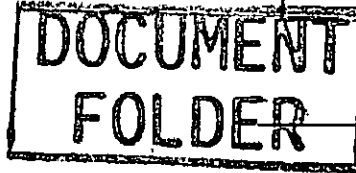
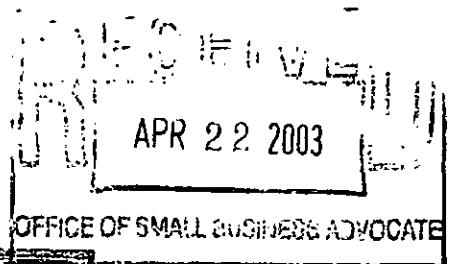


ACKNOWLEDGEMENT OF RECEIPT & ACCEPTANCE OF SERVICE

AND NOW, to wit, this _____ day of _____, 20__,

the undersigned, as evidenced by execution hereof, acknowledges receipt, and accepts service of an Opinion and Order an official Commission document entered, issued, or otherwise promulgated under date of April 18, 2003 at Docket No. A-310814F7000 on behalf of:

CAROL F PENNINGTON ESQ
SMALL BUSINESS ADVOCATE
COMMERCE BLDG SUITE 1102
300 NORTH SECOND STREET
HARRISBURG PA 17101
MESSENGER



Signature

Kindly sign and date this acceptance of service and acknowledgement of receipt, and, return the same for filing to:

SECRETARY'S BUREAU RECORD RETENTION
PA PUBLIC UTILITY COMMISSION
KEYSTONE BUILDING 2ND FLOOR
400 NORTH STREET
Harrisburg, PA 17105-3265

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03 APR 25 PM 12:46
P.U.C.
SECRETARY'S BUREAU

ACKNOWLEDGEMENT OF RECEIPT & ACCEPTANCE OF SERVICE

AND NOW, to wit, this 18 day of April, 2003

the undersigned, as evidenced by execution hereof, acknowledges receipt, and accepts service of an Opinion and Order an official Commission document entered, issued, or otherwise promulgated under date of April 18, 2003 at Docket No. A-310814F7000 on behalf of:

CHARLES HOFFMAN DIRECTOR
PA PUC OFFICE OF TRIAL STAFF
PO BOX 3265
HARRISBURG PA 17105-3265
MESSENGER

Paul A. Edwards
Signature

Kindly sign and date this acceptance of service and acknowledgement of receipt, and, return the same for filing to:

SECRETARY'S BUREAU RECORD RETENTION
PA PUBLIC UTILITY COMMISSION
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400 NORTH STREET
Harrisburg, PA 17105-3265

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OFFICE OF TRIAL STAFF

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PA PUC
SECRETARY'S BUREAU

RECEIVED

MAY 05 2003



Suzan DeBusk Paiva
Assistant General Counsel
Law Department

PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

Verizon Pennsylvania Inc.
1717 Arch Street, 32NW
Philadelphia, PA 19103

May 5, 2003

Tel: (215) 963-6068
Fax: (215) 563-2658
Suzan.D.Paiva@Verizon.com

Via Overnight Express Mail
James J. McNulty, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street
Harrisburg, PA 17120

ORIGINAL

Re: In Re: Petition of US LEC of Pennsylvania, Inc. for
Arbitration with Verizon Pennsylvania Inc. Pursuant to
Section 252(b) of the Telecommunications Act of 1996
Docket No. A-310814F7000

DOCUMENT

Dear Secretary McNulty:

Enclosed please find an original and three (3) copies of Verizon Pennsylvania Inc.'s Petition for Clarification of one aspect of the Commission's Opinion and Order entered April 18, 2003 in the above-captioned proceeding.

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

Sincerely yours,

Suzan D. Paiva/sdp
Suzan DeBusk Paiva

JAC/slb
Enc.

KJR

cc: Aaron Panner, Esquire
Attached Certificate of Service

CERTIFICATE OF SERVICE

ORIGINAL

I, Suzan DeBusk Paiva, hereby certify that I have this day served a true copy of Verizon Pennsylvania Inc.'s Petition for Clarification, in the matter of Petition for Arbitration Filed by US LEC of Pennsylvania Inc., upon the participants listed below in accordance with the requirements of 52 Pa. Code Section 1.54 (related to service by a participant) and 1.55 (related to service upon attorneys).

Dated at Philadelphia, Pennsylvania, this 5th day of May, 2003.

VIA UPS OVERNIGHT DELIVERY

Michael L. Shor
Swidler Berlin Shereff Friedman, LLP
3000 K Street, NW, Suite 300
Washington, DC 20007


Linda C. Smith, Esquire
Dilworth Paxson LLP
305 North Front Street
Suite 403
Harrisburg, PA 17101-1236

Honorable Louis G. Cocheres
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street, 2nd Floor
Harrisburg, PA 17120

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MAY 05 2003

PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU


Suzan DeBusk Paiva, Esquire
VERIZON PENNSYLVANIA INC.
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(215) 963-6068

ORIGINAL

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MAY 05 2003

BEFORE THE PENNSYLVANIA PUBLIC UTILITY COMMISSION PA PUBLIC UTILITY COMMISSION SECRETARY'S BUREAU

In Re: Petition of US LEC of Pennsylvania Inc. for Arbitration with Verizon Pennsylvania Inc. Pursuant to Section 252(b) of the Telecommunications Act of 1996 : Docket No. A-310814F7000

DOCKETED MAY 20 2003

PETITION OF VERIZON PENNSYLVANIA INC. FOR CLARIFICATION

Verizon Pennsylvania Inc. ("Verizon PA"), pursuant to 52 Pa. Code § 5.572, respectfully requests clarification of one aspect of the Commission's Opinion and Order ("Order") entered April 18, 2003, in the above-captioned proceeding.

DOCUMENT

Specifically, the Commission should clarify that its conclusion to adopt US LEC's proposed language for Issue 1 in this arbitration does not permit US LEC to designate a Point of Interconnection ("POI") that is not on Verizon PA's network. Although Verizon PA believes the Commission intended to comply with the FCC's binding regulations on this issue, which specify that the point of interconnection must be "within the incumbent LEC's network," 47 C.F.R. § 51.305(a)(2), US LEC's proposed language, if incorporated without modification, would leave the contract unclear on this issue. Moreover, US LEC's language would impose financial responsibility on Verizon PA to transport traffic past the POI, contrary to this Commission's own conclusion elsewhere in the Order, which is consistent with federal law, that such responsibility ends at the POI.

ARGUMENT

Under Federal Law, the Point of Interconnection Must Be on Verizon PA's Network

Although this Commission ordered that US LEC's proposed language for Issue 1 be made part of the parties' interconnection agreement, see Order at 77, it apparently did not review

that language for compliance with federal law. Among other things, US LEC's language provides that "US LEC will designate the POI(s) at any technically feasible location within the LATA." US LEC Best & Final Offer at 3. This language is inconsistent with the FCC's regulations, which provides that the POI must be "within the incumbent LEC's network." 47 C.F.R. § 51.305(a)(2) ("An incumbent LEC shall provide . . . interconnection . . . [a]t any technically feasible point within the incumbent LEC's network."); see Verizon PA Exceptions at 34 n.32. In the *GNAPs Order*,¹ decided at the same public meeting as the Order in this proceeding, the Commission recognized that, under federal law, a CLEC "is permitted to interconnect at any technically feasible point *within Verizon's network*." *GNAPs Order* at 8 (emphasis added; internal quotation marks omitted). The parties' current interconnection architecture is consistent with federal law — US LEC's witness testified that the POIs are currently at Verizon PA's tandem switches, which are on Verizon PA's network, see Hearing Transcript ("Tr.") 20:6-11, 38:14-17, 40:3-7 — and the text of the interconnection agreement should be as well. The Commission should clarify that the US LEC contract language it adopted for Issue 1 must be modified to recognize that the POI must be on Verizon PA's network, consistent with this Commission's holding in the *GNAPs Order* and with binding federal law.

US LEC's language violates federal law in a second manner. That language entitles US LEC to designate an Interconnection Point ("IP") that "is not at the same location as [its] POI" and to require Verizon PA to be "financially responsible for transporting its originating traffic to [US LEC's] IP." US LEC Best & Final Offer at 3. US LEC has consistently claimed that its IP is at its switch. See, e.g., Montano Direct at 5:8-9; Tr. 39:25. US LEC's language, therefore,

¹ Opinion and Order, *Petition of Global NAPs South, Inc. for Arbitration Pursuant to 47 U.S.C. § 252(b) of Interconnection Rates, Terms and Conditions with Verizon Pennsylvania Inc.*, Docket No. A-310771F7000 (Pa. PUC entered Apr. 21, 2003) ("*GNAPs Order*").

would require Verizon PA to bear the costs of transporting its originating traffic past the POI and on to US LEC's switch. As Verizon PA explained in its exceptions, "[a]ny obligation Verizon has under federal law to transport traffic unquestionably ends at the POI." Verizon PA Exceptions at 33-34. Indeed, this Commission concluded that the FCC's rules "place[] the financial obligation on originating carriers to deliver traffic to the point where it is 'handed off' to the terminating carrier" — that point is the POI. Order at 15; *see id.* at 18 ("under current [FCC] rules, originating carriers must bear the cost of transporting traffic *to the POI* of the terminating carrier") (emphasis added); *GNAPs Order* at 10 ("the physical POI . . . should, under current law, be the same point at which financial responsibility passes for the Parties"). Despite agreeing with Verizon PA on this point, the Commission adopted US LEC's proposed language that would leave the contract unclear on this point, in a manner that violates federal law. The Commission should clarify that the contract must provide that Verizon PA's financial responsibility to transport traffic to US LEC ends at the POI, and that the US LEC language it adopted for Issue 1 must be modified in that regard.

CONCLUSION

For the foregoing reasons, the Commission should clarify its decision and require that the parties' interconnection agreement specify that the POI(s) must be on Verizon PA's network and that Verizon PA's financial obligation for transporting its originating traffic ends at the POI.

Respectfully submitted,



Julia A. Conover
Suzan DeBusk Paiva

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Philadelphia, PA 19103
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Scott H. Angstreich
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May 5, 2003

Attorneys for Verizon Pennsylvania Inc.

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mwffleming@swidlaw.com

May 5, 2003

VIA OVERNIGHT MAIL

Secretary James P. McNulty
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street
Harrisburg, Pennsylvania 17120

DOCUMENT


Re: Petition of US LEC of Pennsylvania Inc. for Arbitration
with Verizon-Pennsylvania, Docket No. A-310814F7000

Dear Mr. McNulty:

Enclosed please find an original and nine (9) copies of the Petition for Reconsideration of US LEC of Pennsylvania Inc. for filing in the above-captioned case.

An extra copy of this filing has been provided to be stamped and returned. Please do not hesitate to contact the undersigned if you have any questions regarding this matter.

Sincerely,


Michael W. Fleming

cc: Michael Shor, Esq.
Linda Smith, Esq.
Attached Service List

RECEIVED

MAY 05 2003

PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

126

ORIGINAL
RECEIVED

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

MAY 05 2003

PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

In Re: Petition of US LEC of Pennsylvania
Inc. for Arbitration with Verizon-Pennsylvania
Inc. Pursuant to Section 252(b) of the
Telecommunications Act of 1996

Docket No. A-310814F7000

DOCKETED

MAY 30 2003

PETITION FOR RECONSIDERATION OF US LEC OF PENNSYLVANIA INC.

US LEC of Pennsylvania Inc. ("US LEC"), by its undersigned counsel, and pursuant to 52 Pa. Code § 5.572, respectfully requests that the Commission reconsider the determinations made in connection with Issue 3 in its April 18, 2003 Opinion and Order ("Order") in the above-referenced proceeding.

I. INTRODUCTION

DOCUMENT

US LEC generally supports the Commission's thorough decision in this complex matter regarding unresolved issues arising between US LEC and Verizon Pennsylvania Inc. ("Verizon") in connection with the establishment of an interconnection agreement. With regard to Issue 3, however, US LEC urges the Commission to reconsider its decision and adopt the recommendation made by ALJ Cocheres. Issue 3 addresses whether Verizon is obligated to pay reciprocal compensation for calls terminated to "Voice Information Service Providers." US LEC submits that the Commission erred in finding that such calls are not eligible for reciprocal compensation, and requests that it reverse its determination and rule that US LEC is entitled to reciprocal compensation for the termination of traffic that Verizon has defined as "Voice Information Services" traffic.

As discussed herein, the Commission findings challenged by US LEC fall squarely under the standards for reconsideration set forth in *Duick v. Pennsylvania Gas & Water Co.*, 56 Pa.

P.U.C. 553 (1982) because there are issues “which appear to have been overlooked or not addressed by the Commission” and which support reconsideration.¹ A request for reconsideration “may properly raise any matter designed to convince [the Commission] that [it] should exercise [its] discretion to amend or rescind a prior Order, in whole or in part.”² For the reasons explained herein, US LEC urges the Commission to reconsider its decision on this issue and adopt the findings made by ALJ Cocheres.

II. THE COMMISSION SHOULD CLARIFY THE RESULT REGARDING ISSUE 3 AND ADOPT ALJ COCHERES’ RECOMMENDATION (APPLICATION OF RECIPROCAL COMPENSATION OBLIGATIONS TO “VOICE INFORMATION SERVICES TRAFFIC”)

Issue 3 concerns whether US LEC is entitled to be paid reciprocal compensation for terminating “Voice Information Services” traffic. Although ALJ Cocheres found that reciprocal compensation is properly payable on such traffic, the Commission reversed this determination and accepted Verizon’s position that “Voice Information Services” traffic should not be subject to reciprocal compensation obligations. The Commission premised this ruling on a finding that “Voice Information Services” fits the definition of “Information Access” traffic, which is excluded from reciprocal compensation obligations.³ US LEC submits that the Commission erred in finding that “Voice Information Services” traffic should not be subject to reciprocal compensation obligations and should reconsider its ruling for the reasons stated below.

In finding that “Voice Information Services” fits the definition of “Information Access” traffic, the Commission relied on ALJ Cocheres’s determination that “Voice Information

¹ *Duick v. Pennsylvania Gas & Water Co.*, 56 Pa. P.U.C. 553, 559 (1982).

² *Re DQE, Inc.*, 186 P.U.R. 4th 66, *3 (1998).

³ Order at 21.

Services fit squarely within the meaning of Information Access as used in *United States v. AT&T*, 552 F.Supp. 131, 229 (D.DC 1982) (“*Modified Final Judgment*”).⁴ Although ALJ Cocheres nonetheless rejected Verizon’s proposal and recommended that US LEC’s position be adopted, the Commission disagreed based on its readings of 47 C.F.R. § 51.701(b)(1), the *ISP Remand Order*, and 47 U.S.C. § 153 (20). US LEC submits that the Commission should reconsider its findings for several reasons. Because these issues were overlooked by the Commission in its Order, US LEC’s request meets the *Duick* standard for reconsideration of the Commission’s findings.

First, the ALJ’s Decision and the Commission’s ruling is not even consistent with what Verizon requested. Verizon clarified in its Post-Hearing Brief that it only sought a ruling that when Voice Information Services traffic was transmitted on an exchange access basis, it would not be subject to reciprocal compensation obligations. Verizon Brief at 25-26.⁵ Further, when Voice Information Services traffic was transmitted to an “information services provider,” it would not be subject to reciprocal compensation obligations under the FCC’s *ISP Remand Order*. *Id.* Thus, a call to an entity that does not provide access to stored information—such as a “a vocal discussion program open to the public” on a chatline platform—is not at issue in this definition because it could never fit the definition of “information services.” At a minimum, the Commission should clarify that, as actually requested by Verizon, “Voice Information Services” traffic is not subject to reciprocal compensation when it is used to access stored information or when it is provided on an exchange access basis.

⁴ Order at 20.

⁵ Verizon also sought clarification, in essence, that voice information service traffic provided on a foreign-exchange basis was also not subject to reciprocal compensation. Verizon Brief at 27. US LEC asserts that the discussion of foreign-exchange traffic elsewhere in the Order addresses this point.

Second, even if “Voice Information Services” traffic was directed to a provider of stored information, it should be eligible for reciprocal compensation. The “Voice Information Services” traffic at issue in the present case is not the same type of traffic that was deemed “Information Access” in the *Modified Final Judgment* relied upon by the Commission. In fact, ALJ Cocheres deemed Verizon’s unilateral definition of “Voice Information Services” “redundant and outdated.”⁶ As US LEC explained in its Brief, “Information Access” is defined in the *Modified Final Judgment* applies to services provided *by a BOC*. Because US LEC is not a BOC, the definition of “Information Access” from the MFJ can never apply to US LEC.

Third, US LEC’s position is consistent with the recent Wireline Bureau decision, which rejected Verizon’s attempt to define its reciprocal compensation obligations in the same manner as it does here, by excluding “interstate or intrastate Exchange Access, Information Access, or exchange services for Exchange Access or Information Access.”⁷ Verizon’s position that all Section 251(g) traffic should be automatically excluded from its reciprocal compensation obligations was rejected in that case, and the same result should obtain here. Although the Commission acknowledged that both parties addressed the Wireline Bureau decision,⁸ it did not evaluate whether the US LEC or Verizon analysis of the decision was correct. This is an issue which the Commission appears to have overlooked, and US LEC submits that it presents justification for the Commission to revisit its ruling at this juncture.

⁶ Recommended Decision at 19.

⁷ *Petition of WorldCom, Inc. Pursuant to Section 252(e)(5) of the Communications Act for Preemption of the Jurisdiction of the Virginia State Corporation Commission Regarding Interconnection Disputes with Verizon Virginia, Inc., and for Expedited Arbitration*, CC Docket No. 00-218, Memorandum Opinion and Order, ¶¶ 257 (Wireline Comp. Bureau, rel. July 17, 2002) (“*FCC Arbitration Order*”).

⁸ Order at 19, 21.

Fourth, the Commission did not address the merits of US LEC's position that Verizon's proposal is defective because there is no technically feasible, cost-effective way to segregate "Voice Information Services" traffic from other traffic that the Commission deems eligible for reciprocal compensation.⁹ In fact, Verizon has not succeeded in challenging US LEC's position that there is no factual or legal basis to exclude "Voice Information Services" traffic from the scope of the parties' reciprocal compensation obligations, and the Commission should adopt ALJ Cocheres' finding that US LEC's proposal should be implemented in lieu of Verizon's proposal.

III. CONCLUSION

For the reasons set forth herein, US LEC urges the Commission to adopt ALJ Cocheres' recommendation regarding Issue 3, and to find that reciprocal compensation is owed for calls terminating to Voice Information Service Providers. ALJ Cocheres' finding should be adopted because it (a) implements the statutory rights and duties imposed by the Act, as interpreted by the FCC and this Commission, (b) maintains widespread and long-held customs and practices within the telecommunications industry, and (c) advances and encourages the development of true competition in the market for local exchange services.

Respectfully submitted,

⁹ Order at 19. See US LEC Brief at 28-29.

Michael L. Shor
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(202) 424-7645 (facsimile)

Dated: May 5, 2003


CERTIFICATE OF SERVICE

I hereby certify that on the 5th day of May, 2003, true and correct copies of the Petition for Reconsideration of US LEC of Pennsylvania Inc. were served upon the participants listed below via electronic and overnight mail.

Julia A. Conover, Esquire
VERIZON PENNSYLVANIA, INC.
1717 Arch Street 32 NW
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VERIZON PENNSYLVANIA, INC.
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Aaron M. Panner
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(202) 326-7900
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Michael W. Fleming

COMMONWEALTH OF PENNSYLVANIA

BTL

DATE: May 8, 2003
SUBJECT: A-310814F7000
TO: Office of Special Assistants
FROM: James J. McNulty, Secretary *J.J.*

DOCKETED
MAY 30 2003

DOCUMENT

US LEC of Pennsylvania Inc.

Attached is a copy of a Petition for Reconsideration, filed by US LEC of Pennsylvania Inc. in connection with the above docketed proceeding.

This matter is assigned to your Office for appropriate action.

Attachment

was

COMMONWEALTH OF PENNSYLVANIA

DATE: May 9, 2003

SUBJECT: A-310814F7000

TO: Office of Special Assistants

FROM: James J. McNulty, Secretary *JJ*

DOCKETED
MAY 20 2003
DOCUMENT

KJR

US LEC of Pennsylvania Inc.

Attached is a copy of a Petition for Clarification, filed by Verizon Pennsylvania Inc. in connection with the above docketed proceeding.

This matter is assigned to your Office for appropriate action.

Attachment

was

ORIGINAL

KELLOGG, HUBER, HANSEN, TODD & EVANS, P.L.L.C.

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May 15, 2003

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MAY 15 2003

PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

VIA OVERNIGHT DELIVERY

Secretary James P. McNulty
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street
Harrisburg, PA 17120

DOCUMENT FOLDER

BTL

Re: *Petition of US LEC of Pennsylvania Inc. for Arbitration with Verizon
Pennsylvania Inc. Pursuant to Section 252(b) of the Telecommunications Act
of 1996; Docket No. A-310814F7000*

Dear Secretary McNulty:

Please find enclosed for filing three (3) copies of the Opposition of Verizon Pennsylvania Inc. to Petition for Reconsideration in the above-captioned proceeding. Also enclosed is one extra copy of the opposition. Please date-stamp and return the extra copy in the self-addressed, postage prepaid envelope.

If you have any questions, please call me at 202-326-7921.

Sincerely,



Aaron M. Panner

cc: Service List

ORIGINAL

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MAY 15 2003

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

In Re: Petition of US LEC of Pennsylvania : Docket No. A-310814F7000
Inc. for Arbitration with Verizon Pennsylvania :
Inc. Pursuant to Section 252(b) of the :
Telecommunications Act of 1996 :

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INDEXED
JUN 7 2003

**OPPOSITION OF VERIZON PENNSYLVANIA INC.
TO PETITION FOR RECONSIDERATION**

Verizon Pennsylvania Inc. ("Verizon PA"), pursuant to 52 Pa. Code § 5.572, respectfully opposes the Petition for Reconsideration filed by US LEC of Pennsylvania, Inc. on May 5, 2003, in the above-captioned proceeding.

US LEC's petition is limited to Issue 3, which addresses whether the parties have any obligation to pay reciprocal compensation on Voice Information Services traffic. The Commission correctly ruled that this question "turns on a determination as to whether Voice Information Services fits the definition of Information Access." Op. and Order at 21. And the Commission also correctly ruled that "Voice Information Services do indeed fall squarely within the definition of Information Access." *Id.* at 24. Accordingly, under the plain terms of the FCC's regulations and the negotiated language in the interconnection agreement, such traffic is not subject to reciprocal compensation. *See id.*

The contrary arguments that US LEC offers in its petition are without merit. First, US LEC argues that there may be traffic included in the definition of "Voice Information Services" that does not meet the definition of "information services" for purposes of the FCC's reciprocal compensation regulations. US LEC Pet. at 4. But that objection simply demonstrates that US LEC's position — that all Voice Information Services traffic is subject to reciprocal compensation because none of that traffic satisfies the definition of Information Access — has been fatally flawed from the beginning: US LEC belatedly concedes that Voice Information

Services traffic *does include* information services traffic that is not subject to reciprocal compensation under the FCC's regulations; that is what Verizon's proposed contract language is intended to ensure.

Second, US LEC reiterates its argument that information access, for purposes of the FCC's reciprocal compensation regulations, can include only traffic delivered by a Bell Operating Company. *Id.* at 5. That argument is flatly contrary to the terms of the *ISP Remand Order*, which held that "'information access' was meant to include *all* access traffic that was routed by a LEC 'to or from' providers of information services." *ISP Remand Order*¹ ¶ 44. Indeed, the determination that "information access" traffic includes traffic handled by all types of LECs – both incumbents and CLECs – was at the very heart of the *ISP Remand Order*, because it was fundamental to the FCC's determination that traffic bound for ISPs served by CLECs is information access and therefore not subject to reciprocal compensation. Notably, US LEC does not claim that any *other* type of information access traffic that it carries is subject to reciprocal compensation.

Third, US LEC attempts to rely on a bureau-level decision in a separate FCC arbitration proceeding (US LEC Pet. at 5), but that reliance is misplaced. As an initial matter, US LEC offers no *reason* for the Commission to follow that ruling, which is not an FCC order and therefore has no force as a statement of federal law. *See* Op. and Order at 17 (noting that Wireline Bureau determinations are "not conclusive upon this Commission"). In any event, that ruling dealt with a different issue: in that case, the parties disputed whether they would adopt a provision excluding all access traffic from the scope of their reciprocal compensation

¹ Order on Remand and Report and Order, *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996; Intercarrier Compensation for ISP-Bound Traffic*, 16 FCC Rcd 9151, *remanded*, *WorldCom, Inc. v. FCC*, 288 F.3d 429 (D.C. Cir. 2002), *cert. denied*, No. 02-980 (May 5, 2003) ("*ISP Remand Order*").

obligations. Here, the parties have *agreed* that “Reciprocal compensation shall not apply to interstate or intrastate Exchange Access, Information Access, or exchange services for Exchange Access or Information Access.” *See* US LEC Pet’n for Arbitration, Exh. B at 64, Interconnection Attachment, § 7.3.1 (filed Apr. 26, 2002). The *only* question here is whether Voice Information Services traffic may fall within the parties’ agreed exclusion for “interstate or intrastate Exchange Access, Information Access, or exchange services for Exchange Access or Information Access.” *Id.* Because there can be no serious dispute that it may, the Commission properly directed the parties to adopt Verizon’s proposed language.

Finally, US LEC argues that “there is no technically feasible, cost-effective way to segregate ‘Voice Information Services’ traffic from . . . traffic . . . eligible for reciprocal compensation.” US LEC Pet. at 6. In fact, because US LEC knows who its Voice Information Services customers are (if it has any), it can easily distinguish such traffic from traffic subject to reciprocal compensation based on the telephone numbers it assigns to those customers. *See generally* Verizon Br. at 34-35, 39-40 (filed Aug. 1, 2002). Verizon is fully prepared to work with US LEC to ensure that the parties’ legal obligations are efficiently implemented.

CONCLUSION

The Commission should deny US LEC's Petition for Reconsideration.

Respectfully submitted,



Julia A. Conover
Suzan DeBusk Paiva

Verizon Pennsylvania Inc.
1717 Arch Street, 32N
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Attorneys for Verizon Pennsylvania Inc.

May 15, 2003

RECEIVED

MAY 15 2003

PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

CERTIFICATE OF SERVICE

I hereby certify that, on this 15th day of May 2003, I caused copies of the Opposition of Verizon Pennsylvania Inc. to Petition for Reconsideration to be served on the following parties by electronic and overnight mail:

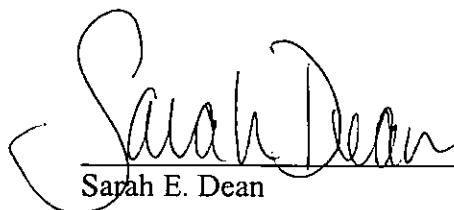
Pennsylvania Public Utility Commission

Hon. Louis Cocheres
Pennsylvania Public Utility Commission
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Harrisburg, PA 17120
Email: lcocheres@state.pa.us

US LEC of Pennsylvania, Inc.

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Tamar E. Finn
Michael Fleming
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Linda C. Smith, Esquire
Dilworth Paxson LLP
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Harrisburg, PA 17101-1236
Email: smithlc@dilworthlaw.com


Sarah E. Dean

RECEIVED

MAY 15 2003

PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

ORIGINAL



May 15, 2003

KJR

VIA HAND DELIVERY

James J. McNulty
Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street, 2nd Floor
Harrisburg, PA 17120

DOCUMENT
FOLDER

RECEIVED
03 MAY 15 PM 3:30
PA.P.U.C.
SECRETARY'S BUREAU

Re: *Petition of US LEC of Pennsylvania Inc. for Arbitration with Verizon Pennsylvania Inc. Pursuant to Section 252(b) of the Telecommunications Act of 1996, Docket No. A-310814F7000*

Dear Mr. McNulty:

I am writing on behalf of Verizon Pennsylvania Inc. and US LEC of Pennsylvania Inc. to jointly request an extension of the Commission's deadline for filing the final Interconnection Agreement conforming to the Commission's April 18, 2003 Order in this matter. Currently, the deadline is May 19, 2003 (30 days from entry of the order). However, on May 5, 2003 the parties each filed petitions for reconsideration (US LEC) or clarification (Verizon). The issues raised in these two petitions have complicated the parties' efforts to draft a conforming Interconnection Agreement.

Therefore, the parties jointly request that the Commission extend the deadline for filing the final Interconnection Agreement by two weeks, to June 2, 2003.

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

DOCKETED

JUL 22 2003

Very truly yours,

Suzan DeBusk Paiva
Suzan DeBusk Paiva *dyu*

Cc: Michael W. Fleming
Michael Shor
Linda Smith
Aaron M. Panner
Scott H. Angstreich

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DOCUMENT FOLDER

May 16, 2003

RECEIVED

MAY 16 2003

VIA OVERNIGHT MAIL

Secretary James P. McNulty
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street
Harrisburg, Pennsylvania 17120

PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

Re: Petition of US LEC of Pennsylvania Inc. for Arbitration
with Verizon-Pennsylvania, Docket No. A-310814F7000

Dear Mr. McNulty:

Enclosed please find an original and nine (9) copies of US LEC of Pennsylvania Inc.'s Answer to Verizon Petition for Clarification for filing in the above-captioned case.

An extra copy of this filing has been provided to be stamped and returned. Please do not hesitate to contact the undersigned if you have any questions regarding this matter.

Sincerely,



Michael W. Fleming

BTL

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MAY 16 2003

ORIGINAL

PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

DOCUMENT FOLDER

In Re: Petition of US LEC of Pennsylvania
Inc. for Arbitration with Verizon-Pennsylvania
Inc. Pursuant to Section 252(b) of the
Telecommunications Act of 1996

: Docket No. A-310814F7000

DOCKETED

JUN 8 2003

ANSWER TO VERIZON PETITION FOR CLARIFICATION

US LEC of Pennsylvania Inc. ("US LEC"), by its undersigned counsel, and pursuant to 52 Pa. Code § 5.572, submits the following answer to the Petition for Clarification of the Commission's April 18, 2003 Opinion and Order ("Order") served by Verizon Pennsylvania, Inc. ("Verizon") on May 6, 2003.

Verizon seeks clarification that US LEC's proposed language that was accepted by the Commission does not provide US LEC with greater rights to interconnection than those provided by regulations of the Federal Communications Commission ("FCC"). US LEC asserts that no clarification is necessary because US LEC is not seeking any rights greater than those provided under 47 C.F.R. § 51.305(a)(2) and already agreed to by the parties.

As US LEC stated previously,

As both of US LEC's witnesses testified, the Parties' current interconnection architecture is working and US LEC does not want to change it. Hoffmann Direct at 9; Tr. 95:16-18 (Montano Cross). Moreover, the architecture that the Parties are operating under is consistent with each Party's obligations under current law. Therefore, US LEC has proposed contract language that would permit the Parties to maintain their current network architecture under the successor agreement or, upon mutual agreement, alter it.

US LEC Post-Hearing Brief at 12. Verizon agrees that the current network arrangements comply with federal law: "the parties' current interconnection architecture is consistent with federal law — US LEC's witness testified that the POIs are currently at Verizon PA's tandem

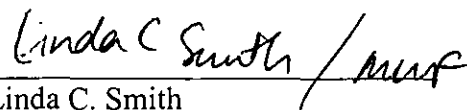
switches, which are on Verizon PA's network, *see* Hearing Transcript ("Tr.") 20:6-11, 38:14-17, 40:3-7." Verizon Petition at 2. US LEC is seeking nothing more than what it has already established with Verizon.

Verizon also asserts, however, that US LEC's proposed language would require Verizon "to bear the costs of transporting its originating traffic past the POI and on to US LEC's switch," *in violation of federal law*. Verizon Petition at 3. This characterization is not correct because Verizon is not transporting traffic "past the POI." As US LEC stated in its Post-Hearing Brief, "In the Philadelphia LATA, because the Parties have agreed that Verizon may establish a POI at US LEC's switch, Verizon brings its originating traffic over its own facilities to US LEC's network and compensates US LEC for terminating its traffic under Section 251(b)(5) and FCC Rules 51.701 and 51.703. Tr. 21:7-22:7, 23:14-19 (Hoffmann Cross). This arrangement could also be continued under US LEC's proposal." US LEC Post-Hearing Brief at 13. This arrangement in Philadelphia allows Verizon to provide direct trunking to US LEC's switch for traffic that Verizon customers originate, rather than route traffic through Verizon's tandem switch. Verizon continues to have the option to route traffic through its tandem switch and to the US LEC IP at the tandem switch. One source of Verizon's confusion may be that the transport facility from the Verizon tandem to the US LEC switch is provisioned by Verizon, at US LEC's request. Thus, the actual physical linking of the two networks occurs at the US LEC switch. Yet US LEC is financially responsible for the transport facility between the Verizon tandem switch and the US LEC switch, just as if US LEC provided that transport facility itself, or leased it from a party other than Verizon. If Verizon chooses not to send traffic to US LEC over that transport facility between the Verizon tandem and the US LEC switch, any alternative transport arrangement is solely Verizon's responsibility, not US LEC's. Adopting Verizon's view would

require US LEC to compensate Verizon for transport from the Verizon end office to the US LEC switch, a result squarely rejected by the Order. As the Order makes clear, Verizon has no right to demand that US LEC compensate Verizon for transport from Verizon's end offices to US LEC's switch.

