumbent LEC's cable facilities, and at which space is available for new facilities in at least two of those entry points.

The Commission believes that while the ILECs are technically not required by the FCC to provide inspections when access to dual entrance facilities has been denied, the CLPs, including MCIm, should be entitled to verify the ILEC's assertion, when made, that dual entrance facilities are not available. Dual entrances are physically diverse entrances into a wire center; i.e., having dual entrances provides an opportunity to design redundancy into the network, thereby preventing some network failures (e.g., if there is a cable cut at one entrance facility, the overall service is not affected). MCIm is simply seeking an inspection of the ducts entering the cable vaults. From the testimony of the WorldCom and BellSouth witnesses, it appears that the Parties have come to general agreement on this issue sufficient to allow them to negotiate the appropriate terms and conditions for a satisfactory inspection or tour. The Commission believes that, through good faith negotiations, the ILECs should provide an inspection or tour for the requesting CLP to inspect the cable vaults and entrance manholes of central offices where dual entry facilities are not available. In addition, floor plans for central offices, provided to CLPs on request, could provide enough clarity to verify the number of entrance facilities in a specific central office and thereby avoid the need for a physical tour.

The Commission also believes that it is reasonable to require the ILECs, including BellSouth, to maintain waiting lists for entrance space and notify the CLPs, such as MCIm, when such space becomes available. Regarding MCIm's request for a waiting list, this Commission has the authority to require ILECs to engage in practices that are in addition to and consistent with the minimum standards required by the FCC rules. Because the lack of dual entrances may, as a practical matter, determine whether collocation is advisable at a given location, it is reasonable and not overly burdensome under the circumstances to require the ILECs to maintain waiting lists. The potential benefits to the CLPs of requiring waiting lists outweigh the potential detriments to the ILECs.

CONCLUSIONS

The Commission concludes that the CLPs, including MCIm, should be entitled to verify the ILEC's assertion, when made, that dual entrance facilities are not available. Through good faith negotiations, the ILECs should provide an inspection or tour for the requesting CLP to inspect the cable vaults and entrance manholes of central offices where dual entry facilities are not available. The Commission further finds it appropriate to require the ILECs, including BellSouth, to maintain waiting lists for entrance space and notify the CLPs, such as MCIm, when such space becomes available. The Commission also finds it appropriate to require the Parties to negotiate mutually agreeable language for Section 5.2.1 of the Standard Offering and Section 7.21.2 of the MCIm/BellSouth Interconnection Agreement to reflect these conclusions.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 63

ISSUE 84 (SPRINT ISSUE 10): Should an ILEC deny priority to a CLP that challenges an ILEC's denial of space should space become available as a result of the challenge?

POSITIONS OF PARTIES

Sprint is the only Party who mentioned this in its Proposed Order. Sprint's position is that the CLP initiating a successful challenge should have priority over available space. FCC rules establish a process whereby CLPs are afforded the opportunity to challenge an ILEC's denial of available space. Specifically, CLPs can tour the entire premises at no charge, and ILECs are required to provide certain information to substantiate lack of space claims.

CONCLUSIONS

The Commission concludes that, because of an insufficient record, it will not make a conclusion regarding this issue at this time. However, consistent with the conclusions previously reached in Finding of Fact No. 20, the Commission finds that procedures for evaluating space denials by the ILECs should be included in the Standard Offering.

IT IS, THEREFORE, ORDERED as follows:

1. That no later than January 28, 2002, the Parties shall jointly file a Standard Offering modified pursuant to the Commission's conclusions in this Order. The modified Standard Offering should include a Table of Contents.

2. That BellSouth's Motion to Allow Expedited Filings of Cost Studies is hereby granted. Therefore, barring any Motions for Reconsideration concerning collocation rates,

BellSouth, Carolina/Central, and Verizon shall refile their cost studies and resulting rates as soon as possible, but in no event later than January 28, 2002. The Public Staff is requested to review the cost studies and resulting rates as soon as possible after they are filed and submit comments on its reviews as soon as possible but in no event later than 30 days after receipt of said cost study and rates.

3. That BellSouth, Carolina/Central, and Verizon shall file hard copies and electronic copies (in Microsoft Excel format) of their collocation rates as set forth herein.

4. That the cost studies and supporting documentation shall be filed by the ILECs in *electronic form and shall, upon request, be provided to all Parties subject to previous restrictions* on disclosure of information for which proprietary treatment has been requested.

5. That the Parties are hereby instructed to attempt to negotiate appropriate rates for inclusion in the Standard Offering for cross-connects, cable installation, augments, adjacent collocation, and premises space reports by January 28, 2002 and if such rates are not negotiated, the Parties are instructed to file Supplemental Briefs discussing these issues in more depth by February 11, 2002.

6. That, after approval by the Commission, the rates filed pursuant to this Order shall be deemed permanent prices pursuant to Section 252(d) of TA96 for purposes of replacing interim prices adopted in Docket No. P-100, Sub 133d.

7. That BellSouth, Carolina/Central, and Verizon shall, by February 26, 2002, file proposals to refund the difference between revenues collected for services provided under interim prices subject to true-up and revenues that would have been collected under the permanent prices established in this docket.

ISSUED BY ORDER OF THE COMMISSION.

This the 28th day of December, 2001.

NORTH CAROLINA UTILITIES COMMISSION

Geneva S. Thigpen

Geneva S. Thigpen, Chief Clerk

Commissioner William R. Pittman resigned from the Commission effective January 24, 2001, and he did not participate in this decision.

Commissioner Ralph A. Hunt's term ended effective June 30, 2001, and he did not participate in this decision.

bp122801.01

GLOSSARY OF ACRONYMS
Docket Nos. P-100, Sub 133j

AC	Alternating Current
ACF	Annual Charge Factor
Act	Telecommunications Act of 1996
ADR	Alternative Dispute Resolution
ALEC	Alternative Local Exchange Carrier
ALLTEL	ALLTEL Communications, Inc.
AT&T	AT&T Communications of the Southern States, Inc.
BDFB	Battery Distribution Fuse Bay
BellSouth	BellSouth Telecommunications, Inc.
CCXC	Co-Carrier Cross-Connect
CDF	Conventional Distributing Frame
CFA	Channel/Connecting Facility Assignment
CLEC	Competitive Local Exchange Company (Carrier)
CLLI	Common Language Location Identification
CLP	Competing Local Provider
CLP Coalition	New Entrants (See New Entrants)
CO	Central Office
COE	Central Office Equipment
Commission	North Carolina Utilities Commission
DC	Direct Current
DS0	Digital Signal Level Zero
DS1	Digital Signal Level One
DS3	Digital Signal Level Three
DSX	Digital Signal Cross-Connect

DWDM	Dense Wavelength Division Multiplexing
EDR	Expedited Dispute Resolution
EHG	Environmental Hazard Guidelines
FCC	Federal Communications Commission
FDF	Fiber Distribution Frame
FOC	Fiber Optic Cable
HVAC	Heating, Ventilation, and Air Conditioning
ICB	Individual Case Basis
ILEC	Incumbent Local Exchange Company (Carrier)
LEC	Local Exchange Company (Carrier)
MCIm	MCI Telecommunications Corporation
MDF	Main Distributing Frame
MOPs	Method of Procedures
NEBS	Network Equipment Building Systems
New Entrants	Adelphia Business Solutions, Covad Communications, Inc., Business Telecom, Inc. DSLnet, Inc., Intermedia Communications, Inc., KMC Telecom, Inc., Mpower Communications, Corp., New Edge Networks, XO Communications, Inc., SECCA, US LEC, WorldCom, Inc., AT&T Communications of the Southern States
NPRMs	Non-Penetrating Roof Mounts
NRC	Nonrecurring Charge
POT	Point of Termination
Public Staff	Public Staff-North Carolina Utilities Commission
SECCA	Southeastern Competitive Carriers Association
Sprint	Carolina Telephone and Telegraph Company, Central Telephone Company, and Sprint Communications Company L.P.

SR	Special Report
SWBT	Southwestern *Bell Telecommunications*
TA96	Telecommunications Act of 1996
Texas PUC	Texas Public Utilities Commission
TR	Technical Requirement
SMEs	Subject Matter Experts
UNE	Unbundled Network Element
Verizon	Verizon South, Inc., f/k/a GTE South, Inc.
WorldCom	WorldCom, Inc., including MCImetro Access Transmission Services, LLC

STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

At a session of the Public Service
Commission held in the City of
Albany on January 22, 2003

COMMISSIONERS PRESENT:

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

CASE 99-C-0949 - Petition Filed by Bell Atlantic-New York for Approval of a Performance Assurance Plan and Change Control Assurance Plan, filed in C 97-C-0271.

ORDER AMENDING PERFORMANCE ASSURANCE PLAN

(Issued and Effective January 24, 2003)

BY THE COMMISSION:

INTRODUCTION

In November 1999, the Commission adopted the Performance Assurance Plan and Change Control Assurance Plan (PAP or the Plan).[1] The PAP provides for an annual review to determine whether any modifications or additions should be made to the PAP to address current market conditions. Amendments were made to the PAP after the first year review process.[2]

[1] Case 99-C-0949, Order Adopting the Amended Performance Assurance Plan and Amended Change Control Plan (issued November 3, 1999).

[2] Case 99-C-0949, Order Amending Performance Assurance Plan, (issued December 15, 2000) and Order Granting Modification of December 15, 2000 Order and Amending Performance Assurance Plan (issued May 8, 2001).

On November 2, 2001, a notice was issued inviting interested parties to propose modifications or additions to the Plan and to comment on Verizon's proposed items outlined in an October 22, 2001 filing.[3] Consideration of the comments received from competitive local exchange carriers (CLECs) and discussions with Verizon were deferred until well into 2002, a consequence of Staff's and Verizon's focus on stabilizing telecommunications service in the months following the 9/11 tragedy. On October 18, 2002, Staff's proposed PAP was posted on the Department web site, and comments were invited on the proposal and three other matters.[4] Comments were received from AT&T, WorldCom, Covad Communications Company (Covad), XO New York, Allegiance Telecom of New York, Inc., A.R.C. Networks, Inc. (d/b/a InfoHighway Communications Corp.), and the Joint Commentors. Replies were received from WorldCom, Joint Commentors and Verizon.

The comments generally support the broad structural changes contained in the October 2002 proposal. CLEC comments

[3] Comments were received from WorldCom, Inc.(WorldCom), AT&T Communications of New York, Inc.(AT&T), XO New York, Inc.(XO New York), joint comments from Metropolitan Telecommunications, Inc. and Z-Tel Communications, Inc. (Joint Commentors), Network Plus, Inc.(Network Plus), and Allegiance Telecom of New York, Inc., e-Spire Communications, Inc., Focal Communications of New York and Time Warner Telecom-NY-L.P., (collectively, the CLEC Group). Reply comments were received from Verizon, WorldCom, AT&T, XO New York, and the Joint Commentors.

[4] In a letter dated October 15, 2002, Verizon proposed two additional modifications to the Plan: 1) a six-month statute of limitations to challenge the monthly reported data and bill credit calculations, and 2) deletion of the prohibition on waivers for parity metrics. Additionally, Staff asked for comments addressing whether a CLEC's entitlement to bill credits should be conditioned on a CLEC being reasonably timely on its UNE payments to Verizon for undisputed bills.

oppose the three proposed modifications to the 2003 PAP described in footnote 4, supra. Verizon urges their approval with some modifications.

ADMINISTRATIVE PROCESSES

Statute of Limitations

Verizon proposes that a six-month statute of limitations be applied to CLEC challenges to Verizon's report of its performance under the PAP. All CLECs state that they need more than 6 months just to discover and attempt to resolve errors and omissions on Verizon's bills, which are typically lengthy and complex. Covad suggests that if the Commission adopts any statute of limitations against CLEC challenges, then it should also order a symmetrical provision against Verizon for backbilling of CLECs. WorldCom suggests a 2-year statute, while XO recommends a 1-year statute conditioned on Verizon's timely provision of a detailed explanation of unclear bills.

Verizon asserts that its proposal is reasonable principally because a statute of limitations serves the important purpose of ensuring that disputes are not resolved using data and recollections that have become stale and unreliable due to the passage of time. Expeditious resolutions are needed within the PAP, Verizon contends, where the subject matter experts deal with monthly waves of microscopic detail.

Discussion

While CLECs should be properly credited for Verizon's poor service, including that which is uncovered sometime after the fact, a reasonable period to seek review of PAP performance reports should facilitate the process. However, to be fair, CLECs must have access to sufficient information about the data in order to adequately review and, if necessary, challenge a performance report.

To that end, CLECs have requested that the Structured Query Language (SQL) algorithms which underlie the calculation of each reported metric result be distributed to parties along with the raw data for each metric that is currently provided for metric replication purposes. Verizon indicates that it will complete the metric business rules which contain these query statements "by next year".[5] Given that the queries define the basis for the metric calculations, electronically providing the CLECs with specific query statements along with the raw data used to generate the metric results each month should facilitate the CLECs' ability to replicate reported results, and also lessen confusion regarding how the metric guidelines are being interpreted by Verizon.

Verizon's provision of the complete array of SQLs will allow CLECs to discover data incongruities in a relatively short time. Therefore, a two-year limitation on challenges to PAP performance is reasonable and will be adopted. This limitation will be prospective beginning with the report issued for June 2003 performance,[6] provided Verizon submits all SQLs related to PAP metrics to the Director of Communications prior to that date.

Waiver for Parity Metrics

Verizon proposes that the PAP waiver provision be modified to delete the prohibition on waivers for parity metrics. In support of this proposal, Verizon cites examples

[5] Verizon Reply Comments, November 22, 2002, p.24.

[6] The limitation period will begin on July 25, 2003, the date when June 2003 performance is reported.

from its recent work stoppage as extraordinary circumstances where a waiver request would have been appropriate. It claims that during the work stoppage, it was unable to process its own retail provisioning and repair orders, but CLEC provisioning and repair orders nevertheless continued to come in. Because CLEC orders came in at a faster rate than Verizon retail orders, Verizon asserts, the result was a much larger backlog of CLEC orders than retail orders. According to Verizon, the relevant parity metrics incorrectly interpreted these circumstances as a lack of parity between Verizon's retail and wholesale performance.

The CLECs point out that they are entitled to wholesale performance on par with Verizon's retail performance, regardless of the circumstances. They acknowledge that emergency situations will hamper Verizon's overall performance, but maintain that the PAP's ideal of non-discrimination means that CLECs and Verizon should suffer equally. AT&T notes that federal and state law also obligate Verizon to provide nondiscriminatory access to wholesale services.

Discussion

CLECs are understandably concerned that Verizon provide parity service, even in extraordinary circumstances, to assure that their ability to compete effectively is not impeded. WorldCom points out that, even in a work stoppage, Verizon has the ability to adjust or reassign resources so that parity can be met. Recognizing that this latter suggested action may at times be difficult, on balance, maintaining parity performance is a critical element in the competitive fabric. In light of the importance of the PAP's pro-competitive goals, waivers should be reserved as an extreme remedy for relief from circumstances clearly beyond Verizon's control and should apply only to absolute measures. The examples Verizon submitted in support of its proposal, given as they are solely in the context of a work stoppage, are not compelling and do not justify deletion of the existing prohibition on waivers for parity metrics.

Conditioning of Bill Credits Upon Timely CLEC Payments

Staff tentatively proposed that the receipt of bill credits be conditioned on a CLEC being reasonably timely in its UNE payments to Verizon. CLECs advance three objections to this proposal: first, that no relationship exists between bill credits, which are intended to serve as penalties to enforce the PAP, and timely CLEC payments; second, that Verizon already possesses other means for collecting late CLEC payments through its tariffs and interconnection agreements; and third, that Verizon's billing and dispute resolution procedures are flawed, so Verizon's own processes may result in a CLEC payment being considered untimely. AT&T argues that a 30-day grace period is commercially impractical and/or unfair because some bill credits are based on Verizon's quarterly performance.

Verizon replies that it cannot afford to provide quality service when CLECs do not pay bills in a timely fashion. It notes that its wholesale business depends upon a small customer base that makes large purchases. Verizon would revise Staff's proposal by delaying its effect until the Critical Measures billing claims metrics become effective; applying an offset only to balances that remain unpaid for more than two months after billing disputes are resolved; and allowing Verizon to retain the bill credits that are recaptured by this provision.

Discussion

Staff's proposal was intended to address the potential inequity of Verizon providing bill credits at a time it is owed undisputed payments for service. Judging from the comments received, it appears that issues relating to billing dispute provisions found in interconnection agreements and tariffs, together with bankruptcy rules, could introduce an unnecessary level of complexity to the PAP that could draw the Commission into ordinary commercial disputes.

Verizon will be directed to strike the proposed change to Section II.G. of the Plan and reinstate the original language, to wit: "Verizon NY will issue checks in lieu of outstanding bill credits to CLECs that discontinue taking service from Verizon NY." However, immediately following the reinstated language, the PAP should be amended by adding: "Verizon NY may, however, exercise ordinary commercial means to ensure that it will not issue such a check prior to receipt of a CLEC's undisputed payments due Verizon NY."

Inclusion of CLECs in Annual Review

AT&T, Covad, WorldCom and the Joint Commentors request that CLECs be allowed to participate in the annual review process along with Staff and Verizon. AT&T states that the current process, in which CLECs are invited to comment after the issuance of a proposed PAP, is neither equitable nor efficient. Covad argues that PAP changes should be worked out in the Carrier Working Group (CWG), which promotes a thorough examination of all relevant issues and provides a fair process for resolving disputed issues. WorldCom concurs with Covad and suggests that making annual reviews a function of the CWG would be the most expedient way to involve the CLECs, work out compromises, and resolve disputes. The Joint Commentors propose establishing a PAP Advisory Board consisting of CLECs.

Verizon states that the 2003 PAP was developed with prior CLEC comments in mind, and that CLECs have been given a full and fair opportunity to comment on the 2003 proposal. It further asserts that including PAP issues in the CWG will damage the CWG's consensus-building processes.

Discussion

The PAP provides that "CLECs and other interested parties will have an opportunity to provide comments on any proposed changes" to the PAP. Recognizing that the review process initiated in 2001 was interrupted by the events of 9/11, we find that the existing process, as modified by Staff depending on the particular circumstances, is working. CLECs provided input prior to Staff's proposed revisions and filed comments and reply comments on the 2003 PAP proposal after two conference calls with Staff designed to assist their understanding of the proposed changes.

To facilitate greater participation, CLECs suggest that the PAP review be tied in certain ways to the Carrier Working Group (CWG), for example, to have the CWG propose PAP changes. Because this suggestion may change the consensus building processes of the CWG, we will not adopt it.[7]

[7] For example, the three proposals set forth in footnote 4, supra, do not lend themselves to consensus resolution, and many such proposals will be contentious. However, an exception will be made for changes to the Carrier Guidelines, arrived at through consensus, which affect existing PAP measures. In agreeing to such changes, Verizon understands they will be incorporated into the PAP at some point. We now establish that when the Carrier Guidelines changes are approved by the Commission, a separate PAP order will be issued to give effect to the consensus provisions affecting existing PAP measures.

While we decline to dictate any particular process, we believe that the annual review should afford the CLECs the opportunity to file comments proposing changes to the PAP prior to any discussions by Staff with Verizon for modification of the Plan. Comments should be solicited to initiate the annual review, with the comments forming the basis for the annual review discussions. Following discussions with Verizon, Staff's proposed changes should be posted on the Department web site and a technical conference held before seeking comments on the proposed changes. Staff will have discretion to propose such other changes as it deems appropriate.

Third Party Audits

AT&T and WorldCom propose that an independent third party auditor be utilized to perform the PAP annual audit. AT&T states that this is necessary because of the substantial amount of time and resources required to perform a comprehensive audit.

WorldCom's proposal includes content of the audit, who should pay for the audit, remedies, and single-issue "mini-audits." The Joint Commentors support WorldCom's proposal with certain modifications relating to management, funding of mini-audits, and resolution of CLEC complaints involving mis-reporting by Verizon. WorldCom generally justifies third party audits by noting that Staff has ceased replicating metrics and that other states, including two in Verizon's territory (Pennsylvania and New Jersey), have ordered the ILEC to pay for at least one year of independent auditing.

Verizon argues that third party audits are unnecessary because: (1) the 2003 PAP already includes annual audit provisions; (2) the PAP was established well in advance of other states, and PAP data has been scrutinized by Staff for three years; (3) the PAP already allows CLECs to request an audit of any monthly measure; and (4) CLECs will be given the ability to replicate Verizon's data with the provision of the SQLs. Verizon requests that, if the Commission adopts third party audits, Verizon should only pay half of the cost of the annual audit and none of the cost of mini-audits (unless Verizon were to be found at fault).

Discussion

While there is value in assuring the accuracy of performance reporting, our three years' experience with the PAP indicates no present need to seek further assurances. Since the inception of the PAP, the Commission has addressed a wide array of technical and operational issues, which together constituted comprehensive review of Verizon's OSS, its quality control, and the accuracy of its data. Numerous metric modifications and new metrics have been incorporated into the PAP from the Carrier Guidelines or established specifically for the PAP (e.g., EDI Special Provisions) as a direct result of ongoing monitoring of Verizon performance. Further, because there have been few specific complaints by CLECs regarding the aforementioned issues, there is not sufficient evidence to justify the expense associated with the extensive audits contemplated by the CLECs.

WorldCom notes that several other state commissions have authorized annual third party audits. However, these states are, for the most part, in the early stages of their respective performance plans and may find it beneficial to seek outside assistance to assess the functionality of their plans. While we will not order similar action at this time, this proposal may be revisited at the next annual review, taking into consideration CLEC evidence of Verizon's non-compliance with PAP requirements.

METRICS AND STANDARDS ISSUES

Absolute Measures Performance Scores

CLECs maintain that a "-1" performance score for an absolute standard metric should not have the same connotation as a "-1" score for a parity metric. The Joint Commentors note that there is no gray area in the Carrier Guidelines language regarding non-achievement of absolutely defined performance standards; either service was provided at the required level or it was not. WorldCom argues that a benchmark measure "should be a clear bright line," which would set the required level of service to ensure that CLECs have a "meaningful opportunity to compete."

Verizon finds fault with the Joint Commentors' probability-based calculations and argues that they have confused the notion of performance level and probabilities. It further argues that no new information has been introduced that would support a change to absolute metrics scoring.

Discussion

In setting benchmark standards for the Carrier Guidelines,[8] the Commission was cognizant of the statistical nature inherent in the processes associated with absolute metrics. Although not subject to a statistical test for parity, the processes that are measured with benchmark metrics may exhibit random variation on a month to month basis. Thus, Verizon was given the incentive to aim higher than the absolute standard (e.g. 95% on time, parity plus four seconds, etc.) in order to minimize the possibility of being incorrectly penalized (i.e., much closer to 0% than to 5%). However, such risk may not

[8] Case 97-C-0139, Proceeding on Motion of the Commission to Review service Quality Standards for Telephone Companies, Order Adopting Inter-Carrier Service Quality Guidelines, (issued February 16, 1999).

be entirely avoidable for all benchmark measures as currently defined. The "-1" thresholds associated with absolute standard metric performance scores were intended to balance numerous considerations. The CLECs' proposal to remove the "-1" scores for absolute metrics, such that full penalty consequences apply at Carrier Guidelines levels, would cause a major shift in the financial impact of the PAP. We decline to entertain such a large scale restructuring of the Plan's risk parameters.

Mode of Entry Deadband Thresholds

AT&T argues that the deadband thresholds allow for the possibility that Verizon could miss a metric repeatedly, month after month, without any financial consequences. AT&T proposes lower performance scores ("-3" and "-4") to account for failure of a specific metric over multiple months. Verizon suggests that AT&T's argument is without merit, because many of the metrics that AT&T cites are Critical Measures and could be subject to bill credits under the PAP's Individual Rule.[9] AT&T also proposes to offset Type I error (a finding that discrimination exists when in fact there is none) with adjustments for Type II error (not detecting discrimination when in fact it has occurred) to avoid the need for deadbands all together. Verizon notes that AT&T's modifications to address repeated failures, as well as its arguments for Type I/Type II error balancing, have been previously rejected by the Commission. Verizon also suggests that the methodology for the threshold calculation should take

[9] PAP, appendix F. A CLEC that receives a performance score of "-1" or less in two consecutive months for a particular Critical Measure is assured of receiving bill credits, notwithstanding that all CLECs on average received an aggregate score for that measure above "-1" for either or both such months.

into account the effect of weighting differences between individual MOE metrics.

Discussion

AT&T's proposal was taken into consideration when the Modes of Entry were first developed. The MOEs are overall market measures wherein a small number of metric failures may not reach a level deemed to warrant an industry-wide rebate[10]. The deadband sets a threshold point where accumulated poor service triggers a rebate. If the deadband were changed, as suggested by AT&T, the initial rebate amount, as well as each graduated step, would also change to account for threshold and confidence level changes. Thus, each rebate generated under AT&T's suggestion would be comparable in value to the rebates generated using the deadbands in the revised PAP for 2003. AT&T's proposal to adjust Type I error with Type II error has been thoroughly reviewed and rejected, as discussed in the initial order approving implementation of the PAP.[11] Arguments have not been presented that would justify a change in our reasoning on this issue.

We note that the effect of weighting differences between individual MOE metrics, as suggested by Verizon, is a statistically correct consideration that should be taken into account to more accurately compute the deadbands. Therefore, we will adopt the revised MOE threshold calculation, which underlies Staff's proposed model.

[10] Key measures in the MOEs are also in the Critical Measures and are subject to the individual two-month rule, which addresses the concern that poor performance in key measures should not be without financial consequences.

[11] Case 99-C-0949, Order issued November 3, 1999, p. 16.

Special Provisions Proposals

AT&T proposes to raise the Special Provision hot cut performance standard to 95%, and increase OR-5-01, Flow Through-Total, to 90%. WorldCom recommends that the Order Completion Notice and Resolution Timeliness Metrics be made a Special Provision (or a separate Critical Measure) at the Carrier Guidelines 95% standard. Verizon opposes these proposals as not being consistent with the intent of Special Provisions. It also points out, for example, that the Flow Through-Total metric is not entirely within its control.

Discussion

Special Provisions are intended for metrics that have had a history of poor service and/or need additional incentives to ensure improvement. The CLEC proposals do not suggest chronic poor performance and will not be adopted. Although the hot cut standard will not be raised, the metric will remain in place to discourage backsliding in this critical process for facilities-based CLECs. Likewise, the standard for Flow Through-Total will not be raised, but may be reconsidered in the event a metric standard is developed for the Carrier Guidelines.

With respect to WorldCom's proposal, the new Order Completion Notice metrics are currently meeting standards and do not merit Special Provision attention. Grouping the proposed metrics in a new Critical Measures category is also not necessary, because the metric for Provisioning Completion Notice, which is already in Critical Measures, adequately measures the timeliness of order completion. Further, the establishment of metrics for the Resolution Performance Critical Measure will redress CLECs when service problems are not resolved in a timely fashion.

Small Sample Provision for Benchmark Measures

The Joint Commentors propose that recognized national standards should be used whenever possible in order to avoid the need to develop small sample rules and tables. They indicate that there should be fewer excuses for not performing at the highest level when sample sizes are small. Verizon argues that it would be required to provide perfect service to its competitors without the small sample tables for benchmark metrics.

Discussion

Small sample absolute metric scoring procedures have been included in Appendix C of the PAP since its inception. The modifications to Appendix C in the revised PAP do not change the methodology for evaluating benchmarks with a 95% standard, but merely provide a more general rule, which enables small sample absolute metric scoring when the standard is other than 95%.[12]

The Joint Commentors suggest that national standards be used in place of our current rules and procedures for evaluating performance for benchmark metrics. However, it is unclear how the national standards proposed by the Joint Commentors, relating to average process characteristics, pertain to the decision parameters which went into determining each current Carrier Guideline and PAP metric definition. Before national standards can reasonably be considered for use in place of our current rules and procedures for evaluating benchmark performance (or, for that matter, parity performance), the relevance of those standards should first be fully addressed by the Carrier Working Group. Appendix C provides a reasoned guide for assessing benchmark measures.

[12] This only applies to CLEC aggregate results. Critical Measures and the two-month individual rule are not implicated.

CHANGES TO THE PAP FOR 2003

In adopting the modifications and additions to the PAP summarized below, we have considered the proposals advanced by Verizon and its competitors, the Carrier Guidelines changes that impact the Plan, and developing market conditions. Many of the Carrier Guidelines changes relate directly to proposals submitted by CLECs in their November 2001 comments. Such changes include order completion metrics, resolution metrics for missing notifiers and billing claims, and metrics that focus on facilities-based competition. With the exception of the issues discussed above, Staff's proposed PAP substantially addresses the concerns raised by CLECs since the last annual review.

The broad changes to the Plan are the separation of the UNE Mode of Entry (MOE) and Critical Measures (CM) into UNE Platform and UNE Loop, moving metrics for Specials from the MOEs into a Critical Measure, establishing a Critical Measure for Resolution Performance (timely resolution of order exceptions and billing claims) and reallocating funds among several components of the Plan.[13] On a metric-specific basis, various metric and standard changes follow changes adopted in the Carrier Guidelines.[14]

[13] The CLECs have also raised issues relating to line loss, dark fiber, directory listing, and project performance, among others, which may have relevance for inclusion in the PAP. However, their respective proposals are premature. The issues should first be brought to the Carrier Working Group to be prioritized and developed by all interested parties.

[14] Case 97-C-0139, Proceeding on Motion of the Commission to Review Service Quality Standards for Telephone Companies, Order Modifying Existing and Establishing Additional Inter-Carrier Service Quality Guidelines (issued October 29, 2001); Order Establishing Additional Inter-Carrier Service Quality Guidelines (issued April 29, 2002); and, Order Establishing Additional Inter-Carrier Service Quality Guidelines (issued October 25, 2002).