Accordingly, the "clarification" requested by Verizon should be rejected. US LEC sought to maintain the status quo in its Best and Final Offer, and that is what the Commission awarded in the arbitration decision. Adopting Verizon's view would in fact reverse that award by requiring US LEC to compensate Verizon for transport for traffic that Verizon's customers originate. Verizon made these very same arguments at each step in the arbitration and the Commission wisely rejected them. Casting the same arguments as a request for "clarification" does not change this basic fact.

Respectfully submitted,



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Michael L. Shor
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US LEC Corp.
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Richard M. Rindler
Tamar E. Finn
Michael W. Fleming
SWIDLER BERLIN SHEREFF
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Washington, D.C. 20007
(202) 424-7775 (telephone)
(202) 424-7645 (facsimile)

Dated: May 16, 2003

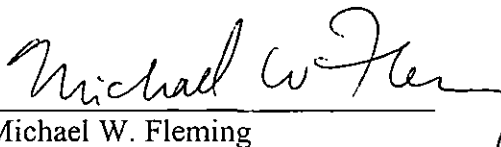
CERTIFICATE OF SERVICE

I hereby certify that on the 16th day of May 2003, true and correct copies of the Petition for Reconsideration of US LEC of Pennsylvania Inc. were served upon the participants listed below via electronic and overnight mail.

Julia A. Conover, Esquire
VERIZON PENNSYLVANIA, INC.
1717 Arch Street 32 NW
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Phone (215) 963-6001
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julia.a.conover@verizon.com

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Aaron M. Panner
Scott H. Angstreich
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Washington, D.C. 20026
(202) 326-7900
apanner@khhte.com


Michael W. Fleming

DILWORTH PAXSON LLP

LAW OFFICES

May 29, 2003

VIA HAND DELIVERY

James J. McNulty
Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street, 2nd Floor
Harrisburg, PA 17120

ORIGINAL

DOCKETED

JUL 15 2003

Re: *Petition of US LEC of Pennsylvania Inc. for Arbitration with Verizon Pennsylvania Inc. Pursuant to Section 252(b) of the Telecommunications Act of 1996*, Docket No. A-310814F7000

Dear Mr. McNulty:

KJR

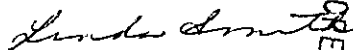
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I am writing on behalf of US LEC of Pennsylvania Inc. and Verizon Pennsylvania Inc. to jointly request an extension of the Commission's deadline for filing the final Interconnection Agreement conforming to the Commission's April 18, 2003 Order in this matter. On May 5, 2003 the parties each filed petitions for reconsideration (US LEC) or clarification (Verizon). The issues raised in these two petitions have complicated the parties' efforts to draft a conforming Interconnection Agreement. Under a previous agreement between the parties, as approved by the Commission on May 16, 2003, the current deadline for filing a conforming Agreement is June 2, 2003. The parties now request an extension of the Commission's deadline until the petitions for reconsideration and clarification are resolved.

Therefore, the parties jointly request that the Commission extend the deadline for filing the final Interconnection Agreement to thirty (30) days after the US LEC Petition for Reconsideration and the Verizon Petition for Clarification are resolved by the Commission.

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

Very truly yours,



Linda Smith

Cc: Russell Albert
Suzan DeBusk Paiva
Michael Shor
Aaron M. Panner

RECEIVED
03 MAY 29 PM 4:07
PA.P.U.C.
SECRETARY'S BUREAU

112 MARKET STREET • 8TH FLOOR • HARRISBURG PA 17101
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<p>1. REPORT DATE: April 2, 2003</p>	<p>2. BUREAU AGENDA NO. APR-2003-OSA-0078*</p>
<p>3. BUREAU: Office of Special Assistants</p>	<p style="font-size: 2em; opacity: 0.5;">DOCUMENT FOLDER</p>
<p>4. SECTION(S):</p>	
<p>6. APPROVED BY: Director: C.W. Davis 7-1827 Supervisor: R. H. Albert 7-8108</p>	<p>5. PUBLIC MEETING DATE: April 10, 2003</p>
<p>7. PERSONS IN CHARGE: R. Marinko 3-3930/A. Arnold Jr. 7-8032</p>	<p style="font-size: 2em; opacity: 0.5;">RECEIVED JUN 25 2003</p>
<p>8. DOCKET NO.: A-310814F7000</p>	

- 9. (a) CAPTION (abbreviate if more than 4 lines)**
(b) Short summary of history & facts, documents & briefs
(c) Recommendation

(a) Petition of US LEC of Pennsylvania, Inc. (US LEC) for Arbitration with Verizon Pennsylvania Inc. (Verizon) Pursuant to Section 252(b) of the Telecommunications Act of 1996

(b) On April 26, 2002, US LEC filed a Petition for Arbitration (Petition) pursuant to Section 252(b) of the Federal Telecommunications Act of 1996, 47 USC §252(b), and the Commission's *Implementation Orders*, to resolve certain disputed issues with Verizon for the purpose of establishing an Interconnection Agreement. By Recommended Decision (R.D.) issued September 17, 2002, presiding Administrative Law Judge (ALJ) Louis G. Cocheres recommended the disposition of various unresolved issues. Exceptions were filed by US LEC and Verizon.

(c) The Office of Special Assistants recommends that the Commission adopt a proposed draft Opinion and Order which modifies the Recommended Decision, in part, only to the extent consistent with the discussion contained in the draft Opinion and Order and adopts the Recommended Decision in all other respects.

Concurred in by: _____
 David Screven
 Law Bureau

- | | |
|---|---|
| <p>10. MOTION BY: Commissioner Wilson</p> <p>SECONDED: Commissioner Bloom</p> | <p>Commissioner Chm. Thomas - Yes
 Commissioner Fitzpatrick - Yes
 Commissioner Pizzigrilli - Yes</p> |
|---|---|

CONTENT OF MOTION: Postponement to Public Meeting of April 17, 2002 for the Commission's further consideration.

DILWORTH PAXSON LLP ORIGINAL
LAW OFFICES

DIRECT DIAL NUMBER:
(717) 236-4812

Linda C. Smith
LSMITH@DILWORTHLAW.COM

June 2, 2003

VIA HAND DELIVERY

James J. McNulty
Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street, 2nd Floor
Harrisburg, PA 17120

KJR

Re: Petition of US LEC of Pennsylvania Inc. for Arbitration with Verizon
Pennsylvania Inc. Pursuant to Section 252(b) of the Telecommunications Act of
1996, Docket No. A-310814F7000

Dear Mr. McNulty:

At the request of Russell Albert, Deputy Director of Office of Special Assistants,
Pennsylvania Public Utility Commission, I am writing to confirm that the Office of Special
Assistants has granted the joint request of US LEC of Pennsylvania Inc. and Verizon
Pennsylvania Inc. for an extension of the Commission's deadline for filing the final
Interconnection Agreement conforming to the Commission's April 18, 2003 Order in this matter.
The new deadline is thirty (30) days after the US LEC Petition for Reconsideration and the
Verizon Petition for Clarification in this proceeding are resolved by the Commission.

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

Very truly yours,

Linda C. Smith

Linda C. Smith

DOCKETED
JUN 19 2003

PA.P.U.C.
SECRETARY'S BUREAU

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cc: Russell Albert
Wanda Montano
Michael Shor
Michael W. Fleming
Aaron M. Panner
Scott H. Angstreich
Suzan DeBusk Paiva

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KELLOGG, HUBER, HANSEN, TODD & EVANS, P.L.L.C.

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June 6, 2003

ORIGINAL

KJR

VIA OVERNIGHT DELIVERY

Secretary James P. McNulty
Pennsylvania Public Utility Commission
P.O. Box 3265
Keystone Building, 3rd Floor
Harrisburg, PA 17101-3265

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PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

Re: *Petition of US LEC of Pennsylvania Inc. for Arbitration with Verizon
Pennsylvania Inc. Pursuant to Section 252(b) of the Telecommunications Act
of 1996; Docket No. A-310814F7000*

Dear Secretary McNulty:

I write to submit, as supplemental authority relevant to issues in the above-captioned proceeding, a decision of the Florida Public Service Commission ("FPSC") in the arbitration between US LEC of Florida, Inc. and Verizon Florida Inc.¹ The FPSC sided with Verizon on the two issues raised in Verizon's petition for clarification and US LEC's petition for reconsideration of this Commission's Order, released April 18, 2003. A copy of the FPSC decision unanimously approving its staff's recommendation, and the recommendation, are attached.

First, the FPSC adopted Verizon's position with respect to its motion for clarification of this Commission's decision as to the location of the Point of Interconnection ("POI") and the allocation of financial responsibility for transporting traffic exchanged between the parties. The FPSC held that "US LEC is permitted to select a single interconnection point (IP) per local access and transport area (LATA) . . . and to require Verizon to bear the financial responsibility to deliver its originating traffic to [that] IP, . . . as long as that IP is within Verizon's network."

¹ At an open meeting on June 3, 2003, the FPSC unanimously affirmed the recommendations of its staff with respect to the issues raised in that arbitration. See Vote Sheet, *Petition for Arbitration of Unresolved Issues in Negotiation of Interconnection Agreement with Verizon Florida Inc. by US LEC of Florida, Inc.*, Docket No. 020412-TP (Fla. PSC June 3, 2003), approving Memorandum, Docket No. 020412-TP (Fla. PSC filed May 22, 2003). The FPSC's written order in this proceeding is scheduled to be released on June 23, 2003. Verizon will provide the Commission with a copy of the order once it is released.

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KELLOGG, HUBER, HANSEN, TODD & EVANS, P.L.L.C.

Sec. McNulty

June 6, 2003

Page 2

Vote Sheet at 1 (emphasis added); *see* Memorandum at 13-15 (consistent with “the FCC’s rules and [the FPSC’s] prior ruling,” “US LEC’s POI is within Verizon’s network”). The FPSC thus confirmed that the POI must be on Verizon’s network and rejected US LEC’s claim that it should be able to designate an IP on US LEC’s network (at US LEC’s switch) and to require Verizon to bear the financial responsibility for transporting traffic to that point. *See* Verizon Petition for Clarification at 2-3.

Second, the FPSC rejected the position US LEC advances in its petition for reconsideration with respect to the question whether Voice Information Services traffic is subject to reciprocal compensation. The FPSC held that, although “US LEC is entitled to reciprocal compensation for terminating or delivering ‘Voice Information Services’ traffic[] when the call is to a service that provides a vocal discussion program open to the public,” “when the traffic is to a service that provides recorded voice announcement information, such traffic falls into the category of information access and is therefore *not subject to reciprocal compensation.*” Vote Sheet at 2 (emphasis added); *see* Memorandum at 24-26. The FPSC thus agreed with Verizon that Voice Information Services can be information access and that, where it is, reciprocal compensation is not due for such traffic.

If I can provide further information or clarification, please contact me at 202-326-7921.

Sincerely,

A handwritten signature in black ink, appearing to read "Aaron M. Panner". The signature is fluid and cursive, with a small mark at the end that could be initials or a flourish.

Aaron M. Panner

cc: Service List

FLORIDA PUBLIC SERVICE COMMISSION

VOTE SHEET

JUNE 3, 2003

RE: Docket No. 020412-TP - Petition for arbitration of unresolved issues in negotiation of interconnection agreement with Verizon Florida Inc. by US LEC of Florida Inc.

ISSUE 1: Is US LEC permitted to select a single interconnection point (IP) per local access and transport area (LATA), to select the interconnection method, and to require Verizon to bear the financial responsibility to deliver its originating traffic to the IP chosen by US LEC?

RECOMMENDATION: Yes. Staff recommends that US LEC is permitted to select a single interconnection point (IP) per local access and transport area (LATA), to select the interconnection method, and to require Verizon to bear the financial responsibility to deliver its originating traffic to the IP chosen by US LEC, as long as that IP is within Verizon's network.

APPROVED

DOCKETED
JUN 13 2003

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COMMISSIONERS ASSIGNED: Baez, Bradley, Davidson

COMMISSIONERS' SIGNATURES

MAJORITY

DISSENTING

Charles M. Davidson
Marta Baez
Rudy Bradley

REMARKS/DISSENTING COMMENTS:

DOCUMENT NUMBER-DATE
04929 JUN-3 03
FPSC-COMMISSION CLERK

VOTE SHEET

JUNE 3, 2003

Docket No. 020412-TP - Petition for arbitration of unresolved issues in negotiation of interconnection agreement with Verizon Florida Inc. by US LEC of Florida Inc.

(Continued from previous page)

ISSUE 2: If US LEC establishes its own collocation site at a Verizon end office, can Verizon request US LEC to designate that site as a US LEC IP and impose additional charges on US LEC if US LEC declines that request?

RECOMMENDATION: No. If US LEC establishes a collocation site at a Verizon end office, staff recommends that Verizon should not be permitted to require that US LEC designate that site as a US LEC IP and impose additional charges on US LEC if US LEC declines that request. However, Verizon should only be required to bear the financial responsibility to deliver its originating traffic to an IP chosen by US LEC, if that IP is on Verizon's network, within a LATA.

APPROVED

ISSUE 3: Is US LEC entitled to reciprocal compensation for terminating and/or delivering "Voice Information Services" traffic?

RECOMMENDATION: Yes. US LEC is entitled to reciprocal compensation for terminating or delivering "Voice Information Services" traffic, when the call is to a service that provides a vocal discussion program open to the public; however, when the traffic is to a service that provides recorded voice announcement information, such traffic falls into the category of information access and is therefore not subject to reciprocal compensation.

APPROVED

VOTE SHEET

JUNE 3, 2003

Docket No. 020412-TP - Petition for arbitration of unresolved issues in negotiation of interconnection agreement with Verizon Florida Inc. by US LEC of Florida Inc.

(Continued from previous page)

ISSUE 5: Should the term "terminating party" or the term "receiving party" be employed for the purpose of traffic measurement and billing over interconnection trunks?

RECOMMENDATION: Staff recommends that all references in the Agreement to a party that is terminating traffic should refer to that party as the "terminating party." Further, all references to the party "receiving" traffic or to the "receiving party" should refer instead to the party "terminating" traffic and to the "terminating party" with terms or notations added solely for purposes of clarification.

APPROVED

ISSUE 6: (A) Should the parties pay reciprocal compensation for calls that originate in one local calling area and are delivered to a customer located in a different local calling area, if the NXX of the called number is associated with the same local calling area as the NXX of the calling number?

(B) Should the originating carrier be able to charge originating access for the traffic described in Issue 6(A)?

RECOMMENDATION: (A) No. The parties should not pay reciprocal compensation for calls that originate in one local calling area and are delivered to a customer located in a different local calling area, if the NXX of the called number is associated with the same local calling area as the NXX of the calling number.

(B) Staff recommends that the originating carrier should be able to charge originating access on the traffic described in Issue 6(A). Staff recommends that this treatment should also apply to FX numbers.

APPROVED

VOTE SHEET

JUNE 3, 2003

Docket No. 020412-TP - Petition for arbitration of unresolved issues in negotiation of interconnection agreement with Verizon Florida Inc. by US LEC of Florida Inc.

(Continued from previous page)

ISSUE 7: What compensation framework should govern the parties' exchange of ISP-bound traffic in the event the interim compensation framework set forth in the FCC's Internet Order is vacated or reversed on appeal?

RECOMMENDATION: Staff recommends the parties' agreed upon change of law clause should govern the parties' obligations in the event the interim compensation framework set forth in the FCC's ISP Remand Order is vacated or reversed on appeal. Thus, the parties should renegotiate in good faith and amend their final interconnection agreement if the interim compensation framework for ISP-bound traffic is vacated or reversed on appeal.

APPROVED

ISSUE 8: Under what circumstances, if any, should tariffed charges which take effect after the agreement becomes effective take precedence over non-tariffed charges previously established in the agreement for the same or similar services or facilities?

RECOMMENDATION: Staff recommends non-tariffed charges must remain fixed for the term of the agreement, unless changed pursuant to a valid Commission order. If, during the term of the final interconnection agreement, Verizon seeks to assess a new tariffed rate, it must first enter into a negotiated amendment to the final interconnection agreement with US LEC.

APPROVED

VOTE SHEET

JUNE 3, 2003

Docket No. 020412-TP - Petition for arbitration of unresolved issues in negotiation of interconnection agreement with Verizon Florida Inc. by US LEC of Florida Inc.

(Continued from previous page)

ISSUE 9: Should this docket be closed?

RECOMMENDATION: No. The parties should be required to submit a signed agreement that complies with the Commission's decisions in this docket for approval within 30 days of issuance of the Commission's Order. This docket should remain open pending Commission approval of the final arbitrated agreement in accordance with Section 252 of the Telecommunications Act of 1996.

APPROVED

State of Florida



Public Service Commission
CAPITAL CIRCLE OFFICE CENTER • 2540 SHUMARD OAK BOULEVARD
TALLAHASSEE, FLORIDA 32399-0850

-M-E-M-O-R-A-N-D-U-M-

RECEIVED-FPSC
MAY 22 AM 11:41
COMMISSIONER
&
CLERK
JCA
AK

DATE: MAY 22, 2003

TO: DIRECTOR, DIVISION OF THE COMMISSION ADMINISTRATIVE SERVICES (BAYÓ)

FROM: DIVISION OF COMPETITIVE MARKETS & ENFORCEMENT (J-E BROWN) OFFICE OF THE GENERAL COUNSEL (TEITZMAN) AK AK

RE: DOCKET NO. 020412-TP - PETITION FOR ARBITRATION OF UNRESOLVED ISSUES IN NEGOTIATION OF INTERCONNECTION AGREEMENT WITH VERIZON FLORIDA INC. BY US LEC OF FLORIDA INC.

AGENDA: 06/03/03 - REGULAR AGENDA - POST-HEARING DECISION - PARTICIPATION IS LIMITED TO COMMISSIONERS AND STAFF

CRITICAL DATES: NONE

SPECIAL INSTRUCTIONS: NONE

FILE NAME AND LOCATION: S:\PSC\CMP\WP\020412.RCM

DOCUMENT NUMBER- DATE

04616 MAY 22 '03

FPSC-COMMISSION CLERK

TABLE OF CONTENTS

ACRONYMS -3-

CASE BACKGROUND -5-

ISSUE 1: Is US LEC permitted to select a single interconnection point (IP) per local access and transport area (LATA), to select the interconnection method, and to require Verizon to bear the financial responsibility to deliver its originating traffic to the IP chosen by US LEC? . . -6-

ISSUE 2: If US LEC establishes its own collocation site at a Verizon end office, can Verizon request US LEC to designate that site as a US LEC IP and impose additional charges on US LEC if US LEC declines that request? -16-

ISSUE 3: Is US LEC entitled to reciprocal compensation for terminating and/or delivering "Voice Information Services" traffic? -21-

ISSUE 5: Should the term "terminating party" or the term "receiving party" be employed for the purpose of traffic measurement and billing over interconnection trunks? -27-

ISSUE 6: (A) Should the parties pay reciprocal compensation for calls that originate in one local calling area and are delivered to a customer located in a different local calling area, if the NXX of the called number is associated with the same local calling area as the NXX of the calling number? -32-

(B) Should the originating carrier be able to charge originating access for the traffic described in Issue 6(A)? -32-

ISSUE 7: What compensation framework should govern the parties' exchange of ISP-bound traffic in the event the interim compensation framework set forth in the FCC's Internet Order is vacated or reversed on appeal? -43-

ISSUE 8: Under what circumstances, if any, should tariffed charges which take effect after the agreement becomes effective, take precedence over non-tariffed charges previously established in the agreement for the same or similar services or facilities? -47-

ISSUE 9: Should this docket be closed? -51-

ACRONYMS

LIST OF ACRONYMS AND ABBREVIATIONS USED IN THE RECOMMENDATION

ALEC	Alternative Local Exchange Company
BOC	Bell Operating Company
BR	Brief
CFR	Code of Federal Regulations
CLEC	Competitive Local Exchange Carrier
CO	Central Office
COID	Company Identification
DN	Docket Number
EXH	Exhibit
FCC	Federal Communications Commission
GRIP	Geographically Relevant Interconnection Point
GTEFL	General Telephone and Electronics of Florida
ID	Identification
ILEC	Incumbent Local Exchange Company
IP	Interconnection Point
ISP	Internet Service Provider
IXC	Interexchange carrier
LATA	Local Access and Transport Area
LEC	Local Exchange Company
No.	Number
NPA	Numbering Plan Area
NXX	The first 3 digits of a 7 digit local phone number that identifies the specific telephone company CO which serves that number.
POI	Point of Interconnection
PSC	Public Service Commission

DOCKET NO. 020412-TP
DATE: May 22, 2003

RBOC	Regional Bell Operating Company
TR	Transcript
VGRIP	Virtual Geographically Relevant Interconnection Point

DOCKET NO. 020412-TP
DATE: May 22, 2003

CASE BACKGROUND

On May 10, 2002, US LEC of Florida Inc. (US LEC) petitioned the Commission to arbitrate certain unresolved terms and conditions of an interconnection agreement with Verizon Florida Inc. (Verizon). Verizon filed a response and the matter was set for hearing. At the issue identification meeting, 9 issues were identified by the parties to be arbitrated. Prior to the administrative hearing, the parties resolved one issue.

The administrative hearing was held on February 6, 2003. At the administrative hearing the parties agreed to stipulate into the record all prefiled testimony and waive their rights to cross-examination. This is staff's recommendation on the unresolved issues: 1, 2, 3, 5, 6a, 6b, 7, 8, and 9.

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ISSUE 1: Is US LEC permitted to select a single interconnection point (IP) per local access and transport area (LATA), to select the interconnection method, and to require Verizon to bear the financial responsibility to deliver its originating traffic to the IP chosen by US LEC?

RECOMMENDATION: Yes. Staff recommends that US LEC is permitted to select a single interconnection point (IP) per local access and transport area (LATA), to select the interconnection method, and to require Verizon to bear the financial responsibility to deliver its originating traffic to the IP chosen by US LEC, as long as that IP is within Verizon's network. (BROWN)

POSITION OF THE PARTIES:

US LEC: Pursuant to state and federal law, US LEC has the right to choose a single IP per LATA at any technically feasible point and each originating carrier must bear the cost of delivering its originating traffic to the IP selected by US LEC.

VERIZON: US LEC's proposal, which would require Verizon to bear the cost of transporting traffic to a point on US LEC's network, violates federal law and the Commission's decisions, and should be rejected. Either Verizon's initial proposal or its current proposal, each of which complies with federal law, should be adopted.

STAFF ANALYSIS: This issue addresses whether US LEC is permitted to elect a single interconnection point (IP) per local access and transport area (LATA), to select the interconnection method, and to require Verizon to bear the financial responsibility to deliver its originating traffic to the IP chosen by US LEC.

Arguments

Staff believes that a brief description of US LEC's current network architecture in the Tampa LATA and of Verizon's Virtual Geographically Relevant Interconnection Points ("VGRIP") proposal, is appropriate. Staff notes that under Verizon's defined terms, the physical point at which the parties physically connect is called a point of interconnection (POI) and billing points that distinguish the financial responsibility of each party for transporting traffic are called Interconnection Points (IPs). (Montano TR 10) Further, staff notes that although US LEC witness Montano argues that the terms POI and IP are synonymous and interchangeable, US LEC is familiar with Verizon's terms and is willing to use them, so long as the resulting obligations remain consistent with FCC rules that govern interconnection between ALECs and ILECs. (TR 10-11) US LEC witness Montano states that US LEC has one switch in Florida; it is located in Verizon's service territory in the Tampa area. The US LEC switch currently serves the

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Tampa LATA and numerous local calling areas within that LATA. US LEC has established Points of Interconnection (POIs) at each Verizon Access Tandem where US LEC has been assigned NXX codes and provides local exchange services to its end users. (TR 11-12) In describing US LEC's current network architecture in the Tampa LATA US LEC witness Hoffmann adds:

US LEC delivers its originating traffic to the Verizon-IPs via its point-to-point circuits that connect US LEC's switch to Verizon's tandems. Additionally, US LEC has agreed that where it delivers at least 200,000 minutes of use per month to a Verizon end office, it will deliver such traffic to that end office via direct end office trunks it purchases from Verizon, or via a third party transport provider. Similarly, Verizon is financially responsible for delivering its originating traffic to the US LEC-IP. It is my understanding that Verizon has three tandems in the Tampa LATA, all of which are located within the same building, which is one-third of one mile from US LEC's switch. US LEC has established POIs at two of those tandems where US LEC has numbers and has been assigned NXX codes. US LEC purchases an OC-48 entrance facility from Verizon as its method of interconnection to those tandems.

After accepting Verizon South's traffic at the POIs, US LEC transports that traffic over the same OC-48 entrance facility back to US LEC's switch and bills Verizon a non-distance sensitive entrance facility charge for providing that transport. (TR 81)

US LEC witness Montano believes that US LEC has the right to maintain its current interconnection method in the Tampa LATA. (TR 23)

Staff notes that the testimony of Verizon witness D'Amico was adopted by Verizon witness Munsell. (TR 108) Verizon witness Munsell claims that the interconnection language initially proposed by Verizon is a compromise because the VGRIP plan mitigates only some of the transport cost; however, it does enable Verizon to deliver its traffic to US LEC at a more central location. (TR 162-163) Witness Munsell states that "[u]nder VGRIP, Verizon may request that the ALEC establish a POI at a collocation site in each Verizon tandem wire center where the ALEC chooses to assign telephone numbers. That POI would serve as the ALEC's IP under VGRIP." (TR 161-162) Witness Munsell defines a point where the ILEC and ALEC physically interconnect their respective networks. To exchange traffic, two carriers' networks must be physically linked; the point of that physical linkage is the POI. (TR 161) He adds that an IP, on the other hand, is the place in the network at which one local exchange carrier hands over financial

responsibility for traffic to another local exchange carrier.
(Munsell TR 161)

Verizon witness Munsell maintains that a POI and an IP may be at the same place but do not have to be. (TR 161) Witness Munsell contends that under VGRIP, if Verizon only operates one tandem in a LATA, then Verizon may designate additional VGRIP locations, such as host end office wire centers. In addition, either Party may designate an ALEC collocation site at any Verizon wire center as the ALEC IP for traffic originating from that end office. (TR 162)

Verizon witness Munsell opines that under Verizon's VGRIP proposal, Verizon would incur more than its share of the transport cost, but it would be able to deliver its traffic to the ALECs at a more central location. (TR 162) He reasons his belief by stating that:

Verizon would be responsible for the costs of hauling this traffic from the Verizon customer to the designated Verizon VGRIP tandem wire center or end office wire center where the ALEC is collocated, even though that location may be beyond the local calling area of the originating customer. The ALEC is then responsible for delivering the call from this central location to the ALEC customer. If an ALEC elects not to collocate and establish a POI/IP at the VGRIP locations, Verizon proposes that the end office serving the Verizon customer who places the call will act as the "virtual IP." Although Verizon will then transport this traffic from the Verizon customer to the ALEC-designated location, the ALEC will be financially responsible for the transport from the "virtual IP" to the ALEC POI. (TR 162)

Verizon witness Munsell believes that Verizon should not have to continue to subsidize US LEC's costs of interconnection or network design choices. (TR 160) Witness Munsell opines that "if US LEC chooses to locate only one point of interconnection ("POI") in a LATA, it should be financially responsible for hauling the Verizon originated call to its distant POI." (TR 160)

While it is evident to staff that the crux of the dispute between the parties deals with the designation and quantity of the US LEC Interconnection Points (IPs) in the LATA, the remaining focus is on three contentious questions, for which each party has an answer. (TR 79-80) The first question is whether US LEC is permitted to select a single interconnection point per LATA. Based on a review of Verizon's proposal, US LEC witness Montano believes that Verizon wants the right to designate the IP or to require US LEC to designate additional IPs even if US LEC has already designated its IP in the Tampa LATA. (TR 14) However, US LEC witness Montano contends that Verizon's position is inconsistent

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with FCC rules and that US LEC is entitled to select the point(s) of interconnection between the parties' networks. (TR 14) Witness Montano asserts:

The Act and the FCC recognize that new entrants, such as US LEC, must be able to determine the most efficient location for the exchange of traffic. The Act grants ALECs, not Verizon, the right to select the POI/default IP. Under 47 U.S.C. § 251(c)(2)(B), Verizon must provide interconnection at any technically feasible point selected by US LEC. (TR 15)

Witness Montano notes that the fact that the parties have already interconnected at US LEC's requested POI(s) and single IP in the Tampa LATA is evidence that US LEC's current interconnection architecture is technically feasible. (TR 16)

Second, the parties ask this Commission to decide whether US LEC is permitted to select the method of interconnection. US LEC witness Montano believes that Verizon wants to designate collocation as the method US LEC must use to interconnect with Verizon; however, US LEC witness Montano contends that this position is also inconsistent with federal regulations, whereby pursuant to Section 251(c)(2), US LEC is entitled to select a technically feasible entrance facility or other method of interconnection that will be used to establish the physical IP. (TR 14,16) Witness Montano states that US LEC is not currently collocated at any Verizon office in any LATA in Florida and unlike Verizon, US LEC does not wish to change its current method of interconnecting with Verizon. (TR 16) Witness Montano explains Verizon's proposal and how it might constrain US LEC's network design:

Under Verizon's proposed contract language, Verizon wants US LEC to interconnect through collocation at Verizon's tandems, and to establish a physical IP at any other collocation arrangement US LEC may establish at a Verizon end office, or pay for Verizon's originating tandem switching costs and all of Verizon's transport costs, beginning at the Verizon end office where the call originates. These so-called "options" require US LEC to mirror Verizon's legacy network architecture (either physically or financially), which may not be the most efficient forward-looking architecture for an entrant deploying a new network, and therefore constitutes a barrier to entry. (TR 17)

The third question the parties want this Commission to resolve is whether US LEC can require Verizon to bear the financial responsibility to deliver its originating traffic to the IP chosen by US LEC. US LEC witness Montano believes that according to

Verizon's Virtual Geographically Relevant Interconnection Points ("VGRIP") proposal, if US LEC fails to establish the physical IPs requested by Verizon, then Verizon wants to penalize US LEC by imposing transport charges for the delivery of Verizon's originating traffic, from the Verizon end office to US LEC's IP. (TR 14) Witness Montano contends that charging US LEC for transporting Verizon's originating traffic within the local calling area violates FCC rules and that under current FCC rules, the originating carrier bears the cost of transporting traffic to its point of interconnection with the terminating carrier. (TR 18,19)

Verizon witness Munsell's testimony focuses on two points: First, explaining the Virtual Geographically Relevant Interconnection Point proposal; second, explaining why, if US LEC chooses to locate only one point of interconnection in a LATA, US LEC should be financially responsible for transporting the Verizon-originated call to US LEC's distant POI. (TR 163-170) Initially, Verizon witness Munsell discusses the nuances of Verizon's VGRIP proposal, set forth in section 7.1.1 of the Interconnection Attachment of the parties' proposed agreement. (TR 160-163) According to that section, US LEC is allowed to choose the location of its POI(s) and is provided three options for the establishment of IPs.¹ First, if US LEC established a POI at a collocation site at a Verizon tandem wire center in a multi-tandem LATA, and accepted Verizon's originated traffic at that point, US LEC could designate that site as an IP.² Second, if US LEC decided to collocate at a Verizon end office, Verizon may request that this collocation site function as both a POI and an IP for the local calling area where that end office is located.³ Third, if US LEC chooses not to establish a POI at either of the above locations, the end office serving the Verizon customer who places the call acts as a virtual IP, as though US LEC had elected to establish a collocation site at that location.⁴ Any reciprocal compensation due to US LEC for this call would be reduced by the transport and switching costs Verizon incurs in transporting this traffic from the virtual IP to US LEC's POI. Therefore, under the agreement proposed by Verizon, US LEC is permitted to select a single interconnection point (IP) per LATA and to choose an interconnection method, although its choices are limited by the options provided in VGRIP.⁵

¹ Verizon Interconnection Attachment, §7.1.1.

² See Verizon Interconnection Attachment, § 7.1.1.1.

³ See id. § 7.1.1.2.

⁴ See id § 7.1.1.3

⁵ Verizon Interconnection Attachment, §7.1.1.

Verizon witness Munsell believes that under US LEC's proposal, US LEC attempts to have Verizon bear costs that are actually caused by US LEC forcing Verizon to make network architecture decisions for the benefit of US LEC and not for Verizon and its customers. (TR 160) Witness Munsell contends that the main premise behind US LEC's network architecture position is that Verizon should be financially responsible for US LEC's interconnection choices. (TR 160-161)

Further, witness Munsell testifies that he believes that US LEC's proposed network architecture would qualify as a "technically feasible but expensive" form of interconnection, which under federal law would require US LEC to ". . . bear the cost of that interconnection, including a reasonable profit. . . ." ⁶ because US LEC's proposal would require Verizon to incur costs for which it would not receive compensation. (TR 170) Conversely, witness Munsell contends that Verizon's VGRIP proposal would enable Verizon to receive fair compensation for the transport functions that it provides US LEC. (TR 173) US LEC witness Montano responds to this subject in her Rebuttal Testimony.

In her rebuttal testimony, witness Montano points out that in its generic reciprocal compensation order the Commission specifically rejected the argument made by Verizon ". . . that a point of interconnection and an interconnection point are separate entities because the distinction lacks any discernable [sic] authority." ⁷ (TR 55) Witness Montano adds that the Commission instead ruled 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." (TR 55)

US LEC witness Montano infers that this Commission's decisions in its Reciprocal Compensation Order ⁸ regarding point of interconnection designation, originating carrier's obligations, and originating carrier's responsibilities are binding in this matter. Witness Montano states that the Reciprocal Compensation Order was issued in a generic proceeding that was opened by the Commission to establish guidelines for all carriers that interconnect in Florida. (TR 56) Witness Montano believes that the Commission's decision supports US LEC's position that Verizon is required to bear the

⁶ See Local Competition Order, 11 FCC RCD at 15603, ¶ 199.

⁷ See Order No. PSC-02-1248-FOF-TP, p.25.

⁸ Order No. PSC-02-1248-FOF-TP, issued September 10, 2002, in DN 000075-TP, In Re: Investigation into appropriate methods to compensate carriers for exchange of traffic subject to Section 251 of the Telecommunications Act of 1996, (Reciprocal Compensation Order)

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cost of delivering its originating traffic to the POI selected by US LEC, and to compensate US LEC for the transport and termination functions it performs. (TR 56-57)

In response to Verizon's argument that it may require a separate IP where the ALEC requests an "expensive" form of interconnection, US LEC witness Montano states that she does not believe that this position is viable. Furthermore, she adds, ". . . to the extent that there is any validity to Verizon's 'expensive' interconnection argument, which appears doubtful, my understanding is that Verizon would be required to support its position with cost studies demonstrating that US LEC's single IP per LATA is 'expensive'." (TR 57) In conclusion, witness Montano contends that US LEC's present network architecture is more consistent with current Commission precedent and FCC rules than Verizon's VGRIP proposal. (TR 61)

US LEC witness Hoffmann does not believe Verizon's virtual IP proposal is a compromise. He counters that under Verizon's proposal, US LEC would be forced to bear the cost of transporting both parties' originating traffic if US LEC declines Verizon's "request" to establish collocated physical IPs, thus shifting all of Verizon's financial responsibility to US LEC. (TR 98)

Witness Hoffmann claims that contrary to Verizon witness Munsell's assertions, Verizon is today aggregating and delivering its traffic to US LEC at a central location, at the US LEC switch. (TR 102) US LEC witness Hoffmann believes that Verizon witness Munsell's testimony indicates that ". . . he does not equate 'central locations' with 'single locations'. Rather, by 'central location,' what he really means is at Verizon's tandem switches; via collocation no less!" (TR 103) Further, witness Hoffman believes that Verizon's costs are de minimis, and not significant. (TR 105) He states that US LEC only charges a non-distance sensitive entrance facility rate to carry Verizon's originating traffic back to US LEC's switch. (TR 105-106)

US LEC witness Hoffman contends that the bottom line is that through VGRIPs, Verizon would force US LEC to choose between one of two equally unacceptable options: US LEC can either establish a POI at a collocation site at a Verizon tandem wire center in a multi-tandem LATA, and accept Verizon's originated traffic at that point, or if US LEC decided to collocate at a Verizon end office, Verizon may request that this collocation site function as both a POI and an IP for the local calling area where that end office is located. (TR 104) In conclusion, witness Hoffmann offers as a compromise that US LEC is willing to allow Verizon to deliver its traffic to US LEC at POIs US LEC has established at Verizon tandems via entrance facilities, provided that (1) US LEC does not have to change its established method of interconnection at Verizon's tandems, and (2) Verizon continues to compensate US LEC for a non-

distance sensitive entrance facility, at the rate contained in Verizon's own state access tariff, to transport Verizon's traffic from the POI to US LEC's switch. (TR 103-104)

According to "option three" of Verizon's proposal, if an ALEC elects not to collocate and establish a POI/IP at the VGRIP location, Verizon proposes that the end office serving the Verizon customer who places the call will act as the "virtual IP." Although Verizon will then transport this traffic from the Verizon customer to the ALEC-designated location, the ALEC will be financially responsible for the transport from the "virtual IP" to the ALEC POI. (Munsell TR 162) Verizon witness Munsell agrees with US LEC witness Hoffman that under "option three" US LEC must bear all of the costs of transporting a call from the originating end office to US LEC's chosen IP. (TR 109) Witness Munsell states that under "option three" US LEC must bear the costs of transporting traffic within the local calling area, calculated using the unbundled network element rate in the parties' agreement. (TR 109) Thus, VGRIP is a compromise proposal that provides US LEC with options based on the network architecture that it finds more advantageous. (TR 109) He adds that under "option one," where US LEC finds it cost-justified to establish a geographically relevant IP at a Verizon tandem, Verizon can incur more than its share of the transport cost, because Verizon will be responsible for the costs of hauling its traffic from Verizon customers to the geographically relevant IP, even though the IP may be located beyond the Verizon local calling area. (Munsell TR 109)

Verizon witness Munsell concludes that it is Verizon's position that this Commission's decision in the Sprint Arbitration Order⁹ is consistent with FCC rules; however, because of its generic nature, he acknowledges that this Commission's recent decision in the Reciprocal Compensation Order is binding. However, he notes that Verizon has sought reconsideration of the decision.¹⁰

Analysis

Staff notes that this issue was addressed by the Commission in the recent generic reciprocal compensation proceedings Docket No. 000075-TP. Staff believes that no new facts or viable arguments have been presented in this proceeding to merit a change from the

⁹ Order No. PSC-01-1095-FOF-TP, issued May 8, 2001, in DN 000828-TP, In Re: Petition of Sprint Communications Company Limited Partnership for arbitration of certain unresolved terms and conditions of a proposed renewal of current interconnection agreement with BellSouth Telecommunications, Inc. (Sprint Arbitration Order) pp 58-63.

¹⁰ Reconsideration was denied by this Commission in Order No. PSC-03-0059-FOF-TP on . However, Verizon and other parties have appealed the Commission's decision.

Commission's decisions in the generic docket. Accordingly, staff believes the recommendation for this issue should be consistent with the decision made in this Commission's Reciprocal Compensation Order.

In order for US LEC and Verizon to exchange traffic between their respective customers, they must interconnect their networks as required by Section 251(c)(2) of the Act. The physical points at which they connect are called Points of Interconnection or "POIs" under Verizon's defined terms. In contrast, the billing points that distinguish the financial responsibility of each Party for transporting traffic are called Interconnection Points or "IPs" using Verizon's terms.

Under the parties' current interconnection architecture, US LEC has elected to have one switch in Florida, located in Verizon's service territory in the Tampa area. This switch currently serves the Tampa LATA and numerous local calling areas within that LATA. US LEC has also chosen to establish POIs at each Verizon Access Tandem where US LEC has been assigned NXX codes and provides local exchange services to its end users. (TR 11-12) Staff believes that the parties' current method of interconnection is appropriate and in compliance with FCC rules and this Commission's prior ruling, as long as US LEC's POI is within Verizon's network. According to the FCC's current rules, the originating carrier is responsible for the cost of delivering its calls to the point of interconnection with the co-carrier; recovery of the cost of the facilities used to deliver this traffic to the POI is the originating carrier's responsibility. The originating carrier recovers the cost of these facilities through the rates it charges its own customers for making calls.¹¹ This sentiment was echoed by this Commission in its Reciprocal Compensation Order.¹²

This Commission came to two additional conclusions with regard to this issue in its Reciprocal Compensation Order.¹³ First, this Commission found 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. Second, this Commission found that an originating carrier is precluded by FCC rules from charging a terminating carrier for the cost of transport, or for the

¹¹ TSR Wireless, LLC v. US West Communications Inc., File Nos. E-98-13, E-98-15, E-98-16, E-98-17, E-98-18m Memorandum Opinion and Order, FCC 00-194, ¶34 (rel. June 1, 2000) ("TSR Wireless"), aff'd, Quest Corp. et al. v. FCC, et al., 252 F.3d 462 (D.C. Cir 2001)

¹² See Order No. PSC-02-1248-FOF-TP, p.25.

¹³ See Id. pp. 25 and 26.

facilities used to transport the carrier's originating traffic, from its source to the point(s) of interconnection in a LATA. These rules require an originating carrier to compensate the terminating carrier for transport and termination of traffic through intercarrier compensation.

Although staff acknowledges that Verizon indicates that US LEC's selected interconnection points are "technically feasible but expensive," staff agrees with US LEC witness Montano that it is incumbent on Verizon to provide support for this claim. Verizon has not provided any such support.¹⁴ (TR 60) Consequently, staff was not persuaded by Verizon's testimony on this matter. (TR 170-173, Verizon BR at 3-4)

Staff believes that the recommendations for this issue should mirror the Commission's rulings made in the Reciprocal Compensation Order and the subsequent Order Denying Reconsideration of the Reciprocal Compensation Order.¹⁵ Staff believes that no new facts have been presented to this Commission by the parties. Therefore, staff recommends that US LEC should be permitted to select a single interconnection point (IP) per LATA, to select the interconnection method, and to require Verizon to bear the financial responsibility of delivering its originating traffic to the IP chosen by US LEC, as long as that IP is within Verizon's network.

CONCLUSION

Staff recommends that US LEC is permitted to select a single interconnection point (IP) per local access and transport area (LATA), to select the interconnection method, and to require Verizon to bear the financial responsibility to deliver its originating traffic to the IP chosen by US LEC, as long as that IP is within Verizon's network.

¹⁴ See EXH 7, p.20.

¹⁵ Order No. PSC-03-0059-FOF-TP, issued January 8, 2003, in DN 000075-TP, denying reconsideration of the Reciprocal Compensation Order. (Order Denying Reconsideration of the Reciprocal Compensation Order)

ISSUE 2: If US LEC establishes its own collocation site at a Verizon end office, can Verizon request US LEC to designate that site as a US LEC IP and impose additional charges on US LEC if US LEC declines that request?

RECOMMENDATION: No. If US LEC establishes a collocation site at a Verizon end office, staff recommends that Verizon should not be permitted to require that US LEC designate that site as a US LEC IP and impose additional charges on US LEC if US LEC declines that request. However, Verizon should only be required to bear the financial responsibility to deliver its originating traffic to an IP chosen by US LEC, if that IP is on Verizon's network, within a LATA. (BROWN)

POSITION OF THE PARTIES:

US LEC: Under 47 U.S.C. § 251(c)(2)(B), Verizon must provide US LEC interconnection at any technically feasible point selected by US LEC. Therefore, Verizon cannot require US LEC either to designate a site as a US LEC IP, including US LEC's own collocation site, or pay additional charges.

VERIZON: The Commission need not resolve this issue, which is entirely hypothetical and is moot if the Commission rejects Verizon's VGRIP proposal. In any event, US LEC's concerns are based on a misreading of the provision at issue.

STAFF ANALYSIS:

This issue addresses whether Verizon can require US LEC to designate a US LEC collocation site at a Verizon end office as a US LEC IP, and impose additional charges on US LEC if US LEC declines that request.

Arguments

Based on the testimony of the parties, coupled with the parties' acknowledgment of the relevant and binding decisions made by this Commission in its Reciprocal Compensation Order, staff is puzzled that the parties have not agreed to remove this issue from consideration by this Commission in this docket. US LEC witness Montano objects to Verizon's requirement that US LEC establish an IP via collocation for two reasons. First, US LEC witness Montano states that US LEC does not use collocation as its method of interconnection with Verizon. (TR 16) Witness Montano affirms that US LEC is not collocated at any Verizon office in Florida, nor does US LEC wish to change its method of interconnecting with Verizon. (TR 16)

Second, US LEC witness Montano believes that US LEC's right to select an entrance facility or other method of interconnection is

granted by Section 251(c)(2) of the Act, which permits US LEC to select any technically feasible method of interconnection that will be used to establish the physical IP. (TR 16-17) US LEC witness Montano contends that Verizon's proposed contract language requires US LEC to interconnect through collocation at Verizon's tandems, establish a physical IP at a collocation arrangement US LEC may establish at a Verizon end office, or pay for Verizon's originating tandem switching costs and all of Verizon's transport costs, beginning at the Verizon end office where calls originate. (TR 17) Witness Montano states that ". . . this portion of Verizon's VGRIP proposal is a penalty that has not been sanctioned by the Commission, and Verizon should be prohibited from imposing it." (TR 17)

US LEC witness Montano points out that under current FCC rules, the originating telecommunication carrier bears the costs of transporting traffic to its point of interconnection with the terminating carrier; thus, the POI serves as the IP. (TR 19) US LEC witness Montano believes that Verizon's obligation to deliver its originating traffic to US LEC's IP is not conditioned on US LEC establishing the collocated IPs Verizon is trying to require through Verizon's contract proposals. (TR 19) Consequently, witness Montano believes that the Commission should find that US LEC has the right to maintain its chosen IP(s) in each LATA and, at US LEC's option, its current interconnection method. (TR 23)

Staff notes that the testimony of Verizon witness D'Amico was adopted by Verizon witness Munsell. (TR 108) Verizon witness Munsell believes that Verizon's Virtual Geographically Relevant Interconnection Point ("VGRIP") proposal is consistent with federal law. (TR 160) Witness Munsell states that under Verizon's proposal, ". . . if US LEC chooses to locate only one point of interconnection("POI") in a LATA, it should be financially responsible for hauling the Verizon-originated call to its distant POI." (TR 160) Verizon witness Munsell believes that a POI is different from an Interconnection Point("IP"). (TR 161) He elaborates:

A POI is where the ILEC and ALEC physically interconnect their respective networks. To exchange traffic, two carriers' networks must be physically linked; the point of that physical linkage is the POI. An IP, on the other hand, is the place in the network at which one local exchange carrier hands over financial responsibility for traffic to another local exchange carrier. A POI and an IP may be at the same place but do not have to be. (Munsell TR 161)

Verizon witness Munsell contends that pursuant to Verizon's proposal, Verizon is financially responsible for delivering its traffic to US LEC's IP. Once Verizon transports traffic

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originating on its network to US LEC's IP, then US LEC takes over financial responsibility for delivering the traffic to its customer. (TR 163)

Witness Munsell believes that Verizon's VGRIP proposal, which is found in the Interconnection Attachment of US LEC's petition for arbitration in Sections 7.1.1.1, 7.1.1.2, and 7.1.1.3, mirrors Sprint's proposal in the Sprint Arbitration Order, which this Commission determined was in compliance with the 1996 Act and the FCC's rules implementing the Act. (TR 163) Verizon witness Munsell claims that under VGRIP, Verizon may request that the ALEC establish a POI at a collocation site in each Verizon tandem wire center where the ALEC chooses to assign telephone numbers. (TR 161-162) He adds:

That POI would serve as the ALEC's IP under VGRIP. If Verizon only operates one tandem in a LATA, then Verizon may designate additional VGRIP locations, such as host end office wire centers. In addition, either may designate an ALEC collocation site at any Verizon wire center as the ALEC IP for traffic originating from that end office.

If an ALEC elects not to collocate and establish a POI/IP at the VGRIP location, Verizon proposes that the end office serving the Verizon customer who places the call will act as the "virtual IP." Although Verizon will then transport this traffic from the Verizon customer to the ALEC-designated location, the ALEC will be financially responsible for the transport from the "virtual IP" to the ALEC POI. (Munsell TR 162)

Verizon witness Munsell does not believe that Verizon's proposal in the Interconnection Attachment grants Verizon the power to change US LEC's network architecture at Verizon's sole discretion. (TR 173) Witness Munsell maintains that Verizon's VGRIP proposal allows Verizon to request that US LEC establish POI/IPs at a collocation site at either a Verizon tandem or a Verizon end office; however, US LEC remains free to meet VGRIP's requirements through the establishment of virtual IPs, which does not require US LEC to change its network architecture. (TR 173-174)

Verizon witness Munsell notes that any dispute about Verizon's VGRIP proposal with regard to collocation is entirely hypothetical because ". . . US LEC admits that it does not currently collocate with Verizon. . . ." and this issue only applies when an ALEC has established a collocation arrangement in a Verizon end office. (TR 174) Witness Munsell believes that unless US LEC decides to change its network architecture, this issue will not affect it in any way. (TR 174)

In response, US LEC witness Montano contends that US LEC's position to continue operating using their existing network interconnection architecture is more consistent with current Commission precedent and FCC rules than Verizon's VGRIP proposal. (TR 61) Consequently, US LEC witness Montano believes that the Commission should adopt US LEC's proposal with regard to Issue 2. (TR 61)

Verizon witness Munsell maintains that Verizon's VGRIP proposal is consistent with this Commission's decision in the Sprint Arbitration Order and therefore should be adopted by this Commission. (TR 110) However, referring to the Reciprocal Compensation Order later in his testimony, witness Munsell acknowledges that in a more recent decision, this Commission held that "an originating carrier is precluded by FCC rules from charging a terminating carrier for the costs of transport, or for facilities used to transport the originating carrier's traffic from its source to the point(s) of interconnection in a LATA," which witness Munsell believes is contrary to this Commission's decision in the Sprint Arbitration Order.¹⁶ (TR 113-114) Verizon witness Munsell claims that in reaching its generic decision this Commission did not discuss the Sprint Arbitration Order; thus, Verizon sought and has been denied reconsideration of this Commission's decision in Order No. PSC-02-1248-FOF-TP. (TR 114) Consequently, in its brief, Verizon has offered this later decision as an alternative to Verizon's VGRIP proposal. (Verizon BR at 5)

Verizon indicates in its brief that Verizon's alternative proposal does not contain a counterpart to Interconnection Attachment section 7.1.1.2. (BR at 7) If this section is adopted by this Commission, it would permit Verizon to request US LEC to designate as a US LEC IP, any collocation site US LEC establishes at a Verizon end office, which is the basis for Issue 2. By purposely omitting this section Verizon implies that it no longer seeks to request that US LEC designate an established US LEC collocation site at a Verizon end office as a US LEC IP.

Analysis

Staff believes that although Verizon witness Munsell disagrees, he recognizes that this Commission's decision in the Reciprocal Compensation Order is inconsistent with Verizon's VGRIP proposal. (TR 114) Staff applauds the foresight Verizon displayed in its brief, where it proffered an alternative proposal to VGRIP. However, staff is disappointed that the parties failed to settle what is now considered by at least one of the parties a moot issue. (Verizon BR at 7)

¹⁶ See Order No. PSC-02-1248-FOF-TP, pp. 25-26.

In light of Verizon's acknowledgment of the binding nature of this Commission's Reciprocal Compensation Order and the alternative proposal offered by Verizon in its brief, staff believes that this issue should have been stipulated by the parties prior to staff's recommendation. Nevertheless, staff is compelled to echo this Commission's findings in the Reciprocal Compensation Order, in staff's recommendation for this issue. Thus, it is clear to staff: that a point of interconnection and an interconnection point are not separate entities; 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; and that an originating carrier has the responsibility for delivering its traffic to the point(s) of interconnection designated by the alternative local exchange company (ALEC) in each LATA for the mutual exchange of traffic.

CONCLUSION

If US LEC establishes a collocation site at a Verizon end office, staff recommends that Verizon should not be permitted to request US LEC designate that site as a US LEC IP and impose additional charges on US LEC if US LEC declines that request. However, Verizon should only be required to bear the financial responsibility to deliver its originating traffic to an IP chosen by US LEC, if that IP is on Verizon's network, within a LATA.

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ISSUE 3: Is US LEC entitled to reciprocal compensation for terminating and/or delivering "Voice Information Services" traffic?

RECOMMENDATION: Yes, US LEC is entitled to reciprocal compensation for terminating or delivering "Voice Information Services" traffic, when the call is to a service that provides a vocal discussion program open to the public; however, when the traffic is to a service that provides recorded voice announcement information, such traffic falls into the category of information access and is therefore not subject to reciprocal compensation. (BROWN)

POSITION OF THE PARTIES:

US LEC: Yes. The traffic that Verizon now seeks to define as Voice Information Service traffic fits completely within the definition of traffic that is eligible for reciprocal compensation under the agreement.

VERIZON: US LEC is not entitled to reciprocal compensation for "voice information services traffic" because such traffic is "interstate or intrastate exchange access information, or exchange services for such access." 47 C.F.R. § 51.701 (b)(1).

STAFF ANALYSIS: This issue address whether US LEC is entitled to reciprocal compensation for terminating or delivering "Voice Information Services" traffic.

Arguments

Although the focus of this issue is the applicability of reciprocal compensation, the point of contention between the parties is the way in which "Voice Information Services" traffic should be characterized. (TR 25; EXH 3, p. 15) US LEC witness Montano believes that the categories of traffic that Verizon now wants to define as Voice Information Services traffic fit completely within the definition of "Reciprocal Compensation Traffic," which is defined in the proposed agreement as "Telecommunications traffic originated by a Customer of one Party on that Party's network and terminated to a Customer of the other Party on that other Party's network, except for Telecommunications traffic that is interstate or intrastate Exchange Access, Information Access, or exchange services for Exchange Access or Information Access." (Montano TR 24) She asserts that this is the basis for the parties' reciprocal compensation obligations. (Montano TR 24) Witness Montano further explains:

The categories of traffic included in the definition of "Voice Information Services Traffic" fit this definition: Whether the call is a "recorded voice announcement information" or "a vocal discussion program open to the public," it is originated by a customer of one party on

that party's network and is terminated by a customer of the other party on that party's network.

At the same time, the traffic at issue can not be characterized as interstate or intrastate Exchange Access, Information Access, or exchange services for Exchange Access or Information Access. In short, there does not appear to be any basis to exclude what Verizon South has defined as "Voice Information Services Traffic" and, as such, the parties should be required to compensate each other for exchanging and terminating such traffic. (Montano TR 24,25)

Verizon provided its position in response to staff's interrogatories. Verizon indicated that "Voice Information Services Traffic should be excluded from the scope of the parties' reciprocal compensation obligations to the extent (and only the extent) that such traffic is "interstate or intrastate exchange access, information access, or exchange services for such access." (EXH 3, p. 16) Verizon does not dispute that the definition of Reciprocal Compensation Traffic given by US LEC is the language agreed to in the proposed agreement; however, Verizon focuses on what the definition excludes. (Verizon BR at 8) Verizon alleges that the definition of "Voice Information Services" traffic includes only traffic that is not subject to reciprocal compensation under current law. (EXH 4, p. 3)

Conversely, US LEC claims the types of traffic considered as Voice Information Services Traffic fit the definition of "Reciprocal Compensation Traffic" in the parties' proposed Interconnection Agreement. (EXH 1, p. 5) In response to a staff interrogatory, US LEC explains why none of the exempted traffic types enumerated in 47 CFR Section 51.701(b)(1) apply to Voice Information Services traffic.

The traffic plainly is not "Exchange Access" traffic, which is defined in the Telecommunications Act as "the offering of access to telephone exchange services or facilities for the purpose of the origination or termination of telephone toll services." 47 U.S.C. § 153 (16) The term has the same meaning for the purposes of the parties' exchange of traffic in Florida because they have defined it in their proposed Interconnection Agreement as having "the meaning set forth in the Act." (Glossary at § 2.33). Thus, VIS traffic is not Exchange Access because it is not toll traffic subject to access charges.

Nor is it properly categorized as "Information Access" traffic, which is not defined in the Act, but rather, is defined in the Modified Final Judgement as "the provision

of specialized exchange telecommunications services by a BOC in an exchange area in connection with origination, termination, transmission, switching, forwarding or routing of telecommunications traffic to or from the facilities of a provider of information services." (United States v. AT&T, 552 F. Supp. 131, 229 (D.D.C. 1982))

In turn, "Information Services" is defined in the Act as "the offering of a capability for generating, acquiring, storing, transforming, processing, retrieving, utilizing, or making available information via telecommunications, and includes electronic publishing, but does not include any use of any such capability for the management, control, or operation of a telecommunications system or the management of a telecommunications service."¹⁷ (EXH 1, pp. 5-6)

In a response to a staff interrogatory, Verizon disputes US LEC's claim that Voice Information Services traffic can never constitute ". . . interstate or intrastate exchange access, information access, or exchange services for such access. . ." as a matter of law. (EXH 3, p. 15) In order to support its position Verizon cites:

As the FCC made clear in the ISP Remand Order, reciprocal compensation does not apply to "traffic destined for an information service provider" because such traffic falls into the category of "information access." ISP Remand Order ¶ 44.¹⁸ The FCC further held that "Congress's reference to 'information access' in section 251(g) was intended to incorporate the meaning of the phrase 'information access' as used in the AT&T Consent Decree" set forth in United States v. AT&T.¹⁹

¹⁷ 47 U.S.C. § 153 (20)

¹⁸ Although the D.C. Circuit Court of Appeals remanded the ISP Remand Order to the FCC, the court explicitly declined to vacate the order, which thus remains binding federal law. See, Worldcom, Inc. v. FCC, 288 F.3d 429, 434 (D.C. Cir. 2002); see also Memorandum Opinion and Order, Joint Application of BellSouth Corporation, et al., for Provision of In-Region, InterLATA Services in Georgia and Louisiana, 17 FCC Rcd 9018, 9173, ¶ 272 (2002) (rules adopted in the ISP Remand Order "remain in effect") (Verizon App. Tab 7)

¹⁹ See ISP Remand Order ¶ 44 (citing United States v. AT&T, 552 F. Supp. 131, 196, 229 (D.D.C. 1982))

The Consent Decree defined "information access" as "the provision of specialized exchange telecommunications services. . . in connection with the origination, termination, transmission, switching, forwarding or routing of telecommunications traffic to or from the facilities of a provider of information services."²⁰ And "information services" were in turn defined as "the offering of a capability for generating, acquiring, storing, transforming, processing, retrieving, utilizing, or making available information which may be conveyed via telecommunications."²¹ The definition of Voice Information Services in the proposed agreement at the very least includes such traffic, because (among other things) that definition includes calls that are intended to retrieve "recorded voice announcement information." US LEC Pet'n, Exh. B at 43, Additional Services Attachment § 5.1. The FCC has explicitly held that retrieval of recorded information is an enhanced service, the FCC's term for an information service.²² (EXH 3 , pp. 15-16)

Analysis

FCC rules define "Reciprocal Compensation" as an arrangement ". . . in which each of the two carriers receives compensation from the other carrier for the transport and termination on each carrier's network facilities of telecommunications traffic that originates on the network facilities of the other carrier."²³ Similarly, the parties propose to define Reciprocal Compensation Traffic in their agreement as ". . . telecommunications traffic originated by a Customer of one party on that party's network and terminated to a Customer of the other party on that party's network, except for Telecommunications traffic that is interstate or intrastate Exchange Access, Information Access, or exchange services for Exchange Access or Information Access."²⁴

²⁰ See id.

²¹ AT&T, 552 F. Supp. at 229.

²² See, e.g., Memorandum Opinion and Order, Petition of Nevada Bell, 16 FCC Rcd 19255, ¶ 1 (2001) (Verizon App. Tab 11).

²³ FCC Rule 51.701(e).

²⁴ See Proposed Agreement Glossary, Section 2.75, pp. 35-36.

"Information Services" is defined in the Act as ". . . the offering of a capability for generating, acquiring, storing, transforming, processing, retrieving, utilizing, or making available information via telecommunications, and includes electronic publishing, but does not include any use of any such capability for the management, control, or operation of a telecommunications system or the management of a telecommunications service."²⁵ Voice Information Services (VIS) is defined in section 5.1 of the Additional Services Attachment of the parties' proposed agreement as ". . . a service that provides (i) recorded voice announcement information or (ii) a vocal discussion program open to the public. It also defines Voice Information Service Traffic as intraLATA switched voice traffic, delivered to a 'Voice Information Service'."

Interstate or intrastate Exchange Access, Information Access, or exchange services for Exchange Access or Information Access are not telecommunications traffic subject to reciprocal compensation, per FCC Rule 51.701(b)(1) and the parties' proposed agreement. Staff believes that calls to VIS Providers who offer "a vocal discussion program open to the public," such as chatlines, are entitled to reciprocal compensation because such a service does not fall into any of the categories of traffic identified in FCC Rule 51.701(b)(1) to which reciprocal compensation does not apply. However, staff is not persuaded by US LEC witness Montano's argument that "Information Access" traffic was meant to apply solely to BOCs. (EXH 1, p. 6) Staff reasons that this decision was made prior to the Telecommunications Act of 1996, in a time when the industry consisted of BOCs and IXCs. Staff believes that because ALECs did not exist at that time, they were excluded from this particular definition of "Information Access." However, staff believes that it would be disingenuous at best to conclude that non-RBOCs such as Sprint or US LEC do not make information access calls. Consequently, it is clear to staff that calls to recorded voice announcements, such as time/temperature, weather information, and sports information, etc. fall into the category of information access. Therefore, staff believes that such traffic should be excluded for the purposes of reciprocal compensation.

CONCLUSION

Staff believes that US LEC is entitled to reciprocal compensation for terminating and/or delivering "Voice Information Services" traffic, as defined in the proposed agreement, when the call is to a service that provides a vocal discussion program open to the public; however, when the traffic is to a service that

²⁵ 47 U.S.C. § 153(20).

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provides recorded voice announcement information, such traffic falls into the category of information access and is therefore excluded from reciprocal compensation.

ISSUE 5: Should the term "terminating party" or the term "receiving party" be employed for the purpose of traffic measurement and billing over interconnection trunks?

RECOMMENDATION: Staff recommends that all references in the Agreement to a party that is terminating traffic should refer to that party as the "terminating party." Further, all references to the party "receiving" traffic or to the "receiving party" should refer instead to the party "terminating" traffic and to the "terminating party" with terms or notations added solely for purposes of clarification. (BROWN)

POSITION OF THE PARTIES:

US LEC: The term "terminating party" should be employed. For billing, measuring, and engineering purposes, traffic is referred to as either originating or terminating. Thus, for any call under the agreement, there is an originating party served by an originating carrier and a terminating party served by a terminating carrier.

VERIZON: Because it is, at minimum, disputed whether all of the traffic received by a LEC for delivery to its customers is terminated by the LEC, the term "receiving party" not "terminating party" should be used.

STAFF ANALYSIS: This issue addresses whether the term "terminating party" or "receiving party" should be employed for the purpose of traffic measurement and billing over interconnection trunks in the proposed agreement.

Arguments

US LEC believes that the term "terminating party" should be employed for the purposes of traffic measurement and billing over interconnection trunks. (US LEC BR at 22) US LEC witness Montano gives two reasons in support of this position: historical reference and consistency. (TR 28-30)

First, witness Montano asserts that historically, as well as currently, when it comes to billing, measuring, and engineering purposes, traffic is referred to as either originating or terminating. Thus, for any call, there is an originating party served by an originating carrier and a terminating party served by a terminating carrier. (TR 28) Witness Montano contends that "US LEC sees no need to disrupt the historic framework that has governed the transport, exchange and billing of traffic for decades." (TR 28) Additionally, US LEC is not willing to abandon

decades of precedence in engineering, measuring, and billing for traffic without a satisfactory explanation. (TR 29)

Second, US LEC witness Montano believes that Verizon should use either "terminating party" or "receiving party" consistently throughout the agreement; witness Montano adds that Verizon should not seek to interject the entirely new concept of a "receiving party" in order to ". . . escape some of its compensation obligations, which are grounded in the traditional 'originating party-terminating party' designations." (TR 29) Witness Montano provides an example:

In section 7.2, the parties agree that they will compensate each other for the "transport and termination" of Reciprocal Compensation Traffic. In turn, "Reciprocal Compensation" is defined with respect to the "transport and termination" of "Reciprocal Compensation Traffic," which itself, is defined with reference to traffic that is "terminated on the other Party's Network."

In contrast, in Sections 2.16 of the Glossary and 8.5.2 and 8.5.3 of the Interconnection Attachment dealing with the definition of an "IP" (Interconnection Point), Verizon abandons the "terminating party" designation and, instead, refers to traffic delivered to the "receiving party" and provides no valid reason why, in these limited sections, the term "receiving party" should replace the more standard "terminating party." Similarly, Section 2.56 of the Glossary refers to the "receiving party," not the "terminating party" when defining Measured Internet Traffic. (TR 29)

US LEC witness Montano contends that it is important that the agreement refer consistently to the "terminating party" for all purposes. (TR 30)

Verizon provided no testimony on this issue, choosing instead to proffer its position in responses to discovery and in its brief. In its brief, Verizon states that it does not agree that the receiving carrier ". . . terminates traffic delivered to ISPs and other information service providers. . . "; therefore, the term "receiving party," not "terminating party" should be used. (Verizon BR at 11)

In a response to a US LEC interrogatory, Verizon attempts to differentiate between "receiving" and "terminating" traffic. (EXH 7, p. 11) Verizon asserts that "'Receiving traffic' is a broader term than 'terminating traffic.' It includes traffic, such as Internet-bound traffic, that the receiving carrier does not

terminate but instead passes on to another party for onward transmission. For example, with respect to an Internet-bound call from a Verizon customer through an Internet service provider ("ISP") served by US LEC, US LEC would receive the call but would not terminate it." (EXH 7, p. 11) Further, "[i]n the case of Internet-bound traffic originated by a Verizon customer through an ISP served by US LEC, US LEC would receive the traffic; Verizon would not know who the terminating carrier would be in such a circumstance." (EXH 7, p. 11)

In response to Staff's Second Set of Interrogatories, Verizon provided a contemporary definition of the term "receiving party" and an explanation of how it is to be distinguished from the historical reference of receiving party, such as those found in the proposed agreement. (EXH 3, p. 18) In its response Verizon alleges that:

"Receiving party" means the party receiving the telecommunications traffic originated on the originating party's network. The use of the term "receiving" in this context is consistent with the use of that term in other contexts; the only difference is what is being "received." Thus, in the case of section 10 of the proposed agreement's inter-carrier compensation provisions, telecommunications traffic is being received. (EXH 3, p. 18)

Verizon concludes that whether or not Internet-bound traffic terminates at the ISP, there can be no doubt that such traffic is received by the carrier serving the ISP for delivery to the ISP. Accordingly, Verizon asserts there can be no dispute that the term "receiving party" accurately and unambiguously describes the carrier receiving the traffic at issue.²⁶

Analysis

In its 1999 ISP Declaratory Ruling, the FCC concluded that calls to ISPs do not terminate at the ISP's local server, but instead "continue to the ultimate destination or destinations, specifically at a[n] Internet website that is often located in another state."²⁷ Accordingly, the FCC determined that ISP-bound

²⁶ Response of Verizon Florida Inc. to Petition for Arbitration Filed by US LEC of Florida Inc., p. 22.