Mode of Entry Changes

The UNE MOE will be divided into a Mode of Entry for UNE Platform and a Mode of Entry for UNE Loop. This change allows funds to be directly associated with facilities-based providers, a growing segment of the market.[15]

Metrics for Specials will be eliminated from all the MOEs and will be grouped into a new Critical Measure. This change allows Specials to be product-specific. It also provides rebates to the customers directly affected by service.

In the DSL MOE, metrics for Resale 2-wire Digital and Line Splitting will be added.

Reallocation of Funds

In the MOEs, $10 million will be provided for the new UNE Loop MOE by reallocating $5 million from each of the Resale and Trunks MOEs. The $45 million dedicated to the original UNE MOE will fund the new UNE Platform MOE.

Mode of Entry	2002 PAP	Change	2003 PAP
UNE	45.0*	(45.0)	
UNE Platform		45.0	45.0
UNE Loop		10.0	10.0
Resale	10.0	(5.0)	5.0
DSL	10.0		10.0
Trunks	10.0	(5.0)	5.0
Total	75.0	0	75.0

* all amounts in $ millions

Critical Measures funds will be increased overall by $18 million from funds moved from the eliminated EDI Special Provision, and $5.5 million and $1.5 million will be reallocated from Trunks and Collocation CMs, respectively. Funds for UNE

[15] As a whole, the Plan is evolving to emphasize facilities-based competition consistent with Commission policy.

Platform will be $45 million, and the new UNE Loop category will have $16 million assigned. The new categories for Specials and Resolution Performance will have $3 million and $1 million allocated to them, respectively.

Critical Measures	2002 PAP	Change	2003 PAP
UNE	40.0*	(40.0)	
UNE Platform		45.0	45.0
UNE Loop		16.0	16.0
Resale	10.0		10.0
DSL	10.0		10.0
Trunks	17.5	(5.5)	12.0
Collocation	3.5	(1.5)	2.0
Specials		3.0	3.0
Resolution Performance.		1.0	1.0
Total	81.0	18.0	99.0

* all amounts in $ millions

Metric Changes in the Modes of Entry

Service in the pre-order domain has been at a high level under current standards, therefore, several metrics in the UNE Platform, UNE Loop, and Resale MOEs will be removed. Changes in the revised Plan will reflect a shift in emphasis to ordering and provisioning.

New ordering metrics in the UNE Platform, UNE Loop, Resale, and DSL MOEs will be added and standards will be changed to correspond to new Carrier Guidelines.

In the provisioning domain for the new UNE Loop MOE, on-time and quality performance for hot cuts will be linked together to provide an overall performance measure. Metric changes in the other MOEs will reflect Carrier Guidelines changes.

In the maintenance domain, trouble report metrics will be removed and replaced by metrics for trouble duration. At present, trouble report rate metrics do not provide a reliable indication of the quality of performance. The metric change places an increased emphasis on performance for correcting troubles, a more consistent measurement of maintenance performance. Other changes reflect metric disaggregation incorporated into the Carrier Guidelines.

Critical Measures Changes

Like the MOE changes, the Critical Measures category for UNE measures will be divided into UNE Platform and UNE Loop. New categories will also be created for Resolution Performance and Specials. Other metric changes will mirror metric changes in the MOEs.

The Resolution Performance CM will include new metrics developed for the Carrier Guidelines that measure Verizon's performance resolving notifier exceptions and billing claims. However, billing claims metrics are still under development in the Carrier Working Group, and a placeholder will be provided pending their inclusion in the Carrier Guidelines and acceptance into the PAP.[16]

Special Provisions

The only change in Special Provisions will be the elimination of the EDI measures. The funds allocated to EDI measures will be moved to Critical Measures. Improved EDI measures, developed for the Carrier Guidelines, will be incorporated into MOEs and Critical Measures.

We note that the PAP's introductory paragraph for the Special Provisions component indicates that it addresses a need to measure key aspects of Verizon's wholesale service to CLECs

[16] When billing claims metrics are approved for inclusion in the Carrier Guidelines, an order will be issued making such metrics effective for the PAP as well.

"…during the first year after Verizon NY's entry in the interLATA market." By continuing the effect of Special Provisions, we intend that they provide an incentive for Verizon to not let its performance in provisioning essential UNEs backslide. Therefore, the quoted language should be stricken and replaced with the following: "…to ensure their ability to effectively compete in the local service market."

Market Adjustment Scale

The range for market adjustments will be modified in the Mode of Entry categories to account for changes in the number of parity measures and the methodology change for metric weights. New ranges were established for the UNE Platform and UNE Loop categories. Unchanged is the initial 20% level of the maximum monthly adjustment for each MOE. The chart below sets forth the relevant performance ranges subject to payment of bill credits.

Market Adjustment Scale

Mode of Entry	Minimum Market Adj.	Maximum Market Adj.	% Market Adj. at Minimum	No. of Increments (min. to max.)
UNE Platform	-.25292	- .67	20%	19
UNE Loop	-.24862	- .67	20%	19
Resale	-.24715	- .67	20%	19
DSL	-.23024	- .67	20%	19
Interconnection	-.21429	-1.0	20%	13

CONCLUSION

The revised PAP for 2003 reflects the knowledge and experience gained from the current PAP and is intended to ensure that local competition will be maintained and continue to develop. The PAP proposal posted on the Department web site, as modified by this Order, will be adopted.

The Commission orders:

1. The Verizon New York Inc. Performance Assurance Plan set forth in the October 18, 2002 proposal posted on the Department web site, as modified by this Order, and as displayed in the attachments to this Order, is adopted and will be effective for March 2003 performance.

2. Within 10 days of the issuance of this Order, Verizon New York Inc. shall file 15 copies of its revised Performance Assurance Plan, in compliance with this Order, with Janet Hand Deixler, Secretary to the Commission, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350. Verizon New York Inc. shall also post the Plan to the company's web site and provide electronic copies of the Plan by e-mail to the parties on the Case 99-C-0949 Active Party List.

3. This proceeding is continued.

By the Commission,

(SIGNED)

JANET HAND DEIXLER
Secretary

ATTACHMENTS

UNE PLATFORM MODE OF ENTRY

UNE LOOP MODE OF ENTRY

RESALE MODE OF ENTRY

DSL MODE OF ENTRY

INTERCONNECTION (TRUNKS) MODE OF ENTRY

CRITICAL MEASURES

SPECIAL PROVISIONS

CHANGE CONTROL ASSURANCE PLAN

MARKET ADJUSTMENT SUMMARY

Verizon New York UNE Platform 2003 Model

Performance Assurance Plan Report

		Performance		Observations		VZ Std	Sampling		Perf.		Wgtd.
		VZ	CLEC	VZ	CLEC	Deviation	Error	Diff.	Score	Wgt.	Score
PO	Pre-Ordering										
PO-1-01-6020	Customer Service Record - EDI	1.00	7.10		18,758			6.10	-2	2	-0.016
PO-1-03-6020	Address Validation -EDI	1.00	7.10		51,976			6.10	-2	2	-0.016
PO-2-02-6020	OSS Interface Availability - Prime - EDI		97.90						-2	5	-0.039
PO-1-01-6030	Customer Service Record - CORBA	1.00	7.10		31,628			6.10	-2	2	-0.016
PO-1-03-6030	Address Validation - CORBA -	1.00	7.10		88,721			6.10	-2	2	-0.016
PO-2-02-6030	OSS Interface Availability - Prime - CORBA		97.90						-2	5	-0.039
PO-1-01-6050	Customer Service Record - Web GUI	1.00	7.10		50,619			6.10	-2	2	-0.016
PO-1-03-6050	Address Validation - Web GUI	1.00	7.10		30,405			6.10	-2	2	-0.016
PO-2-02-6050	OSS Interface Availability - Prime - Web GUI		97.90						-2	5	-0.039
OR	Ordering										
OR-1-02-3143	% On Time LSRC - Flow Through - Platform - 2hrs		88.01		234,285				-2	10	-0.078
OR-2-02-3143	% On Time LSR Reject - Flow Through - Platform		89.90		27,882				-2	5	-0.039
OR-4-11-3000	% Completed Orders with Neither a PCN or BCN Sent		1.01		215,762				-2	5	-0.039
OR-4-16-3000	% On Time PCN - 1 Business Day		89.10		215,762				-2	5	-0.039
OR-4-17-3000	% On Time BCN - 2 Business Day		89.00		215,762				-2	5	-0.039
OR-5-03-3000	% Flow Through - Achieved - POTS		89.00		262,714				-2	5	-0.039
OR-6-03-3143	% Accuracy - LSRC - Platform		10.10		22,740				-2	5	-0.039
OR-1-04-3143	% OT LSRC -No Facil Check(Elec.-No Flow Thru) -Platform		89.90		18,140				-2	5	-0.039
OR-1-06-3143	% OT LSRC/ASRC -Facil Ck(Elec.-No Flow Thru) -Platform		70.00		10				-2	2	-0.016
OR-2-04-3143	% OT LSR Rej.-No Facil Ck (Elec.-No Flow Thru) -Platfrom		89.90		7,560				-2	2	-0.016
OR-2-06-3143	% OT LSR/ASR Rej.-Facil Ck(Elec.-No Flow Thru) -Platform		89.90		636				-2	2	-0.016
PR	Provisioning	VZ	CLEC	VZ	CLEC						
PR-3-01-3140	% Completed in 1 Day (1-5 Lines - No Disp) - Platform	75.00	73.50	10,000	10,000		0.61	-2.45	-2	5	-0.039
PR-4-05-3140	% Missed Appointment- VZ - No Dispatch - Platform	0.10	0.12	470,229	162,265		0.01	-2.20	-2	20	-0.156
PR-4-04-3140	% Missed Appointment - VZ - Dispatch - Platform	1.00	1.25	71,031	6,804		0.13	-1.98	-2	10	-0.078
PR-4-02-3100	Average Delay Days - Total - POTS	2.00	2.25	8,518	4,000	6.72	0.13	-1.94	-2	15	-0.117
PR-5-01-3140	% Missed Appointment - Facilities - Platform	3.00	3.50	71,031	6,804		0.22	-2.31	-2	5	-0.039
PR-5-02-3140	% Orders Held for Facilities > 15 days - Platform	0.30	0.45	71,031	6,804		0.07	-2.16	-2	5	-0.039
PR-6-01-3121	% Installation Troubles within 30 days - Platform	5.00	5.15	496,054	167,865		0.06	-2.44	-2	10	-0.078
		Performance		Observations		VZ Std	Sampling		Perf.		Wgtd.
MR	Maintenance & Repair	VZ	CLEC	VZ	CLEC	Deviation	Error	Diff.	Score	Wgt.	Score
MR-1-01-2000	Avg. Response Time - Create Trouble	2.00	8.10		12,078			6.10	-2	2	-0.016
MR-1-06-2000	Avg. Response Time - Test Touble (POTS only)	2.00	8.10		35,262			6.10	-2	2	-0.016
								Stat. Score			
MR-3-01-3144	% Missed Repair Appointments - Loop - Platform - Bus	20.00	22.00	21,998	1,799		0.98	-2.04	-2	10	-0.078
MR-3-02-3144	% Missed Repair Appointments - CO - Platform - Bus	17.00	21.00	5,275	330		2.13	-1.88	-2	10	-0.078
MR-4-02-3144	Mean Time to Repair - Loop Trouble - Platform - Bus	20.00	21.50	21,998	1,799	27.83	0.68	-2.20	-2	5	-0.039
MR-4-03-3144	Mean Time to Repair - CO Trouble - Platform - Bus	14.00	16.50	5,275	330	22.38	1.27	-1.97	-2	5	-0.039
MR-4-06-3144	% Out of Service >4 Hours - Platform - Bus	77.00	79.00	23,000	1,705		1.06	-1.89	-2	5	-0.039
MR-4-07-3144	% Out of Service >12 Hours - Platform - Bus	55.00	57.50	23,000	1,705		1.25	-2.00	-2	5	-0.039
MR-4-08-3144	% Out of Service > 24 Hours - Platform - Bus	25.00	27.00	23,000	1,699		1.09	-1.84	-2	5	-0.039
MR-3-01-3145	% Missed Repair Appointments - Loop -Platform - Res	15.00	15.50	93,117	19,028		0.28	-1.76	-2	10	-0.078
MR-3-02-3145	% Missed Repair Appointments - CO - Platform - Res	10.00	11.50	12,915	1,495		0.82	-1.83	-2	10	-0.078
MR-4-02-3145	Mean Time to Repair - Loop Trouble - Platform - Res	25.00	25.50	93,117	19,028	27.52	0.22	-2.28	-2	5	-0.039
MR-4-03-3145	Mean Time to Repair - CO Trouble - Platform - Res	13.00	14.00	12,915	1,495	20.16	0.55	-1.82	-2	5	-0.039
MR-4-06-3145	% Out of Service >4 Hours - Platform - Res	85.00	85.60	85,156	16,613		0.30	-1.98	-2	5	-0.039
MR-4-07-3145	% Out of Service >12 Hours - Platform - Res	70.00	71.00	85,156	16,613		0.39	-2.57	-2	5	-0.039
MR-4-08-3145	% Out of Service > 24 Hours - Platform - Res	29.00	30.00	85,156	16,598		0.39	-2.60	-2	5	-0.039
MR-5-01-3140	% Repeat Reports w/in 30 days - Platform	18.00	18.50	133,924	22,652		0.28	-1.81	-2	10	-0.078
BI	Billing										
BI-1-02-2030	% DUF in 4 Business Days		89.90		651,317,092				-2	5	-0.039
								Totals	-90	257	-2.000

"NA" - no activity "UD" - under development

For demonstration purposes, metric performance has been failed to show financial results

Verizon New York UNE LOOP 2003 Model

Performance Assurance Plan Report

PO	Pre-Ordering	Performance VZ	Performance CLEC	Observations CLEC	Diff.	Perf. Score	Wgt.	Wgtd. Score
PO-1-01-6020	Customer Service Record - EDI	1.00	7.10	18,758	6.10	-2	2	-0.022
PO-1-03-6020	Address Validation -EDI	1.00	7.10	51,976	6.10	-2	2	-0.022
PO-2-02-6020	OSS Interface Availability - Prime - EDI		97.90			-2	5	-0.055
PO-1-01-6030	Customer Service Record - CORBA	1.00	7.10	31,628	6.10	-2	2	-0.022
PO-1-03-6030	Address Validation - CORBA	1.00	7.10	88,721	6.10	-2	2	-0.022
PO-2-02-6030	OSS Interface Availability - Prime - CORBA		97.90			-2	5	-0.055
PO-1-01-6050	Customer Service Record - Web GUI	1.00	7.10	50,619	6.10	-2	2	-0.022
PO-1-03-6050	Address Validation - Web GUI	1.00	7.10	30,405	6.10	-2	2	-0.022
PO-2-02-6050	OSS Interface Availability - Prime - Web GUI		97.90			-2	5	-0.055
OR	**Ordering**							
OR-1-02-3331	% On Time LSRC - Flow Thru - Loop/Pre-Qual - 2hrs		89.90	22,726		-2	10	-0.110
OR-2-02-3331	*% On Time LSR Reject - Flow Thru - Loop/Pre-Qual*		*89.90*	*5,359*		-2	5	-0.055
OR-4-11-3000	% Completed Orders with Neither a PCN or BCN Sent		1.01	215,762		-2	2	-0.022
OR-4-16-3000	% On Time PCN - 1 Business Day		89.10	215,762		-2	2	-0.022
OR-4-17-3000	% On Time BCN - 2 Business Day		89.00	215,762		-2	2	-0.022
OR-5-03-3000	% Flow Through - Achieved - POTS		89.00	262,714		-2	5	-0.055
OR-6-03-3331	% Accuracy - LSRC - Loop		10.01	24,296		-2	5	-0.055
OR-1-04-3331	% OT LSRC -No Facil Ck(E -No F/T) -Loop/LNP		89.90	6,987		-2	5	-0.055
OR-1-06-3331	% OT LSRC/ASRC -Facil Ck(E -No F/T) -Loop/LNP		89.90	2,020		-2	2	-0.022
OR-2-04-3331	% OT LSR Rej -No Facil Ck(E -No F/T) -Loop/LNP		81.25	16		-2	2	-0.022
OR-2-06-3331	% OT LSR/ASR Rej -Facil Ck(E -No F/T) -Loop/LNP		89.90	467		-2	2	-0.022

PR	Provisioning	VZ	CLEC	VZ	CLEC	VZ Std Deviation	Sampling Error	Stat. Score			
PR-4-02-3100	Average Delay Days - Total - POTS	2.00	2.25	8,518	4,000	6.72	0.13	-1.94	-2	5	-0.055
PR-4-04-3113	% Missed Appointment - VZ - Dispatch - Loop-New	10.00	12.00	71,031	708		1.13	-1.77	-2	20	-0.221
PR-5-01-3112	% Missed Appointment - Facilities - Loop	3.00	4.50	71,031	708		0.64	-2.33	-2	5	-0.055
PR-5-02-3112	% Orders Held for Facilities > 15 days - Loop	0.50	1.00	71,031	708		0.27	-1.88	-2	5	-0.055
PR-6-01-3112	% Installation Troubles within 30 days - Loop	5.00	5.50	496,054	18,244		0.16	-3.04	-2	10	-0.110
PR-6-02-3520	% Installation Troubles within 7 days - Hot Cut		4.00		11,685				-2	15	-0.166
PR-9-01-3520	% On Time Performance - Hot Cut		89.00		5,071						
MR	**Maintenance & Repair**							Diff.			
MR-1-01-2000	Avg. Response Time - Create Trouble	2.00	8.10		12,078			6.10	-2	2	-0.022
								Stat. Score			
MR-3-01-3550	% Missed Repair Appointments - Loop - Loop	16.00	17.50	115,654	2,115		0.80	-1.86	-2	10	-0.110
MR-4-02-3550	Mean Time to Repair - Loop Trouble - Loop	25.00	26.50	115,654	2,115	33.81	0.74	-2.02	-2	5	-0.055
MR-4-07-3550	% Out of Service > 12 Hours - Loop	65.00	67.00	108,690	2,086		1.05	-1.90	-2	5	-0.055
MR-4-08-3550	% Out of Service > 24 Hours - Loop	29.00	31.00	108,690	2,086		1.00	-1.99	-2	5	-0.055
MR-5-01-3550	% Repeat Reports w/in 30 days - Loop	17.50	19.00	133,924	2,722		0.74	-2.04	-2	10	-0.110
MR-3-02-3550	% Missed Repair Appointments - CO - Loop	12.00	15.00	18,270	607		1.34	-2.24	-2	10	-0.110
MR-4-03-3550	*Mean Time to Repair - CO Trouble - Loop*	*14.00*	*16.00*	*18,270*	*807*	*20.88*	*0.86*	*-2.32*	-2	5	-0.055
	"NA" - no activity "UD" - under development							Totals	-68	181	-2.000

For demonstration purposes, metric performance has been failed to show financial results

Verizon New York RESALE 2003 Model

Performance Assurance Plan Report

PO	Pre-Ordering	VZ	CLEC	VZ	CLEC			Diff.	Perf. Score	Wgt.	Wgtd. Score
PO-1-01-6020	Customer Service Record - EDI	1.00	7.10		18,758			6.10	-2	2	-0.015
PO-1-03-6020	Address Validation - EDI	1.00	7.10		51,976			6.10	-2	2	-0.015
PO-2-02-6020	OSS Interface Availability - Prime - EDI		97.90						-2	5	-0.038
PO-1-01-6050	Customer Service Record - Web GUI	1.00	7.10		50,619			6.10	-2	2	-0.015
PO-1-03-6050	Address Validation - Web GUI	1.00	7.10		30,405			6.10	-2	2	-0.015
PO-2-02-6050	OSS Interface Availability - Prime - Web GUI		97.90						-2	5	-0.038
OR	Ordering										
OR-1-02-2320	% On Time LSRC - Flow Thru - POTS/Pre-Qualified Complex - 2hrs		89.90		8,247				-2	10	-0.076
OR-2-02-2320	% On Time LSR Rej - Flow Thru - POTS/Pre-Qualified Complex		89.90		3,412				-2	5	-0.038
OR-4-11-2000	% Completed Orders with neither a PCN or BCN Sent		1.01		215,762				-2	5	-0.038
OR-4-16-2000	% On Time PCN - 1 Business Day		89.10		215,762				-2	5	-0.038
OR-4-17-2000	% On Time BCN - 2 Business Day		89.00		215,762				-2	5	-0.038
OR-5-03-2000	% Flow Through - Achieved - POTS		87.50		8,739				-2	10	-0.076
OR-6-03-2000	% Accuracy - LSRC		10.10		5,197				-2	10	-0.076
OR-1-04-2100	% OT LSRC - No Facil Ck(E - No Flow Thru)-POTS/Pre-Qual Cmplx		89.90		3,561				-2	5	-0.038
OR-1-06-2320	% OT LSRC/ASRC - Facil Ck(E - No F/T) - POTS/Pre-Qual Cmplx		89.90		684				-2	2	-0.015
OR-2-04-2320	% OT LSR Rej - No Facil Ck(E - No F/T) - POTS/Pre-Qual Cmplx		89.90		3,016				-2	2	-0.015
OR-2-06-2320	% OT LSR/ASR Rej - Facil Ck(E - No F/T) - POTS/Pre-Qual Cmplx		84.21		19				-2	2	-0.015

PR	Provisioning	VZ	CLEC	VZ	CLEC	VZ Std Deviation	Sampling Error	Stat. Score			
PR-3-01-2100	% Completed In 1 Day (1-5 lines - No Disp) - POTS Total	75.00	73.00	10,000	1,597		1.17	-1.71	-2	5	-0.038
PR-4-05-2100	% Missed Appointment - VZ - No Dispatch - POTS	0.10	0.17	470,229	7,558		0.04	-1.91	-2	20	-0.152
PR-4-04-2100	% Missed Appointment - VZ - Dispatch - POTS	1.00	1.50	71,031	1,543		0.26	-1.95	-2	10	-0.076
PR-4-02-2100	Average Delay Days - Total - POTS	2.00	3.44	8,518	64	6.72	0.84	-1.71	-2	15	-0.114
PR-5-01-2100	% Missed Appointment - Facilities - POTS	3.00	3.75	71,031	1,543		0.44	-1.71	-2	5	-0.038
PR-5-02-2100	% Orders Held for Facilities > 15 days - POTS	0.30	0.60	71,031	1,543		0.14	-2.13	-2	5	-0.038
PR-6-01-2100	% Installation Troubles within 30 days - POTS	5.00	5.30	496,054	18,813		0.16	-1.85	-2	15	-0.114
MR	Maintenance & Repair							Diff.			
MR-1-01-2000	Average Response Time - Create Trouble	2.00	8.10		12,078			6.10	-2	2	-0.015
MR-1-06-2000	Average Response Time - Test Touble (POTS only)	2.00	8.10		35,262			6.10	-2	2	-0.015
								Stat. Score			
MR-3-01-2110	% Missed Repair Appointments - Loop - Bus.	20.00	22.00	21,998	1,516		1.06	-1.88	-2	10	-0.076
MR-3-02-2110	% Missed Repair Appointments - CO - Bus.	17.00	21.00	5,275	359		2.05	-1.95	-2	10	-0.076
MR-4-02-2110	Mean Time To Repair - Loop Trouble - Bus.	20.00	22.00	21,998	1,516	27.83	0.74	-2.71	-2	5	-0.038
MR-4-03-2110	Mean Time To Repair - CO Trouble - Bus.	14.00	16.50	5,275	259	22.38	1.42	-1.76	-2	5	-0.038
MR-4-06-2110	% Out of Service > 4 Hours - POTS - Bus	77.00	79.00	23,000	1,474		1.13	-1.77	-2	5	-0.038
MR-4-07-2110	% Out of Service > 12 Hours - POTS - Bus.	55.00	57.50	23,000	1,474		1.34	-1.87	-2	5	-0.038
MR-4-08-2110	% Out of Service > 24 Hours - POTS - Bus.	25.00	27.00	23,000	1,474		1.16	-1.72	-2	5	-0.038
MR-3-01-2120	% Missed Repair Appointments - Loop - Res.	15.00	18.00	93,117	419		1.75	-1.72	-2	10	-0.076
MR-3-02-2120	% Missed Repair Appointments - CO - Res.	10.00	17.00	12,915	62		3.82	-1.83	-2	10	-0.076
MR-4-02-2120	Mean Time To Repair - Loop Trouble - Res.	25.00	28.00	93,117	419	27.52	1.35	-2.23	-2	5	-0.038
MR-4-03-2120	Mean Time to Repair - CO Trouble - Res.	13.00	18.00	12,915	62	20.16	2.57	-1.95	-2	5	-0.038
MR-4-06-2120	% Out of Service > 4 Hours - POTS - Res.	85.00	88.00	85,156	396		1.80	-1.67	-2	5	-0.038
MR-4-07-2120	% Out of Service > 12 Hours - POTS - Res.	70.00	74.00	85,156	396		2.31	-1.73	-2	5	-0.038
MR-4-08-2120	% Out of Service > 24 Hours - POTS - Res.	29.00	33.00	85,156	396		2.29	-1.75	-2	5	-0.038
MR-5-01-2100	% Repeat Reports w/in 30 days - POTS	18.00	19.50	133,924	2,356		0.80	-1.88	-2	10	-0.076
BI	Billing										
BI-1-02-2030	% DUF In 4 Business Days		89.90		651,317,092				-2	5	-0.038
	"NA" - no activity... "UD" - under development							Totals	-84	263	-2.000

For demonstration purposes, metric performance has been failed to show financial results