²⁷ Declaratory Ruling in CC Docket No. 96-98 and Notice of Proposed Rulemaking in CC Docket No. 99-68. Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, 14 FCC Rcd 3689, 3697, ¶ 12

traffic was not subject to reciprocal compensation under its existing rules; however, this determination was later vacated by the D.C. Circuit Court of Appeals and the matter remanded to the FCC. In its ISP Remand Order, the FCC determined that the use of the term "local traffic" to define parties' reciprocal compensation obligations under section 251(b)(5) had "created unnecessary ambiguities" and it abandoned its former jurisdictional analysis.²⁸

In its brief, Verizon implies that it has not attempted to gain any collateral advantage by using this terminology. (Verizon BR at 13-14) Under current law, the question of whether or not traffic "terminates" at the ISP's premises does not govern the parties' obligations under section 251(b)(5) and the FCC's implementing rules. Citing the history of the rulings entered into the record in this proceeding, there is arguably a possibility that the FCC could conclude at its next opportunity to consider the issue that, in fact, for purposes of reciprocal compensation, calls to ISPs do terminate at the ISP. It is also possible that the FCC will not alter its previous position.

Staff believes that the only apparent reason for wanting to use the term "receiving party" pertains to traffic not subject to reciprocal compensation, notably ISP-bound traffic. However, since current FCC rules and orders govern the applicability of reciprocal compensation, Verizon's proposed language is an unnecessary complication. Staff believes that any attempt to countermand the historical language of this issue as it relates to reciprocal compensation would be premature. Therefore, staff believes that the term "terminating party" should be employed for the purposes of traffic measurement and billing over interconnection trunks for the proposed agreement. However, when the term "terminating party" is not applicable, such as in the case of traffic bound for ISPs, where a higher degree of specificity is required for clarification, the parties are free to use an additional established term or notation, defined in the glossary of their agreement, for clarification; e.g. *not subject to reciprocal compensation.

CONCLUSION

Staff recommends that all references in the Agreement to a party that is terminating traffic should refer to that party as the "terminating party." Further, all references to the party "receiving" traffic or to the "receiving party" should refer

(1999) ("1999 ISP Declaratory Ruling"), vacated, Bell Atlantic Tel. Cos. v. FCC, 206 F. 3d 1 (2000).

²⁸ ISP Remand Order, 16 FCC Rcd at 9173, ¶ 46.

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instead to the party "terminating" traffic and to the "terminating party" with terms or notations added solely for purposes of clarification.

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ISSUE 6: (A) Should the parties pay reciprocal compensation for calls that originate in one local calling area and are delivered to a customer located in a different local calling area, if the NXX of the called number is associated with the same local calling area as the NXX of the calling number?

(B) Should the originating carrier be able to charge originating access for the traffic described in Issue 6(A)?

RECOMMENDATION: (A) No, the parties should not pay reciprocal compensation for calls that originate in one local calling area and are delivered to a customer located in a different local calling area, if the NXX of the called number is associated with the same local calling area as the NXX of the calling number.

(B) Staff recommends that the originating carrier should be able to charge originating access on the traffic described in Issue 6(A). Staff recommends that this treatment should also apply to FX numbers. (BROWN)

POSITION OF THE PARTIES:

US LEC: (A) Yes. Whether a call is rated as local or toll for purposes of reciprocal compensation is based upon the NPA/NXX codes of the originating and terminating numbers. There is no viable method in place for replacing this practice with one focused on the originating and terminating points of the calls.

(B) No. Originating access charges should not apply for calls if the customers assigned the NPA/NXX's are located outside of the local calling area to which the NXX is homed. The FCC recently rejected Verizon's arguments and determined that carriers are entitled to receive reciprocal compensation for terminating such calls.

VERIZON: Consistent with its ruling in the Reciprocal Compensation Order the Commission should rule that Virtual NXX traffic is not subject to reciprocal compensation, and require the parties to pay access charges on interexchange traffic, including ISP-bound traffic delivered to virtual NXX numbers.

STAFF ANALYSIS:

In this issue the Commission is presented with two matters for determination. First, the Commission is to determine if the parties should pay reciprocal compensation for calls that originate in one local calling area and are delivered to a customer located in a different local calling area, if the NXX of the called number is associated with the same local calling area as the NXX of the

calling number. Second, the Commission is to determine if the originating carrier should be able to charge originating access for the aforementioned traffic.

Arguments

In its brief, US LEC indicates that the parties should pay reciprocal compensation for calls that originate in one local calling area and are delivered to a customer located in a different local calling area, if the NXX of the called number is associated with the same local calling area as the NXX of the calling number. (US LEC BR at 24) Further, US LEC believes that the originating carrier should not be able to charge originating access for calls that originate in one local calling area and are delivered to a customer located in a different local calling area, if the NXX of the called number is associated with the same local calling area as the NXX of the calling number. US LEC witness Montano states that the Commission has not resolved the issue of whether reciprocal compensation is payable on virtual NXX traffic, and US LEC wants the Commission to do so in this proceeding. (TR 34) Witness Montano believes that Verizon is obligated to pay intercarrier compensation for all calls originated by Verizon customers to US LEC lines with "NXX" codes associated with the calling party's local calling area. (TR 31) Witness Montano adds that ". . . calls are conventionally rated and routed throughout the U.S. telephone industry based upon the NXX codes of the originating and terminating numbers. US LEC submits that there is no reason to deviate from that convention now." (TR 31) In explaining US LEC's position witness Montano states:

Standard industry procedure provides that each NXX code is associated with a particular rate center within a local calling area. (A single rate center may have more than one NXX code, but each code is assigned to one and only one rate center.) This uniquely identifies the end office switch serving the NXX code, so that each carrier that is routing a call knows which end office switch to send the call to. However, it is not uncommon for NXX codes to be assigned to customers who are not physically located in the local calling area where the NXX is "homed," and the Staff Recommendation does not prohibit this practice. When an ILEC provides this arrangement, it typically is called foreign exchange or FX service. This type of arrangement also may be referred to as "Virtual NXX" because the customer assigned the telephone number has a "virtual" presence in the calling area associated with that NXX. Calls to these customers are still routed to the end office switch associated with the NXX code, but then are routed within the terminating

carrier's network to the called party's actual physical location. (TR 35-36)

US LEC witness Montano believes that deviating from the historical practice of rating a call based upon the NXX codes of the originating and terminating number would give Verizon the ability to arbitrarily reclassify local calls as toll calls. (TR 39) Witness Montano states that this is due to the fact that under Verizon's proposed language, it would be nearly impossible and much more economically burdensome for US LEC to utilize virtual NXXs in the provision of service to its customers. (TR 39)

US LEC witness Montano affirms that Virtual NXXs are used by carriers to provide a local number to customers in calling areas in which the customer is not physically located. (TR 39) Witness Montano contends that if the Commission adopts Verizon's language and allows Verizon to avoid rating calls based on the NXX of the originating and terminating numbers, calls to "virtual NXX" customers would effectively be reclassified as toll calls and Verizon would no longer be obligated to compensate US LEC for terminating what for decades have been rated as simple local calls. (TR 39-40)

US LEC witness Montano states that the only costs that Verizon incurs on locally dialed calls are the transport and switching charges required to bring traffic to the interconnection point between Verizon and US LEC; therefore, it would be inconsistent and anti-competitive to allow Verizon to charge US LEC originating switched access charges for calls going to a particular NXX code. (TR 32) US LEC witness Montano believes that "Verizon would double-recover for carrying such traffic and it would also be compensated for cost not incurred." (TR 32)

US LEC witness Montano testifies that there are two main technical reasons why the Commission should find that calls should continue to be rated as local or toll calls based on the NXX codes of the originating and terminating parties rather than on the end points of the call. (TR 46) First, witness Montano states that there is no practical, cost-effective way for the parties to segregate the disputed traffic from other locally dialed traffic. (TR 46) She contends that calls dialed to a number assigned a "virtual NXX" are indistinguishable from all other locally dialed traffic sent over local trunk groups. (Montano TR 46) Witness Montano believes that US LEC would be required to expend considerable effort and absorb the cost associated with developing a program to separate the calls so that invoices submitted to Verizon do not include both types of calls, if Verizon's proposal is adopted by this Commission. (TR 46)

Second, US LEC witness Montano asserts that because it has always been standard industry procedure for carriers to use NXX codes as rate center identifiers, the software in the LEC and ALEC switches and billing systems looks at the NXXs of the calling and called parties to determine whether a call is to be rated and billed as local or toll. (TR 46) Witness Montano believes that implementing Verizon's proposal would be unjustifiably burdensome, expensive, and disruptive. (TR 46) She adds:

Adoption of Verizon's position would require US LEC to devote considerable effort and resources to undo the automated billing systems which have served as the basis for the design of modern switches and to maintain and assure the accuracy of a costly and burdensome alternative tracking system. Verizon's proposal would likewise necessitate the difficult and expensive step of requiring both parties to establish different ratings for a single telephone number; one set for end user purposes, the other for compensation purposes. Verizon has not addressed these serious considerations, and the Commission should evaluate them when determining whether a departure from industry practice is warranted. (TR 46-47)

Verizon witness Haynes believes that reciprocal compensation does not apply to calls that originate and terminate in different local calling areas, defined by reference to the actual originating and terminating points of the complete end-to-end communication. (TR 119-120) Witness Haynes adds:

US LEC is confusing the rating of calls for the purpose of assessing end-user charges and the treatment of calls for intercarrier compensation purposes. Before the widespread introduction of local competition following the adoption of the 1996 Act, the most important type of intercarrier compensation was the access charges that interLATA long distance carriers paid to local telephone companies. Such intercarrier compensation has always been governed by the originating and terminating points of the end-to-end call, not the NPA-NXX of the calling and called party.

The FCC has always held that reciprocal compensation does not apply to interexchange traffic, whether interstate or intrastate, but only to traffic that remains within a single local calling area. The FCC confirmed this in its April 2001 ISP Remand Order, when it ruled that reciprocal compensation does not apply to "exchange

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access, information exchange access, or exchange services for such access." 47 C.F.R. § 51.701 (b)(1). (TR 128)

Witness Haynes asserts that US LEC's proposal to require payment of reciprocal compensation by reference to the NPA-NXX of the called number, rather than the terminating point of the complete communication, is also inconsistent with this Commission's ruling on the same issue in its generic reciprocal compensation docket. (TR 120)

Verizon witness Haynes points out that this Commission squarely held that reciprocal compensation depends on where a call physically originates and terminates, not on ". . . the NPA/NXXs assigned to the calling and called parties." The Commission, therefore, concluded that virtual NXX traffic is not subject to reciprocal compensation because it does not physically terminate in the same local calling area in which it originates. (TR 129) Witness Haynes interprets this finding to mean that whether a particular call is interexchange does not depend on the telephone number, but on whether the call remains within the local calling area or travels outside it. (TR 128)

Verizon witness Haynes believes that US LEC should pay originating access charges for calls that originate in one local calling area and are delivered to a customer located in a different local calling area, even if the NXX of the called number is associated with the same local calling area as the NXX of the calling number, because it is a type of toll-free interexchange traffic. (TR 134) He elaborates:

Even though a Verizon customer is placing an interexchange call, Verizon cannot impose toll charges because of the way in which US LEC has assigned telephone numbers to its customers. Instead, US LEC receives compensation from its customer. There is nothing necessarily wrong with that, but US LEC must compensate Verizon for this originating access service. Access charges have always been applied to toll-free traffic. In fact, this Commission approved its Staff's logic that "it seems reasonable to apply access charges to virtual NXX/FX traffic that originates and terminates in [sic] different local calling area." (Haynes TR 134)

Witness Haynes concludes that if US LEC uses a Verizon access service, as it does in the "virtual FX" arrangements at issue here, it must pay the tariffed access rates per the parties' agreement. (TR 135)

Verizon witness Haynes suggests that for purposes of billing reciprocal compensation, Verizon's billing system may be outdated because the method it uses to determine the amount of CLEC originated traffic sent to a FX number will not yield a correct answer for intercarrier compensation billing. Verizon's billing system assumes that the volume of CLEC originated traffic sent to a FX number on Verizon's network is very small. (TR 142) Witness Haynes contends that since the advent of local competition, the assumption that a customer's assigned NPA-NXX code most likely corresponds to the customer's physical location is often not a valid assumption in the case of traffic delivered to CLECs. (TR 142) Based on the information on page 5 of Exhibit 3, which refers to a study performed by Verizon, witness Haynes alleges that the volume of locally rated interexchange traffic being delivered to some CLECs makes up a significant percentage of the traffic delivered to those CLECs, which would justify Verizon's steps to develop methods to accurately measure the volume of CLEC traffic terminated to Verizon FX numbers. (TR 142)

Verizon witness Haynes states that Verizon conducted an inexpensive study to identify those calls that were originated by CLEC customers and terminated to Verizon FX numbers. (TR 142) He continues ". . . the study amounted to nothing more elaborate than matching call records that Verizon creates on calls originated from facility based CLECs to a list of telephone numbers that Verizon assigned to FX service lines." (Haynes TR 142) Witness Haynes maintains that this study was conducted with the intent of providing a means for Verizon to properly estimate the access revenue that CLECs would be entitled to for CLEC originated calls terminated to Verizon FX numbers.

Verizon witness Haynes states that Verizon also considered what approach would be required to properly account for traffic originated by Verizon customers which terminated to CLEC virtual FX numbers. (TR 142-143) Witness Haynes claims that two options were identified. The first option would be for the CLEC to conduct a study, similar to the one performed by Verizon, to quantify the number of Verizon customer originated minutes that were delivered to the CLEC virtual FX numbers. (TR 143) Witness Haynes adds that the second option would be for the CLEC to notify Verizon of the numbers it has assigned as virtual FX numbers. (TR 143) He continues:

In this scenario, Verizon would modify its traffic data collection system to capture all traffic delivered to the NPA-NXXs associated with the virtual FX numbers. A data query could then be run to identify what portion of the traffic delivered to the NPA-NXXs was actually virtual NXX traffic. A billing adjustment would then be entered

into each parties' billing system to properly account for the Verizon traffic delivered to the CLEC virtual FX numbers. (Haynes TR 143)

Further, witness Haynes notes that Verizon is prepared to work with US LEC to implement one of these options so that traffic can be properly billed. (TR 143)

In response, US LEC witness Montano claims that Verizon witness Haynes is incorrect in stating that NXX codes have not been used to establish intercarrier compensation. (TR 62) Witness Montano asserts that "Verizon rates and bills its customers based on the NXX codes of the calling and called party. If the call is rated as local, Verizon bills its customer for a local call; conversely, if the call is rated as toll, Verizon bills the customer for a toll call." (TR 63)

US LEC witness Montano also infers that Verizon's proposed "fix" has not been evaluated or approved by this Commission. (TR 73) Witness Montano points out that how Verizon's "fix" will be implemented or monitored is not mentioned in the proposed interconnection agreement. (TR 73) Moreover, she asserts that "US LEC has no way of knowing whether Verizon's fix actually works. Verizon states that it is based on a traffic study conducted here in Florida, but nowhere does Verizon state that its fix has been implemented, is functioning smoothly and is accurate." (TR 73)

In his rebuttal testimony, Verizon witness Haynes claims that "the parties' sole disagreement for purposes of this proceeding is whether the NXX code should be used to determine intercarrier compensation, i.e., whether reciprocal compensation must be paid when the called party is actually located in a different local calling area from the calling party." (TR 146) Witness Haynes restates his contention that carriers must pay compensation based on the physical location of the called party, not the NXX code of the called party, which is generally associated with the local calling area of the calling party. (TR 147) Witness Haynes maintains that although the traffic he referred to in his direct testimony was interLATA traffic, the principle is the same for virtual FX traffic. (TR 147) Witness Haynes adds:

If a local telephone subscriber originates a call to an interLATA FX number, the local exchange carrier delivers the call to the interexchange carrier's point of presence for onward transmission to a called party; the local exchange carrier is entitled to originating access for such a call, even though the call is rated as a local call. Likewise, in the case of virtual FX traffic, the local exchange carrier delivers the traffic to the CLEC's

point of interconnection; the CLEC then delivers the call to the called party, which is by definition located in a different local calling area. Because the call is interexchange, no reciprocal compensation applies. (TR 147-148)

Based on US LEC witness Montano's testimony, witness Haynes believes that US LEC wants to be able to force Verizon to bear the cost of transporting virtual FX traffic without paying Verizon for that service. (TR 151)

Witness Haynes argues that contrary to US LEC witness Montano's claim, there is a practical, cost-effective way to ensure that the parties receive the appropriate intercarrier compensation. (TR 154) Witness Haynes claims that Verizon has offered to share this mechanism for separating FX traffic with US LEC, as long as US LEC supplies Verizon a list of virtual FX numbers. (TR 154) He states that ". . . determining the volume of FX traffic is neither burdensome, nor expensive, nor disruptive. If US LEC is unsure how to distinguish virtual FX traffic from local traffic, Verizon would be happy to cooperate with their technical personnel to implement a reliable system." (TR 155)

Verizon witness Haynes maintains that access charges should apply to virtual FX traffic. (TR 155) Witness Haynes reasons that a virtual FX arrangement, like traditional FX arrangements or other toll-free calling arrangements, allows a subscriber to receive calls from a distant exchange without the calling party incurring the toll charges that would normally apply. (TR 155) He adds:

In place of those toll charges, the called party with FX service must pay for a Local Channel, interoffice transport, plus applicable usage charges. In the case of toll-free service, the customer must pay toll charges for calls received. In the case of toll-free calls, the interexchange carrier then pays originating access charges to the originating local exchange carrier. The situation is the same here: the CLEC has set up a toll-free calling arrangement for its customer. The customer is thus able to take advantage of the local exchange service that Verizon is providing in that distant exchange, yet Verizon not only receives no subscriber revenue from the CLEC customer; it is also deprived of the toll charges that would ordinarily apply. Access charges provide the originating LEC some measure of compensation for the service that it provides. (Haynes TR 155-156)

In response to US LEC witness Montano's charge that "Verizon would double-recover for carrying such traffic and it would also be compensated for cost not incurred. . . ." Verizon witness Haynes replies that ". . . the costs of delivering traffic to a CLEC depends on the interconnection architecture in place; if a virtual FX call is delivered to the same point of interconnection as a local call from the same point, Verizon's costs of delivering the traffic will be the same. But if the Commission were to exempt the CLEC from paying the access charges that ordinarily apply to such interexchange traffic, the Commission would be encouraging the CLEC to implement these arrangements even when they are inefficient." (TR 156) Witness Haynes continues:

This is because the CLEC (and the CLEC's customers) would not bear the appropriate costs of providing the services that they consume. Thus, Verizon would have to originate and carry a great deal more traffic, and would therefore be required to bear significantly higher costs, than if access charges were properly applied.

Moreover, Ms. Montano ignores the fact that virtual FX arrangements mean that Verizon will be unable to collect toll charges from its customers where toll charges would apply (but for the assignment of a virtual NXX code). Again, I am not asserting that there is anything wrong with a CLEC setting up such toll free arrangements for its customers, so long as the CLEC complies with applicable state and federal regulations. But it is wrong for the CLEC to attempt to shift the costs of those arrangements to Verizon, and it is also wrong to exempt the CLEC and its customers from bearing an appropriate share of the costs of providing local exchange service in the distant exchange. As long as Verizon is the carrier providing that local exchange service, it is entitled to be compensated for it, and access charges provide that compensation. (TR 156-157)

Witness Haynes concludes that local exchange charges compensate Verizon for providing service within the local exchange. If a call travels outside the local exchange, Verizon should be entitled to additional compensation. Virtual FX service should be no exception. (TR 157)

Analysis

Staff is disappointed that the parties were not able to reach a mutual agreement on this issue despite being urged by this Commission in its Reciprocal Compensation Order to negotiate the best intercarrier compensation mechanism for this type traffic.

Staff is troubled that the parties chose to use this forum to rehash past issues without presenting this Commission with a new or persuasive argument to justify a departure from prior decisions.

Based on the testimony of the parties, it is clear that the parties acknowledge that this Commission found in its Reciprocal Compensation Order that calls to virtual NXX customers located outside of the local calling area to which the NXX is assigned are not considered local calls, and therefore carriers are not obligated to pay reciprocal compensation.²⁹ (Montano TR 33-34; Haynes TR 129) Additionally, staff agrees with Verizon witness Haynes that US LEC's proposal to require payment of reciprocal compensation by reference to the NPA-NXX of the called number, rather than the terminating point of the complete communication, is inconsistent with this Commission's ruling on the same issue in its generic reciprocal compensation docket. (TR 120) Consequently, with respect to part (A) of this issue, staff believes that the parties should not pay reciprocal compensation for calls that originate in one local calling area and are delivered to a customer located in a different local calling area, even if the NXX of the called number is associated with the same local calling area as the NXX of the calling number.

The remaining element of this issue asks this Commission to resolve the issue of whether the originating carrier should be able to charge originating access for calls that originate in one local calling area and are delivered to a customer located in a different local calling area, if the NXX of the called number is associated with the same local calling area as the NXX of the calling number. In discussing this traffic in Order No. PSC-02-1248-FOF-TP, this Commission stated that ". . . [w]e 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." In this decision the Commission did not ". . . mandate a particular intercarrier compensation mechanism for virtual NXX/FX traffic"; however, the Commission found that ". . . virtual NXX traffic and FX traffic shall be treated the same for intercarrier compensation purposes." Therefore, staff recommends that the originating carrier should be able to charge originating access on traffic that originates in one local calling area and is delivered to a customer located in a different local calling area, if the NXX of the called number is associated with the same local calling area as the NXX of the calling number. Staff recommends that this treatment should also apply to calls to FX numbers.

²⁹ Order No. PSC-02-1248-FOF-TP, p. 33.

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CONCLUSION

Staff recommends that the parties should not pay reciprocal compensation for calls that originate in one local calling area and are delivered to a customer located in a different local calling area, if the NXX of the called number is associated with the same local calling area as the NXX of the calling number. In addition, staff recommends that the originating carrier should be able to charge originating access on the traffic described in Issue 6(A). Staff recommends that this treatment should also apply to FX numbers.

ISSUE 7: What compensation framework should govern the parties' exchange of ISP-bound traffic in the event the interim compensation framework set forth in the FCC's Internet Order is vacated or reversed on appeal?

RECOMMENDATION: Staff recommends the parties' agreed upon change of law clause should govern the parties' obligations in the event the interim compensation framework set forth in the FCC's ISP Remand Order is vacated or reversed on appeal. Thus, the parties should renegotiate in good faith and amend their final interconnection agreement if the interim compensation framework for ISP-bound traffic is vacated or reversed on appeal. (TEITZMAN)

POSITION OF THE PARTIES

US LEC: In the event the FCC's interim compensation framework is vacated or reversed, the parties should continue to compensate each other at the rates set forth in the FCC's ISP Remand Order³⁰, but waive any other terms and conditions of that Order (e.g., the growth caps and new market restrictions).

VERIZON: The parties' reciprocal compensation obligations must be governed by applicable federal law; no special change-of-law provision is required with respect to this issue.

STAFF ANALYSIS: This issue addresses whether the parties' agreement should set forth specific language to address the compensation of ISP-bound traffic in the event the interim compensation framework set forth in the FCC's ISP Remand Order is vacated or reversed.

Arguments

US LEC asserts in its brief that in the event the compensation framework in the FCC's ISP Remand Order is vacated or reversed on appeal, the parties should continue to compensate each other at the rates set forth in the Order, but waive any other terms and conditions of that Order (e.g., the growth caps and new market restrictions). US LEC proposes in the interests of certainty and stability, and in order to avoid expensive and time consuming negotiations and litigation, that US LEC is willing to forego the opportunity to be compensated at state rates and proposes that the parties accept the rate structure set forth in the ISP Remand Order

³⁰Implementation of the Local Competition Provisions in the Telecommunications Act of 1996; Intercarrier Compensation for ISP-Bound Traffic, CC Docket Nos. 96-98, 99-68, Order on Remand and Report and Order FCC 01-131 (rel. Apr. 27, 2002) (ISP Remand Order), remanded, WorldCom v. FCC, 288 F.3d 429 (D.C. Cir. May 3, 2002)

for the balance of the term of the agreement, or until the FCC imposes a permanent rate structure governing that traffic. US LEC further asserts that Verizon's refusal to accept US LEC's proposal will result in additional negotiation and possibly litigation. (US LEC BR at 37,38)

Verizon asserts in its brief that although the D.C. Circuit Court remanded the ISP Remand Order, the Court expressly refused to vacate that order; as a result, the rules the FCC adopted remain in effect pending further FCC proceedings on remand. Verizon asserts further that the ISP Remand Order set forth a specific intercarrier compensation regime that governs the exchange of Internet-bound traffic between Verizon and US LEC during the course of this arbitrated agreement. If there is a subsequent change of law, Verizon contends the parties' obligations will conform to that change pursuant to the change of law clause in the agreement. (Verizon BR at 27, 28)

In further support of its opposition to the US LEC proposal, Verizon states US LEC's proposal would lead to results contrary to governing federal law. Verizon asserts under the US LEC proposal, the growth cap and new market provisions in the ISP Remand Order would have been eliminated contrary to what was explicitly decided by the D.C. Circuit. (Verizon BR at 28)

Additionally, Verizon cites to the rejection of US LEC's proposal by the South Carolina Public Service Commission³¹ and the Wireline Competition Bureau's³² adoption of the Verizon position on this issue. US LEC did not distinguish the decision of the South Carolina Public Service Commission; however, US LEC asserts that its proposal is different than the one presented by the CLECs/ALECs which were parties in the recent arbitration before the Wireline Competition Bureau. US LEC asserts the parties in that arbitration sought a return to state rates in the event the compensation framework governing ISP-bound traffic is vacated or reversed, whereas US LEC seeks to apply the rate structure but not the limitations on growth and new markets. (Verizon BR at 28,29)

³¹Petition of US LEC of South Carolina Inc. for Arbitration of an Interconnection Agreement with Verizon South, Inc., Docket No. 2002-181-C, Order on Arbitration, Order No. 2002-619 (S.C. PSC Aug. 30, 2002)

³²Petition of WorldCom, Inc. Pursuant to Section 252(e)(5) of the Communications Act for Preemption of the Jurisdiction of the Virginia State Corporation Commission Regarding Interconnection Disputes with Verizon Virginia Inc., and for Expedited Arbitration, CC Docket Nos. 00-218 et al., Memorandum Opinion and Order, DA 02-1731 (rel. July 17, 2002)

Staff Analysis

In remanding back to the FCC the ISP Remand Order, the D.C. Circuit held,

"Finally, we do not vacate the order. Many of the petitioners themselves favor bill-and-keep, and there is plainly a non-trivial likelihood that the Commission has authority to elect such a system (perhaps under §§ 251(b)(5) and 252(d)(B)(I)). Thus, we simply remand the case to the Commission for further proceedings."

WorldCom, 288 F.3d at 434.

The D.C. Circuit explicitly chose not to vacate the FCC's compensation scheme; rather, it remanded the case to the FCC for further consideration. Therefore, the compensation scheme set forth in the FCC's ISP Remand Order is applicable federal law.

US LEC seeks to include contingency language in the parties' agreement to address ISP compensation if the ISP Remand Order is reversed or vacated at a later date. It is staff's opinion that such language at this time could only be considered highly speculative. It is impossible to ascertain at this time whether the compensation framework set forth in the ISP Remand Order will be reversed or vacated, and if it were reversed or vacated, whether the D.C. Circuit would vacate the language in its entirety and on what grounds. Such speculation could result in contingency language which is contrary to federal law.

Furthermore, the parties' agreement includes a change of law clause which sets forth the obligations and rights of the parties should a change of law render a portion of the parties' agreement null and void. General Terms and Conditions §4.6 of the parties' proposed agreement provides:

If any final and unstayed legislative, regulatory, judicial or other governmental decision, order, determination or action, or any change in Applicable Law, materially affects any material provision of this Agreement, the right or obligations of a Party hereunder, or the ability of a Party to perform any material provision of this Agreement, the Parties shall promptly renegotiate in good faith and amend in writing this Agreement in order to make such mutually acceptable revisions to this Agreement as may be required in order to conform the Agreement to Applicable Law.

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Staff believes this provision protects the rights equally of both parties under the final interconnection agreement should the ISP Remand Order be reversed or vacated at a later date.

CONCLUSION

Based upon the preceding analysis, staff recommends the parties' agreed-upon change of law clause should govern the parties' obligations in the event the interim compensation framework set forth in the FCC's ISP Remand Order is vacated or reversed on appeal. Thus, the parties should renegotiate in good faith and amend their final interconnection agreement if the interim compensation framework for ISP-bound traffic is vacated or reversed on appeal.

DATE: May 22, 2003

ISSUE 8: Under what circumstances, if any, should tariffed charges which take effect after the agreement becomes effective, take precedence over non-tariffed charges previously established in the agreement for the same or similar services or facilities?

RECOMMENDATION: Staff recommends non-tariffed charges must remain fixed for the term of the agreement, unless changed pursuant to a valid Commission order. If during the term of the final interconnection agreement, Verizon seeks to assess a new tariffed rate, it must first enter into a negotiated amendment to the final interconnection agreement with US LEC. (TEITZMAN)

POSITION OF THE PARTIES

US LEC: Non-tariffed charges must remain fixed for the term of the agreement, unless changed pursuant to a valid Commission order. A carrier should not have unbridled discretion to modify its rates at will, particularly those rates that are reflected in the parties' interconnection agreement.

VERIZON: Generally applicable tariff provisions, which are subject to searching regulatory review, should supersede pricing terms in the agreement.

STAFF ANALYSIS This issue addresses whether tariffed charges which take effect after the agreement becomes effective should take precedence over non-tariffed charges previously established in the parties' agreement for the same or similar services or facilities.

Arguments

US LEC asserts in its brief that tariffed charges should be permitted to change during the term of the agreement due to changes in applicable tariffs; however, non-tariffed charges must remain fixed for the term of the agreement. (US LEC BR at 38) US LEC contends that Verizon seeks the unrestricted ability to modify rates that the parties have agreed to include in the agreement through subsequent tariff filings that would supercede the rates in the agreement. (US LEC BR at 39) US LEC Witness Montano states ". . . it would be anti-competitive and detrimental to US LEC if Verizon had the unfettered ability and sole discretion to modify its non-tariffed rates." (TR 51)

In its brief, Verizon asserts it is both fair and appropriate that, if the generally applicable charges for a particular service change, the charges under the agreement should change along with them. Verizon further asserts the principle that the charges for services provided to CLECs should be nondiscriminatory is deeply embedded both in the history of telecommunications regulation and

in the 1996 Act in particular; federal law specifically requires that charges for interconnection unbundled network elements, services offered for resale, and collocation must be ". . . just reasonable, and nondiscriminatory." 47 U.S.C. § 251(c)(2), (3), (4), (6). Verizon contends by providing that applicable tariffs and other charges that are mandated or approved by the FCC or this Commission should supersede any changes set forth in the agreement, Verizon's proposed language gives effect to the letter and the spirit of these non-discrimination provisions.³³ (Verizon BR at 29, 30)

Verizon argues it is not free to modify its generally applicable charges unilaterally; rather, the charges will change in one of two ways: either Verizon will publicly file a tariff with the appropriate state or federal commission providing US LEC the opportunity to challenge the tariff prior to the tariff's effective date, or a generic ratemaking proceeding will commence in which US LEC would presumably be able to participate in the proceedings. (Verizon BR at 30) US LEC counters that Verizon's assertions fail to recognize the considerable burden, both in terms of financial cost and in diversion of personnel whose resources would otherwise be devoted to more pressing matters, that is placed on ALECs to dispute a particular rate proposal. (US LEC BR at 39,40) US LEC argues the entire process would undermine the purpose of having a binding interconnection agreement that provides relative pricing certainty to the parties in the first instance. (US LEC BR at 39)

In its brief, US LEC cites the US LEC/Verizon South Carolina Arbitration Decision³⁴ in support of its assertions. US LEC states the South Carolina Commission found Verizon South's proposal "unpersuasive" in directing the parties to incorporate US LEC's proposed language in their interconnection agreement. Additionally, US LEC cites to a recent arbitration before the Wireline Competition Bureau³⁵ in which Verizon was a party and this same issue was addressed. The Wireline Competition Bureau ". . . rejected Verizon's proposed language because it would allow for tariffed rates to replace automatically the rates arbitrated in this proceeding. Thus, rates approved or allowed to go into effect

³³Tariffs are deemed "presumptively valid."

³⁴Petition of US LEC of South Carolina Inc. for Arbitration of an Interconnection Agreement with Verizon South, Inc., Docket No. 2002-181-C, Order on Arbitration, Order No. 2002-619 (S.C. PSC Aug. 30, 2002)

³⁵Petition of WorldCom, Inc. Pursuant to Section 252(e)(5) of the Communications Act for Preemption of the Jurisdiction of the Virginia State Corporation Commission Regarding Interconnection Disputes with Verizon Virginia Inc., and for Expedited Arbitration, CC Docket Nos. 00-218 et al., Memorandum Opinion and Order, DA 02-1731 (rel. July 17, 2002)

by the Virginia Commission would supercede rates arbitrated under the federal Act." (US LEC BR at 39,40)

Verizon asserts in its brief that the Wireline Competition Bureau's decision actually supports Verizon's position. Specifically, that Bureau held that, under the parties' agreement, "[i]f a commission establishes new rates, that would constitute a change in law, which the parties would be able to incorporate into the agreement pursuant to the change of law provisions of the contract." Verizon further asserts the Wireline Competition Bureau's failure to provide that all tariffed rates would automatically supersede rates arbitrated by the FCC was a result of the Virginia commission's refusal to apply federal law in its state proceedings. (Verizon BR at 31)

Analysis

Although both parties cited in their briefs recent decisions by other Commissions in support of their position on this issue, staff notes that the parties failed to discuss in their briefs this Commission's past holdings when the same or similar issue has been addressed. In fact, Verizon f/k/a GTEFL has previously litigated this same issue before the Commission. In the AT&T/MCI/GTEFL Arbitration Order³⁶, this Commission held:

We believe that GTEFL should not be permitted to unilaterally modify an agreement reached pursuant to the Act by subsequent tariff filings. One party to a contract cannot alter the contract's terms without the assent of the other parties. United Contractors, Inc. v. United Construction Corp., 187 So. 2d 695 (Fla. 2d DCA 1966); 17A C.J.S. §375

Id. at 146.

In the AT&T/MCI/GTEFL Final Arbitration Order, and recently reaffirmed in the Sprint/Verizon Final Arbitration Order³⁷, the

³⁶In Re: Petitions by AT&T Communications of the Southern States, Inc., MCI Telecommunications Corporation and MCI Metro Access Transmission Services, Inc. for arbitration of certain terms and conditions of a proposed agreement with GTE Florida Incorporated concerning interconnection and resale under the Telecommunications Act of 1996, Docket No. 960847-TP and Docket No. 960980-TP, Order No. PSC-97-0064-FOF-TP, issued January 17, 1997. (AT&T/MCI/GTEFL Arbitration Order)

³⁷In Re: Petition by Sprint Communications Company Limited Partnership for Arbitration with Verizon Florida Inc. Pursuant to Sections 251/252 of the Telecommunications Act of 1996, Docket 010795-TP, Order No. PSC-03-0048-FOF-TP, issued January 7, 2003. (Sprint/Verizon Arbitration Order)

DATE: May 22, 2003

Commission found that an interconnection agreement between parties may be modified by subsequent tariff filings if the agreement contains reference to a specific tariff provision. However, in this case, Verizon seeks the right to modify the non-tariffed rates of the parties' agreement through subsequent tariff filings. Staff believes that Verizon's proposal would undermine the purpose of the parties signing a negotiated final agreement in which the parties have agreed to non-tariffed rates.

Furthermore, staff believes that Verizon's assertion that allowing it to modify non-tariffed rates in the parties' final interconnection agreement through subsequent tariff filings furthers the policy of non-discrimination between carriers is misguided. Staff believes the Telecommunications Act of 1996 (Act) already ensures non-discriminatory treatment of ALECs by ILECs entering into negotiated final interconnection agreements. Pursuant to §252(i) of the Act:

A local exchange carrier shall make available any interconnection, service, or, network element provided under an agreement approved under this section to which it is a party to any other requesting telecommunications carrier upon the same terms and conditions as those provided in the agreement.

Accordingly, Verizon is required to make available to a requesting carrier the same terms and conditions set forth in its agreement with US LEC, thus eliminating the possible competitive advantage gained by US LEC in not being subject to a subsequently filed tariff.

CONCLUSION

Based on the preceding analysis, staff recommends that non-tariffed charges must remain fixed for the term of the agreement, unless changed pursuant to a valid Commission order. If during the term of the final interconnection agreement, Verizon seeks to assess a new tariffed rate, it must first enter into a negotiated amendment to the final interconnection agreement with US LEC.

DOCKET NO. 020412-TP

DATE: May 22, 2003

ISSUE 9: Should this docket be closed?

RECOMMENDATION: No, the parties should be required to submit a signed agreement that complies with the Commission's decisions in this docket for approval within 30 days of issuance of the Commission's Order. This docket should remain open pending Commission approval of the final arbitrated agreement in accordance with Section 252 of the Telecommunications Act of 1996. (TEITZMAN)

STAFF ANALYSIS:

The parties should be required to submit a signed agreement that complies with the Commission's decisions in this docket for approval within 30 days of issuance of the Commission's Order. This docket should remain open pending Commission approval of the final arbitration agreement in accordance with Section 252 of the Telecommunications Act of 1996.

CERTIFICATE OF SERVICE

I hereby certify that, on this 6th day of June 2003, I caused copies of the attached letter submitting supplemental authority of Verizon Pennsylvania Inc. to be served on the following parties by electronic and first-class mail:

Pennsylvania Public Utility Commission

Hon. Louis Cocheres
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
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Sarah E. Dean

RECEIVED

JUN 07 2003

PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

005

KELLOGG, HUBER, HANSEN, TODD & EVANS, P.L.L.C. **KJR**

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June 27, 2003

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VIA OVERNIGHT DELIVERY

JUN 27 2003

Secretary James P. McNulty
Pennsylvania Public Utility Commission
P.O. Box 3265
Keystone Building, 3rd Floor
Harrisburg, PA 17101-3265

DOCUMENT

PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

Re: *Petition of US LEC of Pennsylvania Inc. for Arbitration with Verizon
Pennsylvania Inc. Pursuant to Section 252(b) of the Telecommunications Act
of 1996; Docket No. A-310814F7000*

Dear Secretary McNulty:

I write to submit, as supplemental authority relevant to issues in the above-captioned proceeding, the order of the Florida Public Service Commission ("FPSC") in the arbitration between US LEC of Florida, Inc. and Verizon Florida Inc. In a letter filed June 6, 2003, Verizon Pennsylvania Inc. submitted a copy of the FPSC decision unanimously approving its staff's recommendation, as well as the recommendation, in that proceeding. The attached order, released on June 25, 2003, sets forth the FPSC's reasoning in support of its decision, which is as described in Verizon's June 6, 2003, letter.

If I can provide further information or clarification, please contact me at 202-326-7921.

Sincerely,


Aaron M. Panner

cc: Service List

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ORIGINAL

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

DOCKETED

JUL 15 2003

In re: Petition for arbitration of unresolved issues in negotiation of interconnection agreement with Verizon Florida Inc. by US LEC of Florida Inc.

DOCKET NO. 020412-TP
ORDER NO. PSC-03-0762-FOF-TP
ISSUED: June 25, 2003

DOCUMENT

The following Commissioners participated in the disposition of this matter:

BRAULIO L. BAEZ
RUDOLPH "RUDY" BRADLEY
CHARLES M. DAVIDSON

RECEIVED

JUN 27 2003

FINAL ORDER ON PETITION FOR ARBITRATION

PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

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DOCUMENT # 05663

JUN 25 2003

V: (A) Should the parties pay reciprocal compensation for calls that originate in one local calling area and are delivered to a customer located in a different local calling area, if the NXX of the called number is associated with the same local calling area as the NXX of the calling number?

(B) Should the originating carrier be able to charge originating access for the traffic described in Issue 6(A)?
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VI: What compensation framework should govern the parties' exchange of ISP-bound traffic in the event the interim compensation framework set forth in the FCC's Internet Order is vacated or reversed on appeal? -39-

VII: Under what circumstances, if any, should tariffed charges which take effect after the agreement becomes effective, take precedence over non-tariffed charges previously established in the agreement for the same or similar services or facilities?
..... -42-

CONCLUSION -46-

On May 10, 2002, US LEC of Florida Inc. (US LEC) petitioned the Commission to arbitrate certain unresolved terms and conditions of an interconnection agreement with Verizon Florida Inc. (Verizon). Verizon filed a response and the matter was set for hearing. At the issue identification meeting, 9 issues were identified by the parties to be arbitrated. Prior to the administrative hearing, the parties resolved one issue.

The administrative hearing was held on February 6, 2003. At the administrative hearing the parties agreed to stipulate into the record all prefiled testimony and waive their rights to cross-examination. This Order addresses the remaining arbitrated issues.

I. INTERCONNECTION POINT SELECTION

This issue addresses whether US LEC is permitted to elect a single interconnection point(IP) per local access and transport area (LATA), to select the interconnection method, and to require

Verizon to bear the financial responsibility to deliver its originating traffic to the IP chosen by US LEC.

A. Arguments

We believe that a brief description of US LEC's current network architecture in the Tampa LATA and of Verizon's Virtual Geographically Relevant Interconnection Points ("VGRIP") proposal, is appropriate. We take note that under Verizon's defined terms, the physical point at which the parties physically connect is called a point of interconnection (POI) and billing points that distinguish the financial responsibility of each party for transporting traffic are called Interconnection Points (IPs). Further, we note that although US LEC witness Montano argues that the terms POI and IP are synonymous and interchangeable, US LEC is familiar with Verizon's terms and is willing to use them, so long as the resulting obligations remain consistent with FCC rules that govern interconnection between ALECs and ILECs. US LEC witness Montano states that US LEC has one switch in Florida; it is located in Verizon's service territory in the Tampa area. The US LEC switch currently serves the Tampa LATA and numerous local calling areas within that LATA. US LEC has established Points of Interconnection (POIs) at each Verizon Access Tandem where US LEC has been assigned NXX codes and provides local exchange services to its end users. In describing US LEC's current network architecture in the Tampa LATA US LEC witness Hoffmann adds:

US LEC delivers its originating traffic to the Verizon-IPs via its point-to-point circuits that connect US LEC's switch to Verizon's tandems. Additionally, US LEC has agreed that where it delivers at least 200,000 minutes of use per month to a Verizon end office, it will deliver such traffic to that end office via direct end office trunks it purchases from Verizon, or via a third party transport provider. Similarly, Verizon is financially responsible for delivering its originating traffic to the US LEC-IP. It is my understanding that Verizon has three tandems in the Tampa LATA, all of which are located within the same building, which is one-third of one mile from US LEC's switch. US LEC has established POIs at two of those tandems where US LEC has numbers and has been assigned NXX codes. US LEC purchases an OC-48 entrance

facility from Verizon as its method of interconnection to those tandems.

After accepting Verizon South's traffic at the POIs, US LEC transports that traffic over the same OC-48 entrance facility back to US LEC's switch and bills Verizon a non-distance sensitive entrance facility charge for providing that transport.

US LEC witness Montano believes that US LEC has the right to maintain its current interconnection method in the Tampa LATA.

We note that the testimony of Verizon witness D'Amico was adopted by Verizon witness Munsell. Verizon witness Munsell claims that the interconnection language initially proposed by Verizon is a compromise because the VGRIP plan mitigates only some of the transport cost; however, it does enable Verizon to deliver its traffic to US LEC at a more central location. Witness Munsell states that "[u]nder VGRIP, Verizon may request that the ALEC establish a POI at a collocation site in each Verizon tandem wire center where the ALEC chooses to assign telephone numbers. That POI would serve as the ALEC's IP under VGRIP." Witness Munsell defines a point where the ILEC and ALEC physically interconnect their respective networks. To exchange traffic, two carriers' networks must be physically linked; the point of that physical linkage is the POI. He adds that an IP, on the other hand, is the place in the network at which one local exchange carrier hands over financial responsibility for traffic to another local exchange carrier.

Verizon witness Munsell maintains that a POI and an IP may be at the same place but do not have to be. Witness Munsell contends that under VGRIP, if Verizon only operates one tandem in a LATA, then Verizon may designate additional VGRIP locations, such as host end office wire centers. In addition, either Party may designate an ALEC collocation site at any Verizon wire center as the ALEC IP for traffic originating from that end office.

Verizon witness Munsell opines that under Verizon's VGRIP proposal, Verizon would incur more than its share of the transport cost, but it would be able to deliver its traffic to the ALECs at a more central location. He reasons his belief by stating that:

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Verizon would be responsible for the costs of hauling this traffic from the Verizon customer to the designated Verizon VGRIP tandem wire center or end office wire center where the ALEC is collocated, even though that location may be beyond the local calling area of the originating customer. The ALEC is then responsible for delivering the call from this central location to the ALEC customer. If an ALEC elects not to collocate and establish a POI/IP at the VGRIP locations, Verizon proposes that the end office serving the Verizon customer who places the call will act as the "virtual IP." Although Verizon will then transport this traffic from the Verizon customer to the ALEC-designated location, the ALEC will be financially responsible for the transport from the "virtual IP" to the ALEC POI.

Verizon witness Munsell believes that Verizon should not have to continue to subsidize US LEC's costs of interconnection or network design choices. Witness Munsell opines that "if US LEC chooses to locate only one point of interconnection ("POI") in a LATA, it should be financially responsible for hauling the Verizon originated call to its distant POI."

While it is evident to us that the crux of the dispute between the parties deals with the designation and quantity of the US LEC Interconnection Points (IPs) in the LATA, the remaining focus is on three contentious questions, for which each party has an answer. The first question is whether US LEC is permitted to select a single interconnection point per LATA. Based on a review of Verizon's proposal, US LEC witness Montano believes that Verizon wants the right to designate the IP or to require US LEC to designate additional IPs even if US LEC has already designated its IP in the Tampa LATA. However, US LEC witness Montano contends that Verizon's position is inconsistent with FCC rules and that US LEC is entitled to select the point(s) of interconnection between the parties' networks. Witness Montano asserts:

The Act and the FCC recognize that new entrants, such as US LEC, must be able to determine the most efficient location for the exchange of traffic. The Act grants ALECs, not Verizon, the right to select the POI/default IP. Under 47 U.S.C. § 251(c) (2) (B), Verizon must provide

interconnection at any technically feasible point selected by US LEC.

Witness Montano notes that the fact that the parties have already interconnected at US LEC's requested POI(s) and single IP in the Tampa LATA is evidence that US LEC's current interconnection architecture is technically feasible.

Second, the parties ask us to decide whether US LEC is permitted to select the method of interconnection. US LEC witness Montano believes that Verizon wants to designate collocation as the method US LEC must use to interconnect with Verizon; however, US LEC witness Montano contends that this position is also inconsistent with federal regulations, whereby pursuant to Section 251(c)(2), US LEC is entitled to select a technically feasible entrance facility or other method of interconnection that will be used to establish the physical IP. Witness Montano states that US LEC is not currently collocated at any Verizon office in any LATA in Florida and unlike Verizon, US LEC does not wish to change its current method of interconnecting with Verizon. Witness Montano explains Verizon's proposal and how it might constrain US LEC's network design:

Under Verizon's proposed contract language, Verizon wants US LEC to interconnect through collocation at Verizon's tandems, and to establish a physical IP at any other collocation arrangement US LEC may establish at a Verizon end office, or pay for Verizon's originating tandem switching costs and all of Verizon's transport costs, beginning at the Verizon end office where the call originates. These so-called "options" require US LEC to mirror Verizon's legacy network architecture (either physically or financially), which may not be the most efficient forward-looking architecture for an entrant deploying a new network, and therefore constitutes a barrier to entry.

The third question the parties want us to resolve is whether US LEC can require Verizon to bear the financial responsibility to deliver its originating traffic to the IP chosen by US LEC. US LEC witness Montano believes that according to Verizon's Virtual Geographically Relevant Interconnection Points ("VGRIP") proposal,

if US LEC fails to establish the physical IPs requested by Verizon, then Verizon wants to penalize US LEC by imposing transport charges for the delivery of Verizon's originating traffic, from the Verizon end office to US LEC's IP. Witness Montano contends that charging US LEC for transporting Verizon's originating traffic within the local calling area violates FCC rules and that under current FCC rules, the originating carrier bears the cost of transporting traffic to its point of interconnection with the terminating carrier.

Verizon witness Munsell's testimony focuses on two points: First, explaining the Virtual Geographically Relevant Interconnection Point proposal; second, explaining why, if US LEC chooses to locate only one point of interconnection in a LATA, US LEC should be financially responsible for transporting the Verizon-originated call to US LEC's distant POI. Initially, Verizon witness Munsell discusses the nuances of Verizon's VGRIP proposal, set forth in section 7.1.1 of the Interconnection Attachment of the parties' proposed agreement. According to that section, US LEC is allowed to choose the location of its POI(s) and is provided three options for the establishment of IPs.¹ First, if US LEC established a POI at a collocation site at a Verizon tandem wire center in a multi-tandem LATA, and accepted Verizon's originated traffic at that point, US LEC could designate that site as an IP.² Second, if US LEC decided to collocate at a Verizon end office, Verizon may request that this collocation site function as both a POI and an IP for the local calling area where that end office is located.³ Third, if US LEC chooses not to establish a POI at either of the above locations, the end office serving the Verizon customer who places the call acts as a virtual IP, as though US LEC had elected to establish a collocation site at that location.⁴ Any reciprocal compensation due to US LEC for this call would be reduced by the transport and switching costs Verizon incurs in transporting this traffic from the virtual IP to US LEC's POI.

¹ Verizon Interconnection Attachment, §7.1.1.

² See Verizon Interconnection Attachment, § 7.1.1.1.

³ See id. § 7.1.1.2.

⁴ See id § 7.1.1.3

Therefore, under the agreement proposed by Verizon, US LEC is permitted to select a single interconnection point (IP) per LATA and to choose an interconnection method, although its choices are limited by the options provided in VGRIP.⁵

Verizon witness Munsell believes that under US LEC's proposal, US LEC attempts to have Verizon bear costs that are actually caused by US LEC forcing Verizon to make network architecture decisions for the benefit of US LEC and not for Verizon and its customers. Witness Munsell contends that the main premise behind US LEC's network architecture position is that Verizon should be financially responsible for US LEC's interconnection choices.

Further, witness Munsell testifies that he believes that US LEC's proposed network architecture would qualify as a "technically feasible but expensive" form of interconnection, which under federal law would require US LEC to ". . . bear the cost of that interconnection, including a reasonable profit. . ." ⁶ because US LEC's proposal would require Verizon to incur costs for which it would not receive compensation. Conversely, witness Munsell contends that Verizon's VGRIP proposal would enable Verizon to receive fair compensation for the transport functions that it provides US LEC. US LEC witness Montano responds to this subject in her Rebuttal Testimony.

In her rebuttal testimony, witness Montano points out that in our generic reciprocal compensation order the Commission specifically rejected the argument made by Verizon ". . . that a point of interconnection and an interconnection point are separate entities because the distinction lacks any discernable [sic] authority."⁷ Witness Montano adds that the Commission instead ruled 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."

⁵ Verizon Interconnection Attachment, §7.1.1.

⁶ See Local Competition Order, 11 FCC RCD at 15603, ¶ 199.

⁷ See Order No. PSC-02-1248-FOF-TP, p.25.

US LEC witness Montano infers that our decisions in the Reciprocal Compensation Order⁸ regarding point of interconnection designation, originating carrier's obligations, and originating carrier's responsibilities are binding in this matter. Witness Montano states that the Reciprocal Compensation Order was issued in a generic proceeding that was opened by the Commission to establish guidelines for all carriers that interconnect in Florida. Witness Montano believes that the Commission's decision supports US LEC's position that Verizon is required to bear the cost of delivering its originating traffic to the POI selected by US LEC, and to compensate US LEC for the transport and termination functions it performs.

In response to Verizon's argument that it may require a separate IP where the ALEC requests an "expensive" form of interconnection, US LEC witness Montano states that she does not believe that this position is viable. Furthermore, she adds, ". . . to the extent that there is any validity to Verizon's 'expensive' interconnection argument, which appears doubtful, my understanding is that Verizon would be required to support its position with cost studies demonstrating that US LEC's single IP per LATA is 'expensive'." In conclusion, witness Montano contends that US LEC's present network architecture is more consistent with current Commission precedent and FCC rules than Verizon's VGRIP proposal.

US LEC witness Hoffmann does not believe Verizon's virtual IP proposal is a compromise. He counters that under Verizon's proposal, US LEC would be forced to bear the cost of transporting both parties' originating traffic if US LEC declines Verizon's "request" to establish collocated physical IPs, thus shifting all of Verizon's financial responsibility to US LEC.

Witness Hoffmann claims that contrary to Verizon witness Munsell's assertions, Verizon is today aggregating and delivering its traffic to US LEC at a central location, at the US LEC switch. US LEC witness Hoffmann believes that Verizon witness Munsell's testimony indicates that ". . . he does not equate 'central

⁸ Order No. PSC-02-1248-FOF-TP, issued September 10, 2002, in DN 000075-TP, In Re: Investigation into appropriate methods to compensate carriers for exchange of traffic subject to Section 251 of the Telecommunications Act of 1996, (Reciprocal Compensation Order)

locations' with 'single locations'. Rather, by 'central location,' what he really means is at Verizon's tandem switches; via collocation no less!" Further, witness Hoffman believes that Verizon's costs are de minimis, and not significant. He states that US LEC only charges a non-distance sensitive entrance facility rate to carry Verizon's originating traffic back to US LEC's switch.

US LEC witness Hoffman contends that the bottom line is that through VGRIPs, Verizon would force US LEC to choose between one of two equally unacceptable options: US LEC can either establish a POI at a collocation site at a Verizon tandem wire center in a multi-tandem LATA, and accept Verizon's originated traffic at that point, or if US LEC decided to collocate at a Verizon end office, Verizon may request that this collocation site function as both a POI and an IP for the local calling area where that end office is located. In conclusion, witness Hoffmann offers as a compromise that US LEC is willing to allow Verizon to deliver its traffic to US LEC at POIs US LEC has established at Verizon tandems via entrance facilities, provided that (1) US LEC does not have to change its established method of interconnection at Verizon's tandems, and (2) Verizon continues to compensate US LEC for a non-distance sensitive entrance facility, at the rate contained in Verizon's own state access tariff, to transport Verizon's traffic from the POI to US LEC's switch.

According to "option three" of Verizon's proposal, if an ALEC elects not to collocate and establish a POI/IP at the VGRIP location, Verizon proposes that the end office serving the Verizon customer who places the call will act as the "virtual IP." Although Verizon will then transport this traffic from the Verizon customer to the ALEC-designated location, the ALEC will be financially responsible for the transport from the "virtual IP" to the ALEC POI. Verizon witness Munsell agrees with US LEC witness Hoffman that under "option three" US LEC must bear all of the costs of transporting a call from the originating end office to US LEC's chosen IP. Witness Munsell states that under "option three" US LEC must bear the costs of transporting traffic within the local calling area, calculated using the unbundled network element rate in the parties' agreement. Thus, VGRIP is a compromise proposal that provides US LEC with options based on the network architecture that it finds more advantageous. He adds that under "option one,"

where US LEC finds it cost-justified to establish a geographically relevant IP at a Verizon tandem, Verizon can incur more than its share of the transport cost, because Verizon will be responsible for the costs of hauling its traffic from Verizon customers to the geographically relevant IP, even though the IP may be located beyond the Verizon local calling area.

Verizon witness Munsell concludes that it is Verizon's position that our decision in the Sprint Arbitration Order⁹ is consistent with FCC rules; however, because of its generic nature, he acknowledges that our recent decision in the Reciprocal Compensation Order is binding. Moreover, he notes that Verizon has sought reconsideration of the decision.¹⁰

B. Analysis

We note that this issue was addressed by us in the recent generic reciprocal compensation proceedings Docket No. 000075-TP. We find that no new facts or viable arguments have been presented in this proceeding to merit a change from the Commission's decisions in the generic docket. Accordingly, we believe our decision for this issue should be consistent with the decision made in our Reciprocal Compensation Order.

In order for US LEC and Verizon to exchange traffic between their respective customers, they must interconnect their networks as required by Section 251(c)(2) of the Act. The physical points at which they connect are called Points of Interconnection or "POIs" under Verizon's defined terms. In contrast, the billing points that distinguish the financial responsibility of each Party for transporting traffic are called Interconnection Points or "IPs" using Verizon's terms.

⁹ Order No. PSC-01-1095-FOF-TP, issued May 8, 2001, in DN 000828-TP, In Re: Petition of Sprint Communications Company Limited Partnership for arbitration of certain unresolved terms and conditions of a proposed renewal of current interconnection agreement with BellSouth Telecommunications, Inc. (Sprint Arbitration Order) pp 58-63.

¹⁰ Reconsideration was denied by us in Order No. PSC-03-0059-FOF-TP on . However, Verizon and other parties have appealed the Commission's decision.

Under the parties' current interconnection architecture, US LEC has elected to have one switch in Florida, located in Verizon's service territory in the Tampa area. This switch currently serves the Tampa LATA and numerous local calling areas within that LATA. US LEC has also chosen to establish POIs at each Verizon Access Tandem where US LEC has been assigned NXX codes and provides local exchange services to its end users. We find that the parties' current method of interconnection is appropriate and in compliance with FCC rules and our prior ruling, as long as US LEC's POI is within Verizon's network. According to the FCC's current rules, the originating carrier is responsible for the cost of delivering its calls to the point of interconnection with the co-carrier; recovery of the cost of the facilities used to deliver this traffic to the POI is the originating carrier's responsibility. The originating carrier recovers the cost of these facilities through the rates it charges its own customers for making calls.¹¹ This sentiment was echoed by us in our Reciprocal Compensation Order.¹²

We came to two additional conclusions with regard to this issue in our Reciprocal Compensation Order.¹³ First, we found 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. Second, we 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 carrier's originating traffic, from its source to the point(s) of interconnection in a LATA. These rules require an originating carrier to compensate the terminating carrier for transport and termination of traffic through intercarrier compensation.

Although we acknowledge that Verizon indicates that US LEC's selected interconnection points are "technically feasible but

¹¹ TSR Wireless, LLC v. US West Communications Inc., File Nos. E-98-13, E-98-15, E-98-16, E-98-17, E-98-18m Memorandum Opinion and Order, FCC 00-194, ¶34 (rel. June 1, 2000) ("TSR Wireless"), aff'd, Quest Corp. et al. v. FCC, et al, 252 F.3d 462 (D.C. Cir 2001)

¹² See Order No. PSC-02-1248-FOF-TP, p.25.

¹³ See Id. pp. 25 and 26.

expensive," we agree with US LEC witness Montano that it is incumbent on Verizon to provide support for this claim. Verizon has not provided any such support. Consequently, we were not persuaded by Verizon's testimony on this matter.

We believe that our decisions for this issue should mirror the Commission's rulings made in the Reciprocal Compensation Order and the subsequent Order Denying Reconsideration of the Reciprocal Compensation Order.¹⁴ We find that no new facts have been presented to us by the parties. Therefore, we find that US LEC shall be permitted to select a single interconnection point (IP) per LATA, to select the interconnection method, and to require Verizon to bear the financial responsibility of delivering its originating traffic to the IP chosen by US LEC, as long as that IP is within Verizon's network.

C. Decision

We find that US LEC is permitted to select a single interconnection point (IP) per local access and transport area (LATA), to select the interconnection method, and to require Verizon to bear the financial responsibility to deliver its originating traffic to the IP chosen by US LEC, as long as that IP is within Verizon's network.

II. DESIGNATION OF US LEC IP

This issue addresses whether Verizon can require US LEC to designate a US LEC collocation site at a Verizon end office as a US LEC IP, and impose additional charges on US LEC if US LEC declines that request.

A. Arguments

Based on the testimony of the parties, coupled with the parties' acknowledgment of the relevant and binding decisions made by us in our Reciprocal Compensation Order, we are puzzled that the parties have not agreed to remove this issue from consideration by

¹⁴ Order No. PSC-03-0059-FOF-TP, issued January 8, 2003, in DN 000075-TP, denying reconsideration of the Reciprocal Compensation Order. (Order Denying Reconsideration of the Reciprocal Compensation Order)

us in this docket. US LEC witness Montano objects to Verizon's requirement that US LEC establish an IP via collocation for two reasons. First, US LEC witness Montano states that US LEC does not use collocation as its method of interconnection with Verizon. Witness Montano affirms that US LEC is not collocated at any Verizon office in Florida, nor does US LEC wish to change its method of interconnecting with Verizon.

Second, US LEC witness Montano believes that US LEC's right to select an entrance facility or other method of interconnection is granted by Section 251(c)(2) of the Act, which permits US LEC to select any technically feasible method of interconnection that will be used to establish the physical IP. US LEC witness Montano contends that Verizon's proposed contract language requires US LEC to interconnect through collocation at Verizon's tandems, establish a physical IP at a collocation arrangement US LEC may establish at a Verizon end office, or pay for Verizon's originating tandem switching costs and all of Verizon's transport costs, beginning at the Verizon end office where calls originate. Witness Montano states that ". . . this portion of Verizon's VGRIP proposal is a penalty that has not been sanctioned by the Commission, and Verizon should be prohibited from imposing it."

US LEC witness Montano points out that under current FCC rules, the originating telecommunication carrier bears the costs of transporting traffic to its point of interconnection with the terminating carrier; thus, the POI serves as the IP. US LEC witness Montano believes that Verizon's obligation to deliver its originating traffic to US LEC's IP is not conditioned on US LEC establishing the collocated IPs Verizon is trying to require through Verizon's contract proposals. Consequently, witness Montano believes that the Commission should find that US LEC has the right to maintain its chosen IP(s) in each LATA and, at US LEC's option, its current interconnection method.

We note that the testimony of Verizon witness D'Amico was adopted by Verizon witness Munsell. Verizon witness Munsell believes that Verizon's Virtual Geographically Relevant Interconnection Point ("VGRIP") proposal is consistent with federal law. Witness Munsell states that under Verizon's proposal, ". . . if US LEC chooses to locate only one point of interconnection("POI") in a LATA, it should be financially

responsible for hauling the Verizon-originated call to its distant POI." Verizon witness Munsell believes that a POI is different from an Interconnection Point("IP"). He elaborates:

A POI is where the ILEC and ALEC physically interconnect their respective networks. To exchange traffic, two carriers' networks must be physically linked; the point of that physical linkage is the POI. An IP, on the other hand, is the place in the network at which one local exchange carrier hands over financial responsibility for traffic to another local exchange carrier. A POI and an IP may be at the same place but do not have to be.

Verizon witness Munsell contends that pursuant to Verizon's proposal, Verizon is financially responsible for delivering its traffic to US LEC's IP. Once Verizon transports traffic originating on its network to US LEC's IP, then US LEC takes over financial responsibility for delivering the traffic to its customer.

Witness Munsell believes that Verizon's VGRIP proposal, which is found in the Interconnection Attachment of US LEC's petition for arbitration in Sections 7.1.1.1, 7.1.1.2, and 7.1.1.3, mirrors Sprint's proposal in the Sprint Arbitration Order, which we determined was in compliance with the 1996 Act and the FCC's rules implementing the Act. Verizon witness Munsell claims that under VGRIP, Verizon may request that the ALEC establish a POI at a collocation site in each Verizon tandem wire center where the ALEC chooses to assign telephone numbers. He adds:

That POI would serve as the ALEC's IP under VGRIP. If Verizon only operates one tandem in a LATA, then Verizon may designate additional VGRIP locations, such as host end office wire centers. In addition, either may designate an ALEC collocation site at any Verizon wire center as the ALEC IP for traffic originating from that end office.

If an ALEC elects not to collocate and establish a POI/IP at the VGRIP location, Verizon proposes that the end office serving the Verizon customer who places the call will act as the "virtual IP." Although Verizon will then

transport this traffic from the Verizon customer to the ALEC-designated location, the ALEC will be financially responsible for the transport from the "virtual IP" to the ALEC POI.

Verizon witness Munsell does not believe that Verizon's proposal in the Interconnection Attachment grants Verizon the power to change US LEC's network architecture at Verizon's sole discretion. Witness Munsell maintains that Verizon's VGRIP proposal allows Verizon to request that US LEC establish POI/IPs at a collocation site at either a Verizon tandem or a Verizon end office; however, US LEC remains free to meet VGRIP's requirements through the establishment of virtual IPs, which does not require US LEC to change its network architecture.

Verizon witness Munsell notes that any dispute about Verizon's VGRIP proposal with regard to collocation is entirely hypothetical because ". . . US LEC admits that it does not currently collocate with Verizon. . . ." and this issue only applies when an ALEC has established a collocation arrangement in a Verizon end office. Witness Munsell believes that unless US LEC decides to change its network architecture, this issue will not affect it in any way.

In response, US LEC witness Montano contends that US LEC's position to continue operating using their existing network interconnection architecture is more consistent with current Commission precedent and FCC rules than Verizon's VGRIP proposal. Consequently, US LEC witness Montano believes that the Commission should adopt US LEC's proposal with regard to Issue 2.