CASE 99-C-0949

Verizon NY Performance Assurance Plan Report DSL 2003 Model

		Perfromance		Observations					Perf.		Wgtd
PO	Pre-Ordering	VZ	CLEC	VZ	CLEC			Diff	Score	Wgt	Score
PO-1-06-6020	Mechanized Loop Qualification - EDI	1.00	7.10		100			6.10	-2	5	-0.034
PO-2-02-6020	OSS Interface Availability - Prime - EDI		97.90						-2	5	-0.034
PO-1-06-6030	Mechanized Loop Qualification - CORBA	1.00	7.10		100			6.10	-2	5	-0.034
PO-2-02-6030	OSS Interface Availability - Prime - CORBA		97.90						-2	2	-0.014
PO-1-06-6050	Mechanized Loop Qualification - Web GUI	1.00	7.10		100			6.10	-2	5	-0.034
PO-2-02-6050	OSS Interface Availability - Prime - Web GUI		97.90						-2	2	-0.014
PO-8-01-2000	% On Time - Manual Loop Qualification		53.30		15				-2	2	-0.014
PO-8-02-2000	% On Time - Engineering Record Request		89.00		100				-2	2	-0.014
OR	Ordering										
OR-1-04	% On Time LSRC -No Facil Ck (E -No FT) -2W Digital -UNE/Resale		80.00		236				-2	2	-0.014
OR-1-06	% OT LSRC/ASRC -Facility Ck (E -No FT) -2W Digital -UNE/Resale		75.00		12				-2	2	-0.014
OR-2-04	% On Time LSR Rej -No Facil Ck(E- No FT) -2W Digital -UNE/Resale		83.00		73				-2	2	-0.014
OR-2-06	% OT LSR/ASR Rej -Facility Ck(E -No FT) -2W Digital -UNE/Resale		77.20		11				-2	2	-0.014
OR-1-04-3342	% On Time LSRC -No Facil Ck(E -No FT) -2W xDSL Loops		81.00		542				-2	5	-0.034
OR-1-06-3342	% On Time LSRC/ASRC -Facility Check(Elec) -2W xDSL Loops		0.00		3				-2	5	-0.034
OR-2-04-3342	% OT LSR Rej -No Facil Ck(E- No FT) -2W xDSL Loops		84.00		88				-2	2	-0.014
OR-2-06-3342	% On Time LSR/ASR Rej -Facility Check(Elec) -2W xDSL Loops		89.90		39				-2	2	-0.014
OR-1-04-3340	% OT LSRC -No Facility Check (E -No FT) -Line Share/Split		82.00		85				-2	5	-0.034
OR-1-06-3340	% On Time LSRC/ASRC -Facility Ck(E -No FT) -Line Share/Split		89.90		100				-2	5	-0.034
OR-2-04-3340	% OT LSR Rej -No Facil Ck(E- No FT) -Line Share/Split		85.00		100				-2	2	-0.014
OR-2-06-3340	% OT LSR/ASR Rej -Facility Ck(E- No FT) -Line Share/Split		81.25		16				-2	2	-0.014
OR-4-11-3000	% Completed Orders with Neither a PCN or BCN Sent		1.01		215,762				-2	2	-0.014
OR-4-16-3000	% On Time PCN - 1 Business Day		89.10		215,762				-2	2	-0.014
OR-4-17-3000	% On Time BCN - 2 Business Day		89.00		215,762				-2	2	-0.014
PR	Provisioning	VZ	CLEC	VZ	CLEC			Stat Score			
PR-4-02	Average Delay Days -Total -2W Digital -UNE/Resale	4.00	7.00	54	7	4.25	1.71	-1.76	-2	2	-0.014
PR-4-04	% Missed Appointment -Dispatch -2W Digital -UNE/Resale	4.00	8.00	724	91		2.18	-1.84	-2	2	-0.014
PR-4-05	% Missed Appointment -No Dispatch -2W Digital -UNE/Resale	1.00	4.00	644	37		1.68	-1.78	-2	2	-0.014
PR-6-01	% Install. Troubles w/in 30 Days -2W Digital Loops -UNE/Resale	6.00	9.00	95,124	257		1.48	-2.02	-2	2	-0.014
PR-8-01	Open Orders In Hold Status >30 Days -2W Digital -UNE/Resale	0.10	0.60	1,394	133		0.29	-1.74	-2	2	-0.014
PR-3-10-3342	% Comp w/in 6 Days (1-5 lines) Tot -2W xDSL Loops		89.90		645				-2	10	-0.069
PR-4-02-3342	Average Delay Days -Total -2W xDSL Loops	5.00	7.00	194	60	7.00	1.03	-1.93	-2	10	-0.069
PR-4-14-3342	% Completed On Time -2W xDSL Loops		89.90		1,469				-2	10	-0.069
PR-6-01-3342	% Installation Troubles w/in 30 Days -2W xDSL Loops	6.00	7.00	91,224	1,787		0.57	-1.76	-2	15	-0.103
PR-8-01-3342	Open Orders in Hold Status >30 Days -2W xDSL Loops	0.10	0.40	1,058	1,737		0.12	-2.43	-2	5	-0.034
PR-3-03	% Completed w/in 3 Days (1-5 lines) No Disp -Line Share/Split		94.00		616				-2	10	-0.069
PR-3-03	% Completed w/in 3 Days (1-5 lines) No Disp -Line Share/Split	95.00	93.00	16,744	616		0.89	-2.24			
PR-4-02	Average Delay Days -Total -Line Share/Split	3.00	4.50	3,608	31	3.87	0.70	-2.15	-2	10	-0.069
PR-4-04	% Missed Appointment -Dispatch -Line Share/Split	6.00	10.00	2,723	112		2.29	-1.75	-2	5	-0.034
PR-4-05	% Missed Appointment -No Dispatch -Line Share/Split	13.00	15.50	24,561	781		1.22	-2.05	-2	10	-0.069
PR-6-01	% Installation Troubles w/in 30 Days -Line Share/Split	1.00	1.75	27,295	851		0.35	-2.17	-2	15	-0.103
PR-8-01	Open Orders in Hold Status >30 Days -Line Share/Split	0.01	0.10	27,328	448		0.05	-1.89	-2	5	-0.034
MR	Maintenance & Repair	VZ	CLEC	VZ	CLEC			Diff.	Perf. Score	Wtg	Wtgd Score
MR-1-01-2000	Average Response Time - Create Trouble	2.00	8.10		12,078			6.10	-2	2	-0.014
								Stat. Score			
MR-3-01	% Missed Repair Appt -Loop -2W Digital -UNE/Resale	1.00	3.50	100	100		1.41	-1.78	-2	2	-0.014
MR-3-02	% Missed Repair Appt -CO -2W Digital -UNE/Resale	1.00	3.50	100	100		1.41	-1.78	-2	2	-0.014
MR-4-02	Mean Time To Repair -Loop -2W Digital -UNE/Resale	2.00	4.00	100	100	7.00	0.99	-2.02	-2	2	-0.014
MR-4-03	Mean Time To Repair -CO Trouble -2W Digital -UNE/Resale	2.00	4.00	100	100	7.00	0.99	-2.02	-2	2	-0.014
MR-4-04	% Cleared (all troubles) w/in 24 Hours -2W Digital -UNE/Resale	99.00	96.00	100	100		1.41	-2.13	-2	2	-0.014
MR-4-07	% Out of Service >12 Hours -2W Digital -UNE/Resale	75.00	86.00	100	100		6.12	-1.80	-2	2	-0.014
MR-5-01	% Repeat Reports w/in 30 Days -2w Digital -UNE/Resale	2.00	6.00	100	100		1.98	-2.02	-2	2	-0.014
MR-3-01-3342	% Missed Repair Appt -Loop -2W xDSL Loops	5.00	7.00	116,076	457		1.02	-1.96	-2	5	-0.034
MR-3-02-3342	% Missed Repair Appointment -CO -2W xDSL Loops	2.00	4.00	18,545	156		1.13	-1.78	-2	5	-0.034
MR-4-02-3342	Mean Time To Repair -Loop -2W xDSL Loops	10.00	13.00	116,076	457	33.81	1.58	-1.89	-2	5	-0.034
MR-4-03-3342	Mean Time To Repair -CO -2W xDSL Loops	13.00	16.00	18,545	156	21.08	1.69	-1.77	-2	5	-0.034
MR-4-04-3342	% Cleared (all troubles) w/in 24 Hours -2W xDSL Loops	77.00	74.00	134,621	613		1.70	-1.76	-2	5	-0.034
MR-4-07-3342	% Out of Service >12 Hours -2W xDSL Loops	66.00	70.00	109,285	528		2.07	-1.94	-2	10	-0.069
MR-5-01-3342	% Repeat Reports w/in 30 Days -2W xDSL Loops	29.00	33.00	109,285	528		1.98	-2.02	-2	10	-0.069
MR-3-01	% Missed Repair Appointment -Loop -Line Share/Split	30.00	60.00	300	7		17.52	-1.71	-2	5	-0.034
MR-3-02	% Missed Repair Appointment -CO -Line Share/Split	20.00	35.00	619	30		7.48	-2.01	-2	5	-0.034
MR-4-02	Mean Time To Repair -Loop -Line Share/Split	10.00	35.00	300	7	34.02	13.01	-1.92	-2	5	-0.034
MR-4-03	Mean Time To Repair -CO -Line Share/Split	10.00	30.00	619	30	59.92	11.20	-1.79	-2	5	-0.034
MR-4-04	% Cleared (all troubles) w/in 24 Hours -Line Share/Split	55.00	40.00	919	37		8.34	-1.80	-2	5	-0.034
MR-4-07	% Out of Service >12 Hours -Line Share/Split	50.00	70.00	883	31		9.14	-2.19	-2	10	-0.069
MR-5-01	% Repeat Reports w/in 30 Days -Line Share/Split	25.00	40.00	883	31		7.91	-1.90	-2	10	-0.069
								Totals	-122	291	-2.000

"NA" - no activity. "UD" - under development

For demonstration purposes, metric performance has been failed to show financial results

Verizon New York

2003 Model

INTERCONNECTION (TRUNKS)

		Performance		Observations		VZ					
		VZ	CLEC	VZ	CLEC	Standard Deviation	Sample Error	Stat. Score	Perf. Score	Wgt.	Wgtd. Score
OR	Ordering										
OR-1-12-5020	% OT Firm Order Confirmations (<=192 Forecasted Trunks)		88.00		81				-2	5	-0.071
OR-1-13-5020	% On Time Design Layout Record		88.10		212				-2	10	-0.143
OR-1-19-5020	% On Time Response - Request for Inbound Augment (<=192)*		25.00		4				-2	5	-0.071
OR-2-12-5000	% On TimeTrunk ASR Reject		88.30		24				-2	5	-0.071
PR	Provisioning										
PR-4-07-3540	% On Time Performance - LNP only		89.90		719				-2	20	-0.286
PR-4-15-5000	% On Time Provisioning - Trunks		88.80		10,000				-2	20	-0.286
PR-5-01-5000	% Missed Appointment - Facilities	0.25	0.35	20,176	17,618		0.05	-1.94	-2	5	-0.071
PR-5-02-5000	% Orders Held for Facilities >15 Days	0.10	0.16	20,176	17,618		0.03	-1.84	-2	5	-0.071
PR-6-01-5000	% Installation Troubles w/in 30 Days	0.01	0.03	20,176	17,618		0.01	-1.94	-2	10	-0.143
PR-8-01-5000	Open Orders in a Hold Status >30 Days	0.01	0.03	20,176	35,922		0.01	-2.27	-2	5	-0.071
MR	Maintenance & Repair										
MR-4-01-5000	Mean Time to Repair - Total	2.00	4.00	36	32	5.00	1.21	-1.65	-2	5	-0.071
MR-4-05-5000	% Out of Service >2 Hours	30.00	50.00	36	32		11.13	-1.80	-2	5	-0.071
MR-4-06-5000	% Out of Service >4 Hours	16.00	35.00	36	32		8.91	-2.13	-2	5	-0.071
MR-4-07-5000	% Out of Service >12 Hours	8.00	20.00	36	32		6.59	-1.82	-2	5	-0.071
MR-4-08-5000	% Out of Service >24 Hours	4.00	12.00	36	32		4.76	-1.68	-2	5	-0.071
MR-5-01-5000	% Repeat Reports w/in 30 Days	10.00	25.00	36	32		7.29	-2.06	-2	10	-0.143
NP	Network Performance										
NP-1-03-5000	# of Final Trunk Groups Blocked 2 months		2		379				-2	5	-0.071
NP-1-04-5000	# of Final Trunk Groups Blocked 3 months		2		379				-2	10	-0.143
								Totals	-36	140	-2.000

"NA" - no activity "UD" - under development

For demonstration purposes, metric performance has been failed to show financial results

Verizon New York

2003 Model

		CRITICAL MEASURES	UNE Platform	UNE Loop	Resale	DSL	Trunks	Specials	Other	Total
		PRE-ORDERING								
1		**OSS Interface**	$937,500	$266,667	$208,333	$208,333				$1,620,833
	PO-1-06	Mechanized Loop Qualification - EDI				69,444				
	PO-1-06	Mechanized Loop Qualification - CORBA				69,444				
	PO-1-06	Mechanized Loop Qualification - Web GUI				69,444				
	PO-2-02	*OSS Interface Availability - Prime - EDI*	*312,500*	*88,889*	*104,167*					
	PO-2-02	OSS Interface Availability - Prime - CORBA	312,500	88,889						
	PO-2-02	OSS Interface Availability - Prime - Web GUI	312,500	88,889	104,167					
		ORDERING								
2		**% On Time Ordering Notification**	$937,500	$266,667	$208,333	$208,333	$200,000	$40,761		$1,851,594
	OR-1-02	% On Time LSRC -Flow Through	625,000	222,222	138,889					
	OR-1-04	*%OT LSRC -No Fac Ck(E-No FT) -2W Digital -UNE/Resale*				*23,148*				
	OR-1-04	%OT LSRC -No Fac Ck(E-No FT) -2W xDSL Loops				57,870				
	OR-1-04	%OT LSRC -No Fac Ck(E-No FT) -Line Share/Split				57,870				
	OR-1-12	% On Time FOC					50,000			
	OR-1-13	% On Time Design Layout Record					100,000			
	OR-1-19	% OT Response -Request for Inbound Augment (<=192)					50,000			
	OR-2-04	%OT LSR Rej -No Fac Ck(E-No FT) -2W Digital -UNE/Resl				23,148				
	OR-2-04	%OT LSR Rej -No Fac Ck(E-No FT) -2W xDSL Loops				23,148				
	OR-2-04	%OT LSR Rej -No Fac Ck(E-No FT) -Line Share/Split				23,148				
	OR-4-16	% On Time PCN - 1 Business Day	312,500	44,444	69,444					
	OR-1-04	%OT LSRC -No Fac Ck(E-No FT)-All Specials-UNE/Resale						13,587		
	OR-1-06	%OT LSRC/ASRC -Fac Ck(E-No FT) -All Specls -UNE/Resl						13,587		
	OR-2-04	%OT LSR Rej -No Fac Ck(E-No FT) -UNE/Resale						6,793		
	OR-2-06	%OT LSR/ASR Rej-Fac Ck (Elec) -UNE/Resale						6,793		
		PROVISIONING								
3		**Installation Performance**	$937,500	$266,667	$208,333	$208,333	$200,000	$154,891		$1,975,725
	PR-3-01	% Completed in 1 Day (1-5 lines No Disp.)	78,125		16,026					
	PR-4-02	Average Delay Days -Total	234,375	38,095	48,077					
	PR-4-02	Average Delay Days -Total -2W Digital				5,020				
	PR-4-02	Average Delay Days -Total -2W xDSL Loop				25,100				
	PR-4-02	Average Delay Days -Total -Line Share/Split				25,100				
	PR-4-04	% Missed Appointments -Dispatch	156,250	152,381	32,051					
	PR-4-04	% Missed Appointments -Dispatch -2W Digital -UNE/Resale				5,020				
	PR-4-04	% Missed Appointments -Dispatch -Line Share/Split				12,550				
	PR-4-05	% Missed Appointments - No Dispatch	312,500		64,103					
	PR-4-05	% Missed Appt -No Dispatch -2W Digital -UNE/Resale				5,020				
	PR-4-05	% Missed Appointment -No Dispatch -Line Share/Split				25,100				
	PR-4-14	% Completed On Time -2W xDSL Loops				25,100				
	PR-4-15	% On Time *Provisioning - Trunks*					133,333			
	PR-6-01	% Installation Troubles w/in 30 Days	156,250	76,190	48,077		66,667			
	PR-6-01	% Install Trble w/in 30 Days -2W Digital Loop -UNE/Resale				5,020				
	PR-6-01	% Installation Troubles w/in 30 Days -2W xDSL Loops				37,651				
	PR-6-01	% Installation Troubles w/in 30 Days -Line Share/Split				37,651				
	PR-4-01	% Missed Appointment -VZ -DSO -UNE/Resale						6,793		
	PR-4-01	% Missed Appointment -VZ -DS1 -UNE/Resale						6,793		
	PR-4-01	% *Missed Appointment -VZ -DS3 -UNE/Resale*						*6,793*		
	PR-4-01	% Missed Appointment -VZ -Other -UNE/Resale						6,793		
	PR-4-02	Average Delay Days -Total -UNE/Resale						6,793		
	PR-5-01	% Missed Appointment -Facilities -UNE/Resale						27,174		
	PR-5-02	% Orders Held for Facilities >15 days -UNE/Resale						27,174		
	PR-6-01	% Installation Troubles w/in 30 days -UNE/Resale						13,587		
	PR-8-01	Open Orders in Hold Status >30 Days -UNE/Resale						6,793		
	PR-4-01	% Missed Appointment -VZ -Total -EEL						13,587		
	PR-4-02	Average Delay Days -Total -EEL						6,793		
	PR-8-01	Open Orders in a Hold Status >30 Days -EEL						2,717		
	PR-4-01	% Missed Appointment -VZ -Total -IOF						13,587		
	PR-4-02	Average Delay Days -IOF						6,793		
	PR-8-01	Open Orders in a Hold Status >30 Days -IOF						2,717		
4	PR-4-07	**% On Time Performance -LNP**					$200,000			$200,000
5		**Hot Cut Performance**		$266,667						$266,667
	PR-6-02	% Installation Troubles within 7 days -Hot Cut								
	PR-9-01	% On Time Performance -Hot Cut								

continued on next page

Under the provisions of the Plan, -1 performance scores are subject to adjustment based on the next two month's performance.

For demonstration purposes, metric performance has been failed to show financial results

CASE 99-C-0949

		Verizon New York								2003 Model
		CRITICAL MEASURES	UNE Platform	UNE Loop	Resale	DSL	Trunks	Specials	Other	Total
		MAINTENANCE								
6		Maintenance Performance	$ 937,500	$268,687	$208,333	$208,333	$200,000	$54,348		$1,875,181
	MR-3-01	Missed Repair Appointments -Loop -Business	234,375		15,432					
	MR-3-01	Missed Repair Appointments -Loop -Residential	234,375		38,580					
	MR-3-01	Missed Repair Appointments -Loop		31,373						
	MR-3-01	% Missed Repair Appt -Loop -2W Digital -UNE/Resale				9,058				
	MR-3-01	% Missed Repair Appointment -Loop -2W xDSL Loops				22,645				
	MR-3-01	% Missed Repair Appointment -Loop -Line Share/Split				22,645				
	MR-4-04	% Cleared(all troubles) w/in 24hrs -2W Digital -UNE/Resale				9,058				
	MR-4-04	% Cleared (all troubles) w/in 24hrs -2W xDSL Loops				22,645				
	MR-4-04	% Cleared (all troubles) w/in 24hrs -Line Share/Split				22,645				
	MR-4-08	Out of Service >24hrs -Business	117,188		38,580					
	MR-4-08	Out of Service >24hrs -Residential	117,188		38,580					
	MR-4-08	Out of Service >24hrs -Total		78,431			66,667			
	MR-5-01	% Repeat Reports within 30 Days	234,375	158,863	77,160		133,333			
	MR-5-01	% Repeat Reports w/in 30 Days -2w Digital -UNE/Resale				9,058				
	MR-5-01	% Repeat Reports w/in 30 Days -2W xDSL Loops				45,290				
	MR-5-01	% Repeat Reports w/in 30 Days -Line Share/Split				45,290				
	MR-4-01	Mean Time to Repair - nonDS0 & DS0 -UNE/Resale						6,793		
	MR-4-01	Mean Time to Repair - DS1 & DS3 -UNE/Resale						6,793		
	MR-4-06	% Out of Service >4hrs -nonDS0 & DS0 -UNE/Resale						6,793		
	MR-4-08	%Out of Service >24hrs -nonDS0 & DS0 -UNE/Resale						6,793		
	MR-4-06	% Out of Service >4hrs -DS1 & DS3 -UNE/Resale						6,793		
	MR-4-08	% Out of Service >24hrs -DS1 & DS3 -UNE/Resale						6,793		
	MR-5-01	% Repeat Reports w/in 30 days -Specials -UNE/Resale						13,587		
		NETWORK PERFORMANCE								
7	NP-1-04	Final Trunk Groups Blocked					$200,000			$200,000
8		Collocation							$166,667	$166,667
	NP-2-01/2	% OT Response to Request for Collocation - Total							73,746	
	NP-2-05/6	% On Time - Physical Collocation - Total							85,546	
	NP-2-07/8	Average Delay Days - Total							7,375	
		RESOLUTION PERFORMANCE								
9		Resolution Timeliness							83,333	$83,333
	OR-10-01	% PON Exceptions Resolved w/in 3 Business Days							46,071	
	OR-10-02	% PON Exceptions Resolved w/in 10 Business Days							18,898	
	BI-3-04	% CLEC Billing Claims Acknowledged w/in 2 Bus Days							1,728	
	BI-3-05	% CLEC Billing Claims Resolved w/in 28 Cal Days after Ack.							16,635	
		Month Total	$3,750,000	$1,333,333	$833,333	$833,333	$1,000,000	$250,000	$250,000	$8,250,000

Under the provisions of the Plan, -1 performance scores are subject to adjustment based on the next two month's performance.

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Verizon New York 2003 Model

Performance Report for Critical Measure # 8 - Collocation

NP	Network Performance	CLEC Perf.	CLEC Obs.	Perf. Score	Wgt.
NP-2-01/2	*% OT Response to Request for Collocation - Total*	*89.0*	*100*	-2	5
NP-2-05/6	% On Time - Physical Collocation - Total	89.9	29	-2	20
NP-2-07/8	Average Delay Days - Total	15.0	5	-2	10
					35

Performance Report for Critical Measure # 9 - Resolution Performance

	Resolution Timeliness	CLEC Perf.	CLEC Obs.	Perf. Score	Wgt.
OR-10-01	% PON Exceptions Resolved w/in 3 Bus Days	89.90	3,412	-2	5
OR-10-02	% PON Exceptions Resolved w/in 10 Bus Days	97.90	3,499	-2	2
BI-3-04	% CLEC Billing Claims Acknowledged within Two Business Days	89.00	320	-2	2
BI-3-05	% CLEC Billing Claims Resolved w/in 28 Calendar Days after Ack.	89.00	308	-2	20
					29

Performance Report for Critical Measures - Specials

OR	Ordering	CLEC Perf.	CLEC Obs.	Perf. Score	Wgt.
OR-1-04	% OT LSRC -No Facil Ck(Elec.-No FT) -All Specials -UNE/Resale	89.90	142	-2	10
OR-1-06	% OT LSRC/ASRC -Facil Ck(E -No FT) -All Specials -UNE/Resale	89.30	633	-2	10
OR-2-04	% OT LSR Rej -No Facil Ck (Elec -No FT) -UNE/Resale	89.90	100	-2	5
OR-2-06	% OT LSR/ASR Reject -Facil Check (Electronic) -UNE/Resale	89.50	277	-2	5

PR	*Provisioning*	VZ		VZ		Std Dev.	Sample Error	Stat. Score		
PR-4-01	% Missed Appointment -VZ -DSO -UNE/Resale	5.01	15.00	1,058	20		4.92	-2.03	-2	5
PR-4-01	% Missed Appointmment -VZ -DS1 -UNE/Resale	10.00	15.00	848	182		2.45	-2.04	-2	5
PR-4-01	% Missed Appointmment -VZ -DS3 -UNE/Resale	10.00	30.00	79	10		10.07	-1.99	-2	5
PR-4-01	% Missed Appointmment -VZ -Other -UNE/Resale	10.00	25.00	91	20		7.41	-2.02	-2	5
PR-4-02	*Average Delay Days - Total -UNE/Resale*	*15.00*	*19.00*	*482*	*25*	*10.00*	2.05	-1.95	-2	5
PR-5-01	% Missed Appointment - Facilities -UNE/Resale	0.90	2.00	1,721	295		0.60	-1.85	-2	20
PR-5-02	% Orders Held for Facilities > 15 days -UNE/Resale	0.30	1.00	1,721	295		0.34	-2.03	-2	20
PR-6-01	% Installation Troubles within 30 days -UNE/Resale	7.50	10.00	3,013	443		1.34	-1.87	-2	10
PR-8-01	Open Orders in a Hold Status > 30 Days -UNE/Resale	1.00	2.50	2,076	205		0.73	-2.06	-2	5
PR-4-01-3510	% Missed Appointment - VZ - Total - EEL	9.00	15.00	843	101		3.01	-1.99	-2	10
PR-4-02-3510	Average Delay Days - Total - EEL	5.00	12.00	223	16	15.00	3.88	-1.80	-2	5
PR-8-01-3510	Open Orders in a Hold Status >30 Days -EEL	1.00	3.00	843	101		1.05	-1.91	-2	2
PR-4-01-3530	% Missed Appointment - VZ - Total - IOF	10.00	20.00	79	58		5.19	-1.93	-2	10
PR-4-02-3530	Average Delay Days - IOF	10.00	20.00	24	13	15.00	5.17	-1.94	-2	5
PR-8-01-3530	Open Orders in a Hold Status >30 Days -IOF	1.00	4.00	79	58		1.72	-1.74	-2	2
MR	**Maintenance & Repair**									
MR-4-01	Mean Time to Repair - nonDS0 & DS0 -UNE/Resale	20.00	30.00	3,079	16	20.00	5.01	-1.99	-2	5
MR-4-01	Mean Time to Repair - DS1 & DS3 -UNE/Resale	10.00	13.00	1,429	217	25.00	1.82	-1.65	-2	5
MR-4-06	% Out of Service > 4 Hours - nonDS0 & DS0 -UNE/Resale	60.00	83.00	3,047	15		12.68	-1.81	-2	5
MR-4-08	*% Out of Service > 24 Hours - nonDS0 & DS0 -UNE/Resale*	*8.00*	*13.00*	3,047	100		2.76	-1.81	-2	5
MR-4-06	% Out of Service > 4 Hours - DS1 & DS3 -UNE/Resale	50.00	57.00	1,425	184		3.92	-1.79	-2	5
MR-4-08	% Out of Service > 24 Hours - DS1 & DS3 -UNE/Resale	3.50	6.00	1,425	184		1.44	-1.74	-2	5
MR-5-01	% Repeat Reports w/in 30 days -UNE/Resale	10.00	14.00	4,508	233		2.02	-1.98	-2	10
	"NA" - no activity "UD" - under development								Total	184

For demonstration purposes, metric performance has been failed to show financial results

2003 Model

Special Provision - UNE Ordering

		% On Time	Observations	Market Adj.
OR-1-04	% OT-LSRC<10 Lines (Elec.-No Flow Through)-POTS	89.90	25,127	$ 500,000
OR-1-06	% On Time LSRC >=10 Lines (Electronic) - POTS	89.80	2,030	$ 500,000
OR-2-04	% OT LSR Rej.<10 lines (Elec.-No Flow Through)-POTS	89.88	7,576	$ 500,000
OR-2-06	% On Time LSR Reject >= 10 Lines (Elec.)- POTS	89.90	1,103	$ 500,000

May not have enough $$'s in current month
to fund market adjustment!!

Total Market Adj.* $ 2,000,000

* For allocation, any UNE Ordering market adjustment is combined with the MOE UNE market adjustment allocation.

Special Provision - UNE Flow Through

PR-5-01-3000 % Flow Through - Total - POTS & Specials

Month	%	Observations Gross #	Flow-thru
Month - 1	79.00	302,709	239,140
Month - 2	79.00	261,956	206,945
Month - 3	79.00	288,022	227,537
Overall	79.00	852,687	673,623

OR-5-03-3000 % Flow Through - Achieved - POTS

Month	%	Observations Gross #	Flow-thru
Month - 1	94.00	278,435	261,729
Month - 2	94.00	241,800	227,292
Month - 3	94.00	262,714	246,951
Overall	94.00	782,949	735,972

Market Adjustment * $ 2,500,000

* For allocation, any Flow Though market adjustment is combined with the MOE UNE market adjustment allocation.

Special Provision - Hot Cut - Loop Performance

		% On Time Current Mo.	Observations	% On Time Prior Month	Observations
PR-9-01-3520	% On Time Performance - Hot Cut	89.00	5071	98.90	3220
		%Troubles		%Troubles Prior Month	
PR-6-02-3520	% Installation Troubles within 7 days - Hot Cut	4.00	11685	0.47	8166

	Greater of - Tier I (2 mo) or Tier II (1mo)	Total
Market Adjustment *	$ 2,000,000	$ 2,000,000

* For allocation purposes, any Hot Cut market adfustment is combined with the Critical measure market adfustment allocation.

For demonstration purposes, metric performance has been failed to show financial results

Change Control Assurance Plan

2003 Model

	% On Time	Observations	Mrkt Adj.
PO-4-01 % Change Management Notices sent on Time (type 3,4,5)	89.9	100	$ 500,000

* Cumlative number of delay days greater than 8 standard	Delay Days*	Observations	
PO-4-03 Change Management Notice Delay 8 plus Days (type 1-5)	6	10	$ 150,000

	% Test Deck Wgt. Failure	Test Deck Wgt.	
PO-6-01 % Software Validation	11	100	$ 1,000,000

* Cumlative number of delay hours greater than 48 hour standard	Delay Hours*	Observations	
PO-7-04 Delay Hours - Failed/Rejected Test Deck Transactions Transactions failed, no workaround	26	3	$ 5,417

Total Market Adjustment		$ 1,655,417
UNE Platform allocation	64.29%	$ 1,064,196
UNE Loop allocation	14.29%	$ 236,488
Resale allocation	7.14%	$ 118,244
DSL allocation	14.29%	$ 236,488

For demonstration purposes, metric performance has been failed to show financial results

Verizon New York

PAP/CCAP Market Adjustment Summary

2003 Model

#		Weighted Score	Market Adjustment	
	MODE OF ENTRY			
	UNE Platform	-2.000	$ 3,750,000	
	UNE Loop	-2.000	833,333	
	Resale	-2.000	416,667	
	Digital Subscriber Lines	-2.000	833,333	
	Trunks	-2.000	416,667	
	Mode of Entry Total			$ 6,250,000
#	**CRITICAL MEASURES**			
1	OSS Interface		$ 1,620,833	
2	% On Time Ordering Notification		1,861,594	
3	Installation Performance		1,975,725	
4	% On Time Performance -LNP		200,000	
5	Hot Cut Performance		266,667	
6	Maintenance Performance		1,875,181	
7	Final Trunk Groups Blocked		200,000	
8	Collocation		166,667	
9	Resolution Performance		83,333	
	Critical Measure Total			8,250,000
	Individual Rule Payments:	Not Shown (needs two months of data)		
	SPECIAL PROVISIONS			
	UNE Ordering		2,000,000	
	UNE Flow Through		2,500,000	
	UNE Hot Cut Loop		2,000,000	
	Special Provision Total			6,500,000
	CHANGE CONTROL			1,655,417
	Grand Total			$ 22,655,417

Under the Plan, -1 performance scores are subject to adjustment based on the next two month's performance.

For demonstration purposes, metric performance has been failed to show financial results

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition by Global NAPS, Inc. for arbitration of interconnection rates, terms and conditions and related relief of proposed agreement with BellSouth Telecommunications, Inc.	DOCKET NO. 991220-TP ORDER NO. PSC-01-1423-FOF-TP ISSUED: July 2, 2001

The following Commissioners participated in the disposition of this matter:

E. LEON JACOBS, JR., Chairman
J. TERRY DEASON
LILA A. JABER

ORDER GRANTING EXTENSION OF TIME TO FILE FINAL ARBITRATED AGREEMENT, DECLINING TO RESOLVE DISPUTE REGARDING LANGUAGE NOT ADDRESSED IN ARBITRATION ORDER, REJECTING INCOMPLETE AGREEMENT, AND REQUIRING PARTIES TO REFILE FINAL ARBITRATED AGREEMENT

BY THE COMMISSION:

I. CASE BACKGROUND

On August 26, 1999, Global NAPs, Inc. (GNAPs) filed a petition for arbitration of an interconnection agreement with BellSouth Telecommunications, Inc. (BellSouth) under Section 252(b) of the Telecommunications Act of 1996 (the "Act"). On September 20, 1999, BellSouth timely filed its Response to the petition. At the issue identification meeting, the parties identified 14 issues to be arbitrated.

An administrative hearing was held on June 7, 2000. Parties agreed to stipulate all testimony and exhibits, entering them into the record without calling witnesses.

DOCUMENT NUMBER-DATE
08132 JUL-2 ō
FPSC-RECORDS/REPORTING

By Order No. PSC-00-1680-FOF-TP, issued September 19, 2000, we rendered our decision on the issues. Therein, we addressed the treatment of dial-up traffic to Internet service providers (ISPs), reciprocal compensation, the definition of local traffic, rates for unbundled network elements (UNEs), and collocation provisions.

On October 4, 2000, BellSouth filed a Motion for Reconsideration of our post-hearing decision. That same day, GNAPs also filed a Motion for Reconsideration and/or Clarification of the Commission's decision. On October 16, 2000, the parties filed their responses to the Motions. By Order No. PSC-01-0762-FOF-TP, issued March 26, 2001, we denied the Motions for Reconsideration and required that the final arbitrated agreement be filed within 30 days of the issuance of the Order. The agreement was, therefore, due to be filed on April 25, 2001.

On April 24, 2001, the parties filed a Joint Motion for Extension of Time to file their arbitrated agreement. Therein, they requested an extension of 30 days to allow them to file their final interconnection agreement on May 25, 2001. On May 25, 2001, BellSouth filed the final interconnection agreement along with a Statement of Disputed Issues. On that same day, GNAPs filed a letter requesting that we order the parties to adopt the final agreement with GNAPs' language, as opposed to BellSouth's.

II. JURISDICTION

Part II of the Federal Telecommunications Act of 1996 (Act) sets forth provisions regarding the development of competitive markets in the telecommunications industry. Section 251 of the Act regards interconnection with the incumbent local exchange carrier, and Section 252 sets forth the procedures for negotiation, arbitration, and approval of agreements.

Section 252(b) addresses agreements reached through compulsory arbitration. Specifically, Section 252(b)(1) states:

> (1) Arbitration. - During the period from the 135th to 160th day (inclusive) after the date on which an incumbent local exchange carrier receives a request for negotiation under this section, the carrier or any other

> party to the negotiation may petition a State commission to arbitrate any open issues.

Section 252(b)(4)(C) states that the State commission shall resolve each issue set forth in the petition and response, if any, by imposing the appropriate conditions as required. This section requires this Commission to conclude the resolution of any unresolved issues not later than 9 months after the date on which the local exchange carrier received the request under this section. In this case, however, the parties explicitly waived the 9-month requirement set forth in the Act. Pursuant to Section 252(e)(5) of the Act, if we were to refuse to act, then the FCC could issue an order preempting our jurisdiction in the matter, and thereafter assume jurisdiction of the proceeding. Furthermore, Section 252(e) requires that arbitrated agreements be submitted for approval by the state Commission in accordance with the requirements of that subsection and applicable state law.

III. EXTENSION OF TIME

In their motion, the parties indicated that they needed additional time in which to file their final executed interconnection agreement, because they needed additional time to work out the details. The parties both agreed that this extension was necessary and that it would prejudice neither party. We note that the parties filed their agreement within the requested time frame. As such, we approve the extension of time.

IV. DISPUTED LANGUAGE

The parties to this proceeding, upon filing their final interconnection agreement, have identified language that is still in dispute. This language involves two issues identified by BellSouth, namely: (1) the definition of ISP-bound traffic; and (2) the establishment of the point of interconnection. Global NAPs agrees that language involving these two issues is still in dispute. However, Global NAPs identifies a third issue that is still being negotiated, namely: (3) the use of fiber optics as an interconnection technology. The above issues, and the applicable language, are addressed in Attachment 3 of the interconnection agreement. More specifically, the disputed language is contained in sections 1.2, 1.6, 1.7, 1.9.1, 1.9.2, 1.9.5, 1.9.6, and 5.1.2, and identified as the shaded language in the final interconnection agreement filed by BellSouth on May 25, 2001.

The above mentioned issues were not identified in either Global NAPs' petition for arbitration or BellSouth's response. Since we are limited to considering only those issues raised in the petition for arbitration and any response thereto, pursuant to Section 252(b)(4)(A) of the Telecommunications Act of 1996, we do not find it appropriate to address the above mentioned issues in this proceeding. Therefore, we shall not approve language resolving these issues for incorporation in the final interconnection agreement filed by the parties.

V. FINAL AGREEMENT

As set forth above, the parties have identified language within this interconnection agreement that is still a matter of dispute. In addition, the interconnection agreement filed by BellSouth on May 25, 2001, has not been executed by the parties; therefore, we find it is not a valid agreement, and as such, shall not approve it. Therefore, we hereby require the parties to refile a fully executed agreement that does not contain language still in dispute within 30 days of the issuance of this Order.

It is therefore

ORDERED by the Florida Public Service Commission that the Extension of Time requested by the parties for filing their arbitrated agreement has been approved. It is further

ORDERED that we hereby decline to resolve the disputed language identified by the parties for the reasons set forth in the body of this Order. It is further

ORDERED that we hereby reject the agreement submitted by BellSouth Telecommunications, Inc., on May 25, 2001, for the reasons set forth in the body of this Order. It is further

ORDERED that the parties shall file their final arbitrated agreement complying with the provisions of this Order, our final Order on the parties' arbitration, Order No. PSC-00-1680-FOF-TP, and our decision on the Motions for Reconsideration, Order No. PSC-

01-0762-FOF-TP, within thirty (30) days of the issuance of this Order. It is further

ORDERED that this Docket shall remain open pending approval of the parties' final arbitrated agreement.

By ORDER of the Florida Public Service Commission this 2nd Day of July, 2001.

BLANCA S. BAYÓ, Director
Division of the Commission Clerk
And Administrative Services

By: Kay Flynn
Kay Flynn, Chief
Bureau of Records

(S E A L)

BK

NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.569(1), Florida Statutes, to notify parties of any administrative hearing or judicial review of Commission orders that is available under Sections 120.57 or 120.68, Florida Statutes, as well as the procedures and time limits that apply. This notice should not be construed to mean all requests for an administrative hearing or judicial review will be granted or result in the relief sought.

Any party adversely affected by the Commission's final action in this matter may request: 1) reconsideration of the decision by filing a motion for reconsideration with the Director, Division of the Commission Clerk and Administrative Services, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, within fifteen (15) days of the issuance of this order in the form prescribed by Rule 25-22.060, Florida Administrative Code; or 2) judicial review by the Florida Supreme Court in the case of an electric, gas or telephone utility or the First District Court of Appeal in the case of a water and/or wastewater utility by filing a notice of appeal with the Director, Division of the Commission Clerk and Administrative Services and filing a copy of the notice of appeal and the filing fee with the appropriate court. This filing must be completed within thirty (30) days after the issuance of this order, pursuant to Rule 9.110, Florida Rules of Appellate Procedure. The notice of appeal must be in the form specified in Rule 9.900(a), Florida Rules of Appellate Procedure.

ORDER NO. 76488

IN THE MATTER OF THE ARBITRATION
OF RHYTHMS LINKS, INC. AND COVAD
COMMUNICATIONS COMPANY VS.
BELL ATLANTIC-MARYLAND, INC.
PURSUANT TO SECTION 252(b) OF THE
TELECOMMUNICATIONS ACT OF 1996.

BEFORE THE
PUBLIC SERVICE COMMISSION
OF MARYLAND

CASE NO. 8842,
PHASE I

This matter comes before the Commission on appeal from a Proposed Order of the Hearing Examiner entered in this case on August 31, 2000. Appeals were taken by Rhythms Links, Inc. ("Rhythms"), Covad Communications Company ("Covad") and Verizon Maryland, Inc. ("Verizon"). Rhythms urges the Commission to overturn the Hearing Examiner's decision and establish that the appropriate interval for provisioning line sharing is one business day. Rhythms further requests that the Commission reject the Hearing Examiner's determination and find that the interval to perform collocation augments should be 30 calendar days. Rhythms also requests that the Commission clarify that Verizon's provisioning obligations are independent of its own retail offerings and thus line sharing must be offered where technologically feasible, regardless of whether Verizon offers a retail service relying on such technology. Finally, Rhythms requests that the Commission adopt minimum ground rules for the provisioning of line sharing over loops served by fiber.

Covad does not take issue with the Hearing Examiner's determination that the appropriate interval for provisioning line sharing is three business days. However, Covad requests that the Commission specify the schedule by which Verizon must decrease the provisioning interval to achieve the three day requirement by April 1, 2001. Covad also requests that the Commission review this interval requirement on a biannual basis. Covad also urges the Commission to modify the Hearing Examiner's ruling to decrease the collocation augment interval to 32 business days within four months after April 1, 2001 and to 30 calendar days four months thereafter. In response to the Hearing Examiner's rejection of minimum ground rules for the provisioning of line sharing over loops served by fiber, Covad requests that the Commission prohibit Verizon from providing retail services based upon "Plug and Play" technology until Verizon either unbundles that equipment or demonstrates that it has no legal obligation to unbundle the equipment. Finally, Covad requests that the Commission overturn the Hearing Examiner's decision and require Verizon to own and provide splitter capacity to requesting competitive local exchange carriers ("CLEC").

Verizon also requests that the Commission reject the three day interval for provisioning line sharing, advocating a parity standard which would provide that the provisioning interval for CLECs would be the same interval as that provided by Verizon to any affiliate offering DSL retail service. Verizon also objects to the Hearing Examiner's determination that Verizon should be permitted only a five business day interval to provision line sharing where the requested loop must be conditioned in order to permit high-speed data transmission. Verizon contends that the 15 business day period agreed to by the parties on an interim basis is the appropriate interval. Finally, Verizon requests that the Commission reject the 45 business day interval for augmenting collocation arrangements and adopt Verizon's proposed 76 business day interval.

I. BACKGROUND

The issues in this matter arise out of the Federal Communications Commission's ("FCC") "*Line Sharing Order*".[1] The *Line Sharing Order* requires that incumbent local

[1] *Deployment of Wireline Services Offering Advanced Telecommunications Capability*, Third Report and Order, CC Docket 98-147 and Fourth Report and Order, CC Docket 96-98 (rel. Dec. 9, 1999) ("*Line Sharing Order*").

exchange carriers ("ILEC"), such as Verizon, provide CLECs access to the high frequency portion of a copper loop when the ILEC is providing voice service over the low frequency portion of the loop. This "line sharing" allows a CLEC to provide Ditigal Subscriber Line Service ("DSL") to customers over the high frequency portion of the loop while the ILEC continues to provide the voice service. DSL technologies allow end users to access various networks at high speeds through the existing copper telephone lines that connect the end user to the ILEC's central office. Thus, an end user can acquire high-speed access to the Internet using standard telephone service.

On April 26, 2000, Rhythms and Covad filed separate petitions for arbitration with the Commission pursuant to §252 of the Telecommunications Act of 1996. ("1996 Act"). By their petitions, both Rhythms and Covad sought arbitration of several disputed issues arising within their negotiations with Verizon for amendment of their interconnection agreements regarding the implementation of DSL line sharing and other DSL issues. The petitions contained many common issues and both Rhythms and Covad each requested that the petitions be consolidated into a single arbitration.

Both Rhythms and Covad filed testimony on May 8, 2000. Subsequent to this filing, a prehearing conference was held on May 23, 2000 at which a procedural schedule was agreed upon by the parties. On June 16, 2000, Rhythms and Covad filed a joint cost study and Verizon submitted its own costs study. On July 14, 2000, Verizon, the Office of People's Counsel ("OPC") and Commission Staff ("Staff") filed direct testimony. Rhythms and Covad filed supplemental testimony on the same day.

Prior to the hearings on this matter, the parties agreed to arbitrate operational issues first, bifurcating all costs and pricing issues into a second phase of the proceeding. Cross-examination of the witnesses regarding the operational issues occurred during hearings held on July 24 and 25, 2000. During the course of the hearings, the parties reached agreement on four of the issues presented to the Hearing Examiner for arbitration. Thus, there remained at this juncture only four issues for the Hearing Examiner to decide. On August 14, 2000, Rhythms, Covad, WorldCom, Verizon and Staff filed briefs addressing the unresolved issues in this matter. The Hearing Examiner issued the Proposed Order on August 31, 2000 and, as noted above, Rhythms, Covad and Verizon each noted exceptions to the Proposed Order. The issues resolved by the Hearing Examiner include the appropriate interval for provisioning line sharing; the appropriate interval for augmenting collocation arrangements involving cabling and splitters; whether Verizon should be required to own and maintain a line sharing splitter on a CLEC's behalf; and whether Verizon should be required to provide line sharing on loops that are constructed of both copper and fiber - fed digital loop carrier ("DLC") systems. Exceptions to the Hearing Examiner's Proposed Order were filed on each of these issues.

II. DISCUSSION

A. Appropriate Interval for Provisioning Line Sharing.

The line sharing provisioning interval is the time it takes the ILEC to complete a CLEC order requesting that line sharing be available on a particular loop. Both Rhythms and Covad requested a decreasing interval of three days commencing with the date of the Commission's final order, decreasing to two days three months later and finally decreasing to one day three months after that. Staff also recommended a decreasing interval period, the end result of which would be that Verizon would be required to provision line sharing within one business day by the end of the first quarter of 2001. Verizon proposed a six business day interval and agreed to revisit this interval in the near future to see if the interval could be shortened as more experience is gained with provisioning.

The Hearing Examiner found that Verizon should gradually decrease the interval for provisioning line sharing so as to achieve a three business day interval by the end of the first quarter of 2001 (April 1, 2001). The Hearing Examiner's conclusion was based upon evidence demonstrating that no "outside" dispatch is necessary to complete line sharing provisioning and that the actual physical work to provision line sharing takes approximately ten minutes to accomplish. The Hearing Examiner determined that Verizon could reduce the time it takes a line sharing order to be processed through Verizon's OSS and service centers by April 1, 2001. The Hearing Examiner further found that the one day interval was unrealistic and that the three business day interval should not cause large scale "leapfrogging" of other work. The Hearing Examiner also disagreed with Verizon's argument that a shorter interval serves no tangible public or private interest.

Rhythms, Covad and Verizon all noted exceptions to this determination. Rhythms argues that the one-day provisioning interval is attainable by Verizon because the necessary Operator Support Services ("OSS") upgrades and other service center improvements will be accomplished shortly and the actual work effort to provide line sharing is minimal. Thus, according to Rhythms, Verizon should be required to meet the one-day interval by July 1, 2001.

In contrast, Verizon argues that the line sharing interval should be six business days and that this interval could be revisited in the near future. Verizon proffers that at no time would the interval experienced by CLECs be longer than the interval experienced by any Verizon affiliate. Verizon also disagrees with the Hearing Examiner's finding that a decreased interval would have a public benefit. Verizon contends that the FCC found that the most appropriate interval is the parity standard and notes that Pennsylvania and California have adopted this standard. Finally, Verizon contends that the three day interval period is unreasonable.

While Covad did not except to the determination that the provisioning interval should be three business days by April 1, 2001, Covad requests that the Commission specify the schedule by which Verizon must decrease the provisioning interval over those six months.

A related issue is the appropriate provisioning interval of a line for DSL which requires conditioning. Verizon argued that the 15 business day interval agreed to by the parties in their May Agreement should be retained. Covad supported an interval of five business days, contending that there was no evidence justifying an interval for provisioning DSL requiring conditioning longer than the six business day interval Verizon now offers for stand-alone DSL loops. Staff suggested a parity standard for conditioning loops, with a goal of five business days.

The Hearing Examiner found that Verizon should gradually decrease the interval for line sharing arrangements which require conditioning so as to achieve a five business day interval by April 1, 2001. The Hearing Examiner agreed with Covad that Verizon failed to provide any evidence explaining why performing dispatches for line sharing arrangements should take any longer than the six business days Verizon offers for stand alone DSL loops.

Verizon is the only party who excepted to the Hearing Examiner's decision on this issue. Verizon contends that all dispatches are not the same and that dispatch requiring conditioning can be substantially more complicated than provisioning a stand-alone DSL-capable loop. Verizon also argues that neither Rhythms nor Covad provided evidence that the fifteen day business interval would substantially affect their ability to timely serve customers.

Based upon careful consideration of the evidence on the record and the exceptions filed on appeal, the Commission agrees with the Hearing Examiner and finds that the appropriate intervals for provisioning of line sharing should be three business days for those lines not requiring conditioning and five business days for those lines requiring conditioning. The Commission agrees with the Hearing Examiner that these intervals are achievable goals that serve both public and private interests.

The Commission also agrees with Covad that a schedule with specific milestones should be established to ensure that the goal of provisioning line sharing within the adopted intervals is achieved by April 1, 2001. While Covad only requested a specific schedule with regard to the provisioning interval applicable to line sharing which does not require conditioning, the Commission finds that it would be illogical to establish a specific schedule for one provisioning interval and not for the other. Therefore, the Commission hereby adopts the following schedule for the provisioning of line sharing not requiring conditioning:

a) Until November 30, 2000, the provisioning interval shall be up to six business days.

b) Between December 1, 2000, and January 31, 2000, the provisioning interval shall be up to five business days.

c) From February 1, 2001, through March 31, 2001, the provisioning interval shall be up to four business days.

d) Finally, on April 1, 2001, the provisioning interval shall be up to three business days.

With regard to the provisioning of line sharing requiring conditioning, the Commission hereby adopts the following schedule:

a) Until November 30, 2000, the provisioning interval shall be up to 15 business days.

b) Between December 1, 2000 and January 31, 2001, the provisioning interval shall be up to eleven business days.

c) Between February 1, 2001 through March 31, 2001, the provisioning interval shall be up to eight business days.

d) Finally, on April 1, 2001 the provisioning interval shall be up to five business days.

Finally, the Commission will require Verizon to provide documentation in the form of a report at each milestone date to assure the Commission that the schedules adopted in this Order are being met. Parties may request that the Commission change these intervals after Verizon has experience provisioning line sharing within the intervals required by this Order.

The Commission stresses that the provisioning intervals adopted in this Order are the maximum time Verizon is permitted to provision line sharing. This time requirement is not intended to supercede the requirement that if a Verizon affiliate obtains the provisioning of line sharing in less than the times provided for in this Order, all other CLECs are entitled to receive provisioning within that lesser timeframe.

B. Appropriate Interval for Augmenting Cabling and Splitter Capacity.

After a CLEC installs a collocation arrangement in a central office, the CLEC may request additions to its original installation. These additions are referred to as augments. These augments include items such as additional cabling between the CLEC's cage and the Main Distributing Frame of Verizon or adding splitter shelves to an existing rack or building an entirely new rack.

Verizon suggested an interval of 76 business days for these augments, noting that this is the standard interval used in New York. Verizon objected to shortening the interval, contending that the CLEC's request for a shorter interval is wrongly premised on the assumption that the physical work necessary to complete an augment is the main determinant of the time required. According to Verizon, a variety of tasks other than the physical labor form the bulk of the work to be performed. Verizon also asserted that the accelerated interval served no public or competitive purpose.

Both Rhythms and Covad supported a collocation augment interval of 30 calendar days. Rhythms contended that the work needed for augments was neither complex nor time consuming. Rhythms also disputed Verizon's assertions regarding the timeframes for various tasks. Covad argued that there will be adequate vendor resources to meet the 30 calendar day interval. Covad also contended that if CLECs are required to own and manage the splitter, the 30 day augment interval would enable CLECs to better manage splitter capacity themselves. Finally, Covad argued that the public interest would be served by the shorter interval.

Staff presented a Gantt chart providing a timeline for collocation augments based upon a list of line sharing activities for collocation augments. Staff determined that many of the activities could occur simultaneously. Based on this fact, Staff concluded that Verizon could provision the collocation augment within a period of 32 business days.

The Hearing Examiner found that Verizon should gradually decrease the interval to perform cable and splitter augments for line sharing from the current 76 business day interval to 45 business days by April 1, 2001. The Hearing Examiner found that the physical tasks only consume several days and that the tasks of ordering and arranging with third party vendors to install augments were activities under Verizon's control. In reaching this determination, the Hearing Examiner also found that the intervals proposed by other parties were unrealistic at this time.

On appeal, Verizon argues that the Commission should reject the Hearing Examiner's decision and allow a 76 business day interval for collocation augments. Verizon contends that there is not much difference between a new arrangement and an augment with regard to the task to be performed, thus the time permitted for provisioning should be the same. Verizon also raises a concern regarding the small supply of vendors available to perform this work. Verizon also argues that reducing the interval for collocation augments will not shorten the time in which customers can receive DSL services. Finally, Verizon alleges that other parties will suffer discrimination because orders for services other than line sharing will be required "to take a backseat" to those CLECs utilizing line sharing.

In contrast to this argument, Rhythms contends that the 45 business day interval should be reduced to 30 calendar days. Rhythms contends that the work required only takes days, not weeks. Rhythms disagrees with Verizon's contention that the work required is the same as that required for full collocation.

Covad also urges the Commission to modify the Hearing Examiner's ruling to decrease the augment interval to 32 business days within four months after April 1, 2001 and to 30 calendar days four months thereafter. Covad also argues that the Hearing Examiner's rationale for the 45 day interval is unclear since no party advocated this interval.

After carefully considering the evidence presented and the exceptions filed on appeal, and given the totality of the circumstances, the Commission agrees with the Hearing Examiner that the appropriate interval for cable and splitter augments is 45 business days. At the outset, the Commission notes that no party provided sufficient support which would justify the Hearing Examiner approving any of the intervals proposed by the individual parties. Neither Verizon, Rhythms nor Covad submitted an activity chart outlining the activities necessary to perform the collocation augments and the time necessary for each activity. Given this lack of supporting data, the Hearing Examiner correctly fashioned a reasonable compromise between the positions of the parties.

The Commission also notes that the 45 business day interval represents a significant decrease in the amount of time currently allowed for the provisioning of collocation augments. However, the Commission does not consider the 45 day interval to necessarily be the final determination on this matter. After actual experience with the task of provisioning augments with the 45 business day timeframe, any party may file a request for a change in this interval.

As with the provisioning of line sharing, the Commission finds it appropriate to set forth a specific schedule establishing milestones for the reduction of the provisioning interval from 76 days to the required 45 days. The Commission hereby adopts the following schedule:

> a. Until November 30, 2000 the collocation augment shall be up to 76 business days.
>
> b. Between December 1, 2000 and January 31, 2001, the collocation augment interval shall be up to 65 business days.
>
> c. From February 1, 2001, through March 31, 2001, the collocation augment interval shall be up to 55 business days.
>
> d. Finally, on April 1, 2001, the collocation augment interval shall be up to 45 business days.

As with the line sharing interval, the Commission hereby directs Verizon to provide documentation in the form of a report at each milestone date to assure the Commission that the schedule adopted in this Order is being met.

C. Requiring Verizon to purchase or own a line sharing splitter on a CLEC's behalf.

A splitter is a device that separates the standard telephone signal from the DSL or data signal. The splitter is wired into the existing service by removing one cross connect and replacing it with two, thereby providing separate voice and data signals. The splitter also prevents the two signals from interfering with each other.

Both Rhythms and Covad argued that the CLEC should be allowed to elect whether it would purchase and maintain the splitter or, in the alternative Verizon would own and maintain the splitter on the CLEC's behalf. In contrast, Verizon argued that the CLECs must own the splitter and may locate the splitter in either their own collocation arrangement or in the common area of the central office. Verizon is not willing to own the splitters.

The Hearing Examiner found that Verizon's proposal was reasonable. According to the Hearing Examiner, the FCC's *Line Sharing Order* explicitly states that the right of an ILEC to own the splitter is permissive, not mandatory. The Hearing Examiner noted that California, Illinois, Texas and Pennsylvania reached this same conclusion.

Only Covad filed an exception to this determination. Covad contends that pursuant to FCC Rule 47 CFR §51.319(h)(4), Verizon is legally obligated to provide splitters to requesting CLECs.

The Commission disagrees with Covad's legal analysis. Contrary to the implications in Covad's arguments, the FCC's decision in the *Line Sharing Order* is not an interpretation of 47 C.F.R. §51.319(h)(4). The *Line Sharing Order* actually established the regulation at issue. Thus ¶76 of the *Line Sharing Order* does not constitute a subsequent interpretation of that regulation but is an "indication of the [FCC's] intent at the time of the regulation's promulgation". *Gardebring v. Jenkins*, 485 US 415, 430, (1988). The Hearing Examiner appropriately relied on ¶76 in reaching his determination.

Furthermore, Covad's interpretation of 47 CFR §51.319(h)(4) is incorrect. This provision provides:

> In situations where a requesting carrier is obtaining access to the high frequency portion of the loop, the incumbent LEC may maintain control over the loop and splitter equipment and functions, and shall provide to requesting carriers loop and splitter functionality that is compatible with any transmission technology the requesting carrier seeks to deploy using the high

> frequency portion of the loop, as defined in this subsection, provided that such transmission technology is presumed to be deployed pursuant to section 51.230.

Clearly, the clause relied on by Covad modifies the phrase "the incumbent LEC may maintain control over the loop and splitter equipment and functions". The only reasonable interpretation of these two clauses is that if an ILEC owns and maintains the splitter, the ILEC must provide loop splitter functionality that is compatible with any transmission technology the requesting carrier seeks to deploy. Covad's interpretation would render the regulation internally inconsistent.

The Commission adopts the determination of the Hearing Examiner on this issue.

D. Line Sharing over Fiber-Fed Loops or Ditigal Loop Carrier (DLC) Systems.

Rhythms and Covad requested that the Hearing Examiner order Verizon to provide CLECs line sharing on loops that are constructed of copper and fiber-fed DLC systems. The petitioners asserted that they needed procedures for line sharing when customers are served by such loop, because the fiber portion of the loop will not carry a DSL signal in the same manner as a copper portion. Additionally, Covad requests that the Hearing Examiner establish ground rules to ensure that neither Verizon nor its affiliates end up with "first mover advantage" in the market for providing DSL services over fiber using "plug and play".

Verizon contended that the particular type of DLC equipment and associated line-cards which permit line sharing and DSL service over fiber facilities have not been deployed in Maryland and may not be deployed in the future. Verizon stated that to the extent any such technologies are deployed for use by Verizon or its affiliates, Verizon would make those technologies available to the CLECs on a non-discriminatory basis. Verizon asserted that it is not obligated to purchase and deploy for CLEC use a particular kind of technology in its central offices. Verizon committed to providing CLECs the ability to place DSLAM[2] equipment at the remote terminal, providing line sharing over the copper subloop, and access to the feeder back to the central office.

Staff, as well as Covad and Rhythms, argued that CLECs should be allowed to use a particular type of technology in which "line cards" are placed in specifically upgraded DLC equipment for the purpose of providing DSL service. This is known as the "plug and play" option. As noted above, Verizon has not deployed the DLC equipment equipped with the line card technology, nor does it have any such line cards.

The Hearing Examiner agreed with Verizon's position on the issue regarding fiber-fed DLC, finding that to the extent these new technologies are deployed by Verizon they must be made available on a non-discriminatory basis to CLECs as well. The Hearing Examiner declined to adopt Covad's recommended ground rules and directed the parties to negotiate these rules.

Both Covad and Rhythms filed exceptions to this determination. Rhythms requested that the Commission clarify that as soon as the network serving a particular geographic area is able to support the provisioning of line sharing, Verizon is obligated to provide access to that network. Rhythms is concerned that Verizon will interpret this aspect of the Hearing Examiner's Proposed Order as requiring Verizon only to provide line sharing over fiber-fed loops where Verizon itself provisions and offers its own retail DSL service.

Covad requests that the Commission adopt "ground rules" to ensure that Verizon provides nondiscriminatory access to "plug and play". Covad contends that it has already attempted to negotiate these rules with Verizon. Covad requests that the Commission prohibit Verizon from providing retail services based upon plug and play technology until Verizon

[2] DSLAM allows DSL to be provided over DLC and thus Verizon has agreed to make this service available at least to the extent it can be provided through a DSLAM.

either unbundles that equipment or demonstrates to the Commission that it has no legal obligation to do so.

With regard to the Rhythms' exception, the Commission grants Rhythms request for clarification and finds that Verizon is obligated to provide the plug and play option to CLECs as soon as Verizon's network in a geographic area is capable of supporting this technology. Thus, Verizon cannot wait until it offers a retail service based on this technology to make that technology available to CLECs. However, the Commission stresses that this should not be interpreted as a mandate that Verizon upgrade the network to support this technology in any particular geographic area.

With regard to Covad's request for ground rules, the Commission declines to order any specific ground rules at this time. However, the Commission recognizes the need for ground rules and the need to have such rules in place in a timely manner. The Commission is concerned that simply sending the parties back to the negotiating table will not achieve the desired result.

In this regard, the Commission notes that subsequent to the Hearing Examiner's issuance of the Proposed Order in this proceeding, the FCC issued its own "plug and play" order in the Ameritech/SBC Communications merger proceeding.[3] The Commission further notes that Verizon agreed to be bound by this FCC Order as a condition of its merger with GTE. The Commission believes that many of the issues raised by Covad's request for ground rules may have been resolved by this Order. At the very least, the effect of this Order should be considered before any ground rules are adopted by the Commission.

Therefore, the Commission hereby directs the parties and Staff to collaborate on proposed ground rules based on the FCC's SBC Order and establishes a 60 day deadline for

[3] *In the Matter of Ameritech Corp. and SBC Communications,* CC Docket No. 98-141 Second Opinion and Order, FCC 00-336 (rel. Sept. 8, 2000) ("*SBC Order*").

this collaboration. At the end of this time period, the parties shall report to the Commission regarding those rules the parties have agreed upon and those issues the Commission must resolve.

IT IS, THEREFORE, this 6th day of October, *in the* year Two Thousand,

ORDERED: 1) That the Proposed Order of the Hearing Examiner is affirmed, except as modified by this Order.

2) That Verizon Maryland, Inc. shall gradually decrease the intervals for provisioning line sharing to three business days by the end of the first quarter of 2001 (April 1, 2001), as provided by the schedule set forth in this Order;

3) That Verizon Maryland, Inc. shall gradually decrease the interval for provisioning line sharing arrangements that require conditioning to five business days by the end of the first quarter of 2001 (April 1, 2001), as provided by the schedule set forth in this Order;

4) That Verizon Maryland, Inc. shall gradually decrease the interval for augmenting cabling and splitter capacity to provide line sharing to 45 business days by the end of the first quarter of 2001 (April 1, 2001), as provided by the schedule set forth in this Order;

5) That Verizon Maryland, Inc.'s two proposed options for splitter configurations are hereby accepted;

6) That Verizon shall make available on a non-discriminatory basis to CLECs new technologies, such as DLC equipment and associated line cards which permit line sharing and DSL service over fiber facilities if, and when the network in a given geographic area is capable of supporting such technology; and

7) The parties shall collaborate based upon the FCC's *SBC Order* on the ground rules for "plug and play" technology and report back to the Commission the results of this collaboration within 60 days of the date of this Order.