Verizon witness Munsell maintains that Verizon's VGRIP proposal is consistent with our decision in the Sprint Arbitration Order and therefore should be adopted by . However, referring to the Reciprocal Compensation Order later in his testimony, witness Munsell acknowledges that in a more recent decision, we held that "an originating carrier is precluded by FCC rules from charging a terminating carrier for the costs of transport, or for facilities used to transport the originating carrier's traffic from its source to the point(s) of interconnection in a LATA," which witness Munsell believes is contrary to our decision in the Sprint

Arbitration Order.¹⁵ Verizon witness Munsell claims that in reaching our generic decision we did not discuss the Sprint Arbitration Order; thus, Verizon sought and has been denied reconsideration of our decision in Order No. PSC-02-1248-FOF-TP. Consequently, in its brief, Verizon has offered this later decision as an alternative to Verizon's VGRIP proposal.

Verizon indicates in its brief that Verizon's alternative proposal does not contain a counterpart to Interconnection Attachment section 7.1.1.2. If this section is adopted by us, it would permit Verizon to request US LEC to designate as a US LEC IP, any collocation site US LEC establishes at a Verizon end office, which is the basis for Issue 2. By purposely omitting this section Verizon implies that it no longer seeks to request that US LEC designate an established US LEC collocation site at a Verizon end office as a US LEC IP.

B. Analysis

We believe that although Verizon witness Munsell disagrees, he recognizes that this Commission's decision in the Reciprocal Compensation Order is inconsistent with Verizon's VGRIP proposal. We applaud the foresight Verizon displayed in its brief, where it proffered an alternative proposal to VGRIP. However, we are disappointed that the parties failed to settle what is now considered by at least one of the parties a moot issue.

In light of Verizon's acknowledgment of the binding nature of our Reciprocal Compensation Order and the alternative proposal offered by Verizon in its brief, we believe that this issue should have been stipulated by the parties prior to our rendering a decision. Nevertheless, we are compelled to echo our findings in the Reciprocal Compensation Order, in our decision of this issue. Thus, it is clear to us: that a point of interconnection and an interconnection point are not separate entities; 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; and that an originating carrier has the responsibility for delivering its

¹⁵ See Order No. PSC-02-1248-FOF-TP, pp. 25-26.

traffic to the point(s) of interconnection designated by the alternative local exchange company (ALEC) in each LATA for the mutual exchange of traffic.

C. Decision

If US LEC establishes a collocation site at a Verizon end office, we find that Verizon shall not be permitted to request US LEC designate that site as a US LEC IP and impose additional charges on US LEC if US LEC declines that request. However, Verizon shall only be required to bear the financial responsibility to deliver its originating traffic to an IP chosen by US LEC, if that IP is on Verizon's network, within a LATA.

III. COMPENSATION FOR VOICE INFORMATION SERVICES

This issue address whether US LEC is entitled to reciprocal compensation for terminating or delivering "Voice Information Services" traffic.

A. Arguments

Although the focus of this issue is the applicability of reciprocal compensation, the point of contention between the parties is the way in which "Voice Information Services" traffic should be characterized. US LEC witness Montano believes that the categories of traffic that Verizon now wants to define as Voice Information Services traffic fit completely within the definition of "Reciprocal Compensation Traffic," which is defined in the proposed agreement as "Telecommunications traffic originated by a Customer of one Party on that Party's network and terminated to a Customer of the other Party on that other Party's network, except for Telecommunications traffic that is interstate or intrastate Exchange Access, Information Access, or exchange services for Exchange Access or Information Access." She asserts that this is the basis for the parties' reciprocal compensation obligations. Witness Montano further explains:

The categories of traffic included in the definition of "Voice Information Services Traffic" fit this definition: Whether the call is a "recorded voice announcement information" or "a vocal discussion program open to the

public," it is originated by a customer of one party on that party's network and is terminated by a customer of the other party on that party's network.

At the same time, the traffic at issue can not be characterized as interstate or intrastate Exchange Access, Information Access, or exchange services for Exchange Access or Information Access. In short, there does not appear to be any basis to exclude what Verizon South has defined as "Voice Information Services Traffic" and, as such, the parties should be required to compensate each other for exchanging and terminating such traffic.

Verizon provided its position in response to our staff's interrogatories. Verizon indicated that "Voice Information Services Traffic should be excluded from the scope of the parties' reciprocal compensation obligations to the extent (and only the extent) that such traffic is "interstate or intrastate exchange access, information access, or exchange services for such access." Verizon does not dispute that the definition of Reciprocal Compensation Traffic given by US LEC is the language agreed to in the proposed agreement; however, Verizon focuses on what the definition excludes. Verizon alleges that the definition of "Voice Information Services" traffic includes only traffic that is not subject to reciprocal compensation under current law.

Conversely, US LEC claims the types of traffic considered as Voice Information Services Traffic fit the definition of "Reciprocal Compensation Traffic" in the parties' proposed Interconnection Agreement. US LEC asserts none of the exempted traffic types enumerated in 47 CFR Section 51.701(b)(1) apply to Voice Information Services traffic.

The traffic plainly is not "Exchange Access" traffic, which is defined in the Telecommunications Act as "the offering of access to telephone exchange services or facilities for the purpose of the origination or termination of telephone toll services." 47 U.S.C. § 153 (16) The term has the same meaning for the purposes of the parties' exchange of traffic in Florida because they have defined it in their proposed Interconnection

Agreement as having "the meaning set forth in the Act." (Glossary at § 2.33). Thus, VIS traffic is not Exchange Access because it is not toll traffic subject to access charges.

Nor is it properly categorized as "Information Access" traffic, which is not defined in the Act, but rather, is defined in the Modified Final Judgement as "the provision of specialized exchange telecommunications services by a BOC in an exchange area in connection with origination, termination, transmission, switching, forwarding or routing of telecommunications traffic to or from the facilities of a provider of information services." (United States v. AT&T, 552 F. Supp. 131, 229 (D.C. 1982))

In turn, "Information Services" is defined in the Act as "the offering of a capability for generating, acquiring, storing, transforming, processing, retrieving, utilizing, or making available information via telecommunications, and includes electronic publishing, but does not include any use of any such capability for the management, control, or operation of a telecommunications system or the management of a telecommunications service."¹⁶

Verizon disputes US LEC's claim that Voice Information Services traffic can never constitute ". . . interstate or intrastate exchange access, information access, or exchange services for such access. . . ." as a matter of law. In order to support its position Verizon cites:

As the FCC made clear in the ISP Remand Order, reciprocal compensation does not apply to "traffic destined for an information service provider" because such traffic falls into the category of "information access." ISP Remand

¹⁶ 47 U.S.C. § 153 (20)

Order ¶ 44.¹⁷ The FCC further held that "Congress's reference to 'information access' in section 251(g) was intended to incorporate the meaning of the phrase 'information access' as used in the AT&T Consent Decree" set forth in *United States v. AT&T*.¹⁸

The Consent Decree defined "information access" as "the provision of specialized exchange telecommunications services. . . in connection with the origination, termination, transmission, switching, forwarding or routing of telecommunications traffic to or from the facilities of a provider of information services."¹⁹ And "information services" were in turn defined as "the offering of a capability for generating, acquiring, storing, transforming, processing, retrieving, utilizing, or making available information which may be conveyed via telecommunications."²⁰ The definition of Voice Information Services in the proposed agreement at the very least includes such traffic, because (among other things) that definition includes calls that are intended to retrieve "recorded voice announcement information." US LEC Pet'n, Exh. B at 43, Additional Services Attachment § 5.1. The FCC has explicitly held that

¹⁷ Although the D.C. Circuit Court of Appeals remanded the ISP Remand Order to the FCC, the court explicitly declined to vacate the order, which thus remains binding federal law. See, Worldcom, Inc. v. FCC, 288 F.3d 429, 434 (D.C. Cir. 2002); see also Memorandum Opinion and Order, Joint Application of BellSouth Corporation, et al., for Provision of In-Region, InterLATA Services in Georgia and Louisiana, 17 FCC Rcd 9018, 9173, ¶ 272 (2002) (rules adopted in the ISP Remand Order "remain in effect") (Verizon App. Tab 7)

¹⁸ See ISP Remand Order ¶ 44 (citing *United States v. AT&T*, 552 F. Supp. 131, 196, 229 (D.D.C. 1982))

¹⁹ See *id.*

²⁰ *AT&T*, 552 F. Supp. at 229.

retrieval of recorded information is an enhanced service, the FCC's term for an information service.²¹

B. Analysis

FCC rules define "Reciprocal Compensation" as an arrangement ". . . in which each of the two carriers receives compensation from the other carrier for the transport and termination on each carrier's network facilities of telecommunications traffic that originates on the network facilities of the other carrier."²² Similarly, the parties propose to define Reciprocal Compensation Traffic in their agreement as ". . . telecommunications traffic originated by a Customer of one party on that party's network and terminated to a Customer of the other party on that party's network, except for Telecommunications traffic that is interstate or intrastate Exchange Access, Information Access, or exchange services for Exchange Access or Information Access."²³

"Information Services" is defined in the Act as ". . . the offering of a capability for generating, acquiring, storing, transforming, processing, retrieving, utilizing, or making available information via telecommunications, and includes electronic publishing, but does not include any use of any such capability for the management, control, or operation of a telecommunications system or the management of a telecommunications service."²⁴ Voice Information Services (VIS) is defined in section 5.1 of the Additional Services Attachment of the parties' proposed agreement as ". . . a service that provides (i) recorded voice announcement information or (ii) a vocal discussion program open to

²¹ See, e.g., Memorandum Opinion and Order, Petition of Nevada Bell, 16 FCC Rcd 19255, ¶ 1 (2001) (Verizon App. Tab 11).

²² FCC Rule 51.701(e).

²³ See Proposed Agreement Glossary, Section 2.75, pp. 35-36.

²⁴ 47 U.S.C. § 153(20).

the public. It also defines Voice Information Service Traffic as intraLATA switched voice traffic, delivered to a 'Voice Information Service'."

Interstate or intrastate Exchange Access, Information Access, or exchange services for Exchange Access or Information Access are not telecommunications traffic subject to reciprocal compensation, per FCC Rule 51.701(b)(1) and the parties' proposed agreement. We find that calls to VIS Providers who offer "a vocal discussion program open to the public," such as chatlines, are entitled to reciprocal compensation because such a service does not fall into any of the categories of traffic identified in FCC Rule 51.701(b)(1) to which reciprocal compensation does not apply. However, we are not persuaded by US LEC witness Montano's argument that "Information Access" traffic was meant to apply solely to BOCs. We reason that this decision was made prior to the Telecommunications Act of 1996, in a time when the industry consisted of BOCs and IXCs. We find that because ALECs did not exist at that time, they were excluded from this particular definition of "Information Access." However, we believe that it would be disingenuous at best to conclude that non-RBOCs such as Sprint or US LEC do not make information access calls. Consequently, it is clear to us that calls to recorded voice announcements, such as time/temperature, weather information, and sports information, etc. fall into the category of information access. Therefore, we find that such traffic shall be excluded for the purposes of reciprocal compensation.

C. Decision

We find that US LEC is entitled to reciprocal compensation for terminating and/or delivering "Voice Information Services" traffic, as defined in the proposed agreement, when the call is to a service that provides a vocal discussion program open to the public; however, when the traffic is to a service that provides recorded voice announcement information, such traffic falls into the category of information access and is therefore excluded from reciprocal compensation.

IV. "TERMINATING PARTY" OR "RECEIVING PARTY"

This issue addresses whether the term "terminating party" or "receiving party" should be employed for the purpose of traffic measurement and billing over interconnection trunks in the proposed agreement.

A. Arguments

US LEC believes that the term "terminating party" should be employed for the purposes of traffic measurement and billing over interconnection trunks. US LEC witness Montano gives two reasons in support of this position: historical reference and consistency.

First, witness Montano asserts that historically, as well as currently, when it comes to billing, measuring, and engineering purposes, traffic is referred to as either originating or terminating. Thus, for any call, there is an originating party served by an originating carrier and a terminating party served by a terminating carrier. Witness Montano contends that "US LEC sees no need to disrupt the historic framework that has governed the transport, exchange and billing of traffic for decades." Additionally, US LEC is not willing to abandon decades of precedence in engineering, measuring, and billing for traffic without a satisfactory explanation.

Second, US LEC witness Montano believes that Verizon should use either "terminating party" or "receiving party" consistently throughout the agreement; witness Montano adds that Verizon should not seek to interject the entirely new concept of a "receiving party" in order to ". . . escape some of its compensation obligations, which are grounded in the traditional 'originating party-terminating party' designations." Witness Montano provides an example:

In section 7.2, the parties agree that they will compensate each other for the "transport and termination" of Reciprocal Compensation Traffic. In turn, "Reciprocal

Compensation" is defined with respect to the "transport and termination" of "Reciprocal Compensation Traffic," which itself, is defined with reference to traffic that is "terminated on the other Party's Network."

In contrast, in Sections 2.16 of the Glossary and 8.5.2 and 8.5.3 of the Interconnection Attachment dealing with the definition of an "IP" (Interconnection Point), Verizon abandons the "terminating party" designation and, instead, refers to traffic delivered to the "receiving party" and provides no valid reason why, in these limited sections, the term "receiving party" should replace the more standard "terminating party." Similarly, Section 2.56 of the Glossary refers to the "receiving party," not the "terminating party" when defining Measured Internet Traffic.

US LEC witness Montano contends that it is important that the agreement refer consistently to the "terminating party" for all purposes.

Verizon provided no testimony on this issue, choosing instead to proffer its position in responses to discovery and in its brief. In its brief, Verizon states that it does not agree that the receiving carrier ". . . terminates traffic delivered to ISPs and other information service providers . . . "; therefore, the term "receiving party," not "terminating party" should be used.

In a response to a US LEC interrogatory, Verizon attempts to differentiate between "receiving" and "terminating" traffic. Verizon asserts that:

"'Receiving traffic' is a broader term than 'terminating traffic.' It includes traffic, such as Internet-bound traffic, that the receiving carrier does not terminate but instead passes on to another party for onward transmission. For example, with respect to an Internet-bound call from a Verizon customer through an Internet

service provider ("ISP") served by US LEC, US LEC would receive the call but would not terminate it." Further, "[i]n the case of Internet-bound traffic originated by a Verizon customer through an ISP served by US LEC, US LEC would receive the traffic; Verizon would not know who the terminating carrier would be in such a circumstance."

In response to our Staff's Second Set of Interrogatories, Verizon provided a contemporary definition of the term "receiving party" and an explanation of how it is to be distinguished from the historical reference of receiving party, such as those found in the proposed agreement. In its response Verizon alleges that:

"Receiving party" means the party receiving the telecommunications traffic originated on the originating party's network. The use of the term "receiving" in this context is consistent with the use of that term in other contexts; the only difference is what is being "received." Thus, in the case of section 10 of the proposed agreement's inter-carrier compensation provisions, telecommunications traffic is being received.

Verizon concludes that whether or not Internet-bound traffic terminates at the ISP, there can be no doubt that such traffic is received by the carrier serving the ISP for delivery to the ISP. Accordingly, Verizon asserts there can be no dispute that the term "receiving party" accurately and unambiguously describes the carrier receiving the traffic at issue.²⁵

B. Analysis

In its 1999 ISP Declaratory Ruling, the FCC concluded that calls to ISPs do not terminate at the ISP's local server, but instead "continue to the ultimate destination or destinations, specifically at a[n] Internet website that is often located in

²⁵ Response of Verizon Florida Inc. to Petition for Arbitration Filed by US LEC of Florida Inc., p. 22.

another state.”²⁶ Accordingly, the FCC determined that ISP-bound traffic was not subject to reciprocal compensation under its existing rules; however, this determination was later vacated by the D.C. Circuit Court of Appeals and the matter remanded to the FCC. In its ISP Remand Order, the FCC determined that the use of the term “local traffic” to define parties’ reciprocal compensation obligations under section 251(b)(5) had “created unnecessary ambiguities” and it abandoned its former jurisdictional analysis.²⁷

In its brief, Verizon implies that it has not attempted to gain any collateral advantage by using this terminology. Under current law, the question of whether or not traffic “terminates” at the ISP’s premises does not govern the parties’ obligations under section 251(b)(5) and the FCC’s implementing rules. Citing the history of the rulings entered into the record in this proceeding, there is arguably a possibility that the FCC could conclude at its next opportunity to consider the issue that, in fact, for purposes of reciprocal compensation, calls to ISPs do terminate at the ISP. It is also possible that the FCC will not alter its previous position.

We believe that the only apparent reason for wanting to use the term “receiving party” pertains to traffic not subject to reciprocal compensation, notably ISP-bound traffic. However, since current FCC rules and orders govern the applicability of reciprocal compensation, Verizon’s proposed language is an unnecessary complication. Any attempt to countermand the historical language of this issue as it relates to reciprocal compensation would be premature. Therefore, we find that the term “terminating party” shall be employed for the purposes of traffic measurement and

²⁶ Declaratory Ruling in CC Docket No. 96-98 and Notice of Proposed Rulemaking in CC Docket No. 99-68. Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, 14 FCC Rcd 3689, 3697, ¶ 12 (1999) (“1999 ISP Declaratory Ruling”), vacated, Bell Atlantic Tel. Cos. v. FCC, 206 F. 3d 1 (2000).

²⁷ ISP Remand Order, 16 FCC Rcd at 9173, ¶ 46.

billing over interconnection trunks for the proposed agreement. However, when the term "terminating party" is not applicable, such as in the case of traffic bound for ISPs, where a higher degree of specificity is required for clarification, the parties are free to use an additional established term or notation, defined in the glossary of their agreement, for clarification; e.g. *not subject to reciprocal compensation.

C. Decision

We find that all references in the Agreement to a party that is terminating traffic shall refer to that party as the "terminating party." Further, all references to the party "receiving" traffic or to the "receiving party" shall refer instead to the party "terminating" traffic and to the "terminating party" with terms or notations added solely for purposes of clarification.

V. COMPENSATION MECHANISM FOR VIRTUAL NXX/FX TRAFFIC

In this issue the Commission is presented with two matters for determination. First, the Commission is to determine if the parties should pay reciprocal compensation for calls that originate in one local calling area and are delivered to a customer located in a different local calling area, if the NXX of the called number is associated with the same local calling area as the NXX of the calling number. Second, the Commission is to determine if the originating carrier should be able to charge originating access for the aforementioned traffic.

A. Arguments

In its brief, US LEC indicates that the parties should pay reciprocal compensation for calls that originate in one local calling area and are delivered to a customer located in a different local calling area, if the NXX of the called number is associated with the same local calling area as the NXX of the calling number. Further, US LEC believes that the originating carrier should not be able to charge originating access for calls that originate in one

local calling area and are delivered to a customer located in a different local calling area, if the NXX of the called number is associated with the same local calling area as the NXX of the calling number. US LEC witness Montano states that the Commission has not resolved the issue of whether reciprocal compensation is payable on virtual NXX traffic, and US LEC wants the Commission to do so in this proceeding. Witness Montano believes that Verizon is obligated to pay intercarrier compensation for all calls originated by Verizon customers to US LEC lines with "NXX" codes associated with the calling party's local calling area. Witness Montano adds that ". . . calls are conventionally rated and routed throughout the U.S. telephone industry based upon the NXX codes of the originating and terminating numbers. US LEC submits that there is no reason to deviate from that convention now." In explaining US LEC's position witness Montano states:

Standard industry procedure provides that each NXX code is associated with a particular rate center within a local calling area. (A single rate center may have more than one NXX code, but each code is assigned to one and only one rate center.) This uniquely identifies the end office switch serving the NXX code, so that each carrier that is routing a call knows which end office switch to send the call to. However, it is not uncommon for NXX codes to be assigned to customers who are not physically located in the local calling area where the NXX is "homed." When an ILEC provides this arrangement, it typically is called foreign exchange or FX service. This type of arrangement also may be referred to as "Virtual NXX" because the customer assigned the telephone number has a "virtual" presence in the calling area associated with that NXX. Calls to these customers are still routed to the end office switch associated with the NXX code, but then are routed within the terminating carrier's network to the called party's actual physical location.

US LEC witness Montano believes that deviating from the historical practice of rating a call based upon the NXX codes of the

originating and terminating number would give Verizon the ability to arbitrarily reclassify local calls as toll calls. Witness Montano states that this is due to the fact that under Verizon's proposed language, it would be nearly impossible and much more economically burdensome for US LEC to utilize virtual NXXs in the provision of service to its customers.

US LEC witness Montano affirms that Virtual NXXs are used by carriers to provide a local number to customers in calling areas in which the customer is not physically located. Witness Montano contends that if the Commission adopts Verizon's language and allows Verizon to avoid rating calls based on the NXX of the originating and terminating numbers, calls to "virtual NXX" customers would effectively be reclassified as toll calls and Verizon would no longer be obligated to compensate US LEC for terminating what for decades have been rated as simple local calls.

US LEC witness Montano states that the only costs that Verizon incurs on locally dialed calls are the transport and switching charges required to bring traffic to the interconnection point between Verizon and US LEC; therefore, it would be inconsistent and anti-competitive to allow Verizon to charge US LEC originating switched access charges for calls going to a particular NXX code. US LEC witness Montano believes that "Verizon would double-recover for carrying such traffic and it would also be compensated for cost not incurred."

US LEC witness Montano testifies that there are two main technical reasons why the Commission should find that calls should continue to be rated as local or toll calls based on the NXX codes of the originating and terminating parties rather than on the end points of the call. First, witness Montano states that there is no practical, cost-effective way for the parties to segregate the disputed traffic from other locally dialed traffic. She contends that calls dialed to a number assigned a "virtual NXX" are indistinguishable from all other locally dialed traffic sent over local trunk groups. Witness Montano believes that US LEC would be required to expend considerable effort and absorb the cost

associated with developing a program to separate the calls so that invoices submitted to Verizon do not include both types of calls, if Verizon's proposal is adopted by us.

Second, US LEC witness Montano asserts that because it has always been standard industry procedure for carriers to use NXX codes as rate center identifiers, the software in the LEC and ALEC switches and billing systems looks at the NXXs of the calling and called parties to determine whether a call is to be rated and billed as local or toll. Witness Montano believes that implementing Verizon's proposal would be unjustifiably burdensome, expensive, and disruptive. She adds:

Adoption of Verizon's position would require US LEC to devote considerable effort and resources to undo the automated billing systems which have served as the basis for the design of modern switches and to maintain and assure the accuracy of a costly and burdensome alternative tracking system. Verizon's proposal would likewise necessitate the difficult and expensive step of requiring both parties to establish different ratings for a single telephone number; one set for end user purposes, the other for compensation purposes. Verizon has not addressed these serious considerations, and the Commission should evaluate them when determining whether a departure from industry practice is warranted.

Verizon witness Haynes believes that reciprocal compensation does not apply to calls that originate and terminate in different local calling areas, defined by reference to the actual originating and terminating points of the complete end-to-end communication. Witness Haynes adds:

US LEC is confusing the rating of calls for the purpose of assessing end-user charges and the treatment of calls for intercarrier compensation purposes. Before the widespread introduction of local competition following the adoption of the 1996 Act, the most important type of

intercarrier compensation was the access charges that interLATA long distance carriers paid to local telephone companies. Such intercarrier compensation has always been governed by the originating and terminating points of the end-to-end call, not the NPA-NXX of the calling and called party.

The FCC has always held that reciprocal compensation does not apply to interexchange traffic, whether interstate or intrastate, but only to traffic that remains within a single local calling area. The FCC confirmed this in its April 2001 ISP Remand Order, when it ruled that reciprocal compensation does not apply to "exchange access, information exchange access, or exchange services for such access." 47 C.F.R. § 51.701 (b) (1).

Witness Haynes asserts that US LEC's proposal to require payment of reciprocal compensation by reference to the NPA-NXX of the called number, rather than the terminating point of the complete communication, is also inconsistent with our ruling on the same issue in our generic reciprocal compensation docket.

Verizon witness Haynes points out that we squarely held that reciprocal compensation depends on where a call physically originates and terminates, not on ". . . the NPA/NXXs assigned to the calling and called parties." The Commission, therefore, concluded that virtual NXX traffic is not subject to reciprocal compensation because it does not physically terminate in the same local calling area in which it originates. Witness Haynes interprets this finding to mean that whether a particular call is interexchange does not depend on the telephone number, but on whether the call remains within the local calling area or travels outside it.

Verizon witness Haynes believes that US LEC should pay originating access charges for calls that originate in one local calling area and are delivered to a customer located in a different local calling area, even if the NXX of the called number is

associated with the same local calling area as the NXX of the calling number, because it is a type of toll-free interexchange traffic. He elaborates:

Even though a Verizon customer is placing an interexchange call, Verizon cannot impose toll charges because of the way in which US LEC has assigned telephone numbers to its customers. Instead, US LEC receives compensation from its customer. There is nothing necessarily wrong with that, but US LEC must compensate Verizon for this originating access service. Access charges have always been applied to toll-free traffic. In fact, this Commission approved its Staff's logic that "it seems reasonable to apply access charges to virtual NXX/FX traffic that originates and terminates in [sic] different local calling area."

Witness Haynes concludes that if US LEC uses a Verizon access service, as it does in the "virtual FX" arrangements at issue here, it must pay the tariffed access rates per the parties' agreement.

Verizon witness Haynes suggests that for purposes of billing reciprocal compensation, Verizon's billing system may be outdated because the method it uses to determine the amount of CLEC originated traffic sent to a FX number will not yield a correct answer for intercarrier compensation billing. Verizon's billing system assumes that the volume of CLEC originated traffic sent to a FX number on Verizon's network is very small. Witness Haynes contends that since the advent of local competition, the assumption that a customer's assigned NPA-NXX code most likely corresponds to the customer's physical location is often not a valid assumption in the case of traffic delivered to CLECs. Based on the information on page 5 of Exhibit 3, which refers to a study performed by Verizon, witness Haynes alleges that the volume of locally rated interexchange traffic being delivered to some CLECs makes up a significant percentage of the traffic delivered to those CLECs, which would justify Verizon's steps to develop methods to

accurately measure the volume of CLEC traffic terminated to Verizon FX numbers.

Verizon witness Haynes states that Verizon conducted an inexpensive study to identify those calls that were originated by CLEC customers and terminated to Verizon FX numbers. He continues ". . . the study amounted to nothing more elaborate than matching call records that Verizon creates on calls originated from facility based CLECs to a list of telephone numbers that Verizon assigned to FX service lines." Witness Haynes maintains that this study was conducted with the intent of providing a means for Verizon to properly estimate the access revenue that CLECs would be entitled to for CLEC originated calls terminated to Verizon FX numbers.

Verizon witness Haynes states that Verizon also considered what approach would be required to properly account for traffic originated by Verizon customers which terminated to CLEC virtual FX numbers. Witness Haynes claims that two options were identified. The first option would be for the CLEC to conduct a study, similar to the one performed by Verizon, to quantify the number of Verizon customer originated minutes that were delivered to the CLEC virtual FX numbers. Witness Haynes adds that the second option would be for the CLEC to notify Verizon of the numbers it has assigned as virtual FX numbers. He continues:

In this scenario, Verizon would modify its traffic data collection system to capture all traffic delivered to the NPA-NXXs associated with the virtual FX numbers. A data query could then be run to identify what portion of the traffic delivered to the NPA-NXXs was actually virtual NXX traffic. A billing adjustment would then be entered into each parties' billing system to properly account for the Verizon traffic delivered to the CLEC virtual FX numbers.

Further, witness Haynes notes that Verizon is prepared to work with US LEC to implement one of these options so that traffic can be properly billed.

In response, US LEC witness Montano claims that Verizon witness Haynes is incorrect in stating that NXX codes have not been used to establish intercarrier compensation. Witness Montano asserts that "Verizon rates and bills its customers based on the NXX codes of the calling and called party. If the call is rated as local, Verizon bills its customer for a local call; conversely, if the call is rated as toll, Verizon bills the customer for a toll call."

US LEC witness Montano also infers that Verizon's proposed "fix" has not been evaluated or approved by us. Witness Montano points out that how Verizon's "fix" will be implemented or monitored is not mentioned in the proposed interconnection agreement. Moreover, she asserts that "US LEC has no way of knowing whether Verizon's fix actually works. Verizon states that it is based on a traffic study conducted here in Florida, but nowhere does Verizon state that its fix has been implemented, is functioning smoothly and is accurate."

In his rebuttal testimony, Verizon witness Haynes claims that "the parties' sole disagreement for purposes of this proceeding is whether the NXX code should be used to determine intercarrier compensation, i.e., whether reciprocal compensation must be paid when the called party is actually located in a different local calling area from the calling party." Witness Haynes restates his contention that carriers must pay compensation based on the physical location of the called party, not the NXX code of the called party, which is generally associated with the local calling area of the calling party. Witness Haynes maintains that although the traffic he referred to in his direct testimony was interLATA traffic, the principle is the same for virtual FX traffic. Witness Haynes adds:

If a local telephone subscriber originates a call to an interLATA FX number, the local exchange carrier delivers the call to the interexchange carrier's point of presence for onward transmission to a called party; the local exchange carrier is entitled to originating access for

such a call, even though the call is rated as a local call. Likewise, in the case of virtual FX traffic, the local exchange carrier delivers the traffic to the CLEC's point of interconnection; the CLEC then delivers the call to the called party, which is by definition located in a different local calling area. Because the call is interexchange, no reciprocal compensation applies.

Based on US LEC witness Montano's testimony, witness Haynes believes that US LEC wants to be able to force Verizon to bear the cost of transporting virtual FX traffic without paying Verizon for that service.

Witness Haynes argues that contrary to US LEC witness Montano's claim, there is a practical, cost-effective way to ensure that the parties receive the appropriate intercarrier compensation. Witness Haynes claims that Verizon has offered to share this mechanism for separating FX traffic with US LEC, as long as US LEC supplies Verizon a list of virtual FX numbers. He states that ". . . determining the volume of FX traffic is neither burdensome, nor expensive, nor disruptive. If US LEC is unsure how to distinguish virtual FX traffic from local traffic, Verizon would be happy to cooperate with their technical personnel to implement a reliable system."

Verizon witness Haynes maintains that access charges should apply to virtual FX traffic. Witness Haynes reasons that a virtual FX arrangement, like traditional FX arrangements or other toll-free calling arrangements, allows a subscriber to receive calls from a distant exchange without the calling party incurring the toll charges that would normally apply. He adds:

In place of those toll charges, the called party with FX service must pay for a Local Channel, interoffice transport, plus applicable usage charges. In the case of toll-free service, the customer must pay toll charges for calls received. In the case of toll-free calls, the interexchange carrier then pays originating access

charges to the originating local exchange carrier. The situation is the same here: the CLEC has set up a toll-free calling arrangement for its customer. The customer is thus able to take advantage of the local exchange service that Verizon is providing in that distant exchange, yet Verizon not only receives no subscriber revenue from the CLEC customer; it is also deprived of the toll charges that would ordinarily apply. Access charges provide the originating LEC some measure of compensation for the service that it provides.

In response to US LEC witness Montano's charge that "Verizon would double-recover for carrying such traffic and it would also be compensated for cost not incurred . . ." Verizon witness Haynes replies that ". . . the costs of delivering traffic to a CLEC depends on the interconnection architecture in place; if a virtual FX call is delivered to the same point of interconnection as a local call from the same point, Verizon's costs of delivering the traffic will be the same. But if the Commission were to exempt the CLEC from paying the access charges that ordinarily apply to such interexchange traffic, the Commission would be encouraging the CLEC to implement these arrangements even when they are inefficient." Witness Haynes continues:

This is because the CLEC (and the CLEC's customers) would not bear the appropriate costs of providing the services that they consume. Thus, Verizon would have to originate and carry a great deal more traffic, and would therefore be required to bear significantly higher costs, than if access charges were properly applied.

Moreover, Ms. Montano ignores the fact that virtual FX arrangements mean that Verizon will be unable to collect toll charges from its customers where toll charges would apply (but for the assignment of a virtual NXX code). Again, I am not asserting that there is anything wrong with a CLEC setting up such toll free arrangements for its customers, so long as the CLEC complies with

applicable state and federal regulations. But it is wrong for the CLEC to attempt to shift the costs of those arrangements to Verizon, and it is also wrong to exempt the CLEC and its customers from bearing an appropriate share of the costs of providing local exchange service in the distant exchange. As long as Verizon is the carrier providing that local exchange service, it is entitled to be compensated for it, and access charges provide that compensation.

Witness Haynes concludes that local exchange charges compensate Verizon for providing service within the local exchange. If a call travels outside the local exchange, Verizon should be entitled to additional compensation. Virtual FX service should be no exception.

B. Analysis

We are disappointed that the parties were not able to reach a mutual agreement on this issue despite being urged by us in our Reciprocal Compensation Order to negotiate the best intercarrier compensation mechanism for this type traffic. We are troubled that the parties chose to use this forum to rehash past issues without presenting us with a new or persuasive argument to justify a departure from prior decisions.