/s/ Claude M. Ligon

/s/ Susanne Brogan

/s/ Catherine I. Riley

/s/ J. Joseph Curran, III

Commissioners

STATE OF NEW YORK DEPARTMENT OF PUBLIC SERVICE
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General Counsel

JANET HAND DEIXLER
Secretary

February 5, 2003

TO ALL PARTIES IN BILLING AND COLLECTION TASK FORCE
CASE 00-C-1945

At its January 22, 2003 Session, the Commission considered the results of the Billing and Collection Task Force. After considerable effort the industry was unable to arrive at consensus resolution for limiting the time period for backbilling. Because the Commission is not, at this time, convinced that backbilling is a substantial problem and because CLECs have the opportunity to negotiate their own terms with Verizon in their interconnection agreements, it determined that it would not formulate a generic limit for backbilling. If problems materialize, the Commission may reexamine this issue. In the meantime, parties are encouraged to pursue appropriate backbilling limits in intercarrier agreement negotiations.

Sincerely yours,

JANET HAND DEIXLER
Secretary

State of Florida

Public Service Commission

CAPITAL CIRCLE OFFICE CENTER ● 2540 SHUMARD OAK BOULEVARD
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DATE: JUNE 5, 2003

TO: DIRECTOR, DIVISION OF THE COMMISSION CLERK & ADMINISTRATIVE SERVICES (BAYÓ).

FROM: DIVISION OF COMPETITIVE MARKETS & ENFORCEMENT (MARSH, aem BARRETT, MCB CATER, KING, MUSKOVAC) (RBS
OFFICE OF THE GENERAL COUNSEL (FORDHAM) LEF. PRB

RE: DOCKET NO. 011666-TP - PETITION BY GLOBAL NAPS, INC. FOR ARBITRATION PURSUANT TO 47 U.S.C. 252(B) OF INTERCONNECTION RATES, TERMS AND CONDITIONS WITH VERIZON FLORIDA INC.

AGENDA: 6/17/03 - POST-HEARING DECISION - PARTICIPATION IS LIMITED TO COMMISSIONERS AND STAFF

CRITICAL DATES: NONE

SPECIAL INSTRUCTIONS: NONE

FILE NAME AND LOCATION: S:\PSC\CMP\WP\011666.RCM

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FPSC-COMMISSION CLERK

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CASE BACKGROUND

On December 20, 2001, Global NAPS, Inc. (GNAPs) petitioned the Commission to arbitrate certain unresolved terms and conditions of an interconnection agreement with Verizon Florida Inc. (Verizon). On January 16, 2002, Verizon filed its response to GNAPs' petition.

On April 2, 2002 the parties agreed that the deadline for resolving the case could be extended to January 13, 2003. On June 4, 2002 Verizon and GNAPs filed a Joint Stipulation to Suspend Arbitration Schedule and Applicable Statutory Deadlines. In the Joint Stipulation, the parties noted that a number of arbitration issues overlap with issues being considered in Docket No. 000075-TP. The parties agreed to file a joint motion seeking new controlling dates within 30 days after the issuance of the order in Docket No. 000075-TP.

On September 10, 2002 the Commission issued Order No. PSC-02-1248-FOF-TP in Docket No. 000075-TP. Subsequently, on October 10, 2002, the parties filed a Joint Motion for a New Arbitration Schedule. Due to the amount of time that had elapsed since filing of Direct Testimony and due to the impact of the decision in Docket No. 000075-TP on certain issues, parties were permitted to file Supplemental Direct testimony. On December 18, 2002, Verizon filed such testimony. None was filed by GNAPs. Both GNAPs and Verizon filed rebuttal testimony on January 16, 2003.

On February 14, 2003, Verizon filed its Motion of Verizon Florida Inc. for Leave to File Surrebuttal or in the Alternative to Strike Portions of the Rebuttal Testimony of Global NAPs, Inc. Witness Lee L. Selwyn. At the February 17, 2003 Prehearing Conference, the prehearing officer ruled that Verizon's surrebuttal testimony would be allowed.

On March 10, 2003, a hearing was held.

On April 10, 2003, GNAPs filed its Initial Brief of Petitioner. On April 11, Verizon filed its Post-Hearing Statement of Verizon Florida, Inc. On April 17, 2003, pursuant to an informal agreement, GNAPs filed its Corrected Post-Hearing Statement of Issues and Positions of Petitioner, Global NAPs, Inc. (Revised Post-hearing Brief) On April 25, 2003 Verizon filed a Motion to Strike New Substantive Argument from GNAPs' Revised Post-hearing Brief. On May 5, 2003, GNAPs filed its Opposition to

Verizon - Florida's Motion to Strike Substantive Argument From GNAP's [sic] Revised Post-Hearing Brief. The Commission addressed these motions at the June 3, 2003, Agenda Conference, granting in part and denying in part Verizon's Motion to Strike.

All references in this recommendation are to GNAPs' Revised Post-hearing Brief.

ISSUE A: **[LEGAL ISSUE]** What is the Commission's jurisdiction in this matter?

RECOMMENDATION: Staff believes that the Commission has jurisdiction pursuant to Chapter 364, Florida Statutes, and Section 252 of the Federal Telecommunication Act of 1996 (Act) to arbitrate interconnection agreements. Section 252 states that a State Commission shall resolve each issue set forth in the petition and response, if any, by imposing the appropriate conditions as required. Further, staff believes that while Section 252(e) of the Act reserves the state's authority to impose additional conditions and terms in an arbitration not inconsistent with the Act and its interpretation by the FCC and the courts, the Commission should use discretion in the exercise of such authority. **(FORDHAM)**

POSITION OF THE PARTIES

GNAPS: The Commission has jurisdiction to resolve each issue raised in the petition and response consistent with the standards set out in 47 U.S.C. §252(c), but has no jurisdiction to regulate ISP-bound traffic.

VERIZON: Verizon does not state a position on this issue in its Brief.

STAFF ANALYSIS: GNAPs states that this Commission has jurisdiction to arbitrate the parties' interconnection agreement pursuant to 47 U.S.C. §252. Under §252(a)(4), the Commission must "limit its consideration of any petition . . . to the issues set forth in the petition and in the response" and must "resolve each issue set forth in the petition and the response" as required by §252(c). GNAPs argues, however, that this Commission has no jurisdiction to regulate ISP-bound traffic.

As noted previously, GNAPs filed for arbitration of an interconnection agreement with Verizon pursuant to the Act. Pursuant to Section 252(b) of the Act, an incumbent local exchange carrier, or any other party to a negotiation, under the Act, after a prescribed period of time for voluntary negotiation, may petition a state commission to arbitrate any open issues. Pursuant to Section 252(b)(4) of the Act, the State Commission must limit its consideration to the issues set forth in the petition and the response. Under Section 252(c) of the Act, the State Commission shall resolve each issue set forth in the petition and the response, if any, by imposing appropriate conditions to implement the standards for arbitration set forth in Section 252(c), of the Act. Pursuant to Section 252(c) of the Act, a State Commission, in resolving any open issue and imposing conditions upon the parties to the agreement, shall ensure that the resolution and conditions meet the requirements of Section 251, including the regulations prescribed by the FCC; establish any rates for interconnection, services, or network elements according to Section 252(d) of the Act; and provide a schedule for implementation of the terms and conditions by the parties to the agreement. In addition, staff believes that the Commission has the authority to construe the requirements of the Act, subject to controlling FCC Rules, FCC Orders and controlling judicial precedent.

Staff agrees that Section 252(e) of the Act reserves the state's authority to impose additional conditions and terms in an arbitration that are not inconsistent with the Act and its *interpretation by the FCC and the courts. Staff believes that* under Section 252(e) of the Act, the Commission could impose additional conditions and terms in exercising its independent state law authority under Chapter 364, Florida Statutes, so long as those requirements are not inconsistent with the Act, FCC rules and orders, and controlling judicial precedent. However, staff believes that it is appropriate for the Commission to exercise its state authority with discretion.

Based on the foregoing, staff believes that the Commission has jurisdiction pursuant to Section 252 of the Act to arbitrate interconnection agreements. Section 252 states that a State Commission shall resolve each issue set forth in the petition and response, if any, by imposing the appropriate conditions as required. Further, staff believes that while Section 252(e) of the Act reserves the state's authority to impose additional conditions and terms in an arbitration not inconsistent with the Act and its interpretation by the FCC and the courts, the Commission should use discretion in the exercise of such authority.

ISSUE 1(a): May GNAPs designate a single physical point of interconnection per LATA on Verizon's existing network?

RECOMMENDATION: Yes. GNAPs may designate a single physical point of interconnection per LATA on Verizon's network. Verizon should be permitted to require a Memorandum of Understanding when a fiber meet is requested. **(MARSH)**

POSITION OF THE PARTIES

GNAPS: The parties are apparently now in agreement that GNAPs has a right to designate a SPOI in each LATA. Each party is responsible for transport on their side of the POI.

VERIZON: Yes. Global cannot, however, require Verizon to interconnect on Global's network, contrary to the Act and FCC requirements.

STAFF ANALYSIS: The parties are in agreement that GNAPs should be allowed to have one point of interconnection (POI). However, it remains to be resolved as to whether the POI must be on Verizon's network.

PARTIES' ARGUMENTS:

VERIZON

Verizon witness D'Amico agrees that Verizon will allow GNAPs to establish a single POI in a LATA at specified technically feasible points within Verizon's network, but notes that the parties have not yet agreed to specific contract language embodying this principle. He asserts that Verizon's proposed contract language "closely tracks" the language of §251(c)(2) of the Telecommunications Act of 1996 (the "Act"), which the FCC held in ¶192 of the Local Competition Order obligates incumbent LECs to provide interconnection within their networks at any technically feasible point. (TR 172-173)

Witness D'Amico provides contract language in which Verizon supplements "its definition of a POI to make clear that the POI must be on Verizon's network and to provide examples of what is or is not a technically feasible point on Verizon's network." (TR 193) The language he provides states:

> The physical location where the Parties' respective facilities physically interconnect for the purpose of mutually exchanging their traffic. As set forth in the Interconnection Attachment, a Point of Interconnection shall be at (i) a technically feasible point on Verizon's network in a LATA and/or (ii) a fiber meet point to which the Parties mutually agree under the terms of this Agreement. By way of example, a technically feasible Point of Interconnection on Verizon's network in a LATA would include an applicable Verizon Tandem Wire Center or Verizon End Office Wire Center but, notwithstanding any other provision of this Agreement or otherwise, would not include a GNAPs Wire Center, GNAPs switch, or any portion of a transport facility provided by Verizon to GNAPs or another party between (x) a Verizon Wire Center or switch and (y) the Wire Center or switch of GNAPs or another party. (TR 193-194)

Regarding Verizon's requested Memorandum of Understanding (MOU), witness D'Amico contends that this is only required when a party requests the fiber meet form of interconnection. (EXH 4, p. 10) He explains that a fiber meet is an agreed-upon fiber point where the parties connect, with each party providing electronics at its own end. (EXH 4, p. 9) He continues that the parties must consider the electronics and software they are using and "make sure everybody is on the same page." (EXH 4, p. 11)

Witness D'Amico asserts that a fiber meet is not very common. (EXH 4, p. 10) He states that most CLECs do not request this form of interconnection. (EXH 4, p. 10) He notes that for all other forms of interconnection, no additional paperwork is required. (EXH 4, p. 10) He responds that he is unaware of the typical amount of time Verizon takes in processing an MOU. (EXH 4, p. 10)

Verizon states that Issue 1(a) is unresolved because GNAPs does not agree that it should be required to interconnect on Verizon's network. (EXH 2, Verizon Responses to Staff 2nd Interrogatories, pp. 27-28) Verizon again raises this point in its brief, arguing that GNAPs' proposed language would allow it to designate a POI anywhere in the LATA, irrespective of whether it is on Verizon's network. Verizon notes that the issue has been addressed in 47 CFR § 51.305(a)(2) and 47 U.S.C. § 251(c)(2), as well as by the FPSC in Docket No. 000075-TP. (Verizon BR at 2)

Verizon argues in its brief that the Commission should reject GNAPs' proposal regarding fiber meet arrangements, which are an alternate means Verizon offers for interconnecting the parties' networks. (Verizon BR at 3) Verizon contends that its approach to fiber meets is consistent with the FCC's "Local Competition Order" [*In re Implementation of the Local Competition Provision in the Telecommunications Act of 1996*, First Report and Order, 11 F.C.C.R. 15499 ¶553 (1996)], which recognizes that both the parties and the state commissions are in the best position to determine the details of interconnection using a fiber meet. (Verizon BR at 3-4)

GNAPS

Witness Selwyn agrees that Verizon Florida does not appear to dispute GNAPs' right to designate a single point of interconnection per LATA within Verizon's network. (TR 47) GNAPs witness Selwyn states that GNAPs uses the fiber meet form of interconnection. (TR 11)

GNAPs responded in discovery that the use of MOUs "significantly delays the process of interconnection, despite the fact that these agreements are virtually universal within the Verizon footprint." (EXH 1, p. 28)

GNAPs acknowledges in its brief Verizon's position that GNAPs may interconnect on Verizon's network at one single point per LATA. (GNAPs BR at 2) However, GNAPs argues that Verizon's MOU allows Verizon alone to determine the terms of interconnection. (BR at 4) GNAPs states that it began asking Verizon for interconnection in October 2002. (BR at 4) GNAPS further states in its brief that in mid-February, 2003, "GNAPs' counsel drafted a proposed MOU based on others accepted and executed between the two parties," but has not received any comments on it from Verizon. (BR at 4)

ANALYSIS

Staff agrees with Verizon's contention that the POI must be placed on Verizon's network. While GNAPs has not consistently referred to a location on Verizon's network, it has done so in several places. Staff believes that GNAPs has sufficiently acknowledged that it must choose a point of interconnection on

Verizon's network within any given LATA. Therefore, it appears that the parties are in agreement on this point.

This position is also consistent with previous Commission decisions. The FPSC found in Docket No. 000075-TP that

> . . . ALECs have the exclusive right to unilaterally designate single POIs for the mutual exchange of telecommunications traffic at any technically feasible location on an incumbent's network within a LATA. (Docket No. 000075-TP, Order No. PSC-02-1248-FOF-TP, issued September 10, 2002, p. 25)

The basis for this decision is that interconnection obligations are asymmetrical. Nothing in the Telecommunications Act of 1996 requires an ALEC to interconnect at multiple locations in a LATA. (Ibid., p. 22)

Staff believes GNAPs' concerns regarding Verizon's MOU requirement are unfounded. GNAPs offered no testimony on this issue, and only mentioned it briefly in response to staff discovery. GNAPs' statement in its brief that it provided a draft MOU to Verizon in February 2003 is based upon a remark of GNAPs' counsel made in opening statements. (TR 9)

The record shows that Verizon only requires an MOU when a fiber-meet is used. It appears from the record that such an arrangement only takes place on a minimal number of occasions for most carriers interconnecting with Verizon, although GNAPs may choose to use this form of interconnection. Verizon's position is unrebutted that a fiber meet takes more planning and engineering than other types of interconnection. Therefore, staff believes Verizon's MOU proposal has merit.

While there is no support for GNAPs' allegation that Verizon has been uncooperative on completing an MOU, staff believes that both parties should be cautioned that full cooperation is necessary for any agreement to work. If Verizon and GNAPs have not yet been able to work out an MOU, both should undertake a renewed effort to finalize the details of the fiber meet.

CONCLUSION

Staff recommends that GNAPs may designate a single physical point of interconnection per LATA on Verizon's network. Verizon should be permitted to require a Memorandum of Understanding when a fiber meet is requested.

ISSUE 1(b): *If GNAPs chooses a single point of interconnection (SPOI) per LATA on Verizon's network, should Verizon receive any compensation from GNAPs for transporting Verizon local traffic to this SPOI? If so, how should the compensation be determined?*

RECOMMENDATION: No. Each party is responsible for transporting its own traffic to the SPOI. **(MARSH)**

POSITION OF THE PARTIES

GNAPS: The parties are apparently now in agreement that GNAPs has a right to designate a SPOI in each LATA. Each party is responsible for transport on their side of the POI.

VERIZON: Verizon does not seek any compensation from GNAPs for transporting Verizon's traffic to the SPOI.

STAFF ANALYSIS: Although the parties initially disagreed on this issue, it appears to have been resolved. This is in keeping with prior decisions of the FPSC, which found that

> an originating carrier is precluded by FCC rules from charging a terminating carrier for the cost of transport, or for the facilities used to transport the originating carrier's traffic, from its source to the point(s) of interconnection in a LATA. (Docket No. 000075-TP, Phases II and II.A., Order No. PSC-02-1248-FOF-TP, issued September 10, 2002, p. 26)

PARTIES' ARGUMENTS:

VERIZON

In his direct testimony, Verizon witness D'Amico explains that Verizon's proposal -- referred to as a "virtual geographically relevant interconnection point" or "VGRIP" -- distinguishes physical points of interconnection, from designated interconnection points where financial responsibility transfers from one carrier to another. (TR 174) However, in his supplemental direct testimony, witness D'Amico states that Verizon proposes simply that each party provide transport facilities to the POI at its own expense. (TR 194) He asserts that this is what GNAPs sought in its Petition for Arbitration, and that it is consistent with the FPSC's previous decision requiring the originating carrier to bear all the cost of transport to a single point of interconnection, in Docket No. 000075-TP, Order No. PSC-02-1248-FOF-TP. (TR 194)

Witness D'Amico dismisses witness Selwyn's "de minimis" cost analysis, stating that it is not helpful in resolving the issue. (TR 200) He points out that the issue is not what the costs are, but which carrier should bear them. He adds that Verizon is no longer pursuing its VGRIP proposal in this proceeding. (TR 200) He notes that although Verizon provided GNAPs its updated contract proposal on December 2, 2002, GNAPs did not respond to this proposal or submit any supplemental direct testimony addressing Verizon's proposal. (TR 201)

Verizon argues in its brief that GNAPs' testimony in this case relates only to Verizon's superseded VGRIP proposal, so that testimony is irrelevant. (Verizon BR at 6) Verizon urges the FPSC to adopt its proposed contract language because Verizon believes such language is consistent with the Commission's precedent and unchallenged in the record. (Verizon BR at 6)

GNAPS

Witness Selwyn argues that Verizon's VGRIP proposal is designed to permit Verizon to charge GNAPs call origination fees that are expressly prohibited by the FCC's intercarrier compensation rules. (TR 114) He contends that the incremental costs to transport traffic to a single POI in each LATA are de minimis, largely due to decreasing costs for transport resulting from advances in fiber optic transmission technology. (TR 66) Witness Selwyn points out that the FPSC, in its Final Order on Arbitration between AT&T and BellSouth, found that each party should assume financial responsibility for transporting its own traffic to the AT&T-designated interconnection point. (TR 60) He adds that the FPSC also reached the same conclusion in Docket No. 000075-TP. (TR 60-61)

GNAPs notes in its brief that Verizon acknowledged in its prehearing statement that each party would bear responsibility for facilities on its side of the POI. (GNAPs BR at 2)

ANALYSIS

Verizon argues that its VGRIP proposal is consistent with FCC orders and several recent federal court decisions. (Verizon BR at 5) Nevertheless, witness D'Amico withdrew that proposal in his supplemental direct testimony. (TR 194) As noted by Verizon in its brief, GNAPs failed to respond to that change in position in its rebuttal testimony. Rather, GNAPs rebutted the original direct testimony of Verizon. In deposition, witness Selwyn asserts that it is not readily apparent from filed testimony that Verizon withdrew its VGRIP proposal. (EXH 1, GNAPs Responses to Staff 2nd Interrogatories, p. 27)

However, upon filing of the briefs, it has become apparent that GNAPs does recognize that Verizon withdrew its VGRIP proposal. The parties are now in agreement that each party will bear its own costs of transport to the POI. With that, this issue is resolved.

As noted above, the agreement of the parties is consistent with the FPSC's findings in Order No. PSC-02-1248-FOF-TP.

CONCLUSION

The parties appear to be in agreement on this issue. Additionally, the consensus reached is consistent with the prior FPSC decision on this issue. Therefore, staff recommends that each party is responsible for transporting its own traffic to the SPOI.

ISSUE 2: Should the parties' interconnection agreement require mutual agreement on the terms and conditions relating to the deployment of two-way trunks when GNAPs chooses to use them?

RECOMMENDATION: Yes. Both parties' engineers should coordinate the use of two-way trunking, due to the potential impact on both parties' networks. However, in the event the parties cannot agree, GNAPs has the right to make the final decision. **(MARSH)**

POSITION OF THE PARTIES

GNAPS: The interconnection agreement should require Verizon to offer two way trunks, each party should forecast their own traffic, and specific equitable provisions should be required. Further, Verizon should not require an additional document, the "Memorandum of Understanding," above and beyond this Agreement to govern the terms and conditions of interconnection.

VERIZON: Global has the option to use two-way trunks for interconnection. If and when Global opts to use two-way trunks, however, the parties must come to an understanding about the operational and engineering aspects of the two-way trunks between them, because Global's decision necessarily affects Verizon's network.

STAFF ANALYSIS: 47 CFR §51.305(f) states that, "If technically feasible, an incumbent LEC shall provide two-way trunking upon request." At issue here, is not whether two-way trunking should be provided, but whether mutual agreement on the engineering aspects of such an interconnection arrangement should be required.

This Commission has previously addressed the issue of two-way trunking in a WorldCom/BellSouth arbitration. In Order No. PSC-01-0824-FOF-TP, the FPSC stated that

> We agree that WorldCom's and BellSouth's trunk engineers should cooperatively work together to decide when to use two-way trunking on a case-by-case basis that is mutually beneficial for both parties. We note that both parties agree with this suggestion. We further note that in the event the parties cannot agree, that WorldCom reserves the right to make the final decision. However, it should be noted that the outcome may be that WorldCom's network design takes precedent over BellSouth's. As a result,

> BellSouth's network may suffer, since WorldCom's economics would control. Notwithstanding that, although the FCC's rules allow WorldCom to order two-way trunks, and require BellSouth to use them, we trust that good engineering will determine the parties' practices. Therefore, we find that BellSouth is obligated to provide and use two-way trunks that carry each party's traffic at WorldCom's request. (Docket No. 000649-TP, Order No. PSC-01-0824-FOF-TP, issued March 30, 2001, p. 72)

PARTIES' ARGUMENTS:

VERIZON

Verizon witness D'Amico agrees that GNAPs may decide whether one-way or two-way trunk groups should be used. (TR 187) However, he asserts that the parties must agree on the operational responsibilities and design parameters required for two-way trunking architecture. (TR 188) He states that such understanding should be reflected in the interconnection agreement. (TR 188) He argues that this is necessary to maintain network integrity. (TR 188) He compares a lack of agreement to driving an automobile without rules as to which side of the road to drive on or at what speed. (TR 188) He explains that the actions of one affect the other which could result in blocking of traffic. (TR 188) Witness D'Amico opines that it is, therefore, reasonable that GNAPs and Verizon should mutually agree on the initial number of two-way trunks, a provision deleted by GNAPs. (TR 189) He rationalizes that such trunks carry both Verizon's traffic and GNAPs' traffic on the same trunk group, thus affecting the performance and operation of each party's network. (TR 189)

Witness D'Amico contends that GNAPs made edits to the agreement that make no sense. (TR 189) He notes that GNAPs uses the phrase "originating party" in section 2.2.4(b), to describe traffic where both GNAPs and Verizon "originate" and "terminate" traffic. (TR 189) He asserts that the use of the term "originating party" does not describe the parties with any specificity. (TR 189)

Witness D'Amico notes that Verizon currently uses two-way trunking with a number of CLECs in Florida with the same terms and conditions that Verizon has proposed to GNAPs. (TR 188) He states that GNAPs has not explained why it should be afforded different treatment. (TR 188)

Verizon notes in its brief that witness D'Amico's testimony is undisputed. Verizon points out that GNAPs' witness offered no explanation for GNAPs' contract proposal or GNAPs' opposition to Verizon's language. Verizon argues that GNAPs has no legal basis or record support for its proposal to solely dictate the specifications for two-way trunks. (Verizon BR at 6-7)

GNAPS

GNAPs witness Selwyn did not provide testimony on this issue. GNAPs responded to staff discovery that witness Selwyn has not addressed this issue because he is an economist and provides policy testimony. (EXH 1, GNAPs Responses to Staff 2nd Interrogatories, p. 26) Nevertheless, GNAPs states that "all issues remain, including, but not limited to implementation dates, forecasting requirements, Verizon's reservation of facilities and their ability to take facilities." (EXH 1, GNAPs Responses to Staff 2nd Interrogatories, p. 26)

GNAPs argues in its brief that "the very fact this petition needs to be filed indicates that there is now, and will likely be in future, [sic] disagreements on these operational aspects." (BR at 3) GNAPs contends that its proposed modifications to the agreement

> (1) exclude measured Internet traffic; (2) replace "intrastate traffic" with "other traffic"; (3) remove restrictions on the manner of connection; (4) impose industry standards for equipment used in provisioning; (5) assure equality in service quality and provisioning through the ASR process; (6) equalize trunk underutilization restrictions; (7) eliminate asymmetrical upfront payment requirements over and above what would actually be due; (8) eliminate restrictive subtending arrangement requirements; and, (9) clarify the definition of "traffic rate." (BR at 3-4)

GNAPs asserts that its proposed agreement provides for a more equitable offering of two-way trunking than that provided by Verizon. (BR at 4) GNAPs continues that trunks on a tandem should be limited to 672, rather than the 240 trunks proposed by Verizon. (BR at 4) GNAPs also complains that Verizon has never provided it with a Memorandum of Understanding (MOU) with regard to a request made by GNAPs in 2002 for interconnection. (BR at 4)

ANALYSIS

Verizon appears to have no objection to providing two-way trunks to GNAPs. Verizon asks that the parties agree on the operational responsibilities and design parameters. Verizon provided a list of thirty-seven companies with which it has agreements in Florida that it states contain the same two-way trunking language as that it proposes for GNAPs. (EXH 2, Verizon Responses to Staff 2nd Interrogatories, pp. 27, 29) Witness D'Amico stated that he "personally scanned all of the language . . . but there are no substantial changes between what [Verizon] proposed with GNAPs." (EXH 4, p. 6) Thus, it appears that the language proposed by Verizon is in common usage.

Despite the common acceptance of Verizon's proposed language in Florida, GNAPs objects to coordinating its two-way trunks with Verizon. GNAPs contends in its brief that the very fact it filed a petition indicates there is a problem. (GNAPs BR at 3) However, staff notes that GNAPs had three opportunities to file testimony, and was even asked by staff in discovery why it did not do so. At no time did GNAPs provide any record evidence in support of its position.

In its brief, GNAPs finally stepped up to the plate. GNAPs enumerated a list of provisions, as shown above, that it proposed with its petition. Those provisions deal with a number of definitions in the proposed interconnection agreement. GNAPs asserts that "[t]hese proposed modifications are necessary and in totality provide for a more equitable offering of two-way trunking than those proposed by Verizon." (GNAPs BR at 4) As support for its position in the brief, GNAPs cites Exhibit B to its Petition. Staff determined that this exhibit contains the testimony of Jeffrey A. King on behalf of AT&T in Docket No. 020919-TP which is currently before this Commission. Two-way trunking is not an issue in that docket, nor is it discussed in the referenced testimony. GNAPs also cites the Proposed Interconnection Agreement at §§ 2.93-95. The provisions noted by staff are part of the glossary to the interconnection agreement. They define Percent Interstate Usage

(PIU) and Percent Local Usage (PLU) factors as well as the term "Trunk Side." GNAPs further cites Interconnection Attachment Sections 2.2-2.4, 5, 6, and 9. Several of these Sections do address two-way trunks, but again, there is nothing to support any of GNAPs' allegations that these provisions have any inherently negative impact. Staff does not see anything in the material cited by GNAPs that supports its statement that its proposed modifications are necessary to provide for a more equitable offering of two-way trunking than those proposed by Verizon. It is unfortunate that GNAPs did not file testimony that would have afforded staff an opportunity to explore the allegations that GNAPs now makes.

Staff has the same problem with GNAPs' argument that the agreement should allow a maximum of 672 trunks instead of 240. There is no record evidence to support this statement.

GNAPs' discussion of MOUs is addressed in Issue 1(a).

Staff agrees with Verizon that its testimony is unrebutted. Further, Verizon convincingly showed that it has used the language that lays out two-way trunking provisions. GNAPs provided no testimony or other evidence to the contrary. It appears that Verizon's request that the parties agree on the operational responsibilities and design parameters is in line with the FPSC's previous finding.

However, it should be made clear to Verizon, in keeping with the FPSC's previous decision, that where Verizon and GNAPs' engineers have a difference of opinion, GNAPs should have the final say on the provisioning of two-way trunks, so long as GNAPs' requests are reasonable and technically feasible. As noted by the FCC in its First Interconnection Order, specific, significant, and demonstrable network reliability concerns may be evidence that a particular interconnection point is not technically feasible. (¶198, Order FCC 96-325, CC Docket Nos. 96-98, 95-185) Nevertheless, as the FPSC found with WorldCom and BellSouth, the outcome may be that GNAPs' network design takes precedent over Verizon's.

CONCLUSION

GNAPs' and Verizon's trunk engineers should cooperatively work together to decide when to use two-way trunking on a case-by-case basis that is mutually beneficial for both parties. In the event the parties cannot agree, GNAPs has the right to make the final decision. Thus, the parties should resolve any doubt in favor of GNAPs, so long as both parties make a good faith effort to work out the necessary engineering details. There is no record evidence that either of the parties will not do so.

Staff recommends that both parties' engineers should coordinate the use of two-way trunking, due to the potential impact on both parties' networks. However, in the event the parties cannot agree, GNAPs has the right to make the final decision.

__ISSUE 3(a)__: *Should GNAPs be required to provide collocation to Verizon at GNAPs' facilities in order to interconnect with GNAPs?*

__ISSUE 3(b)__: *If Verizon cannot collocate at GNAPs' facilities, should GNAPs charge Verizon distance-sensitive rates for transport?*

__RECOMMENDATIONS__:

(a) No. GNAPs should not be required to provide collocation to Verizon, but is encouraged to do so.

(b) If Verizon charges distance-sensitive rates for transport, and cannot collocate at GNAPs' facilities, GNAPs is permitted to charge Verizon distance-sensitive rates for transport. However, based on staff's recommendation in Issue 1A, a physical point of interconnection must be on Verizon's network which negates the need for Verizon to purchase transport from GNAPs. **(BARRETT/MUSKOVAC)**

__POSITIONS OF THE PARTIES__

__GNAPs__:

__Issues 3(a) & 3(b)__: GNAPs should not be required to provide collocation to Verizon and Verizon should bear its own network costs.

__VERIZON__:

__Issues 3(a) & 3(b)__: If the Commission permits Global to interconnect at a SPOI that is not on Verizon's network, it is particularly important for Verizon to have the right to (1) collocate at Global's facilities and (2) pay reasonable, non-distance-sensitive rates for transport of traffic to Global's network.

__STAFF ANALYSIS__: For the purposes of efficiency, staff notes that its recommendations and analysis for Issues 3(a) and 3(b) are combined. Issue 3(a) addresses a proposed interconnection option between GNAPs and Verizon that involves Verizon collocating at GNAPs' central office. Issue 3(b) is a spin-off issue that is conditioned upon the outcome of Issue 3(b). Staff would note that the testimony for these issues was somewhat limited.

PARTIES' ARGUMENTS:

GNAPS

GNAPs witness Selwyn emphasizes that the interconnection obligations in the Telecom Act of 1996 "do not require or provide for symmetric treatment of ILECs and ALECs." (TR 55) "An ILEC [i.e., Verizon] may not assume some authority that is not provided for in the Act," according to witness Selwyn. (TR 57) The witness makes this point to stress that GNAPs, as an ALEC, is not constrained by the same guidelines and obligations as Verizon to provide collocation. Witness Selwyn states:

> The key point of this asymmetry is that both the *Telecommunications Act* as well as FCC Rules hold that, in order to interconnect with an ILEC, an ALEC need establish only one (1) point of interconnection ("POI") with an ILEC at any technical point *anywhere* in each LATA . . . Moreover, FCC regulations do not grant the ILEC the right to designate the point at which the other party must "pick up" the ILEC's traffic. (Emphasis in original)(TR 66)

Although this portion of witness Selwyn's testimony addresses GNAPs' argument for a single point of interconnection (SPOI), the witness offers very limited testimony that specifically addresses collocation. In its brief, GNAPs contends that Verizon is specifically required to provide collocation to ALECs, yet "there is simply no legal requirement for GNAPs to provide collocation." (GNAPs BR at 6)

In an interrogatory response, GNAPs contends that Issue 3(b) is a "legal issue and no factual testimony in its brief is required." (EXH 1, p. 1) Although not obligated, GNAPs asserts that it has never rejected a request from Verizon for collocation. (GNAPs BR at 6) In an interrogatory response, GNAPs states that

> This issue [Issue 3(b)] remains unresolved since it is conditional on a determination of Verizon's ability to collocate at Global facilities. It should be noted, however, that Global has not been asked by Verizon for collocation space, nor has Global rejected . . . or in any way dissuaded them from seeking such space. (EXH 1, p. 4)

A portion of Issue 3(b) involves the cost considerations for call transport, and witness Selwyn provides a considerable amount of testimony on this topic. (Selwyn TR 63-77) The witness believes that Verizon is attempting to shift the financial responsibility of transporting Verizon-originated traffic to GNAPs. (TR 63) Witness Selwyn contends that if Verizon utilized a SPOI per LATA to transport its originated traffic to GNAPs,

> the incremental costs that Verizon Florida would incur to extend transport beyond the local calling area to a SPOI in each LATA are *de minimis*, in large part reflecting the drastic reductions in unit costs for transport that advances in fiber optic transmission technology have produced. (Emphasis in original)(TR 66)

The witness provides mathematical support to demonstrate his assertions. (Selwyn TR 66-75)

In summary, GNAPs believes it should not be required to provide collocation to Verizon. GNAPs has concerns about possibly discriminating against other customers if it were to accede to the terms and conditions that Verizon seeks in collocating with it. (GNAPs BR at 6) Finally, GNAPs believes Verizon should bear its own network costs.

VERIZON

Verizon witness D'Amico characterizes these issues as being about "fairness," and states that Verizon should be offered the same terms and conditions for collocation that it offers to ALECs. (TR 191; EXH 4, pp. 13, 20) In Issue 3(a), Verizon seeks the right to establish a collocation arrangement with GNAPs in order to terminate its own traffic using its own facilities. (D'Amico TR 189) Witness D'Amico asserts that Issue 3(b) is conditioned upon the outcome of Issue 3(a), contending that unless the Commission rules in favor of Verizon on this issue, Verizon would be forced to purchase transport facilities from GNAPs "at rates that are typically unconstrained by any form of regulation." (TR 191)

The witness describes allowing reciprocal collocation as being a "common sense approach to interconnection." (D'Amico TR 190) Verizon witness D'Amico believes that since Verizon offers collocation to ALECs, it is "clearly reasonable that Verizon have available to it the same types of interconnection choices that are available to a CLEC so as to provide the most efficient type of interconnection." (TR 190) He asserts that both parties to an interconnection agreement can then have more than one option in order to facilitate interconnection. (D'Amico TR 190) In its Brief, Verizon contends that its language actually proposes two interconnection options: (1) collocation at GNAPs facilities; and (2) purchasing GNAPs transport at non-distance sensitive rates. (Verizon BR at 7-8)

To summarize, witness D'Amico is asking this Commission to recognize the potential "invitation for abuse" that Verizon would face if Verizon is not permitted to collocate at the facilities of GNAPs, and then were subject to GNAPs' pricing of its transport services at distance-sensitive rates. (TR 191) Verizon acknowledges that GNAPs has no obligation to provide collocation, though Verizon would prefer to interconnect in this manner. (D'Amico TR 189-190) In the alternative, if the Commission does not order GNAPs to provide collocation, Verizon believes it should be charged reasonable, non-distance-sensitive rates for transport of traffic to Global's network. (Verizon BR at 6)

ANALYSIS

As referenced earlier, the analysis for Issues 3(a) and 3(b) is combined. The outcome of issue 3(b) is conditioned upon the decision in issue 3(a), and could become a moot point based upon the method of interconnection.

Staff believes Issue 3(a) is a very straightforward issue. The testimony of GNAPs' witness Selwyn highlights that the obligations of ILECs and ALECs are not equal. Staff agrees with witness Selwyn that the obligation to provide collocation is solely on the ILEC, Verizon in this proceeding.

In a broad sense, Section 251 of the Act describes the interconnection duties and obligations of carriers. Of specific interest for the purposes of this issue, is Section 251(c)(6), which states:

> *(6) COLLOCATION*.-The duty to provide, on rates, terms, and conditions that are just, reasonable, and nondiscriminatory, for physical collocation of equipment necessary for interconnection for access to unbundled network elements at the premises of the local exchange

> carrier, except that the carrier may provide for virtual collocation if the local exchange carrier demonstrates to the State commission that physical collocation is not practical for technical reasons or because of space limitations.

Staff believes reciprocity is simply not a legal requirement for collocation at either the federal or state level. Although staff would encourage reciprocal collocation as an efficient mechanism for ILEC/ALEC interconnection, staff is persuaded that it does not have the authority to order it. Quite simply, there is no federal requirement for GNAPs to provide collocation. As noted in Issue 1, the parties have agreed that GNAPs may choose one point of interconnection per LATA on Verizon's network for purposes of interconnection with Verizon. Additionally, the parties have agreed that each party should bear financial responsibility for transport of its own traffic to that interconnection point.

Staff acknowledges that GNAPs witness Selwyn alludes to reciprocal collocation arrangements from other states, namely New York, but remains perplexed as to why this issue (both parts, A and B) has not been resolved between the two parties, particularly in light of the fact that GNAPs has stated it is willing to offer Verizon collocation. Staff is puzzled that Verizon would devote portions of its argument to support its assertions that it seeks to collocate with GNAPs, yet the record of this proceeding indicates that Verizon has never submitted an application for collocation to GNAPs. In staff's opinion, the course of action seems clear: If Verizon seeks to establish a collocation arrangement with GNAPs, it should make a formal request to do so; the record of this proceeding indicates that no such requests have been forthcoming in Florida. In the event GNAPs does not accommodate such a request for collocation, staff believes that GNAPs has the right to charge for transport consistent with FCC regulations.

Pursuant to FCC Regulation 47 CFR 51.711 (a), which states in part that, "[r]ates for transport and termination of telecommunications traffic shall be symmetrical. . .," staff believes that if Verizon cannot collocate at GNAPs' facilities, GNAPs is permitted to charge Verizon distance-sensitive rates for transport. Staff's evaluation of the above-stated FCC Rule is that the parties to this arbitration shall charge an equal amount to the other for originated traffic.

CONCLUSION

Staff believes that GNAPs is not required to provide collocation to Verizon, but is encouraged to do so as an efficient method of interconnection. As noted in Issue 1, the parties have agreed that GNAPs may choose one point of interconnection per LATA on Verizon's network for purposes of interconnection with Verizon. Additionally, the parties have agreed that each party should bear financial responsibility for transport of its own traffic to that interconnection point. In keeping with that position, staff believes that GNAPs should be permitted to charge Verizon for reciprocal compensation, including transport where applicable, for terminating Verizon's traffic from the point of interconnection.

ISSUE 4: Which carrier's local calling area should be used as the basis for determining intercarrier compensation obligations?

RECOMMENDATION: Consistent with the Commission's decision in Docket No. 000075-TP, the originating carrier's retail local calling area should be the basis for determining intercarrier compensation. In order to implement this decision, GNAPs should provide Verizon with details of its originating carrier proposal. At a minimum, this information should include responses to the eight questions found on page 6 of Exhibit 2. Implementation of the originating carrier plan should not delay the filing of the interconnection agreement. Therefore, if all other matters are incorporated into an interconnection agreement, except for the details of the originating carrier plan, the parties should file the agreement. Once the originating carrier implementation details are determined, the parties may file an amendment to their agreement. **(KING)**

POSITION OF THE PARTIES

GNAPS: The originating caller's local calling area should be used as the basis for determining intercarrier compensation.

VERIZON: Verizon's tariffed local calling areas should continue to govern intercarrier compensation obligations. Despite repeated inquiries, Global failed to provide any implementation details about its originating carrier proposal. Therefore, there is no basis in the record to adopt Global's extreme proposal.

STAFF ANALYSIS:

This issue is to address which carrier's local calling area (LCA) should be used as the basis for determining intercarrier compensation obligations[1]. Staff notes that the Florida Public Service Commission (FPSC or Commission) addressed this matter recently in its generic docket on reciprocal compensation (Docket No. 000075-TP[2]) and concluded:

[1] Staff notes that the parties filed testimony regarding defining LCAs for retail purposes; however, that is not an issue in this arbitration. (Selwyn TR 161; Haynes 221)

[2] According to the FPSC's Case Management System, both GNAPs and Verizon were Official Parties of Record in Docket No. 000075-TP.

> . . . we find that it is appropriate to establish a default local calling area for purposes of reciprocal compensation. This issue appears with enough frequency that a default definition is needed for the sake of efficiency. A default should be as competitively neutral as possible, thereby encouraging negotiation and development of business solutions. On this basis, we find that the originating carrier's retail local calling area shall be used as the default local calling area for purposes of reciprocal compensation. (PSC-02-1248-FOF-TP, pp. 54-55)
>
> . . . We emphasize, however, that our decision regarding use of the originating carrier local calling area is a default only. Verizon is still free to negotiate a different solution in its interconnection agreements. Based on the foregoing, we find the Motions for Reconsideration shall be denied on this point. (PSC-03-0059-TP, p. 15)

Although the Commission recently addressed this issue in Docket No. 000075-TP, the Commission must again resolve this matter in this docket because it is required to address all issues brought before it in a Petition for Arbitration (and the Response to the Petition for Arbitration). As such, the parties' arguments are presented below.

GNAPS

GNAPs be]ieves that intercarrier compensation should always be based upon the retail LCA "as defined by the originating local carrier." (Selwyn TR 159) GNAPs witness Selwyn notes that in Order No. PSC-02-1248-FOF-TP, the FPSC concluded that use of the ILEC's definition of LCA will effectively prevent ALECs from offering their customers anything different. Specifically, he notes that the FPSC stated:

> Using the ILEC's retail local calling area appears to effectively preclude an ALEC from offering more expansive calling scopes. Although an ALEC may define its retail local calling area as it sees fit, this decision is constrained by the cost of intercarrier compensation. An ALEC would be hard pressed to offer local calling in situations where the form of intercarrier compensation is

> access charges, due to the unattractive economics. (PSC-02-1248-FOF-TP, p. 53) (TR 158)

Witness Selwyn also noted that the FPSC has required that the retail local calling areas as defined by the originating local carrier be used as the default for purposes of determining where reciprocal compensation, rather than access charges, is to be paid to the terminating carrier. (TR 158-159)

At the time witness Selwyn filed his testimony in this docket, the FPSC's originating carrier decision was being reconsidered. As such, the witness provided testimony stating his disagreement with FPSC staff's reconsideration recommendation that the originating carrier decision be modified such that the ILEC's LCA would be controlling on the matter of reciprocal compensation versus access charges. (TR 159) The witness stated:

> I believe that the September 10, 2002 ruling is the correct policy position and urge the Commission to retain it, especially with request [sic] to this arbitration between Verizon and Global NAPs. Reverting to ILEC local calling areas would undermine, at its most fundamental level, an ALEC's ability to introduce new and competitively attractive services, and would serve only to protect the competitive interests of the ILECs and their wireless affiliates. . . . If Global NAPs treats a particular call as "local" even if Verizon treats it as "toll," then Global NAPs should compensate Verizon at the applicable reciprocal compensation rate for terminating the call to the Verizon customer. (TR 159)

In support of this position, witness Selwyn cites to 47 U.S.C. §153(47) which defines "Telephone exchange service" as:

> (A) service within a telephone exchange, or within a connected system of telephone exchanges within the same exchange area operated to furnish to subscribers intercommunicating service of the character ordinarily furnished by a single exchange, and which is covered by the exchange service charge, or (B) comparable service provided through a system of switches, transmission equipment, or other facilities (or combination thereof) by which a subscriber can originate and terminate a telecommunications service. (TR 160)

In addition, he notes that 47 U.S.C. §153(48) defines "Telephone toll service" as:

> telephone service between stations in different exchange areas for which there is made a separate charge not included in contracts with subscribers for exchange service. (TR 160)

The witness believes that based on the above definitions, any "telephone service between stations in different exchange areas" for which no separate charge is made is not "telephone toll service." As such, he explains, if calls to Sarasota from Tampa are included in GNAPs' "contracts with subscribers for exchange service," then by definition those calls are not toll calls. (TR 160)

The GNAPs witness also believes these definitions are applicable to the question of whether Verizon is entitled to reciprocal compensation or switched access payments for terminating such calls because the term "exchange access," as defined in 47 U.S.C. §153(16), means the offering of access to telephone exchange services or facilities for the purpose of the origination or termination of telephone toll services. (TR 160) Witness Selwyn argues that charges for exchange access are "thus only applicable for telephone toll services for which there is made a separate charge not included in contracts with subscribers for exchange service." (TR 160-161) If GNAPs does not impose "a separate charge" for calls that are included in its retail local calling areas, then those calls are not "telephone toll service," and the witness avers they are not subject to switched access charges. (TR 161)

VERIZON

Verizon believes its tariffed local calling areas are the appropriate basis for determining intercarrier compensation because it is "the most administratively simple and competitively neutral approach." (Haynes TR 205) Verizon witness Haynes acknowledges that in its Order (PSC-02-1248-FOF-TP) the FPSC chose the originating carrier's local calling area as the "default" for determining reciprocal compensation obligations. (TR 235-236) The witness believes that a principal motivation for the decision was the FPSC's belief that adopting a default would encourage meaningful negotiations. (TR 236) However, Verizon strongly disagrees with this conclusion; in fact, it believes that the ruling will have the opposite effect because no ALEC will have any motivation to agree to anything other than the originating carrier approach. Moreover, Verizon does not believe the Commission adequately considered the substantive consequences of this approach. (TR 236) Although Verizon and GNAPs have not reached agreement on this issue, Verizon maintains that the Commission should not apply its "default" decision to the parties' interconnection agreement. (TR 236)

Verizon witness Haynes explains that what GNAPs proposes in this docket was discussed as the "originating carrier" plan in the generic reciprocal compensation docket (i.e., the originating carrier's retail local calling area will determine intercarrier compensation obligations). (TR 236) However, despite repeated discovery requests, GNAPs has provided no details regarding the geographic area or areas it plans to offer its retail customers or the retail rate scheme it intends to apply. (Haynes TR 236; EXH 3, pp. 12-14; EXH 1, p. 17) Moreover, the witness contends that the lack of implementation detail is one reason that led the FPSC staff to: 1) recommend the FPSC reverse its decision adopting the originating carrier approach; and 2) advise the FPSC not to adopt any default local calling area definition. (TR 237) The Verizon witness believes that the FPSC rejected its staff's recommendation because they trusted implementation details could be worked out by the parties on a case-by-case basis. (TR 237) Stating the obvious, witness Haynes notes that the parties in this proceeding have not been able to work out the details. As such the witness argues:

> . . . Global has not given Verizon or the Commission any clue as to how its originating carrier approach might work in practical terms. Because the Commission's decision assumed that implementation details would emerge on a case-specific basis, and because that has not happened here, this is reason alone to reject the originating carrier approach.(TR 237)

In addition to the lack of detail provided, witness Haynes believes there are several other reasons why the originating carrier plan should be rejected.[3] (TR 237) The witness contends that if the originating carrier plan were selected for inclusion in the parties' interconnection agreement it would:

- be administratively infeasible and unduly expensive;
- be inconsistent with the Commission-ordered intercarrier compensation for virtual NXX traffic;
- create artificial incentives to eliminate consumer choices rather than expand them;
- undermine universal service objectives by eliminating revenues that support universal service and creating incentives to increase calling areas and associated service rates;
- undermine the state-mandated access rates and improperly relieve Global of its obligation to contribute to universal service; and,
- enhance GNAPs opportunities to arbitrage Verizon's existing rate structure. (TR 213-214; TR 219; TR 238)

Witness Haynes provided significant detail in his testimony addressing the points outlined above. (TR 206-210; TR 217-218; TR 219-221; TR 238-245)

Verizon witness Haynes also argues that using the originating carrier's retail local calling area to define the local calling area for reciprocal compensation purposes favors GNAPs over Verizon because "[t]his approach is administratively infeasible and fraught with irrational outcomes." (Haynes TR 215) The witness believes that this approach could enable GNAPs to pay lower reciprocal compensation rates for outbound traffic, to receive higher access rates for inbound traffic, or even a combination of the two. (TR 215) The witness provided an example to "prove the unacceptable nature of this proposal." (TR 215)

> Tampa and Sarasota are not in the same Commission-approved Verizon local calling area. But under the

[3] Witness Haynes notes that many of the reasons for rejecting the originating carrier plan were addressed in his testimony in this docket, as well as in the generic reciprocal compensation docket through briefs, the testimony of Verizon's witnesses Trimble and Beauvais, and Verizon's Petition for Reconsideration. (Haynes TR 237)

> originating carrier scenario, they could be in the same GNAPs local calling area. In that situation, when a Verizon Tampa subscriber calls a GNAPs Sarasota subscriber, Verizon would be required to pay GNAPs access to terminate the call. However, under this hypothetical situation, when a GNAPs customer in Sarasota calls a Verizon customer in Tampa, GNAPs avoids paying Verizon's terminating access charges and instead pays only the lower reciprocal compensation rate. Thus, for identical calls between Tampa and Sarasota, GNAPs would collect a *higher rate for calls from Verizon customers, but pay a* lower rate for calls originated by its customers. (TR 216)

According to the Verizon witness the inequity of basing intercarrier compensation on the originating carrier's LCA is obvious; the plan is not competitively neutral and would encourage gaming of the system. (TR 216) The witness also provided an example assuming that GNAPs markets outbound calling services. (TR 216-217)

Witness Haynes notes that several state Commissions have addressed this issue. (TR 207; TR 245) He testifies that state commissions in California, Illinois, Massachusetts, Maryland, New York, North Carolina, New Hampshire, Ohio, Rhode Island, Texas, and Vermont have recognized that the ILEC's calling area is the proper basis for distinguishing between reciprocal compensation and access *traffic. (TR 207; TR 246) The witness notes that this includes* decision makers in nine of the ten states in which the parties have arbitrated this same issue. (TR 246) The witness elaborated on the Massachusetts decision:

> Most recently, the Massachusetts Department of Telecommunications and Energy ("Department"), arbitrating the same issue between Global and Verizon, correctly observed that the issue "is not whether GNAPs must mirror Verizon's calling areas on a retail basis," but "how to define a calling area for the purpose of intercarrier compensation." (Petition of Global NAPS, *Inc. pursuant to Section 252(b) of the Telecommunications* Act of 1996, . . . (Dec. 12, 2002) (Global/VZ MA Arbitration Order), at 19.) The Department "decline[d] GNAPs' invitation to alter the existing access regime" through its originating carrier proposal. (*Id.* at 25.) In

> rejecting Global's proposal, it cited the need to "balance customers' interests in having the largest local calling areas possible against the advantages of a comprehensive state structure for local calling areas that was cost-based and fair, that ensured rate continuity for customers and earnings stability for Verizon (then New England Telephone), and that protected universal service." *(Id.* at 24.) (TR 246)

Moreover, the Verizon witness noted that the Department emphasized that alteration of the access regime was "not an appropriate subject for investigation in a two-party arbitration." *(Id.* at 23.) (TR 246-247)

Last, the Verizon witness emphasizes that if the Commission rejects GNAPs' proposal to base intercarrier compensation on the originating carrier's retail LCA, GNAPs will nevertheless remain free to establish LCAs that differ from Verizon's for retail calling purposes. (Haynes TR 221) Continuing to use existing local/toll conventions to determine intercarrier compensation obligations will not affect GNAPs' ability to define its own retail local calling areas in any manner it wishes. (TR 221)

ANALYSIS

Issue 4 in this arbitration is substantially similar to Issue 13 in the Commission's generic reciprocal compensation docket (Docket No. 000075-TP). (EXH 2, pp. 7-8; EXH 3, pp. 19-20) As noted above, in its generic docket the Commission concluded that the originating carrier's retail local calling area should be used as the default local calling area for purposes of reciprocal compensation. (PSC-02-1248-FOF-TP, pp. 54-55) In its reconsideration order the Commission emphasized that its decision is a default only, and parties are free to negotiate a different solution for inclusion in interconnection agreements. Staff notes that many of the arguments presented in this arbitration are similar if not identical to arguments made in the generic docket by these parties.

GNAPs' position in this arbitration is essentially the default mechanism adopted by the Commission in Docket No. 000075-TP. While Verizon takes a different position in its testimony (i.e., its local calling areas should continue to govern intercarrier compensation obligations), in its brief Verizon acknowledged that "[a]lthough Verizon vigorously disagrees with the Commission's originating carrier ruling, it does not challenge that ruling here.[4]" (Verizon BR at 12) However, Verizon does urge the Commission not to approve GNAPs' originating carrier proposal (or the "default") in this case because GNAPs has failed to provide any details that would "allow the Commission to order, or the parties to implement, Global's proposal." (Verizon BR at 12) Verizon witness Haynes contends that GNAPs witness Selwyn has provided no detail regarding the geographic area or areas GNAPs will offer its retail customers, and no basis on which to understand or implement GNAPs' proposed originating carrier proposal. (TR 253-254) The Verizon witness emphasizes that GNAPs had not explained in any filing in this docket how it proposes to implement its originating caller proposal. (emphasis added) (TR 254) The witness points to a GNAPs discovery response in which GNAPs stated that it is "impossible" to identify and describe the calling area (or areas) it intends to market in Florida, although it "intends to define wide local calling areas" to eliminate access on "intraLATA, perhaps even intrastate calls." (TR 254) Witness Haynes maintains that:

> Something more than a vague allusion to an intent to avoid access charges to the greatest possible extent is necessary to implement Global's originating carrier scheme. For instance, there is no detail as to how Global will identify and update the calling area associated with the originating caller for intercarrier billing purposes, and it is not clear whether the originating carrier approach is supposed to operate on a carrier-specific or customer-specific basis. Global has provided no information to indicate how Verizon would be able to accurately bill Global for any traffic Verizon terminates for Global. (TR 254)

Without a concrete proposal to consider, witness Haynes maintains that there is no basis for the Commission to adopt GNAPs' proposal. (TR 255)

Staff agrees with Verizon that GNAPs has not provided any implementation details. In fact, in response to discovery GNAPs

[4] Verizon has appealed the decision to the Florida Supreme Court. (Verizon BR at 12)

claims that it cannot identify the size of its intended local calling areas because "[t]he size of calling areas will depend, in large part, to the determination in this case." (EXH 3, p. 12) In response to another Verizon discovery question, which asked for specifics regarding GNAPs' calling areas and its intended markets in Florida, GNAPs responded: "This response calls for a hypothetical, and as such, is impossible to answer." (EXH 3, p. 32)

In an attempt to reach resolution on this matter, staff also questioned GNAPs regarding its originating carrier plan. Specifically, staff asked GNAPs to explain why it has not provided Verizon with its originating carrier plan detail. GNAPs responded that it does not originate voice traffic in Verizon's territory and has not implemented such a plan. (EXH 1, p. 17) In addition, GNAPs was asked to explain how this issue can be resolved, either by continued negotiation or Commission vote, if the carrier does not disclose its originating carrier plan. (EXH 1, p. 17) GNAPs did not provide a specific response to this question. (EXH 1, p. 17)

While staff agrees with Verizon that necessary details are absent, staff disagrees with the assertion that because GNAPs has failed to provide any details, this Commission cannot order the parties to implement GNAPs' proposal. (Verizon BR at 12) As staff has recognized, implementation details are clearly lacking; however, this does not preclude the Commission from ordering (consistent with its decision in Docket No. 000075-TP) that GNAPs' originating carrier proposal or "the default" should be incorporated into the parties' interconnection agreement.

In accord with this Commission's generic policy decision, staff believes that the originating carrier's local calling area should be used as the basis for reciprocal compensation. However, before this decision is incorporated into the parties' interconnection agreement, at a minimum GNAPs must provide responses to Verizon's eight implementation questions found in Exhibit 2, page 6. Staff notes that GNAPs did not address these questions (or any detail issues) in its testimony or brief. Staff presumes that GNAPs will provide appropriate responses. In addition, much like the record in the generic docket, the record here is also silent as to exactly what details are necessary to implement the originating local carrier plan; as such, staff does not know if GNAPs' responses to the eight questions will suffice or if additional information may be necessary. In any case, since GNAPs did not refute the relevancy of the eight questions, staff believes they are a reasonable starting point. Staff firmly believes that the parties should work out the details, especially given that the Commission has previously determined that the originating carrier's retail local calling area should be the default basis for determining intercarrier compensation. Last, staff does not believe this decision should hinder or delay the filing of the interconnection agreement since GNAPs does not originate voice traffic at this time. If all other portions of the interconnection agreement are complete, except for the details of the originating carrier plan, the parties should file the agreement while continuing to work on implementing this part of the Commission decision. Once all details are in place, the parties could file an amendment to the agreement.

CONCLUSION

Consistent with the Commission's decision in Docket No. 000075-TP, the originating carrier's retail local calling area should be the basis for determining intercarrier compensation. In order to implement this decision, GNAPs should provide Verizon with details of its originating carrier proposal. At a minimum, this information should include responses to the eight questions found on page 6 of Exhibit 2. Implementation of the originating carrier plan should not delay the filing of the interconnection agreement. Therefore, if all other matters are incorporated into an interconnection agreement, except for the details of the originating carrier plan, the parties should file the agreement. Once the originating carrier implementation details are determined, the parties may file an amendment to their agreement.

ISSUE 5: Should GNAPs be permitted to assign NXX codes to customers that do not physically reside in the local calling area associated with that NXX code?

RECOMMENDATION: Consistent with the Commission's decision in Docket No. 000075-TP, staff recommends that GNAPs should be permitted to assign telephone numbers to end users physically located outside the rate center to which the telephone number is homed. In addition, intercarrier compensation for non-ISP calls to these numbers should be based upon the end points of the particular calls. *Non-ISP calls terminated to end users outside the local* calling area in which their NPA/NXXs are homed are not local calls. Therefore, carriers will not be obligated to pay reciprocal compensation for this traffic; rather, access charges should apply. *Moreover, virtual NXX traffic and FX traffic should be treated the* same for intercarrier compensation purposes (i.e., access charges should apply). **(KING)**

POSITION OF THE PARTIES

GNAPS: GNAPs should be permitted to assign NXX codes to customers that do not physically reside in the local calling area associated with that NXX code *and as GNAPs does not impose toll charges on* this traffic, it should be treated as reciprocal compensation traffic.

VERIZON: Consistent with its ruling in the Reciprocal Compensation Order, the Commission should rule that virtual NXX traffic is not subject to reciprocal compensation, as a matter of law, and require the parties to pay access charges on interexchange traffic, including Internet-bound traffic delivered to virtual NXX numbers.