Based on the testimony of the parties, it is clear that the parties acknowledge that we found in our Reciprocal Compensation Order that calls to virtual NXX customers located outside of the local calling area to which the NXX is assigned are not considered local calls, and therefore carriers are not obligated to pay reciprocal compensation.²⁸ Additionally, we agree with Verizon witness Haynes that US LEC's proposal to require payment of reciprocal compensation by reference to the NPA-NXX of the called number, rather than the terminating point of the complete communication, is inconsistent with our ruling on the same issue in

²⁸ Order No. PSC-02-1248-FOF-TP, p. 33.

our generic reciprocal compensation docket. Consequently, with respect to part (A) of this issue, we find that the parties shall not pay reciprocal compensation for calls that originate in one local calling area and are delivered to a customer located in a different local calling area, even if the NXX of the called number is associated with the same local calling area as the NXX of the calling number.

The remaining element of this issue asks us to resolve the issue of whether the originating carrier should be able to charge originating access for calls that originate in one local calling area and are delivered to a customer located in a different local calling area, if the NXX of the called number is associated with the same local calling area as the NXX of the calling number. In discussing this traffic in Order No. PSC-02-1248-FOF-TP, we stated that ". . . [w]e 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." In this decision the Commission did not ". . . mandate a particular intercarrier compensation mechanism for virtual NXX/FX traffic"; however, the Commission found that ". . . virtual NXX traffic and FX traffic shall be treated the same for intercarrier compensation purposes." Therefore, we find that the originating carrier shall be able to charge originating access on traffic that originates in one local calling area and is delivered to a customer located in a different local calling area, if the NXX of the called number is associated with the same local calling area as the NXX of the calling number. We find that this treatment shall also apply to calls to FX numbers.

C. Decision

We find that the parties shall not pay reciprocal compensation for calls that originate in one local calling area and are delivered to a customer located in a different local calling area, if the NXX of the called number is associated with the same local

calling area as the NXX of the calling number. In addition, we find that the originating carrier shall be able to charge originating access on the traffic described in Issue 6(A). We find that this treatment shall also apply to FX numbers.

VI. COMPENSATION FRAMEWORK FOR ISP-BOUND TRAFFIC

This issue addresses whether the parties' agreement should set forth specific language to address the compensation of ISP-bound traffic in the event the interim compensation framework set forth in the FCC's ISP Remand Order is vacated or reversed.

A. Arguments

US LEC asserts in its brief that in the event the compensation framework in the FCC's ISP Remand Order is vacated or reversed on appeal, the parties should continue to compensate each other at the rates set forth in the Order, but waive any other terms and conditions of that Order (e.g., the growth caps and new market restrictions). US LEC proposes in the interests of certainty and stability, and in order to avoid expensive and time consuming negotiations and litigation, that US LEC is willing to forego the opportunity to be compensated at state rates and proposes that the parties accept the rate structure set forth in the ISP Remand Order for the balance of the term of the agreement, or until the FCC imposes a permanent rate structure governing that traffic. US LEC further asserts that Verizon's refusal to accept US LEC's proposal will result in additional negotiation and possibly litigation.

Verizon asserts in its brief that although the D.C. Circuit Court remanded the ISP Remand Order, the Court expressly refused to vacate that order; as a result, the rules the FCC adopted remain in effect pending further FCC proceedings on remand. Verizon asserts further that the ISP Remand Order set forth a specific intercarrier compensation regime that governs the exchange of Internet-bound traffic between Verizon and US LEC during the course of this arbitrated agreement. If there is a subsequent change of law,

Verizon contends the parties' obligations will conform to that change pursuant to the change of law clause in the agreement.

In further support of its opposition to the US LEC proposal, Verizon states US LEC's proposal would lead to results contrary to governing federal law. Verizon asserts under the US LEC proposal, the growth cap and new market provisions in the ISP Remand Order would have been eliminated contrary to what was explicitly decided by the D.C. Circuit.

Additionally, Verizon cites to the rejection of US LEC's proposal by the South Carolina Public Service Commission²⁹ and the Wireline Competition Bureau's³⁰ adoption of the Verizon position on this issue. US LEC did not distinguish the decision of the South Carolina Public Service Commission; however, US LEC asserts that its proposal is different than the one presented by the CLECs/ALECs which were parties in the recent arbitration before the Wireline Competition Bureau. US LEC asserts the parties in that arbitration sought a return to state rates in the event the compensation framework governing ISP-bound traffic is vacated or reversed, whereas US LEC seeks to apply the rate structure but not the limitations on growth and new markets.

²⁹Petition of US LEC of South Carolina Inc. for Arbitration of an Interconnection Agreement with Verizon South, Inc., Docket No. 2002-181-C, Order on Arbitration, Order No. 2002-619 (S.C. PSC Aug. 30, 2002)

³⁰Petition of WorldCom, Inc. Pursuant to Section 252(e)(5) of the Communications Act for Preemption of the Jurisdiction of the Virginia State Corporation Commission Regarding Interconnection Disputes with Verizon Virginia Inc., and for Expedited Arbitration, CC Docket Nos. 00-218 et al., Memorandum Opinion and Order, DA 02-1731 (rel. July 17, 2002)

B. Analysis

In remanding back to the FCC the ISP Remand Order, the D.C. Circuit held,

"Finally, we do not vacate the order. Many of the petitioners themselves favor bill-and-keep, and there is plainly a non-trivial likelihood that the Commission has authority to elect such a system (perhaps under §§ 251(b)(5) and 252(d)(B)(I)). Thus, we simply remand the case to the Commission for further proceedings."

WorldCom, 288 F.3d at 434.

The D.C. Circuit explicitly chose not to vacate the FCC's compensation scheme; rather, it remanded the case to the FCC for further consideration. Therefore, the compensation scheme set forth in the FCC's ISP Remand Order is applicable federal law.

US LEC seeks to include contingency language in the parties' agreement to address ISP compensation if the ISP Remand Order is reversed or vacated at a later date. It is our belief that such language at this time could only be considered highly speculative. It is impossible to ascertain at this time whether the compensation framework set forth in the ISP Remand Order will be reversed or vacated, and if it were reversed or vacated, whether the D.C. Circuit would vacate the language in its entirety and on what grounds. Such speculation could result in contingency language which is contrary to federal law.

Furthermore, the parties' agreement includes a change of law clause which sets forth the obligations and rights of the parties should a change of law render a portion of the parties' agreement null and void. General Terms and Conditions §4.6 of the parties' proposed agreement provides:

If any final and unstayed legislative, regulatory, judicial or other governmental decision, order,

determination or action, or any change in Applicable Law, materially affects any material provision of this Agreement, the right or obligations of a Party hereunder, or the ability of a Party to perform any material provision of this Agreement, the Parties shall promptly renegotiate in good faith and amend in writing this Agreement in order to make such mutually acceptable revisions to this Agreement as may be required in order to conform the Agreement to Applicable Law.

We believe this provision protects the rights equally of both parties under the final interconnection agreement should the ISP Remand Order be reversed or vacated at a later date.

C. Decision

Based upon the preceding analysis, we find the parties' agreed-upon change of law clause shall govern the parties' obligations in the event the interim compensation framework set forth in the FCC's ISP Remand Order is vacated or reversed on appeal. Thus, the parties shall renegotiate in good faith and amend their final interconnection agreement if the interim compensation framework for ISP-bound traffic is vacated or reversed on appeal.

VII. EFFECT OF TARIFFED CHARGES WHICH TAKE EFFECT AFTER THE AGREEMENT BECOMES EFFECTIVE

This issue addresses whether tariffed charges which take effect after the agreement becomes effective should take precedence over non-tariffed charges previously established in the parties' agreement for the same or similar services or facilities.

A. Arguments

US LEC asserts in its brief that tariffed charges should be permitted to change during the term of the agreement due to changes in applicable tariffs; however, non-tariffed charges must remain

fixed for the term of the agreement. US LEC contends that Verizon seeks the unrestricted ability to modify rates that the parties have agreed to include in the agreement through subsequent tariff filings that would supercede the rates in the agreement. US LEC Witness Montano states ". . . it would be anti-competitive and detrimental to US LEC if Verizon had the unfettered ability and sole discretion to modify its non-tariffed rates."

In its brief, Verizon asserts it is both fair and appropriate that, if the generally applicable charges for a particular service change, the charges under the agreement should change along with them. Verizon further asserts the principle that the charges for services provided to CLECs should be nondiscriminatory is deeply embedded both in the history of telecommunications regulation and in the 1996 Act in particular; federal law specifically requires that charges for interconnection unbundled network elements, services offered for resale, and collocation must be ". . . just reasonable, and nondiscriminatory." 47 U.S.C. § 251(c)(2), (3), (4), (6). Verizon contends by providing that applicable tariffs and other charges that are mandated or approved by the FCC or us should supersede any changes set forth in the agreement, Verizon's proposed language gives effect to the letter and the spirit of these non-discrimination provisions.³¹

Verizon argues it is not free to modify its generally applicable charges unilaterally; rather, the charges will change in one of two ways: either Verizon will publicly file a tariff with the appropriate state or federal commission providing US LEC the opportunity to challenge the tariff prior to the tariff's effective date, or a generic ratemaking proceeding will commence in which US LEC would presumably be able to participate in the proceedings. US LEC counters that Verizon's assertions fail to recognize the considerable burden, both in terms of financial cost and in diversion of personnel whose resources would otherwise be devoted to more pressing matters, that is placed on ALECs to dispute a particular rate proposal. US LEC argues the entire process would

³¹Tariffs are deemed "presumptively valid."

undermine the purpose of having a binding interconnection agreement that provides relative pricing certainty to the parties in the first instance.

In its brief, US LEC cites the US LEC/Verizon South Carolina Arbitration Decision³² in support of its assertions. US LEC states the South Carolina Commission found Verizon South's proposal "unpersuasive" in directing the parties to incorporate US LEC's proposed language in their interconnection agreement. Additionally, US LEC cites to a recent arbitration before the Wireline Competition Bureau³³ in which Verizon was a party and this same issue was addressed. The Wireline Competition Bureau ". . . rejected Verizon's proposed language because it would allow for tariffed rates to replace automatically the rates arbitrated in this proceeding. Thus, rates approved or allowed to go into effect by the Virginia Commission would supercede rates arbitrated under the federal Act."

Verizon asserts in its brief that the Wireline Competition Bureau's decision actually supports Verizon's position. Specifically, that Bureau held that, under the parties' agreement, "[i]f a commission establishes new rates, that would constitute a change in law, which the parties would be able to incorporate into the agreement pursuant to the change of law provisions of the contract." Verizon further asserts the Wireline Competition Bureau's failure to provide that all tariffed rates would automatically supersede rates arbitrated by the FCC was a result of the Virginia commission's refusal to apply federal law in its state proceedings.

³²Petition of US LEC of South Carolina Inc. for Arbitration of an Interconnection Agreement with Verizon South, Inc., Docket No. 2002-181-C, Order on Arbitration, Order No. 2002-619 (S.C. PSC Aug. 30, 2002)

³³Petition of WorldCom, Inc. Pursuant to Section 252(e)(5) of the Communications Act for Preemption of the Jurisdiction of the Virginia State Corporation Commission Regarding Interconnection Disputes with Verizon Virginia Inc., and for Expedited Arbitration, CC Docket Nos. 00-218 et al., Memorandum Opinion and Order, DA 02-1731 (rel. July 17, 2002)

B. Analysis

Although both parties cited in their briefs recent decisions by other Commissions in support of their position on this issue, we note that the parties failed to discuss in their briefs our past holdings when the same or similar issue has been addressed. In fact, Verizon f/k/a GTEFL has previously litigated this same issue before the Commission. In the AT&T/MCI/GTEFL Arbitration Order³⁴, we held:

We believe that GTEFL should not be permitted to unilaterally modify an agreement reached pursuant to the Act by subsequent tariff filings. One party to a contract cannot alter the contract's terms without the assent of the other parties. United Contractors, Inc. v. United Construction Corp., 187 So. 2d 695 (Fla. 2d DCA 1966); 17A C.J.S. §375

Id. at 146.

In the AT&T/MCI/GTEFL Final Arbitration Order, and recently reaffirmed in the Sprint/Verizon Final Arbitration Order³⁵, the Commission found that an interconnection agreement between parties may be modified by subsequent tariff filings if the agreement contains reference to a specific tariff provision. Moreover, in this case, Verizon seeks the right to modify the non-tariffed rates of the parties' agreement through subsequent tariff filings. We

³⁴In Re: Petitions by AT&T Communications of the Southern States, Inc., MCI Telecommunications Corporation and MCI Metro Access Transmission Services, Inc. for arbitration of certain terms and conditions of a proposed agreement with GTE Florida Incorporated concerning interconnection and resale under the Telecommunications Act of 1996, Docket No. 960847-TP and Docket No. 960980-TP, Order No. PSC-97-0064-FOF-TP, issued January 17, 1997. (AT&T/MCI/GTEFL Arbitration Order)

³⁵In Re: Petition by Sprint Communications Company Limited Partnership for Arbitration with Verizon Florida Inc. Pursuant to Sections 251/252 of the Telecommunications Act of 1996, Docket 010795-TP, Order No. PSC-03-0048-FOF-TP, issued January 7, 2003. (Sprint/Verizon Arbitration Order)

find that Verizon's proposal would undermine the purpose of the parties signing a negotiated final agreement in which the parties have agreed to non-tariffed rates.

Furthermore, we find that Verizon's assertion that allowing it to modify non-tariffed rates in the parties' final interconnection agreement through subsequent tariff filings furthers the policy of non-discrimination between carriers is misguided. We believe the Telecommunications Act of 1996 (Act) already ensures non-discriminatory treatment of ALECs by ILECs entering into negotiated final interconnection agreements. Pursuant to §252(i) of the Act:

A local exchange carrier shall make available any interconnection, service, or, network element provided under an agreement approved under this section to which it is a party to any other requesting telecommunications carrier upon the same terms and conditions as those provided in the agreement.

Accordingly, Verizon is required to make available to a requesting carrier the same terms and conditions set forth in its agreement with US LEC, thus eliminating the possible competitive advantage gained by US LEC in not being subject to a subsequently filed tariff.

C. Decision

Based on the preceding analysis, we find that non-tariffed charges must remain fixed for the term of the agreement, unless changed pursuant to a valid Commission order. If during the term of the final interconnection agreement, Verizon seeks to assess a new tariffed rate, it must first enter into a negotiated amendment to the final interconnection agreement with US LEC.

CONCLUSION

We have conducted these proceedings pursuant to the directives and criteria of Sections 251 and 252 of the Act. We believe that our

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decisions are consistent with the terms of Section 251, the provisions of FCC rules, applicable court orders and provision of Chapter 364, Florida Statutes.

The parties shall be required to submit a signed agreement that complies with this Order for approval within 30 days of issuance of the Commission's Order. This docket shall remain open pending Commission approval of the final arbitration agreement in accordance with Section 252 of the Telecommunications Act of 1996.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that the specific findings set forth in this Order are approved in every respect. It is further

ORDERED that the issues for arbitration identified in this docket are resolved as set forth within the body of this Order. It is further

ORDERED that the parties shall submit a signed agreement that complies with our decisions in this docket for approval within 30 days of issuance of this Order. It is further

ORDERED that this docket shall remain open pending our approval of the final arbitration agreement in accordance with Section 252 of the Telecommunications Act of 1996.

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By ORDER of the Florida Public Service Commission this 25th
Day of June, 2003.

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

By: Kay Flynn
Kay Flynn, Chief
Bureau of Records and Hearing
Services

(S E A L)

AJT

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.

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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.

CERTIFICATE OF SERVICE

I hereby certify that, on this 27th day of June 2003, I caused copies of the attached letter submitting supplemental authority of Verizon Pennsylvania Inc. to be served on the following parties by electronic and first-class mail:

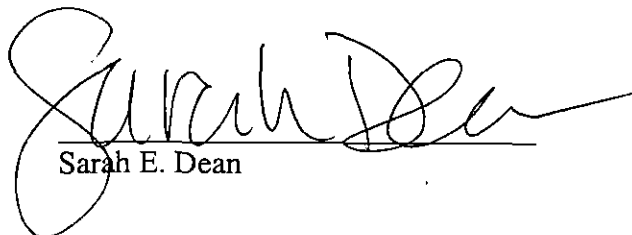
Pennsylvania Public Utility Commission

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Sarah E. Dean

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AGREEMENT

by and between

US LEC OF PENNSYLVANIA INC.

and

**VERIZON PENNSYLVANIA INC.,
f/k/a BELL ATLANTIC - PENNSYLVANIA, INC.**

FOR THE COMMONWEALTH OF

PENNSYLVANIA

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AGREEMENT

PREFACE

This Agreement ("Agreement") shall be deemed effective as of January 17, 2004 (the "Effective Date"), between US LEC of Pennsylvania Inc. ("US LEC"), a corporation organized under the laws of the State of North Carolina, with offices at 6801 Morrison Boulevard, Charlotte, North Carolina 28211 and Verizon Pennsylvania Inc., f/k/a Bell Atlantic – Pennsylvania, Inc. ("Verizon"), a corporation organized under the laws of the Commonwealth of Pennsylvania with offices at 1717 Arch Street, Philadelphia, Pennsylvania 19103 (Verizon and US LEC may be referred to hereinafter, each, individually as a "Party", and, collectively, as the "Parties").

GENERAL TERMS AND CONDITIONS

In consideration of the mutual promises contained in this Agreement, and intending to be legally bound, pursuant to Section 252 of the Act, Verizon and US LEC hereby agree as follows:

1. The Agreement

- 1.1 This Agreement includes: (a) the Principal Document; (b) the Tariffs of each Party applicable to the Services that are offered for sale by it in the Principal Document (which Tariffs are incorporated into and made a part of this Agreement by reference); and, (c) an Order by a Party that has been accepted by the other Party.
- 1.2 Except as otherwise expressly provided in the Principal Document (including, but not limited to, the Pricing Attachment), conflicts among provisions in the Principal Document, Tariffs, and an Order by a Party that has been accepted by the other Party, shall be resolved in accordance with the following order of precedence, where the document identified in subsection "(a)" shall have the highest precedence: (a) the Principal Document; (b) the Tariffs; and, (c) an Order by a Party that has been accepted by the other Party. The fact that a provision appears in the Principal Document but not in a Tariff, or in a Tariff but not in the Principal Document, shall not be interpreted as, or deemed grounds for finding, a conflict for the purposes of this Section 1.2.
- 1.3 This Agreement constitutes the entire agreement between the Parties on the subject matter hereof, and supersedes any prior or contemporaneous agreement, understanding, or representation, on the subject matter hereof. Except as otherwise provisioned in the Principal Document, the Principal Document may not be waived or modified except by a written document that is signed by the Parties. Subject to the requirements of Applicable Law, a Party shall have the right to add, modify, or withdraw, its Tariff(s) at any time, without the consent of, or notice to, the other Party.

2. Term and Termination

- 2.1 This Agreement shall be effective as of the Effective Date and, unless cancelled or terminated earlier in accordance with the terms hereof, shall continue in effect until January 16, 2006 (the "Initial Term"). Thereafter, this Agreement shall continue in force and effect unless and until cancelled or terminated as provided in this Agreement.
- 2.2 Either US LEC or Verizon may terminate this Agreement effective upon the expiration of the Initial Term or effective upon any date after expiration of the

Initial Term by providing written notice of termination at least ninety (90) days in advance of the date of termination.

- 2.3 If either US LEC or Verizon provides notice of termination pursuant to Section 2.2 and on or before the proposed date of termination either US LEC or Verizon has requested negotiation of a new interconnection agreement, unless this Agreement is cancelled or terminated earlier in accordance with the terms hereof (including, but not limited to, pursuant to Section 12), this Agreement shall remain in effect until the earlier of: (a) the effective date of a new interconnection agreement between US LEC and Verizon; or, (b) the date one (1) year after the proposed date of termination.
- 2.4 If either US LEC or Verizon provides notice of termination pursuant to Section 2.2 and by 11:59 PM Eastern Time on the proposed date of termination neither US LEC nor Verizon has requested negotiation of a new interconnection agreement, (a) this Agreement will terminate at 11:59 PM Eastern Time on the proposed date of termination, and (b) the Services being provided under this Agreement at the time of termination will be terminated, except to the extent that the Purchasing Party has requested that such Services continue to be provided pursuant to an applicable Tariff or SGAT.

3. Glossary and Attachments

The Glossary and the following Attachments are a part of this Agreement:

Additional Services Attachment
Interconnection Attachment
Resale Attachment
UNE Attachment
Collocation Attachment
911 Attachment
Pricing Attachment

4. Applicable Law

- 4.1 The construction, interpretation and performance of this Agreement shall be governed by (a) the laws of the United States of America and (b) the laws of the Commonwealth of Pennsylvania, without regard to its conflicts of laws rules. All disputes relating to this Agreement shall be resolved through the application of such laws.
- 4.2 Each Party shall remain in compliance with Applicable Law in the course of performing this Agreement.
- 4.3 Neither Party shall be liable for any delay or failure in performance by it that results from requirements of Applicable Law, or acts or failures to act of any governmental entity or official.
- 4.4 Each Party shall promptly notify the other Party in writing of any governmental action that limits, suspends, cancels, withdraws, or otherwise materially affects, the notifying Party's ability to perform its obligations under this Agreement.
- 4.5 If any provision of this Agreement shall be invalid or unenforceable under Applicable Law, such invalidity or unenforceability shall not invalidate or render unenforceable any other provision of this Agreement, and this Agreement shall

be construed as if it did not contain such invalid or unenforceable provision; provided, that if the invalid or unenforceable provision is a material provision of this Agreement, or the invalidity or unenforceability materially affects the rights or obligations of a Party hereunder or the ability of a Party to perform any material provision of this Agreement, the Parties shall promptly renegotiate in good faith and amend in writing this Agreement in order to make such mutually acceptable revisions to this Agreement as may be required in order to conform the Agreement to Applicable Law.

- 4.6 If any final and unstayed legislative, regulatory, judicial or other governmental decision, order, determination or action, or any change in Applicable Law, materially affects any material provision of this Agreement, the rights or obligations of a Party hereunder, or the ability of a Party to perform any material provision of this Agreement, the Parties shall promptly renegotiate in good faith and amend in writing this Agreement in order to make such mutually acceptable revisions to this Agreement as may be required in order to conform the Agreement to Applicable Law.
- 4.7 Notwithstanding anything in this Agreement to the contrary, if, as a result of any final and unstayed legislative, judicial, regulatory or other governmental decision, order, determination or action, or any change in Applicable Law, Verizon is not required by Applicable Law to provide any Service, payment or benefit, otherwise required to be provided to US LEC hereunder, then Verizon may discontinue the provision of any such Service, payment or benefit. Verizon will provide ninety (90) days prior written notice to US LEC of any such discontinuance of a Service, unless a different notice period or different conditions are specified in this Agreement (including, but not limited to, in an applicable Tariff) or Applicable Law for termination of such Service in which event such specified period and/or conditions shall apply.
- 4.8 The Parties acknowledge and agree that, although the Effective Date of this Agreement post-dates the effective date of the Federal Communications Commission's Report and Order and Order on Remand and Further Notice of Proposed Rulemaking, *Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers; Implementation of the Local Competition Provisions of the Telecommunications Act of 1996; Deployment of Wireline Services Offering Advanced Telecommunications Capability*, FCC 03-36 (rel. Aug. 21, 2003) ("*Triennial Review Order*"), which was released on August 21, 2003 and that became effective on October 2, 2003, this Agreement was negotiated and submitted for arbitration prior to the *Triennial Review Order's* release. The Parties further acknowledge and agree that the *Triennial Review Order* constitutes a change in Applicable Law for purposes of sections 4.6 and 4.7 above and that the parties are in the process of negotiating an amendment to this Agreement pursuant to Section 4.6 above to incorporate certain rulings of the *Triennial Review Order*, with such negotiations deemed to have commenced on October 2, 2003.

5. Assignment

Neither Party may assign this Agreement or any right or interest under this Agreement, nor delegate any obligation under this Agreement, without the prior written consent of the other Party, which consent shall not be unreasonably withheld, conditioned or delayed. Any attempted assignment or delegation in violation of this Section 5 shall be void and ineffective and constitute default of this Agreement.

6. Assurance of Payment

- 6.1 Upon request by Verizon, US LEC shall provide to Verizon adequate assurance of payment of amounts due (or to become due) to Verizon hereunder.
- 6.2 Assurance of payment of charges may be requested by Verizon if US LEC (a) in Verizon's reasonable judgment, at the Effective Date or at any time thereafter, does not have established credit with Verizon, (b) in Verizon's reasonable judgment, at the Effective Date or at any time thereafter, is unable to demonstrate that it is creditworthy, (c) fails to timely pay a bill rendered to US LEC by Verizon, or (d) admits its inability to pay its debts as such debts become due, has commenced a voluntary case (or has had a case commenced against it) under the U.S. Bankruptcy Code or any other law relating to bankruptcy, insolvency, reorganization, winding-up, composition or adjustment of debts or the like, has made an assignment for the benefit of creditors or is subject to a receivership or similar proceeding.
- 6.3 Unless otherwise agreed by the Parties, the assurance of payment shall, at Verizon's option, consist of (a) a cash security deposit in U.S. dollars held by Verizon or (b) an unconditional, irrevocable standby letter of credit naming Verizon as the beneficiary thereof and otherwise in form and substance satisfactory to Verizon from a financial institution acceptable to Verizon. The cash security deposit or letter of credit shall be in an amount equal to two (2) months anticipated charges (including, but not limited to, both recurring and non-recurring charges), as reasonably determined by Verizon, for the Services to be provided by Verizon to US LEC in connection with this Agreement.
- 6.4 To the extent that Verizon elects to require a cash deposit, the Parties intend that the provision of such deposit shall constitute the grant of a security interest in the deposit pursuant to Article 9 of the Uniform Commercial Code as in effect in any relevant jurisdiction.
- 6.5 If payment of interest on a cash deposit is required by an applicable Verizon Tariff or by Applicable Law, interest will be paid on any such cash deposit held by Verizon at the higher of the interest rate stated in such Tariff or the interest rate required by Applicable Law.
- 6.6 Verizon may (but is not obligated to) draw on the letter of credit or cash deposit, as applicable, upon notice to US LEC in respect of any amounts to be paid by US LEC hereunder that are not paid within thirty (30) days of the date that payment of such amounts is required by this Agreement.
- 6.7 If Verizon draws on the letter of credit or cash deposit, upon request by Verizon, US LEC shall provide a replacement or supplemental letter of credit or cash deposit conforming to the requirements of Section 6.2.
- 6.8 Notwithstanding anything else set forth in this Agreement, if Verizon makes a request for assurance of payment in accordance with the terms of this Section, then Verizon shall have no obligation thereafter to perform under this Agreement until such time as US LEC has provided Verizon with such assurance of payment.
- 6.9 The fact that a deposit or a letter of credit is requested by Verizon hereunder shall in no way relieve US LEC from compliance with the requirements of this Agreement (including, but not limited to, any applicable Tariffs) as to advance payments and payment for Services, nor constitute a waiver or modification of

the terms herein pertaining to the discontinuance of Services for nonpayment of any amounts payment of which is required by this Agreement.

7. Audits

- 7.1 Except as may be otherwise specifically provided in this Agreement, either Party ("Auditing Party") may audit the other Party's ("Audited Party") books, records, documents, facilities and systems for the purpose of evaluating the accuracy of the Audited Party's bills. Such audits may be performed once in each Calendar Year; provided, however, that audits may be conducted more frequently (but no more frequently than once in each Calendar Quarter) if the immediately preceding audit found previously uncorrected net inaccuracies in billing in favor of the Audited Party having an aggregate value of at least \$1,000,000.
- 7.2 The audit shall be performed by independent certified public accountants selected and paid by the Auditing Party. The accountants shall be reasonably acceptable to the Audited Party. Prior to commencing the audit, the accountants shall execute an agreement with the Audited Party in a form reasonably acceptable to the Audited Party that protects the confidentiality of the information disclosed by the Audited Party to the accountants. The audit shall take place at a time and place agreed upon by the Parties; provided, that the Auditing Party may require that the audit commence no later than sixty (60) days after the Auditing Party has given notice of the audit to the Audited Party.
- 7.3 Each Party shall cooperate fully in any such audit, providing reasonable access to any and all employees, books, records, documents, facilities and systems, reasonably necessary to assess the accuracy of the Audited Party's bills.
- 7.4 Audits shall be performed at the Auditing Party's expense, provided that there shall be no charge for reasonable access to the Audited Party's employees, books, records, documents, facilities and systems necessary to assess the accuracy of the Audited Party's bills.

8. Authorization

- 8.1 Verizon represents and warrants that it is a corporation duly organized, validly existing and in good standing under the laws of the Commonwealth of Pennsylvania and has full power and authority to execute and deliver this Agreement and to perform its obligations under this Agreement.
- 8.2 US LEC represents and warrants that it is a corporation duly organized, validly existing and in good standing under the laws of the State of North Carolina and has full power and authority to execute and deliver this Agreement and to perform its obligations under this Agreement.
- 8.3 US LEC Certification.

Notwithstanding any other provision of this Agreement, Verizon shall have no obligation to perform under this Agreement until such time as US LEC has obtained such FCC and Commission authorization as may be required by Applicable Law for conducting business in Pennsylvania. US LEC shall not place any orders under this Agreement until it has obtained such authorization. US LEC shall provide proof of such authorization to Verizon upon request.

9. Billing and Payment; Disputed Amounts

- 9.1 Except as otherwise provided in this Agreement, each Party shall submit to the other Party on a monthly basis in an itemized form, statement(s) of charges incurred by the other Party under this Agreement.
- 9.2 Except as otherwise provided in this Agreement, payment of amounts billed for Services provided under this Agreement, whether billed on a monthly basis or as otherwise provided in this Agreement, shall be due, in immediately available U.S. funds, on the later of the following dates (the "Due Date"): (a) the due date specified on the billing Party's statement; or, (b) twenty (20) days after the date the statement is received by the billed Party. Payments shall be transmitted by electronic funds transfer.
- 9.3 If any portion of an amount billed by a Party under this Agreement is subject to a good faith dispute between the Parties, the billed Party shall give notice to the billing Party of the amounts it disputes ("Disputed Amounts") and include in such notice the specific details and reasons for disputing each item. A Party may also dispute prospectively with a single notice a class of charges that it disputes. Subject to the requirements of Applicable Law, notice of a dispute may be given by a Party at any time, either before or after an amount is paid, and a Party's payment of an amount shall not constitute a waiver of such Party's right to subsequently dispute its obligation to pay such amount or to seek a refund of any amount paid. The billed Party shall pay by the Due Date all undisputed amounts. Billing disputes shall be subject to the terms of Section 14, Dispute Resolution.
- 9.4 Undisputed charges due to the billing Party that are not paid by the Due Date, shall be subject to a late payment charge. The late payment charge shall be in an amount specified by the billing Party which shall not exceed a rate of one-and-one-half percent (1.5%) of the overdue amount (including any unpaid previously billed late payment charges) per month.
- 9.5 Although it is the intent of both Parties to submit timely statements of charges, failure by either Party to present statements to the other Party in a timely manner shall not constitute a breach or default, or a waiver of the right to payment of the incurred charges, by the billing Party under this Agreement, and, except for assertion of a provision of Applicable Law that limits the period in which a suit or other proceeding can be brought before a court or other governmental entity of appropriate jurisdiction to collect amounts due, the billed Party shall not be entitled to dispute the billing Party's statement(s) based on the billing Party's failure to submit them in a timely fashion.

10. Confidentiality

- 10.1 As used in this Section 10, "Confidential Information" means the following information that is disclosed by one Party ("Disclosing Party") to the other Party ("Receiving Party") in connection with, or anticipation of, this Agreement:
- 10.1.1 Books, records, documents and other information disclosed in an audit pursuant to Section 7;
 - 10.1.2 Any forecasting information provided pursuant to this Agreement;
 - 10.1.3 Customer Information (except to the extent that (a) the Customer information is published in a directory, (b) the Customer information is disclosed through or in the course of furnishing a Telecommunications Service, such as a Directory Assistance Service, Operator Service, Caller ID or similar service, or LIDB service, or, (c) the Customer to

- whom the Customer Information is related has authorized the Receiving Party to use and/or disclose the Customer Information);
- 10.1.4 information related to specific facilities or equipment (including, but not limited to, cable and pair information);
 - 10.1.5 any information that is in written, graphic, electromagnetic, or other tangible form, and marked at the time of disclosure as "Confidential" or "Proprietary;" and
 - 10.1.6 any information that is communicated orally or visually and declared to the Receiving Party at the time of disclosure, and by written notice with a statement of the information given to the Receiving Party within ten (10) days after disclosure, to be "Confidential" or "Proprietary".

Notwithstanding any other provision of this Agreement, a Party shall have the right to refuse to accept receipt of information which the other Party has identified as Confidential Information pursuant to Sections 10.1.5 or 10.1.6.