STAFF ANALYSIS: Despite the narrow issue articulated for arbitration (i.e., assignment of NXX codes), Verizon believes that GNAPs' Petition for Arbitration made clear that "it was not complaining about any Verizon-proposed contract provision preventing it from assigning virtual NXX codes . . ."; rather, the parties' dispute relates to the appropriate intercarrier compensation for virtual NXX traffic (VNXX). (Haynes TR 269; Verizon BR at 17; GNAPs BR at 13) Although Verizon contends the issue was not properly presented for arbitration by GNAPs, it has provided testimony regarding intercarrier compensation for VNXX traffic. (TR 269)

Verizon witness Haynes testifies that there are two broad intercarrier compensation issues raised by GNAPs. (TR 269) First: What intercarrier compensation applies to virtual NXX traffic? Second: What intercarrier compensation applies to virtual NXX traffic destined to the Internet? (TR 269) Staff agrees with Verizon witness Haynes; Issue 5 is no longer meant to address the assignment of NXX codes. In addition to the statements of the Verizon witness, there are testimony and discovery responses from both parties which support this. In response to staff discovery Verizon stated: ". . . Verizon does not challenge GNAPs' ability to assign virtual NXX codes, so it has not presented new facts that would justify a decision prohibiting GNAPs from providing VNXX service." (EXH 2, pp. 10, 17) In addition, Verizon witness Haynes notes: "Verizon does not propose any contract language that would stop GNAPs from assigning telephone numbers to end users located outside the rate center to which those numbers are homed." (TR 204) GNAPs also responded to staff discovery and stated "There appear to be no physical limitations proscribing the use of virtual NXXs." (EXH 3, p. 42) Also, GNAPs witness Selwyn acknowledges that Verizon does not oppose GNAPs' use of virtual NXX codes. (TR 125) Therefore, because the assignment of NXX codes no longer appears to be a disputed matter, staff will not address this issue in its analysis. (GNAPs BR at 13; Verizon BR at 16-17)

What appears to remain at issue is the appropriate form of intercarrier compensation for VNXX traffic and VNXX traffic destined to the Internet. With regard to traffic destined for the Internet, the Florida Public Service Commission (FPSC or Commission) concluded in Docket No. 000075-TP[5] that:

[5] On March 27, 2002, the parties (including Verizon and GNAPs) in Docket No. 000075-TP filed a *Joint Stipulation*, which suggested that the Commission defer action on the issues which addressed reciprocal compensation for ISP-bound traffic. In support of this proposal, the parties stated that on April 27, 2001, the FCC issued its ruling in the case of Implementation of the Local Compensation Provisions in the Telecommunications Act of 1996, CC Docket No. 96-98, Intercarrier Compensation for ISP-Bound Traffic, CC Docket No. 99-68, Order on Remand and Report Order (ISP Remand Order), FCC 01-131. The parties assert that the ISP Remand Order establishes certain nationally applicable rules regarding intercarrier compensation for ISP-bound traffic. Therein, the parties contend that the FCC has asserted jurisdiction over ISP-bound traffic and hence, this Commission should decline to issue a ruling on ISP-related issues. (PSC-02-0634-AS-TP, p. 2)

> Upon consideration, we agree that the ISP Remand Order does classify ISP-bound traffic as interstate and, therefore, under the jurisdiction of the FCC. (Order No. PSC-02-0634-AS-TP, p. 2)

In its brief, Verizon claims that in an attempt to avoid the FPSC's analysis in the Generic Reciprocal Compensation Proceeding (Docket No. 000075-TP), GNAPs argues that the FPSC has no jurisdiction over Internet-bound traffic. (Verizon BR at 18) Verizon argues that GNAPs is wrong as a matter of federal law and states:

> . . . this Commission indicated in the Reciprocal Compensation Order that its discussion of VNXX traffic would be limited by its terms to non-Internet-bound traffic. But, the FCC made clear in the ISP Remand Order that, to the extent Internet-bound traffic is subject to existing interstate or intrastate access charges, federal law preserves the application of those access charges. The interim Internet-bound traffic compensation regime applies only in those situations where traffic is not subject either to reciprocal compensation under § 251(b)(5) or access charges under state or federal law. There can be no dispute that, under longstanding federal law, Internet-bound calls have been subject to access charges to the same extent as calls bound for ordinary business end users. For this reason, this Commission's determination that non-Internet-bound VNXX calls are subject to access charges necessarily applies to Internet-bound traffic, as well. (Verizon BR at 18)

While both parties provided copious testimony[6] and legal analyses (in their briefs) regarding intercarrier compensation for ISP-bound VNXX traffic, staff believes that the Commission very clearly stated that ISP-bound traffic is under the jurisdiction of the FCC. Moreover, in its order the FPSC recognized:

> In its opinion, the FCC stated that "traffic delivered to an ISP is predominantly interstate access traffic subject to section 201 of the Act . . . ." See ISP Remand Order

[6] Considerable testimony was filed regarding intercarrier compensation for ISP-bound traffic; the testimony included discussions and analysis of the FCC's ISP Remand Order, and other state Commission's decisions.

> at ¶1. Although the FCC stated that the *ISP Remand Order* ". . . does not preempt any state commission decision regarding a compensation mechanism for ISP-bound traffic for the period prior to the effective date of the interim regime we adopt here," it did, however, state that "[b]ecause we now exercise our authority under section 201 to determine the appropriate intercarrier compensation for ISP-bound traffic, however, state commissions will no longer have authority to address this issue." See ISP Remand Order at ¶82. The FCC's intent to preempt a state commission's authority to address reciprocal compensation for ISP-bound traffic is clear. (emphasis added) (Order No. PSC-02-0634-AS-TP, pp. 2-3)

Based upon the statements of this Commission in its prior order, staff will not address the matter of intercarrier compensation for ISP-bound traffic in this recommendation. Therefore, the only issue which remains for the Commission to address is what is the appropriate intercarrier compensation for non-ISP VNXX/FX traffic.

In Docket 000075-TP[7], Investigation Into Appropriate Methods to Compensate Carriers for Exchange of Traffic Subject to Section 251 of the Telecommunications Act of 1996, the FPSC addressed the issue of compensation for VNXX/FX traffic and concluded:

> . . . intercarrier compensation for calls to these numbers shall be based upon the end points of the particular calls. . . . calls terminated to end users outside the local calling area in which their NPA/NXXs are homed are not local calls for purposes of intercarrier compensation; therefore, we find that carriers shall not be obligated to pay reciprocal compensation for this traffic. Although this unavoidably creates a default for determining intercarrier compensation, we do not find that we should mandate a particular intercarrier compensation mechanism for virtual NXX/FX traffic. Since non-ISP virtual NXX/FX traffic volumes may be relatively small, and the costs of modifying the switching and billing systems to separate

[7] Docket No. 000075-TP and the GNAPs/Verizon arbitration were being conducted at the same time; as such, GNAPs and Verizon agreed to allow supplemental direct testimony to be filed in this proceeding after the FPSC issued its order in Docket No. 000075-TP.

> this traffic may be great, we find it is appropriate and best left to the parties to negotiate the best intercarrier compensation mechanism to apply to virtual NXX/FX traffic in their individual interconnection agreements. While we hesitate to impose a particular compensation mechanism, we find that virtual NXX traffic and FX traffic shall be treated the same for intercarrier compensation purposes. (emphasis added) (PSC-02-1248-FOF-TP, pp. 33-34)

Because the parties in this arbitration could not negotiate "the best intercarrier compensation mechanism" to apply to non-ISP virtual NXX/FX traffic, as envisioned by the Commission in its prior decision, the Commission must address it here. The parties' arguments are summarized below.

PARTIES' ARGUMENTS:

GNAPS

According to GNAPs witness Selwyn, GNAPs and other ALECs employ non-geographic assignments of NPA-NXX codes, sometimes referred to as virtual NXX arrangements, in order to offer service that competes directly with Verizon's Foreign Exchange (FX) service. (TR 78) The witness notes that in its proposed interconnection agreement, Verizon has taken the position that GNAPs' local calling area (LCA) should mirror Verizon's LCA for the purposes of reciprocal compensation. (TR 78) Witness Selwyn argues that the LCA is fundamental to the VNXX issue because "the only reason anyone would ever care about assigning a customer in one location a telephone number with an NXX code associated with another location - that is, the "virtual" NXX issue - is if it matters that the customer is not in the local calling area associated with the assigned telephone number." (TR 81)

Witness Selwyn explains that traditionally LCA boundaries have served to delineate the rating treatment for an ordinary telephone call (i.e., whether it would be rated according to the ILEC's local service tariff, or whether toll charges would apply). (TR 81) Witness Selwyn also provided detailed testimony addressing:

- how telephone companies determine whether a call is a local call or if toll charges apply (TR 81-82);
- why he believes the local versus toll distinction was originally established (TR 82-83);
- why he believes that modern digital telecommunications networks do not support a distinction based upon distance-based cost differences between local and toll (TR 83-85);
- why it is necessary for an ALEC to be granted flexibility to make non-geographic assignments of NPA-NXX codes to their customers (TR 87);
- why he believes that it does not constitute an invasion of the ILEC's toll tariff, if an ALEC uses "virtual" NXX (TR 88);
- how traditional ILEC FX service works (TR 88-89);
- why Verizon's transport costs are unaffected by the location at which GNAPs terminates a Verizon Florida-originated call to a GNAPs customer (including examples and figures to support his position) (TR 89-97); and
- Verizon's single "500" number statewide local calling mechanism for use by its ISP affiliate, although the witness acknowledges that it does not appear that Verizon is currently providing such a service in Florida. (TR 100-103)

Regarding the issue of intercarrier compensation for VNXX, witness Selwyn argues that "the costs that an ILEC incurs in carrying and handing off originating traffic to ALECs is entirely unaffected by the location at which the ALEC delivers the call to the ALEC's end user customer." (TR 90) Witness Selwyn contends that as long as the ALEC establishes a POI within the LATA, it should be allowed to offer service in any rate center in the LATA and to terminate calls dialed to that rate center at any location it wishes. As such, the witness believes that it is "reasonable and appropriate" that ALECs be permitted to assign NPA-NXX codes to end users outside the rate center in which the NPA-NXX is homed and still be entitled to full reciprocal compensation. (TR 90)

The GNAPs witness acknowledges that Verizon does not oppose GNAPs' use of VNXX codes, only that if the physical locations of the calling and called parties (e.g., the Verizon customer who originates the call and the GNAPs customer who receives it) are not both within the same Verizon LCA, then GNAPs should be required to pay access charges to Verizon. (TR 125-126) Witness Selwyn claims that under the conditions described above (i.e., paying access charges), it is not feasible for GNAPs to utilize VNXX codes. In addition, GNAPs states in response to staff discovery that:

> There appear to be no physical limitations proscribing the use of virtual NXXs. However, provisions dealing with the rating of calls using Verizon's methodology and Verizon's defined local calling areas restrict the economic ability of Global to provide services other than information access service to consumers in Florida by levying access and other charges irrespective of Global's defined local calling areas. (EXH 3, p. 42)

The GNAPs witness also argues that Verizon does not propose to apply equivalent reciprocal compensation treatment for calls placed by ALEC subscribers to Verizon FX numbers as it is proposing for calls placed by its subscribers to ALEC VNXX numbers. (Selwyn TR 131) He explains that if an ALEC customer dials a Verizon FX number that is rated within the calling party's LCA (as defined by Verizon's tariffs), but is physically delivered to a location outside of that LCA, Verizon will not pay access charges to the ALEC. (TR 131-132) Moreover the witness asserts that:

> If Verizon's proposed treatment of VNXX calls were actually driven by principle, then regardless of how Verizon Florida chooses to market or charge for a given service (e.g., FX) offered to its subscribers, if that service involved transport to an end-point that was physically beyond the originating caller's local calling area, then the service should be classified as "interexchange" so that switched access charges apply, rather than be classified as "local" so that reciprocal compensation applies. (TR 132)

Witness Selwyn believes that Verizon's opposition to an ALEC's right to establish its own LCA and to utilize VNXX services is an attempt to deter competition in the local exchange market. (TR 152) The witness asserts that Verizon is able to maintain the distinction between local and toll because it remains the monopoly provider of switched access services to competing interexchange carriers. (TR 153) "Stated simply, the Company's position is that if Verizon treats a particular route as a toll call with respect to retail pricing, its wholesale switched access charges, rather than local reciprocal compensation arrangements, will apply." (Selwyn TR 153) Moreover, witness Selwyn believes that the economic effect of this practice is to protect Verizon's retail prices by preventing competitors from offering comparable services under structurally different pricing regimes. He argues that there is no reason why competitive marketplace forces should not be permitted to expand or reshape the traditional definition of local calling. (TR 153) In addition, witness Selwyn argues that:

> . . . by "walling off" its local calling areas via this device, Verizon actually protects two categories of retail service - intraLATA toll, and intraLATA foreign exchange (FX) services. Global NAPs' position is that it should be allowed to compete in both of these markets without being burdened with Verizon's *above-cost* access charges that exist to protect the Company's legacy of monopoly-era pricing practices. In contrast, Verizon seeks to block Global NAPs' ability to offer expansive local calling areas (or, similarly, to use virtual NXXs) whenever Global NAPS seeks to offer services that would compete directly with Verizon's intraLATA toll and/or foreign exchange offerings. (TR 153-154)

GNAPs believes that intercarrier compensation should always be based upon the retail LCA as defined by the originating local carrier. (TR 159) Witness Selwyn maintains that if GNAPs treats a particular call as local even if Verizon treats it as toll, then GNAPs should compensate Verizon at the applicable reciprocal compensation rate for terminating the call to the Verizon customer. (TR 159) In support of this position, witness Selwyn cites to 47 U.S.C. §153(47) which defines "Telephone exchange service" as:

> (A) service within a telephone exchange, or within a connected system of telephone exchanges within the same exchange area operated to furnish to subscribers intercommunicating service of the character ordinarily furnished by a single exchange, and which is covered by the exchange service charge, or (B) comparable service provided through a system of switches, transmission equipment, or other facilities (or combination thereof) by which a subscriber can originate and terminate a telecommunications service. (TR 160)

In addition, he notes that 47 U.S.C. §153(48) defines "Telephone toll service" as:

> telephone service between stations in different exchange areas for which there is made a separate charge not

> included in contracts with subscribers for exchange service. (TR 160)

The witness believes that based on the above definitions, any "telephone service between stations in different exchange areas" for which no separate charge is made is not "telephone toll service." As such, he explains, if calls to Sarasota from Tampa are included in GNAPs' "contracts with subscribers for exchange service," then by definition those calls are not toll calls. (TR 160)

The GNAPs witness also believes these definitions are applicable to the question of whether Verizon is entitled to reciprocal compensation or switched access payments for terminating such calls because the term "exchange access," as defined in 47 U.S.C. §153(16), means the offering of access to telephone exchange services or facilities for the purpose of the origination or termination of telephone toll services. (TR 160) Witness Selwyn argues that charges for exchange access are "thus only applicable for telephone toll services for which there is made a separate charge not included in contracts with subscribers for exchange service." (TR 160-161) If GNAPs does not impose "a separate charge" for calls that are included in its retail local calling areas, then those calls are not "telephone toll service" and the witness avers they are not subject to switched access charges. (TR 161)

Furthermore, GNAPs contends that:

> The interconnection agreement between the parties must not work to limit GNAPs' ability to compete and in so doing afford special protection to the ILECs' market, pricing practices, or other aspects of its incumbency - particularly since Verizon's wireless affiliate is permitted to compete with the Verizon ILEC entity and exchange most intraLATA traffic, and some inter-LATA traffic as well, on the basis of reciprocal compensation, not access charges. (TR 163)

GNAPs argues that it is not required to pay access charges on calls that traverse routes that Verizon treats as toll, or "that whatever impact GNAPs' expanded local calling would have upon Verizon Florida's revenues would be consequentially different than the impact arising from Verizon's own wireless affiliate - and other

CMRS providers - exemption from access charges on intra-MTA calls." (TR 163) The witness explains that while a competitive loss of retail sales to GNAPs might erode Verizon's shareholder earnings, there is no basis upon which the FPSC can conclude that any such loss would so adversely impact Verizon's financial position as to invoke extraordinary relief measures or put any of its franchised services at risk. (TR 163-164) Witness Selwyn maintains that past attempts by ILECs to explicitly recover "competitive losses" have been soundly rebuffed by state regulators.

Last, witness Selwyn states that "the Commission should not act to protect Verizon Florida or any other incumbent LEC with respect to the financial consequences of a loss of business to competing local carriers." (TR 164)

VERIZON

Verizon witness Haynes provides definitions for several terms which he believes are the foundation for understanding the virtual NXX issue. (TR 221-223) He also provides testimony regarding how a customer's telephone number or "address" aids in the proper call routing and rating. (TR 221-225) The Verizon witness explains that NXX codes traditionally played a role in intercarrier compensation. (TR 225) Specifically, he notes that although not determinative of the underlying intercarrier compensation owed, carriers have traditionally exchanged NPA/NXX information in order to facilitate classification and rating of calls for intercarrier compensation purposes. (TR 225).

Witness Haynes believes that ALECs have used a virtual NXX for two main purposes. First, the virtual NXX allows an ALEC to alter the pricing which the calling party typically pays to complete a call, with no charge levied on the called party. (TR 226) Second, he believes that because ILECs have no information about the location of an ALEC's customer, ALECs have used VNXXs to "trick" ILEC billing systems. The Verizon witness contends that by "tricking" the billing system, the ILEC does not 1) assess a toll charge on its end-user dialing the ALEC's customer outside the local calling area; and 2) the ILEC does not assess appropriate access charges that it normally would charge an interexchange carrier, but rather pays reciprocal compensation to the ALEC, because the call appears to the ILEC billing systems as local. (TR 226-227)

In addition, witness Haynes states that ALECs typically assign VNXX codes to customers that are expected to receive a high volume of incoming calls from ILEC customers within the exchange associated with the NXX. (TR 227) He explains that it is common for an ALEC to allow an ISP to collocate with the ALEC switch, and then the ALEC assigns that ISP telephone numbers associated with every LCA within a broad geographic area. The ISP would then be able to offer all of its subscribers a locally rated access number without having to establish more than a single physical presence in that geographic area. (TR 227) If the ISP had been assigned an NXX associated with the calling area in which it is located, many of those calls may be rated as toll calls. Therefore, in that situation, Verizon maintains that the ALEC avoids access charges and collects reciprocal compensation on the incoming calls. (TR 227)

Verizon contends that if GNAPs obtains a VNXX for its customers, it should not affect the intercarrier compensation owed. Specifically, witness Haynes notes:

> As the Commission recognized in the generic docket I discussed earlier, carriers can assign phone numbers to customers located outside the geographic area with which the NPN/NXX is associated, but the actual end points of the call will govern intercarrier compensation. (TR 228)

The witness emphasizes that Verizon proposes no contract language that prohibits GNAPs from assigning telephone numbers to end users located outside of the rate center to which the telephone numbers are homed. (Haynes TR 228; TR 261) Rather, the witness explains that Verizon's proposed contract language ensures that GNAPs cannot alter the appropriate intercarrier compensation due by virtue of GNAPs' "virtual" assignment of NPN/NXX codes. (Haynes TR 228; TR 261-262) Moreover, witness Haynes believes that Verizon's proposal is consistent with the FPSC's decision in the generic docket (i.e., 000075-TP), and the proposed contract language ensures that traffic is not subject to reciprocal compensation unless it originates and terminates within Verizon's LCA. (Haynes TR 228-229)

Witness Haynes maintains that because GNAPs' virtual NXX traffic is not local in nature, it should not be subject to reciprocal compensation (which is applicable only on local calls), and access charges should continue to apply. (TR 229) The witness argues that VNXX traffic is interexchange telecommunications, as evidenced by the end points of the call. In addition, he states "if virtual NXX traffic is deemed subject to reciprocal compensation, Verizon would be required to pay terminating reciprocal compensation to GNAPs despite the fact that Verizon would be responsible for hauling the traffic beyond Verizon's local calling scope." (TR 228) If Verizon is required to route traffic beyond the local calling scope and to pay reciprocal compensation, while collecting only the basic local exchange rates from the Verizon retail end-user, then Verizon is not fairly compensated for the VNXX traffic. The witness again asserts that the FPSC has already concluded that VNXX calls are not local calls requiring payment of reciprocal compensation. (Haynes TR 229-230)

Verizon claims that there is now a method to accurately track and bill traditional FX and VNXX traffic consistent with the FPSC's order in Docket No. 000075-TP. (Haynes TR 248-249) Witness Haynes explains that Verizon recently conducted a study in Florida to identify calls originated by ALEC customers and terminated to Verizon FX numbers. The study matched call records for calls from facilities-based ALECs to a list of telephone numbers that Verizon assigned to FX service lines. The study provided Verizon with a means of accurately identifying the access revenue to which ALECs would be entitled for ALEC-originated calls terminated to Verizon FX numbers. (Haynes TR 249) At the same time, Verizon considered what approach would be required to properly account for traffic originated by Verizon customers that terminated on ALEC VNXX numbers. Two options were identified:

- One option would be for the CLEC to conduct a study, similar to the one performed by Verizon, to quantify the number of Verizon-originated minutes that were delivered to CLEC virtual NXX numbers. (TR 249)
- The other option would be for the CLEC to notify Verizon of the numbers it has assigned as virtual FX numbers. In this scenario, Verizon would modify its traffic data collection system to capture all traffic delivered to the NPA-NXXs associated with the virtual NXX numbers. A query could then be run to identify what portion of the traffic delivered to the NPA-NXXs was virtual NXX traffic. A billing adjustment would then be entered into each Party's billing system to properly account for the Verizon

> traffic delivered to the CLEC virtual NXX numbers. (TR 249)

Verizon states that it is prepared to work with GNAPs to implement one of these options so that traffic can be property billed. Also, according to the witness, neither option presents significant technical or system enhancement issues for Verizon. (TR 249)

Witness Haynes notes that currently, Verizon and GNAPs are not exchanging traffic in Florida; however, in the ten states where the parties currently exchange traffic, the ratio of originating traffic exchanged through October 2002 between the parties' respective affiliates was over 99% Verizon to less than 1% GNAPs. (TR 258) Witness Haynes also states that in GNAPs' January 7, 2003 responses to Verizon's discovery requests, it stated that "most traffic carried by Global is information access service traffic and that it provides no dial-tone service to a Florida customer." (TR 258-259) As such, Verizon believes that the traffic ratio for Florida can be expected to mirror that of the other ten states where the parties exchange traffic. Therefore, the witness argues that it is fair to conclude that for over 99% of the traffic the parties exchange, Verizon will originate the traffic, and one end point will be in LATA 952 (the "Tampa LATA"). Because Global admits that it terminates no traffic in the Tampa LATA, Verizon believes it is also fair to conclude that the other end point will be outside the Tampa LATA. (TR 259)

Verizon believes that it is common for GNAPs' customers to collocate at GNAPs' switch locations, making GNAPs' switch locations very likely end points to the traffic Verizon sends it. (TR 259) In addition, witness Haynes notes that notwithstanding the interLATA, and even interstate end points of the traffic, GNAPs witness Selwyn suggests that the parties' agreement should transform all traffic into reciprocal compensation (rather than access) traffic. (TR 259) According to Verizon witness Haynes, GNAPs witness Selwyn suggests that it would be appropriate for Verizon and GNAPs to make intercarrier compensation entirely dependent on the assigned NPA-NXX codes. (TR 260)

Witness Haynes disagrees with several points addressed in the testimony of GNAPs witness Selwyn. First, witness Haynes argues that GNAPs' allegation that its VNXX service is just like Verizon's traditional FX service is incorrect. The Verizon witness notes that while the two services are functionally alike, the similarity ends there. (TR 230) Specifically, he explains that Verizon's FX service is a private line toll substitute service designed so that a calling party in the "foreign" exchange may place to the FX customer, located outside the caller's local calling area, what appears to be a local call. (TR 230) For traditional FX service, Verizon primarily uses its own network to provide FX service. To the extent that another carrier's customer originates a call to a Verizon FX customer, Verizon agrees, consistent with its position here, that it should not charge the other carrier reciprocal compensation to terminate the call. (TR 264) Unlike Verizon's FX and 500-number services, GNAPs primarily relies upon Verizon's transport network to provide its customer the toll-free calling service; thus, unlike traditional FX services, the intercarrier compensation question is paramount, according to the Verizon witness. (TR 265)

Second, contrary to the opinion of GNAPs witness Selwyn, witness Haynes does not believe that the definition of LCA is fundamental to the VNXX issues. (Selwyn TR 81; Haynes TR 256) Witness Haynes contends that "Global's proposals relate to each other only in their common effect of allowing Global to step into the shoes of the Commission in deciding what traffic is subject to reciprocal compensation versus access charges." (TR 256) Witness Haynes continues by explaining that GNAPs' originating carrier proposal allows GNAPs to avoid paying access charges should it ever have customers who originate calls (i.e., outbound calls). Moreover, witness Haynes believes that under GNAPs' proposal, GNAPs wishes to establish the LCA not just for its own customers, but for Verizon's customers as well. (TR 257)

Third, witness Haynes argues that witness Selwyn's claim that "Global's interconnection proposals on Verizon would be de minimis" is not helpful in resolving the VNXX issue. (TR 257) Witness Haynes argues that although witness Selwyn does not directly apply his transport cost analysis to his discussion of the VNXX issue, GNAPs does attempt to support its VNXX proposal with reference to witness Selwyn's conclusion that Verizon's transport costs are "de minimis" and unaffected by the actual end points of the traffic at issue. (TR 258) Witness Haynes believes that in the context of the parties' interconnection agreement, the intercarrier compensation disputes relate to drawing a line between traffic that is subject to reciprocal compensation and traffic that is not. (TR 258) Moreover, he notes that the FPSC has acknowledged that the proper application of a particular intercarrier compensation mechanism is not

> based upon the costs incurred by a carrier in delivering a call, but rather upon the jurisdiction of a call as being either local or long distance. (PSC-02-1248-FOF-TP, p. 30) (TR 258)

Fourth, witness Haynes disagrees with witness Selwyn's suggestion that the local/toll rating distinction is outdated. (Haynes TR 266; Selwyn TR 82) The Verizon witness explains that the Commission's local/toll distinction remains the backbone of the Commission's universal service policy. (TR 266) Although GNAPs witness Selwyn discusses "distance" as an outdated factor in retail and intercarrier pricing, he entirely ignores the role of implicit support for universal service. (TR 266)

Fifth, witness Haynes argues that witness Selwyn's claim that when GNAPs' VNXX assignments cause Verizon to lose toll revenue it would otherwise collect from its end users, Verizon has suffered a competitive loss of business, is an unfair characterization. (Haynes TR 266; Selwyn TR 90, TR 98-100) The Verizon witness explains that when GNAPs assigns to a "non-local" GNAPs customer a phone number that "looks local" to Verizon's end users, GNAPs tricks Verizon's billing system into foregoing an otherwise applicable toll charge to Verizon's end users. (TR 266) Witness Haynes believes that because GNAPs has not taken a Verizon customer or sold any service to a Verizon customer, GNAPs cannot characterize this as a "competitive loss" to Verizon. Moreover, it is Verizon's network that GNAPs is using to provide a GNAPs customer with the ability to receive toll-free calling from Verizon customers. (TR 266-267) The witness argues that GNAPs' strategy is simply an attempt to game the intercarrier compensation system in a way that will force Verizon to provide all the transport for free, prevent Verizon from charging its customer, and allow GNAPs to charge both its customer and Verizon. (TR 267)

Furthermore, witness Haynes notes that GNAPs witness Selwyn attempts to characterize Verizon's loss of toll revenue as an "opportunity cost." (TR 267) Again the Verizon witness argues that this characterization is flawed. He states:

> Dr. Selwyn suggests that when Verizon provides Global a service, it may forego revenue for services it otherwise

> would have provided its own retail end users. When Verizon provides Global service in connection with Global's virtual NXX assignments, however, Global does not propose to pay Verizon at all. Rather, Global proposes to charge Verizon reciprocal compensation. Under Global's theory, Verizon should pay Global for the "opportunity" to forego toll revenues. (TR 267)

The Verizon witness maintains that it is not only Verizon that disagrees with GNAPs' witness Selwyn, but also several other state Commissions, including the FPSC. He notes that the FPSC has found that VNXX traffic is not subject to reciprocal compensation. In addition, he states that the state Commissions in California, Connecticut, Georgia, Illinois, Maine, Massachusetts, Maryland, Missouri, New York, North Carolina, New Hampshire, Ohio, Pennsylvania, Rhode Island, South Carolina, Tennessee, Texas, and Vermont have recognized that the ILEC's calling area is the proper basis for distinguishing between reciprocal compensation and access traffic (this list includes decision makers in nine of the ten states in which the parties have arbitrated this exact same issue). (Haynes TR 245-247; TR 250-252) Witness Haynes contends:

> *Dr. Selwyn's proposal departs from principles of* intercarrier *compensation* in terms of the type of intercarrier compensation owed and the carrier that should pay it. The end points of the traffic span LATAs, making the traffic exchange access and exempt from reciprocal compensation as a legal matter. (TR 261)

Last, the Verizon witness contends that the fact that GNAPs is the carrier providing its customers with a toll-free calling service, and charging its customers for it, makes GNAPs the carrier that should pay Verizon the applicable intercarrier compensation. (TR 261)

STAFF ANALYSIS

The issue which the Commission must decide is what intercarrier compensation should apply to non-ISP bound VNXX traffic. This issue is substantively similar to Issue 15 in the Commission's generic reciprocal compensation docket (Docket No. 000075-TP). (EXH 1, p. 21; EXH 2, p. 9) In fact, many of the arguments considered by the Commission in Docket No. 000075-TP were also presented in this docket.

Regarding intercarrier compensation for non-ISP VNXX traffic, the Commission concluded that:

> . . . we find that intercarrier compensation for calls to these numbers shall be based upon the end points of the particular calls. This approach will ensure that intercarrier compensation will not hinge on a carrier's provisioning and routing method, nor an end user's service selection. We find that calls terminated to end users outside the local calling area in which their NPA/NXXs are homed are not local calls for purposes of intercarrier compensation; therefore, we find that carriers shall not be obligated to pay reciprocal compensation for this traffic. Although this unavoidably creates a default for determining intercarrier compensation, we do not find that we mandate a particular intercarrier compensation mechanism for virtual NXX/FX traffic. Since non-ISP virtual NXX/FX traffic volumes may be relatively small, and the costs of modifying the switching and billing systems to separate this traffic may be great, we find it is appropriate and best left to the parties to negotiate the best intercarrier compensation mechanism to apply to virtual NXX/FX traffic in their individual interconnection agreements. While we hesitate to impose a particular compensation mechanism, we find that virtual NXX traffic and FX traffic shall be treated the same for intercarrier compensation purposes. (emphasis added) (PSC-02-1248-FOF-TP, pp. 33-34)

Verizon maintains that the Commission's conclusion in the generic docket is correct as a matter of law. (EXH 2, p. 10) Specifically, Verizon argues:

> With regard to the question of what intercarrier compensation applies to VNXX traffic, neither Verizon or GNAPs has presented any facts that could lead the Commission to alter its reasoning that VNXX traffic is not subject to reciprocal compensation. That conclusion was based on federal law. Because that law has not changed, there is no basis for the Commission to change its reasoning that reciprocal compensation does not apply to VNXX traffic. (EXH 2, p. 10)

GNAPs, on the other hand, appears to disagree with the Commission's conclusion and believes reciprocal compensation is appropriate for VNXX traffic. (Selwyn TR 90) GNAPs filed extremely limited testimony addressing the Commission's decision in Docket No. 000075-TP even though it acknowledged that Issue 5 in this arbitration is the same as Issue 15 in the generic docket.[8] (EXH 1, p. 21) As part of staff discovery, GNAPs was asked if it had presented any new facts in the arbitration case that could lead this Commission to reach a different conclusion than that in Order No. PSC-02-1248-FOF-TP or its vote on reconsideration at the December 17, 2002 Agenda Conference. GNAPs responded: "Not yet, although the Commission should note the method by which the New Hampshire [sic] resolved the transport of ISP-bound information access traffic by assigning a specific NXX for such traffic . . . ." (EXH 1, p. 21)

In its testimony GNAPs presented several arguments as to why reciprocal compensation charges, rather than access charges, should apply to VNXX traffic. Many of the arguments were previously addressed by the Commission in Docket No. 000075-TP. (PSC-02-1248-FOF-TP; PSC-03-0059-FOF-TP) For example, witness Selwyn argues "the costs that an ILEC incurs in carrying and handing off originating traffic to ALECs is entirely unaffected by the location at which the ALEC delivers the call to the ALECs' end user customer." (TR 90) This Commission disposed of that argument in its generic docket by stating:

> We acknowledge that an ILEC's costs in originating a virtual NXX call do not necessarily differ from the costs incurred originating a normal local call. However, we do not believe that a call is determined to be local or toll based upon the ILEC's costs in originating the call. In addition, we do not believe that the proper application of a particular intercarrier compensation mechanism is based upon the costs incurred by a carrier in delivering a call, but rather upon the jurisdiction of a call as being either local or long distance. (Order No. PSC-02-1248-FOF-TP, p. 30)

[8] The parties were given the opportunity to file supplemental direct testimony to address the outcome of Docket No. 000075-TP. GNAPs did not file any supplemental testimony because they believe ". . . its Direct and Rebuttal testimony is sufficient for the Commission to make a well-reasoned decision supported by fact and law." (EXH 1, p. 13)

GNAPs also argues that Verizon does not propose to apply equivalent reciprocal compensation treatment for calls placed by ALEC subscribers to Verizon FX numbers as it is proposing for calls placed by its subscribers to an ALEC's VNXX number. (Selwyn TR 131) This matter was also addressed in the Commission's generic docket. In that docket the ALECs argued that Verizon treats FX traffic as local, charging reciprocal compensation for terminating calls to its FX customers. (Order PSC-02-1248-FOF-TP, p. 29) The Commission recognized this issue and stated:

> We are troubled that Verizon insists that reciprocal compensation should not be applied to virtual NXX traffic, while at the same time charging reciprocal compensation for its own FX traffic. . . . witness Haynes attributes this to the fact that Verizon's billing systems are presently configured to determine whether a call is local or not, based upon the number dialed. He states that Verizon has not as of yet examined the possibility of separating FX traffic from local traffic dialed to the same NPA/NXX. (PSC-02-1248-FOF-TP, p. 32)

Verizon also addressed this matter and maintains that to the extent that another carrier's customer originates a call to a Verizon FX customer, Verizon agrees, consistent with its position here, that it should not charge the other carrier reciprocal compensation to terminate the call. (TR 264) Also, as noted above, Verizon claims that they now have a method to accurately track and bill traditional FX and VNXX traffic consistent with the FPSC's order in Docket No. 000075-TP. (Haynes TR 248-249) Moreover, Verizon has testified that it is prepared to work with GNAPs to implement a method so that traffic can be properly billed. (TR 249)

In addition, staff notes that in its Order Denying Motions for Reconsideration, in Docket No. 000075-TP, the Commission addressed GNAPs' argument that the LCA is fundamental to the VNXX issue. (Selwyn TR 81) Specifically, the Commission stated:

> . . . while the originating carrier could be viewed as integral to the originating point of a call, we disagree that there is conflict between our decision on the default local calling area and our decision that the jurisdiction of a call is to be determined by the originating and terminating points of a call. These decisions were based upon different factual situations

> and are supported by different rationale. (PSC-03-0059-FOF-TP, pp. 14-15)

Last, the Commission clearly stated that it disagreed with the ALECs' position that the jurisdiction of traffic should be determined based upon the NPA/NXXs assigned to the calling and called parties. (PSC-02-1248-FOF-TP, p. 30) Instead, the Commission stated that the classification of traffic as either local or toll has historically been, and should continue to be, determined based upon the end points of a particular call. Moreover, the Commission agreed with Verizon witness Haynes that traffic that originates in one local calling area and terminates in another local calling area would be considered intrastate exchange access under the FCC's revised Rule 51.701(b)(1). As such, the FPSC concluded that VNXX/FX traffic would not be subject to reciprocal compensation pursuant to Rule 51.701(b)(1). (PSC-02-1248-FOF-TP, p. 31)

Staff believes the issue regarding the appropriate intercarrier compensation for non-ISP VNXX/FX traffic was sufficiently addressed in the Commission's generic docket. Moreover, GNAPs acknowledged that it has not presented any new facts in this arbitration that would lead this Commission to a different conclusion than that reached in Docket No. 000075-TP. Since the parties could not resolve this matter via negotiation, staff believes that the Commission's conclusion from Docket No. 000075-TP should apply here (i.e., the unavoidable default). Therefore, staff believes that virtual NXX calls that terminate outside of the local calling area associated with the rate center to which the NPA/NXX is homed are not local calls, and therefore carriers are not obligated to pay reciprocal compensation and access charges instead should apply.

CONCLUSION

Consistent with the Commission's decision in Docket No. 000075-TP, staff recommends that GNAPs should be permitted to assign telephone numbers to end users physically located outside the rate center to which the telephone number is homed. In addition, intercarrier compensation for non-ISP calls to these numbers should be based upon the end points of the particular calls. Non-ISP calls terminated to end users outside the local calling area in which their NPA/NXXs are homed are not local calls. Therefore, carriers will not be obligated to pay reciprocal compensation for this traffic; rather, access charges should apply. Moreover, virtual NXX traffic and FX traffic should be treated the same for intercarrier compensation purposes (i.e., access charges should apply).

ISSUE 6: Should the parties' interconnection agreement include a change in law provision specifically devoted to the ISP Remand Order?

RECOMMENDATION: No. The parties' interconnection agreement need not include a change in law provision specifically devoted to the ISP Remand Order. **(FORDHAM)**

POSITION OF THE PARTIES

GNAPS: The parties' interconnection agreement should include a change in law provision specifically devoted to the ISP Remand Order.

VERIZON: No. The undisputed, general change-in-law provision requires the parties to negotiate an amendment if a change in law alters the FCC's reciprocal compensation rules resulting from the ISP Remand Order. The parties do not need another change-in-law provision devoted to the ISP Remand Order.

STAFF ANALYSIS: Though GNAPs acknowledges that in Verizon's proposed Interconnection Agreement it grants the right to renegotiate the reciprocal compensation obligations if the current law is overturned or otherwise revised, GNAPs argues that it is inadequate. (BR at 17) Verizon argues, however, that GNAPs has not demonstrated that the general change-in-law provision is inadequate to address any decision that modifies the ISP Remand Order. (BR at 28) The Virginia Commission held "The general change of law provision in each interconnection agreement is sufficient to address any changes that may result from the ongoing proceedings relating to the ISP Remand Order." Virginia Arbitration Order, ¶ 254

Staff believes that there are few industries more dynamic than telecommunications. The possibility of a change in the law affecting any provision of any interconnection agreement is ever present; thus, the general change-in-law provision. It is not apparent to staff that the general change-in-law provision is inadequate in the event of a change in the law affecting the ISP issue. Additionally, it would be inconsistent to include a specific provision for ISP issues and not for other issues which may also see change in the foreseeable future. Accordingly, staff recommends that the parties' interconnection agreement need not include a change in law provision specifically devoted to the *ISP Remand Order*.

ISSUE 7: Should the parties' interconnection agreement incorporate by reference each parties' respective tariffs?

RECOMMENDATION: Staff recommends that the interconnection agreement cover the terms and conditions of the relationship between GNAPs and Verizon. Notwithstanding this, if the agreement references the tariff because the specific terms and conditions of a service are not contained in the agreement, the terms and conditions contained in the tariff should prevail. Staff also recommends that the rates set forth in the agreement's pricing attachment should prevail unless a tariff change is approved by this Commission or the Federal Communications Commission. **(CATER)**

POSITION OF THE PARTIES

GNAPS: The parties duties and obligations should be governed by the four corners of the final arbitration agreement. Incorporation of tariffs, which may be amended by Verizon, permits Verizon to unilaterally change the agreement and imposes a substantial burden on GNAPs.

VERIZON: Yes. The interconnection agreement will control the terms and conditions for services covered by the agreement, while tariffs will be the first source for applicable prices. This approach is necessary to prevent discrimination as between ALECs, as the Commission has already found.

STAFF ANALYSIS: Neither party filed testimony on this issue, and there were very few discovery responses relevant to this issue. Therefore, this issue was argued mostly in the parties' post-hearing briefs.

PARTIES' ARGUMENTS:

GNAPS

In its brief, GNAPs argues that the sole determinant of the rights and obligations of the parties should be the interconnection agreement. Through Verizon's proposed references to the tariff and other documents (i.e., CLEC handbooks), Verizon would be allowed to change the agreement without GNAPs' approval. These references would eliminate the stability and certainty of the agreement. (GNAPs BR at 24) While Verizon argues that tariff filings are public records and that GNAPs has the ability to contest these filings, GNAPs contends that the right to contest the tariff is not the same as the right to veto the tariff. (GNAPs BR at 24-25) GNAPs continues that while a tariff filing is considered to be public notice of the filing, in reality GNAPs would have to investigate every tariff filed to determine whether or not the relationship between the parties would change as a result of the filings. Additionally, GNAPs would incur legal costs if Verizon's position is adopted. (GNAPs BR at 25)

VERIZON

In discovery responses, Verizon provides the following information about how it provides advance notice of tariff changes:

> Advance notice is provided in accordance with the tariff filing requirements of Chapter 364 and the Commission's regulations. In this regard, nonbasic and interconnection services tariffs take effect on 15 days' notice. Basic services tariffs will take effect on 30 days' notice. While the tariff filing itself serves as notice, Verizon also posts notices of tariff filings on its website. (EXH 2, p. 4)

In its brief, Verizon argues that GNAPs proposes that service charges should be those in the applicable tariff. Verizon believes that GNAPs proposes that charges be frozen at the prices currently in the tariff, but proposes the deletion of over forty other references to the tariffs in the agreement, since they would unilaterally change the terms of the agreement. (Verizon BR at 28-29)

Verizon observes that many of the tariff references GNAPs proposes deleting are "concerning services or facilities that are outside the scope of the interconnection agreement. Thus, when the agreement references a tariff, it simply informs Global where it can find the terms and conditions for that service." (Verizon BR at 29) Verizon continues that its proposed agreement contains a hierarchy between the agreement and tariffs, whereby parties would refer to the tariff for prices. Additionally, in the event of a "conflict between the *terms and conditions* of that tariff and the interconnection agreement, the interconnection agreement would supercede the tariff." (Verizon BR at 29, emphasis in brief)

Verizon argues in its brief that GNAPs' proposed contract changes concerning tariffs could freeze charges at current prices; however, if a tariff rate is reduced, GNAPs would seek to purchase the services out of the generally applicable tariff. Therefore, GNAPs could take advantage of any rate reductions, while avoiding rate increases that would apply to other ALECs. (Verizon BR at 30)

Verizon asserts that the Commission, in similar arbitration proceedings, has disapproved of similar carrier-specific advantages. (Verizon BR at 30) The specific case cited is Verizon's recent arbitration with Sprint in Docket No. 010795-TP. By Order No. PSC-03-0048-FOF-TP, issued January 7, 2002, the Commission stated:

> We find that changes made to Verizon's Commission-approved collocation tariffs, made subsequent to the filing of the new Sprint/Verizon interconnection agreement, should supercede the terms set forth at the filing of this agreement. Furthermore, we find that this be accomplished by including specific reference to the Verizon collocation tariffs in the parties' interconnection agreement. However, we find that Sprint shall retain the right, when it deems appropriate, to contest any future Verizon collocation tariff revisions by filing a petition with this Commission. (pp. 37-38)

Verizon also notes that other Commissions[9] have rejected GNAPs' proposal as "contrary to the Act's requirement that rates for interconnection, UNEs, resale, and collocation must be 'just, reasonable, and *nondiscriminatory*.'" (Verizon BR at 30, emphasis in brief)

Responding to GNAPs' argument that the tariff process is unilateral, Verizon points out that tariff revisions are a matter of public record and affected carriers have "the right to seek cancellation of any state tariff revisions," and that GNAPs has the ability to participate in generic proceedings that may result in tariff revisions. (Verizon BR at 31)

[9] In its brief, Verizon cites orders from its arbitrations with GNAPs in New York, Vermont, Rhode Island, New Hampshire, Ohio, Illinois, New Jersey, North Carolina, and Pennsylvania.

ANALYSIS

Staff believes interconnection agreements should cover the terms and conditions of the relationship between GNAPs and Verizon, and that most of the tariff references included in the agreement are unnecessary. In the instances where the terms and conditions of service are not covered by the interconnection agreement, the terms and conditions in the tariff should prevail when incorporated by reference. In instances where the interconnection agreement and tariff conflict, the terms in the interconnection agreement should prevail.

Concerning GNAPs' ability to freeze charges at the current tariff rates, staff believes that rates set forth in the pricing attachment to the interconnection agreement should prevail unless a tariff change is approved by this Commission or the Federal Communications Commission.

Staff does not agree with Verizon's argument that not having a tariff provision in its agreement with GNAPs would discriminate against other ALECs. Under Section 252(i) of the Act, other ALECs can opt into the GNAPs/Verizon agreement; thus, no discrimination occurs.

CONCLUSION

Staff recommends that the interconnection agreement cover the terms and conditions of the relationship between GNAPs and Verizon. Notwithstanding this, if the agreement references the tariff because the specific terms and conditions of a service are not contained in the agreement, the terms and conditions contained in the tariff should prevail. Staff also recommends that the rates set forth in the agreement's pricing attachment should prevail unless a tariff change is approved by this Commission or the Federal Communications Commission.

ISSUE 8: What amounts and types of insurance should GNAPs be required to obtain?

RECOMMENDATION: The insurance requirements should be those detailed in the position of Verizon. **(FORDHAM)**

POSITION OF THE PARTIES

GNAPS: GNAPs should not be required to carry more than $1,000,000 in insurance.

VERIZON: Verizon is legally required to enter into interconnection agreements with ALECs, so it is reasonable for Verizon to seek adequate protection of its network, personnel, and other assets. Verizon's proposed insurance requirements are reasonable, given the risks of interconnection, and consistent with Verizon's requirements for other carriers.

STAFF ANALYSIS: GNAPs first argues that PacBell considered GNAPs' current commercial general liability insurance coverage of $1 Million with $10 in excess liability coverage sufficient. GNAPs finds it inexplicable why PacBell would agree that GNAPs has sufficient coverage while Verizon does not. Additionally GNAPs claims that Verizon's insurance proposals are burdensome and discriminatory. (BR at 19)

Verizon counters that it is required to enter into interconnection agreements with ALECs and, therefore, it is critical for Verizon to seek protection on its network, personnel, and other assets, which it uses to serve all interconnecting ALECs, as well as end users as a carrier of last resort. (BR at 32) Verizon argues that the insurance requirements it proposes here are no different than what it requires for other carriers, and are reasonable and necessary, in light of the risks for which the insurance is procured. (Fleming TR 282-283)

Verizon witness Fleming's testimony provided details regarding the reasonableness of Verizon's proposal for insurance requirements and the fact that those identical requirements have been adopted in similar agreements. (TR 282-283) GNAPs presented no testimony regarding the insurance issue upon which to base its argument. Staff finds Verizon's testimony and argument compelling and, accordingly, recommends that the insurance requirements should be those detailed in the position of Verizon as set forth in §21 of the General Terms and Conditions section of Verizon's proposed Interconnection Agreement.

ISSUE 9: To what extent should the parties be permitted to conduct audits to ensure (i) the accuracy of each other's bills, and (ii) appropriate use and disclosure of Verizon OSS Information?

RECOMMENDATION: Staff recommends that Verizon's proposed audit requirements be included in the interconnection agreement. These audit requirements are narrow enough in scope and frequency to allow for the evaluation of billing accuracy and contain provisions that prevent access to the confidential business information of the audited party. **(CATER)**

POSITION OF THE PARTIES

GNAPS: The parties should only be permitted to audit each other's traffic reports.

VERIZON: *The contract should permit either party to employ a* third-party auditor to verify the accuracy or appropriateness of the other's charges. Under Verizon's proposal, the purpose, scope, and frequency of audits are reasonably constrained, and the parties can require the auditor to keep sensitive or proprietary information confidential.

STAFF ANALYSIS:

GNAPS

While GNAPs did not file testimony on this issue, it provided information through discovery and its post-hearing brief. In an interrogatory concerning this issue, GNAPs was asked about the audit provision in its interconnection agreement with BellSouth, *and how the provision differs from the one proposed by Verizon.* GNAPs responded:

> Global objects to the need for such provision with Verizon as it is unnecessary. First, under the current rules, Global will not receive payment for in-bound ISP traffic from Verizon in Florida by virtue of the FCC's introduction of "caps" which are based at zero as the carriers have not exchanged traffic previously. Second, both parties maintain call data records, or CDRs, which provide the appropriate information. Global makes these available to Verizon on a monthly basis and will do so in Florida as well. Finally, Verizon will not pay Global

> for amounts it contests should there be a disagreement, it will be Global challenging Verizon for payment and not Verizon challenging Global. In sum, it is an unnecessary provision which provides the incumbent the opportunity to burden the limited resources of its competitors and potentially gain competitively sensitive information for no apparent reason. (EXH 1, p. 29)

In its brief, GNAPs argues that while Verizon's proposal allowing for audits to verify bills appears to be reasonable, it ignores two facts. These two facts are that Verizon already keeps computer records of call traffic exchanged between GNAPs and Verizon, and that both parties already verify bills on a monthly basis. (GNAPs BR at 27)

GNAPs' concern with allowing Verizon to audit its records is that a lot of the material contained in these records is competitively sensitive, and it would be prohibitively expensive for GNAPs to redact those records. GNAPs also believes that Verizon does not require GNAPs' information, since "it ignores the fact that Verizon already keeps computer records of call traffic exchanged between the parties, and that Verizon and GNAPs have in place already a practice of verifying billing records on a monthly basis." (GNAPs BR at 27)

While opposed to most of Verizon's proposed audit provisions, GNAPs is amenable to providing Verizon the traffic reports and Call Data Records Verizon finds necessary to verify billing. (GNAPs BR at 27)

VERIZON

Verizon witness Smith begins his direct testimony by highlighting the terms of Verizon's proposed audit provision. Highlights include:

- The purpose of the audit is to evaluate the accuracy of the audited party's bills.

- Only annual audits can take place except if "a previous audit found uncorrected net billing inaccuracies of at least $1,000,000 in favor of the audited party."

- An independent certified public accountant performs the audit. This accountant is acceptable to both parties and paid by the party requesting the audit.

- Confidentiality agreements are executed to protect the information disclosed to the accountant by the audited party.

A: The party requesting the audit pays for the audit. (TR 292-293)

In his direct testimony, Verizon witness Smith indicates that Verizon's proposed audit provisions allow parties to audit "books, records, facilities and systems for the purpose of evaluating the accuracy of the audited party's bills."(TR 292; emphasis removed) He believes that the audit provisions are necessary, in order to "verify the accuracy and appropriateness" of GNAPs' charges to Verizon. (TR 293)

In addressing GNAPs' claims that Verizon's audit provisions compromise GNAPs' confidential business information, the Verizon witness responds that the information is provided to an independent certified public accountant who is acceptable to both parties and is paid for by the party requesting the audit. Additionally, the auditor is required to sign a confidentiality agreement in order to protect the confidential information he will receive. (TR 294) Further, Verizon's proposed language only allows the independent accountant access to the records "'necessary to assess the accuracy of the Audited Party's bills.'" (TR 295; quoting Section 7.3 of Verizon's proposed interconnection agreement)

In order to avoid audits being requested without reasonable cause, Verizon's proposed contract language also requires that the party requesting the audit pay for the audit. (TR 295)

Witness Smith notes that audit provisions are included in over 99 percent of its agreements in Florida, and these provisions allow both parties to audit the other's books as they pertain to the services provided under the interconnection agreement. (TR 295)

Another issue concerning audits is the ability of the parties to audit each other's traffic data. Witness Smith indicates that traffic data is crucial in evaluating each other's bills, and Verizon's proposed provisions allow Verizon to audit GNAPs' traffic data and GNAPs to audit Verizon's traffic data. (TR 295-296)

A final issue raised regarding audits concerns whether Verizon should be allowed to audit GNAPs' use of Verizon's operations support systems (OSS). Witness Smith believes that this provision is necessary to prevent a CLEC from impairing Verizon's OSS. To avoid any impairment, Verizon would like the ability to audit GNAPs' use of Verizon's OSS in order to ensure that GNAPs is using the OSS in the intended manner and to ensure reliable OSS access for all CLECs. (TR 296)

ANALYSIS

Staff agrees with Verizon that an audit provision is necessary to evaluate the accuracy of the audited party's bills. Staff believes Verizon's proposed provisions that limit the frequency of audits are reasonable. Staff also believes that providing the information only to an independent certified public accountant, subject to a non-disclosure agreement, mitigates GNAPs' concerns over Verizon receiving sensitive information. In order to limit abuse of the audit provision, staff also agrees with Verizon's proposal that the party requesting the audit pays for the audit. Finally, for the purpose of preventing impairment of its OSS, Verizon should be allowed to audit GNAPs' use of Verizon's OSS.

In its brief, GNAPs argues that Verizon's proposal ignores the fact that Verizon already keeps computer records of call traffic exchanged between GNAPs and Verizon, and that both parties already verify bills on a monthly basis. However, there is nothing in the record to support these statements; therefore, staff does not believe this to be useful in making this recommendation.

CONCLUSION

Staff recommends that Verizon's proposed audit requirements be included in the interconnection agreement. These audit requirements are narrow enough in scope and frequency to allow for the evaluation of billing accuracy and contain provisions that prevent access to the confidential business information of the audited party.

ISSUE 10: When should a change in law be implemented?

RECOMMENDATION: A change in law should be implemented when it takes effect. **(FORDHAM)**

POSITION OF THE PARTIES

GNAPS: A change in law should be implemented when there is a final adjudicatory determination which materially affects the terms and/or conditions under which the parties exchange traffic.

VERIZON: A change in law should be implemented when its takes effect. Global's proposed contract language would ignore the law, including effective orders of the Commission, FCC, and the courts. Verizon's proposal requires only that the parties follow the law.

STAFF ANALYSIS: GNAPs' position is that a law should not take effect until tested and ruled upon by a commission or judicial body. Staff believes that proposal is inconsistent with logic, as well as any known practice within our legal system. Laws are controlling from the time of the effective date. Many laws are never challenged but are, nevertheless, controlling as of the effective date. Many are challenged upon implementation and, at the discretion of the hearing official or judge, may or may not be stayed pending resolution.

Staff is more persuaded by the position of Verizon in this issue. That position is that a change in law should be implemented when its takes effect. Staff also notes that Verizon's position has been consistently upheld in various other states[10]. (BR at 38) GNAPs was unable to cite an instance where its position has been upheld, and makes no argument in support of its position. Accordingly, staff recommends the adoption of Verizon's position on this issue.

[10] Verizon/Global DE Award at 41; Verizon/Global VT Order at 47; Verizon/Global MA Order at 72; Verizon/Global RI Decision at 40-41; Verizon/Global NH Decision at 41; Verizon/Global OH Panel Report at 25; Verizon/Global IL Decision at 24-25; Verizon/Global NY Order at 21-22; Verizon/Global CA FAR at 95.

ISSUE 11: Should GNAPs be permitted access to network elements that have not already been ordered unbundled?

RECOMMENDATION: No, GNAPs should only be permitted access to network elements that have already been ordered unbundled. **(BARRETT/MUSKOVAC)**

POSITION OF THE PARTIES

GNAPs: GNAPs wants some protections that as a customer it will (a) have access to the same technologies deployed in Verizon's network and (b) Verizon will not deploy new technologies which will affect GNAPs' service quality without adequate advanced notice and testing.

VERIZON: No. Global must interconnect with Verizon's existing network. Verizon has no obligation to (i) freeze its network in time, (ii) build a different network to suit Global, or (iii) commit to unbundle technologies that are not yet deployed, as Global's proposal would require.

STAFF ANALYSIS: Issue 11 is a forward-looking issue that contemplates whether Verizon should permit GNAPs access to network elements that have not already been ordered unbundled. This issue was raised by Verizon as a supplemental issue in responding to GNAPs' Petition for Arbitration.

Staff would note that there is no testimony for this issue; rather, there is only a small amount of information derived from discovery responses and the briefs of each party.

PARTIES' ARGUMENTS:

GNAPS

GNAPs witness Selwyn did not address this issue in direct or rebuttal testimony. In responding to a staff interrogatory, GNAPs contends that Issue 11 "is a legal issue and no factual testimony is required." (EXH 1, p. 5) In responding to a deposition question, however, witness Selwyn asserts that he is generally aware of Verizon's position on the topic from a national level, though not on a more local level (i.e., Verizon-Florida level). According to witness Selwyn, on a national level

> [Verizon's position] is that it is not obligated to unbundle its network beyond the . . . designated elements that the FCC has specified or required to be unbundled. (EXH 5, p. 13)

According to a GNAPs response to a staff interrogatory, Verizon did not serve it with any discovery on Issue 11. (EXH 1, p. 6) GNAPs asserts that it has not sought access to network elements that have not already been ordered unbundled. (EXH 1, p. 7)

VERIZON

Like GNAPs, Issue 11 was not addressed by any Verizon witness. Only a small amount of discovery concerned Issue 11. An interrogatory response from Verizon explains its position on the issue:

> Verizon raised Issue 11 as a supplemental issue in its Response to Global's [i.e., GNAPs] Petition for Arbitration, because Global proposed contract language in the parties' General Terms and Conditions Attachment that would require Verizon to make 'next generation technology' available to Global . . . Although Global has never responded to Verizon's supplemental issue or otherwise explained its proposed contract language . . ., Global has never withdrawn its proposed contract language. (Footnotes omitted) (EXH 1, p. 3)

In responding to a deposition question, Verizon witness D'Amico asserts that he is generally aware that Verizon is under no obligation to unbundle anything not explicitly identified, ordered, and required to be unbundled. (EXH 4, p. 23) In its brief, Verizon asserts that GNAPs' proposal "interjects vague and ambiguous language that could give it access to 'all' of Verizon's 'next generation technology'." (Verizon BR at 39) The Verizon brief makes clear that Verizon's unbundling obligation applies to Verizon's existing network. Verizon contends it has no obligation to (i) freeze its network in time, (ii) build a different network to suit GNAPs, or (iii) commit to unbundle technologies that are not yet deployed, as GNAPs' proposal would require, according to the company's Brief. (Verizon BR at 38)

ANALYSIS

As referenced earlier, Verizon raised Issue 11 in response to some language proposed by GNAPs. Because there is no testimony for this issue from either side, staff has only a minimal amount of evidence to consider. Based on the wording of the issue, staff believes the emphasis is on the "network elements that have not already been ordered unbundled." In staff's opinion, there appears to be a consensus between the parties that GNAPs is entitled to access to the network elements that have already been ordered unbundled.

As in prior issues in this post-hearing arbitration recommendation, staff is perplexed that Verizon and GNAPs could not have resolved this matter without Commission involvement. Verizon contends it was the party that raised the issue initially, and it alleges that GNAPs never explained (or defended) the language that Verizon found objectionable. Staff is puzzled why Verizon did not serve any discovery on GNAPs to pursue an explanation. (EXH 1, p. 6) Staff believes that had this avenue been explored, it is conceivable that a stipulation between the two parties could have been reached.

In staff's view, neither party makes a strong case, though Verizon makes the stronger of the two. Staff believes GNAPs was deficient in not explaining the terms that spawned Issue 11; the GNAPs' brief contained no clarity on this matter either. Staff agrees with Verizon that the language at issue could be interpreted as being "vague and ambiguous." In its brief, Verizon maintains that it has prevailed in numerous other states where Verizon and GNAPs have filed arbitration proceedings, contending that GNAPs has "given the [Florida] Commission no reason . . . to be the first to adopt its extreme proposal." (Verizon BR at 39) For the above reasons, staff does not believe that GNAPs' proposal should be adopted.

CONCLUSION

Staff believes that GNAPs should only be permitted access to network elements that have already been ordered unbundled.

ISSUE 12: Should this docket be closed?

RECOMMENDATION: No. This Docket should remain open pending submission and final approval of the parties' Interconnection Agreement. **(FORDHAM)**

STAFF ANALYSIS: This Docket should remain open pending submission and final approval of the parties' Interconnection Agreement.