- 10.2 Except as otherwise provided in this Agreement, the Receiving Party shall:
 - 10.2.1 use the Confidential Information received from the Disclosing Party only in performance of this Agreement; and,
 - 10.2.2 using the same degree of care that it uses with similar confidential information of its own (but in no case a degree of care that is less than commercially reasonable), hold Confidential Information received from the Disclosing Party in confidence and restrict disclosure of the Confidential Information solely to those of the Receiving Party's Affiliates and the directors, officers, employees, Agents and contractors of the Receiving Party and the Receiving Party's Affiliates, that have a need to receive such Confidential Information in order to perform the Receiving Party's obligations under this Agreement. The Receiving Party's Affiliates and the directors, officers, employees, Agents and contractors of the Receiving Party and the Receiving Party's Affiliates, shall be required by the Receiving Party to comply with the provisions of this Section 10 in the same manner as the Receiving Party. The Receiving Party shall be liable for any failure of the Receiving Party's Affiliates or the directors, officers, employees, Agents or contractors of the Receiving Party or the Receiving Party's Affiliates, to comply with the provisions of this Section 10.
- 10.3 The Receiving Party shall return or destroy all Confidential Information received from the Disclosing Party, including any copies made by the Receiving Party, within thirty (30) days after a written request by the Disclosing Party is delivered to the Receiving Party, except for (a) Confidential Information that the Receiving Party reasonably requires to perform its obligations under this Agreement.
- 10.4 Unless otherwise agreed, the obligations of Sections 10.2 and 10.3 do not apply to information that:
 - 10.4.1 was, at the time of receipt, already in the possession of or known to the Receiving Party free of any obligation of confidentiality and restriction on use;
 - 10.4.2 is or becomes publicly available or known through no wrongful act of the Receiving Party, the Receiving Party's Affiliates, or the directors,

officers, employees, Agents or contractors of the Receiving Party or the Receiving Party's Affiliates;

- 10.4.3 is rightfully received from a third person having no direct or indirect obligation of confidentiality or restriction on use to the Disclosing Party with respect to such information;
 - 10.4.4 is independently developed by the Receiving Party;
 - 10.4.5 is approved for disclosure or use by written authorization of the Disclosing Party (including, but not limited to, in this Agreement); or
 - 10.4.6 is required to be disclosed by the Receiving Party pursuant to Applicable Law, provided that the Receiving Party shall have made commercially reasonable efforts to give adequate notice of the requirement to the Disclosing Party in order to enable the Disclosing Party to seek protective arrangements.
- 10.5 Notwithstanding the provisions of Sections 10.1 through 10.4, the Receiving Party may use and disclose Confidential Information received from the Disclosing Party to the extent necessary to enforce the Receiving Party's rights under this Agreement or Applicable Law. In making any such disclosure, the Receiving Party shall make reasonable efforts to preserve the confidentiality and restrict the use of the Confidential Information while it is in the possession of any person to whom it is disclosed, including, but not limited to, by requesting any governmental entity to whom the Confidential Information is disclosed to treat it as confidential and restrict its use to purposes related to the proceeding pending before it.
- 10.6 The Disclosing Party shall retain all of the Disclosing Party's right, title and interest in any Confidential Information disclosed by the Disclosing Party to the Receiving Party. Except as otherwise expressly provided in this Agreement, no license is granted by this Agreement with respect to any Confidential Information (including, but not limited to, under any patent, trademark or copyright), nor is any such license to be implied solely by virtue of the disclosure of Confidential Information.
- 10.7 The provisions of this Section 10 shall be in addition to and not in derogation of any provisions of Applicable Law, including, but not limited to, 47 U.S.C. § 222, and are not intended to constitute a waiver by a Party of any right with regard to the use, or protection of the confidentiality of, CPNI provided by Applicable Law.
- 10.8 Each Party's obligations under this Section 10 shall survive expiration, cancellation or termination of this Agreement.

11. Counterparts

This Agreement may be executed in two or more counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same instrument.

12. Default

If either Party ("Defaulting Party") fails to make a payment required by this Agreement (including, but not limited to, any payment required by Section 9.3 of undisputed amounts to the billing Party) or materially breaches any other material provision of this Agreement, and such failure or breach continues for thirty (30) days after written notice thereof from

the other Party, the other Party may, by written notice to the Defaulting Party, (a) suspend the provision of any or all Services hereunder, or (b) cancel this Agreement and terminate the provision of all Services hereunder.

13. Discontinuance of Service by US LEC

- 13.1 If US LEC proposes to discontinue, or actually discontinues, its provision of service to all or substantially all of its Customers, whether voluntarily, as a result of bankruptcy, or for any other reason, US LEC shall send written notice of such discontinuance to Verizon, the Commission, and each of US LEC's Customers. US LEC shall provide such notice such number of days in advance of discontinuance of its service as shall be required by Applicable Law. Unless the period for advance notice of discontinuance of service required by Applicable Law is more than thirty (30) days, to the extent commercially feasible, US LEC shall send such notice at least thirty (30) days prior to its discontinuance of service.
- 13.2 Such notice must advise each US LEC Customer that unless action is taken by the US LEC Customer to switch to a different carrier prior to US LEC's proposed discontinuance of service, the US LEC Customer will be without the service provided by US LEC to the US LEC Customer.
- 13.3 Should a US LEC Customer subsequently become a Verizon Customer as a result of US LEC discontinuing service, US LEC shall provide Verizon with all information necessary for Verizon to establish service for the US LEC Customer, including, but not limited to, the US LEC Customer's billed name, listed name, service address, and billing address, and the services being provided to the US LEC Customer.
- 13.4 Nothing in this Section 13 shall limit Verizon's right under this agreement (including, but not limited to, rights set forth in sections 2 and 12 hereof) to cancel or terminate this Agreement or suspend provision of Services under this Agreement.

14. Dispute Resolution

- 14.1 Except as otherwise provided in this Agreement, any dispute between the Parties regarding the interpretation or enforcement of this Agreement or any of its terms shall be addressed by good faith negotiation between the Parties. To initiate such negotiation, a Party must provide to the other Party written notice of the dispute that includes both a detailed description of the dispute or alleged nonperformance and the name of an individual who will serve as the initiating Party's representative in the negotiation. The other Party shall have ten Business Days to designate its own representative in the negotiation. The Parties' representatives shall meet at least once within 45 days after the date of the initiating Party's written notice in an attempt to reach a good faith resolution of the dispute. Upon agreement, the Parties' representatives may utilize other alternative dispute resolution procedures such as private mediation to assist in the negotiations.
- 14.2 If the Parties have been unable to resolve the dispute within 45 days of the date of the initiating Party's written notice, either Party may pursue any remedies available to it under this Agreement, at law, in equity, or otherwise, including, but not limited to, instituting an appropriate proceeding before the Commission, the FCC, or a court of competent jurisdiction.

15. Force Majeure

- 15.1 Neither Party shall be responsible for any delay or failure in performance which results from causes beyond its reasonable control ("Force Majeure Events"), whether or not foreseeable by such Party. Such Force Majeure Events include, but are not limited to, adverse weather conditions, flood, fire, explosion, earthquake, volcanic action, power failure, embargo, boycott, war, revolution, civil commotion, act of public enemies, labor unrest (including, but not limited to, strikes, work stoppages, slowdowns, picketing or boycotts), inability to obtain equipment, parts, software or repairs thereof, acts or omissions of the other Party, and acts of God.
- 15.2 If a Force Majeure Event occurs, the non-performing Party shall give prompt notification of its inability to perform to the other Party. During the period that the non-performing Party is unable to perform, the other Party shall also be excused from performance of its obligations to the extent such obligations are reciprocal to, or depend upon, the performance of the non-performing Party that has been prevented by the Force Majeure Event. The non-performing Party shall use commercially reasonable efforts to avoid or remove the cause(s) of its non-performance and both Parties shall proceed to perform once the cause(s) are removed or cease.
- 15.3 Notwithstanding the provisions of Sections 15.1 and 15.2, in no case shall a Force Majeure Event excuse either Party from an obligation to pay money as required by this Agreement.
- 15.4 Nothing in this Agreement shall require the non-performing Party to settle any labor dispute except as the non-performing Party, in its sole discretion, determines appropriate.

16. Forecasts

In addition to any other forecasts required by this Agreement, upon request by Verizon, US LEC shall provide to Verizon forecasts regarding the Services that US LEC expects to purchase from Verizon, including, but not limited to, forecasts regarding the types and volumes of Services that US LEC expects to purchase and the locations where such Services will be purchased.

17. Fraud

Each party assumes responsibility for all fraud associated with its Customers and accounts. Neither party shall bear responsibility for, nor have any obligation to investigate or make adjustments to the other party's account in cases of, fraud by the other party's Customers or other third parties.

18. Good Faith Performance

The Parties shall act in good faith in their performance of this Agreement. Except as otherwise expressly stated in this Agreement (including, but not limited to, where consent, approval, agreement or a similar action is stated to be within a Party's sole discretion), where consent, approval, mutual agreement or a similar action is required by any provision of this Agreement, such action shall not be unreasonably withheld, conditioned or delayed.

19. Headings

The headings used in the Principal Document are inserted for convenience of reference only and are not intended to be a part of or to affect the meaning of the Principal Document.

20. Indemnification

20.1 Each Party ("Indemnifying Party") shall indemnify, defend and hold harmless the other Party ("Indemnified Party"), the Indemnified Party's Affiliates, and the directors, officers and employees of the Indemnified Party and the Indemnified Party's Affiliates, from and against any and all Claims that arise out of bodily injury to or death of any person, or damage to, or destruction or loss of, tangible real and/or personal property of any person, to the extent such injury, death, damage, destruction or loss, was proximately caused by the grossly negligent or intentionally wrongful acts or omissions of the Indemnifying Party, the Indemnifying Party's Affiliates, or the directors, officers, employees, Agents or contractors (excluding the Indemnified Party) of the Indemnifying Party or the Indemnifying Party's Affiliates, in connection with this Agreement.

20.2 Indemnification Process.

20.2.1 As used in this Section 20, "Indemnified Person" means a person whom an Indemnifying Party is obligated to indemnify, defend and/or hold harmless under Section 20.1.

20.2.2 An Indemnifying Party's obligations under Section 20.1 shall be conditioned upon the following:

20.2.3 The Indemnified Person: (a) shall give the Indemnifying Party notice of the Claim promptly after becoming aware thereof (including a statement of facts known to the Indemnified Person related to the Claim and an estimate of the amount thereof); (b) prior to taking any material action with respect to a Third Party Claim, shall consult with the Indemnifying Party as to the procedure to be followed in defending, settling, or compromising the Claim; (c) shall not consent to any settlement or compromise of a Third Party Claim without the written consent of the Indemnifying Party; (d) shall permit the Indemnifying Party to assume the defense of a Third Party Claim (including, except as provided below, the compromise or settlement thereof) at the Indemnifying Party's own cost and expense, provided, however, that the Indemnified Person shall have the right to approve the Indemnifying Party's choice of legal counsel.

20.2.4 If the Indemnified Person fails to comply with Section 20.2.1 with respect to a Claim, to the extent such failure shall have a material adverse effect upon the Indemnifying Party, the Indemnifying Party shall be relieved of its obligation to indemnify, defend and hold harmless the Indemnified Person with respect to such Claim under this Agreement.

20.2.5 Subject to 20.2.6 and 20.2.7, below, the Indemnifying Party shall have the authority to defend and settle any Third Party Claim.

20.2.6 With respect to any Third Party Claim, the Indemnified Person shall be entitled to participate with the Indemnifying Party in the defense of the Claim if the Claim requests equitable relief or other relief that could affect the rights of the Indemnified Person. In so participating, the Indemnified Person shall be entitled to employ separate counsel for the defense at the Indemnified Person's expense. The Indemnified Person shall also be entitled to participate, at its own expense, in the defense of any Claim, as to any portion of the Claim as to which it is

not entitled to be indemnified, defended and held harmless by the Indemnifying Party.

- 20.2.7 In no event shall the Indemnifying Party settle a Third Party Claim or consent to any judgment with regard to a Third Party Claim without the prior written consent of the Indemnified Party, which shall not be *unreasonably withheld, conditioned or delayed*. In the event the settlement or judgment requires a contribution from or affects the rights of an Indemnified Person, the Indemnified Person shall have the right to refuse such settlement or judgment with respect to itself and, at its own cost and expense, take over the defense against the Third Party Claim, provided that in such event the Indemnifying Party shall not be responsible for, nor shall it be obligated to indemnify or hold harmless the Indemnified Person against, the Third Party Claim for any amount in excess of such refused settlement or judgment.
- 20.2.8 The Indemnified Person shall, in all cases, assert any and all provisions in applicable Tariffs and Customer contracts that limit liability to third persons as a bar to, or limitation on, any recovery by a third-person claimant.
- 20.2.9 The Indemnifying Party and the Indemnified Person shall offer each other all reasonable cooperation and assistance in the defense of any Third Party Claim.
- 20.3 *Except as otherwise provided in Section 20.1 above, each Party agrees that it will not implead or bring any action against the other Party, the other Party's Affiliates, or any of the directors, officers or employees of the other Party or the other Party's Affiliates, based on any claim by any person for personal injury or death that occurs in the course or scope of employment of such person by the other Party or the other Party's Affiliate and that arises out of performance of this Agreement.*
- 20.4 Each Party's obligations under this Section 20 shall survive expiration, cancellation or termination of this Agreement.

21. Insurance

- 21.1 US LEC shall maintain during the term of this Agreement and for a period of two years thereafter all insurance and/or bonds required to satisfy its obligations under this Agreement (including, but not limited to, its obligations set forth in Section 20 hereof) and all insurance and/or bonds required by Applicable Law. The insurance and/or bonds shall be obtained from an insurer having an A.M. Best insurance rating of at least A-, financial size category VII or greater. At a *minimum and without limiting the foregoing undertaking, US LEC shall maintain the following insurance:*
- 21.1.1 Commercial General Liability Insurance, on an occurrence basis, including but not limited to, premises-operations, broad form property damage, products/completed operations, contractual liability, independent contractors, and personal injury, with limits of at least \$1,000,000 combined single limit for each occurrence.
- 21.1.2 Commercial Motor Vehicle Liability Insurance covering all owned, hired and non-owned vehicles, with limits of at least \$1,000,000 combined single limit for each occurrence.

- 21.1.3 Excess Liability Insurance, in the umbrella form, with limits of at least \$10,000,000 combined single limit for each occurrence.
 - 21.1.4 Worker's Compensation Insurance as required by Applicable Law, and Employer's Liability Insurance with limits of not less than \$100,000 per occurrence and \$500,000 per policy provided that the Excess Liability Insurance maintained pursuant to Section 21.1.3 has a deductible of no more than \$100,000 and covers losses in excess of the total applicable limits of the underlying Employer's Liability Insurance.
 - 21.1.5 All risk property insurance on a full replacement cost basis for all of US LEC's real and personal property located at any Collocation site or otherwise located on or in any Verizon premises (whether owned, leased or otherwise occupied by Verizon), facility, equipment or right-of-way.
- 21.2 Any deductibles, self-insured retentions or loss limits ("Retentions") for the foregoing insurance must be disclosed on the certificates of insurance to be provided to Verizon pursuant to Sections 21.4 and 21.5, and Verizon reserves the right to reject any such Retentions in its reasonable discretion. All Retentions shall be the responsibility of US LEC.
 - 21.3 US LEC shall name Verizon and Verizon's Affiliates as additional insureds on the foregoing liability insurance.
 - 21.4 US LEC shall, within two (2) weeks of the Effective Date hereof at the time of each renewal of, or material change in, US LEC 's insurance policies, and at such other times as Verizon may reasonably specify, furnish certificates or other proof of the foregoing insurance reasonably acceptable to Verizon. The certificates or other proof of the foregoing insurance shall be sent to: Director - Contract Performance & Administration, Verizon Wholesale Markets, 600 Hidden Ridge, HQEWMNOTICES, Irving, TX 75038.
 - 21.5 US LEC shall require its contractors, if any, that may enter upon the premises or access the facilities or equipment of Verizon or Verizon's affiliates to maintain insurance in accordance with Sections 21.1 through 21.3 and, if requested, to furnish Verizon certificates or other adequate proof of such insurance acceptable to Verizon in accordance with Section 21.4
 - 21.6 If US LEC or US LEC's contractors fail to maintain insurance as required in Sections 21.1 through 21.5, above, Verizon may (but shall not be obligated to) purchase such insurance and US LEC shall reimburse Verizon for the cost of the insurance.
 - 21.7 Certificates furnished by US LEC or US LEC's contractors shall contain a clause stating: "Verizon Pennsylvania Inc., f/k/a Bell Atlantic – Pennsylvania, Inc. shall be notified in writing at least thirty (30) days prior to cancellation of, or any material change in, the insurance."

22. Intellectual Property

- 22.1 Except as expressly stated in this Agreement, this Agreement shall not be construed as granting a license with respect to any patent, copyright, trade name, trademark, service mark, trade secret or any other intellectual property, now or hereafter owned, controlled or licensable by either Party. Except as expressly stated in this Agreement, neither Party may use any patent, copyrightable materials, trademark, trade name, trade secret or other intellectual

property right, of the other Party except in accordance with the terms of a separate license agreement between the Parties granting such rights.

- 22.2 Except as stated in Section 22.4, neither Party shall have any obligation to defend, indemnify or hold harmless, or acquire any license or right for the benefit of, or owe any other obligation or have any liability to, the other Party or its Affiliates or Customers based on or arising from any Third Party Claim alleging or asserting that the provision or use of any service, facility, arrangement, or software by either Party under this Agreement, or the performance of any service or method, either alone or in combination with the other Party, constitutes direct, vicarious or contributory infringement or inducement to infringe, or misuse or misappropriation of any patent, copyright, trademark, trade secret, or any other proprietary or intellectual property right of any Party or third person. Each Party, however, shall offer to the other reasonable cooperation and assistance in the defense of any such claim.
- 22.3 NOTWITHSTANDING ANY OTHER PROVISION OF THIS AGREEMENT, THE PARTIES AGREE THAT NEITHER PARTY HAS MADE, AND THAT THERE DOES NOT EXIST, ANY WARRANTY, EXPRESS OR IMPLIED, THAT THE USE BY EACH PARTY OF THE OTHER'S SERVICES PROVIDED UNDER THIS AGREEMENT SHALL NOT GIVE RISE TO A CLAIM OF INFRINGEMENT, MISUSE, OR MISAPPROPRIATION OF ANY INTELLECTUAL PROPERTY RIGHT.
- 22.4 US LEC agrees that the Services provided by Verizon hereunder shall be subject to the terms, conditions and restrictions contained in any applicable agreements (including, but not limited to software or other intellectual property license agreements) between Verizon and Verizon's vendors. Verizon agrees to advise US LEC, directly or through a third party, of any such terms, conditions or restrictions that may limit any US LEC use of a Service provided by Verizon that is otherwise permitted by this Agreement. At US LEC's written request, to the extent required by Applicable Law, Verizon will use Verizon's best efforts, as commercially practicable, to obtain intellectual property rights from Verizon's vendor to allow US LEC to use the Service in the same manner as Verizon that are coextensive with Verizon's intellectual property rights, on terms and conditions that are equal in quality to the terms and conditions under which Verizon has obtained Verizon's intellectual property rights. US LEC shall reimburse Verizon for the cost of obtaining such rights.

23. Joint Work Product

The Principal Document is the joint work product of the Parties, has been negotiated by the Parties, and shall be fairly interpreted in accordance with its terms. In the event of any ambiguities, no inferences shall be drawn against either Party.

24. Law Enforcement.

- 24.1 Each Party may cooperate with law enforcement authorities and national security authorities to the full extent required or permitted by Applicable Law in matters related to Services provided by it under this Agreement, including, but not limited to, the production of records, the establishment of new lines or the installation of new services on an existing line in order to support law enforcement and/or national security operations, and, the installation of wiretaps, trap-and-trace facilities and equipment, and dialed number recording facilities and equipment.

- 24.2 A Party shall not have the obligation to inform the other Party or the Customers of the other Party of actions taken in cooperating with law enforcement or national security authorities, except to the extent required by Applicable Law.
- 24.3 Where a law enforcement or national security request relates to the establishment of lines (including, but not limited to, lines established to support interception of communications on other lines), or the installation of other services, facilities or arrangements, a Party may act to prevent the other Party from obtaining access to information concerning such lines, services, facilities and arrangements, through operations support system interfaces.

25. Liability

- 25.1 As used in this Section 25, "Service Failure" means a failure to comply with a direction to install, restore or terminate Services under this Agreement, a failure to provide Services under this Agreement, and failures, mistakes, omissions, interruptions, delays, errors, defects or the like, occurring in the course of the provision of any Services under this Agreement.
- 25.2 Except as otherwise stated in Section 25.5, the liability, if any, of a Party, a Party's Affiliates, and the directors, officers and employees of a Party and a Party's Affiliates, to the other Party, the other Party's Customers, and to any other person, for Claims arising out of a Service Failure shall not exceed an amount equal to the pro rata applicable monthly charge for the Services that are subject to the Service Failure for the period in which such Service Failure occurs.
- 25.3 Except as otherwise stated in Section 25.5, a Party, a Party's Affiliates, and the directors, officers and employees of a Party and a Party's Affiliates, shall not be liable to the other Party, the other Party's Customers, or to any other person, in connection with this Agreement (including, but not limited to, in connection with a Service Failure or any breach, delay or failure in performance, of this Agreement) for special, indirect, incidental, consequential, reliance, exemplary, punitive, or like damages, including, but not limited to, damages for lost revenues, profits or savings, or other commercial or economic loss, even if the person whose liability is excluded by this Section has been advised of the possibility of such damages.
- 25.4 The limitations and exclusions of liability stated in Sections 25.1 through 25.3 shall apply regardless of the form of a claim or action, whether statutory, in contract, warranty, strict liability, tort (including, but not limited to, negligence of a Party), or otherwise.
- 25.5 Nothing contained in Sections 25.1 through 25.4 shall exclude or limit liability:
- 25.5.1 under Sections 20, Indemnification, or 41, Taxes.
 - 25.5.2 for any obligation to indemnify, defend and/or hold harmless that a Party may have under this Agreement.
 - 25.5.3 for damages arising out of or resulting from bodily injury to or death of any person, or damage to, or destruction or loss of, tangible real and/or personal property of any person, or Toxic or Hazardous Substances, to the extent such damages are otherwise recoverable under Applicable Law;
 - 25.5.4 for a claim for infringement of any patent, copyright, trade name, trade mark, service mark, or other intellectual property interest;

- 25.5.5 under Section 258 of the Act or any order of FCC or the Commission implementing Section 258; or
- 25.5.6 under the financial incentive or remedy provisions of any service quality plan required by the FCC or the Commission.
- 25.6 In the event that the liability of a Party, a Party's Affiliate, or a director, officer or employee of a Party or a Party's Affiliate, is limited and/or excluded under both this Section 25 and a provision of an applicable Tariff, the liability of the Party or other person shall be limited to the smaller of the amounts for which such Party or other person would be liable under this Section or the Tariff provision.
- 25.7 Each Party shall, in its tariffs and other contracts with its Customers, provide that in no case shall the other Party, the other Party's Affiliates, or the directors, officers or employees of the other Party or the other Party's Affiliates, be liable to such Customers or other third-persons for any special, indirect, incidental, consequential, reliance, exemplary, punitive or other damages, arising out of a Service Failure.

26. Network Management

- 26.1 Cooperation. The Parties will work cooperatively in a commercially reasonable manner to install and maintain a reliable network. US LEC and Verizon will exchange appropriate information (e.g., network information, maintenance contact numbers, escalation procedures, and information required to comply with requirements of law enforcement and national security agencies) to achieve this desired reliability. In addition, the Parties will work cooperatively in a commercially reasonable manner to apply sound network management principles to alleviate or to prevent traffic congestion and subject to Section 17, to minimize fraud associated with third number billed calls, calling card calls, and other services related to this Agreement.
- 26.2 Responsibility for Following Standards. Each Party recognizes a responsibility to follow the standards that may be agreed to between the Parties and to employ characteristics and methods of operation that will not interfere with or impair the service, network or facilities of the other Party or any third parties connected with or involved directly in the network or facilities of the other.
- 26.3 Interference or Impairment. If a Party ("Impaired Party") reasonably determines that the services, network, facilities, or methods of operation, of the other Party ("Interfering Party") will or are likely to interfere with or impair the Impaired Party's provision of services or the operation of the Impaired Party's network or facilities, the Impaired Party may interrupt or suspend any Service provided to the Interfering Party to the extent necessary to prevent such interference or impairment, subject to the following:
 - 26.3.1 Except in emergency situations (e.g., situations involving a risk of bodily injury to persons or damage to tangible property, or an interruption in Customer service) or as otherwise provided in this Agreement, the Impaired Party shall have given the Interfering Party at least ten (10) days' prior written notice of the interference or impairment or potential interference or impairment and the need to correct the condition within said time period; and,
 - 26.3.2 Upon correction of the interference or impairment, the Impaired Party will promptly restore the interrupted or suspended Service. The Impaired Party shall not be obligated to provide an out-of-service

credit allowance or other compensation to the Interfering Party in connection with the suspended Service.

26.4 Outage Repair Standard. In the event of an outage or trouble in any Service being provided by a Party hereunder, the Providing Party will follow Verizon's standard procedures for isolating and clearing the outage or trouble in a manner consistent with its obligations to act in a non-discriminatory manner.

27. Non-Exclusive Remedies

Except as otherwise expressly provided in this Agreement, each of the remedies provided under this Agreement is cumulative and is in addition to any other remedies that may be available under this Agreement or at law or in equity.

28. Notice of Network Changes

If a Party makes a change in the information necessary for the transmission and routing of services using that Party's facilities or network, or any other change in its facilities or network that will materially affect the interoperability of its facilities or network with the other Party's facilities or network, the Party making the change shall publish notice of the change at least ninety (90) days in advance of such change, and shall use reasonable efforts, as commercially practicable, to publish such notice at least one hundred eighty (180) days in advance of the change; provided, however, that if an earlier publication of notice of a change is required by Applicable Law (including, but not limited to, 47 CFR 51.325 through 51.335) notice shall be given at the time required by Applicable Law.

29. Notices

29.1 Except as otherwise provided in this Agreement, notices given by one Party to the other Party under this Agreement:

29.1.1 shall be in writing;

29.1.2 shall be delivered (a) personally, (b) by express delivery service with next Business Day delivery, (c) by First Class, certified or registered U.S. mail, postage prepaid, or (d) by facsimile telecopy, with a copy delivered in accordance with (a), (b) or (c), preceding; and

29.1.3 shall be delivered to the following addresses of the Parties:

To US LEC:

Wanda G. Montano
Vice President Regulatory and Industry Affairs
US LEC Corporation
6801 Morrison Boulevard
Charlotte, NC 28211
Telephone Number: 704-319-1074
Facsimile Number: 704-602-1074
Internet Address: wmontano@uslec.com

with a copy to:

General Counsel
US LEC Corporation
6801 Morrison Boulevard
Charlotte, NC 28211
Telephone Number: 704-319-1119
Facsimile Number: 704-602-1119
Internet Address: sns smith@uslec.com

To Verizon:

Director-Contract Performance & Administration
Verizon Wholesale Markets
600 Hidden Ridge
HQEWMNOTICES
Irving, TX 75038
Telephone Number: 972-718-5988
Facsimile Number: 972-719-1519
Internet Address: wmnotices@verizon.com

with a copy to:

Vice President and Associate General Counsel
Verizon Wholesale Markets
1515 North Court House Road
Suite 500
Arlington, VA 22201
Facsimile: 703-351-3664

or to such other address as either Party shall designate by proper notice.

Notices will be deemed given as of the earlier of (a) where there is personal delivery of the notice, the date of actual receipt, (b) where the notice is sent via express delivery service for next Business Day delivery, the next Business Day after the notice is sent, (c) where the notice is sent via First Class U.S. Mail, three (3) Business Days after mailing, (d) where notice is sent via certified or registered U.S. mail, the date of receipt shown on the Postal Service receipt, and (e) where the notice is sent via facsimile telecopy, if the notice is sent on a Business Day and before 5 PM. in the time zone where it is received, on the date set forth on the telecopy confirmation, or if the notice is sent on a non-Business Day or if the notice is sent after 5 PM in the time zone where it is received, the next Business Day after the date set forth on the telecopy confirmation .

30. Ordering and Maintenance

US LEC shall use Verizon's electronic Operations Support System access platforms to submit Orders and requests for maintenance and repair of Services, and to engage in other pre-ordering, ordering, provisioning, maintenance and repair transactions. If Verizon has not yet deployed an electronic capability for US LEC to perform a pre-ordering, ordering, provisioning, maintenance or repair, transaction offered by Verizon, US LEC shall use such other processes as Verizon has made available for performing such transaction (including, but not limited, to submission of Orders by telephonic facsimile transmission and placing trouble reports by voice telephone transmission).

31. Performance Standards

- 31.1 Verizon shall provide Services under this Agreement in accordance with the performance standards required by Applicable Law, including, but not limited to, Section 251(c) of the Act.
- 31.2 To the extent required by Appendix D, Section V, "Carrier-to-Carrier Performance Plan (Including Performance Measurements)," and Appendix D, Attachment A, "Carrier-to-Carrier Performance Assurance Plan," of the Merger Order, Verizon shall provide performance measurement results to US LEC.
- 31.3 US LEC shall provide Services under this Agreement in accordance with the performance standards required by Applicable Law.

32. Point of Contact for US LEC Customers

- 32.1 US LEC shall establish telephone numbers and mailing addresses at which US LEC Customers may communicate with US LEC and shall advise US LEC Customers of these telephone numbers and mailing addresses.
- 32.2 Except as otherwise agreed to by Verizon, Verizon shall have no obligation, and may decline, to accept a communication from a US LEC customer, including, but not limited to, a US LEC Customer request for repair or maintenance of a Verizon Service provided to US LEC.

33. Predecessor Agreements

- 33.1 Except as stated in Section 33.1.1 or as otherwise agreed in writing by the Parties:
 - 33.1.1 any prior interconnection or resale agreement between the Parties for the Commonwealth of Pennsylvania pursuant to Section 252 of the Act and in effect immediately prior to the Effective Date is hereby terminated; and
 - 33.1.2 any Services that were purchased by one Party from the other Party under a prior interconnection or resale agreement between the Parties for the Commonwealth of Pennsylvania pursuant to Section 252 of the Act and in effect immediately prior to the Effective Date, shall as of the Effective Date be subject to and purchased under this Agreement.
- 33.2 Except as otherwise agreed in writing by the Parties, if a Service purchased by a Party under a prior interconnection or resale agreement between the Parties pursuant to Section 252 of the Act was subject to a contractual commitment that it would be purchased for a period of longer than one month, and such period had not yet expired as of the Effective Date and the Service had not been terminated prior to the Effective Date, to the extent not inconsistent with this Agreement, such commitment shall remain in effect and the Service will be purchased under this Agreement; provided, that if this Agreement would materially alter the terms of the commitment, either Party make elect to cancel the commitment.
- 33.3 If either Party elects to cancel the commitment pursuant to the proviso in Section 33.1.1, the Purchasing Party shall not be liable for any termination charge that would otherwise have applied. However, if the commitment was cancelled by the Purchasing Party, the Providing Party shall be entitled to payment from the Purchasing Party of the difference between the price of the Service that was actually paid by the Purchasing Party under the commitment and the price of the

Service that would have applied if the commitment had been to purchase the Service only until the time that the commitment was cancelled.

34. Publicity and Use of Trademarks or Service Marks

- 34.1 A Party, its Affiliates, and their respective contractors and Agents, shall not use the other Party's trademarks, service marks, logos or other proprietary trade dress, in connection with the sale of products or services, or in any advertising, press releases, publicity matters or other promotional materials, unless the other Party has given its written consent for such use, which consent the other Party may grant or withhold in its sole discretion.
- 34.2 Neither Party may imply any direct or indirect affiliation with or sponsorship or endorsement of it or its services or products by the other Party.
- 34.3 Any violation of this Section 34 shall be considered a material breach of this Agreement.

35. References

- 35.1 All references to Sections, Appendices and Exhibits shall be deemed to be references to Sections, Appendices and Exhibits of this Agreement unless the context shall otherwise require.
- 35.2 Unless the context shall otherwise require, any reference to a Tariff, agreement, technical or other document (including Verizon or third party guides, practices or handbooks), or provision of Applicable Law, is to such Tariff, agreement, document, or provision of Applicable Law, as amended and supplemented from time to time (and, in the case of a Tariff or provision of Applicable Law, to any successor Tariff or provision).

36. Relationship of the Parties

- 36.1 The relationship of the Parties under this Agreement shall be that of independent contractors and nothing herein shall be construed as creating any other relationship between the Parties.
- 36.2 Nothing contained in this Agreement shall make either Party the employee of the other, create a partnership, joint venture, or other similar relationship between the Parties, or grant to either Party a franchise, distributorship or similar interest.
- 36.3 Except for provisions herein expressly authorizing a Party to act for another Party, nothing in this Agreement shall constitute a Party as a legal representative or Agent of the other Party, nor shall a Party have the right or authority to assume, create or incur any liability or any obligation of any kind, express or implied, against, in the name or on behalf of the other Party unless otherwise expressly permitted by such other Party in writing, which permission may be granted or withheld by the other Party in its sole discretion.
- 36.4 Each Party shall have sole authority and responsibility to hire, fire, compensate, supervise, and otherwise control its employees, Agents and contractors. Each Party shall be solely responsible for payment of any Social Security or other taxes that it is required by Applicable Law to pay in conjunction with its employees, Agents and contractors, and for withholding and remitting to the applicable taxing authorities any taxes that it is required by Applicable Law to collect from its employees.

- 36.5 Except as otherwise expressly provided in this Agreement, no Party undertakes to perform any obligation of the other Party, whether regulatory or contractual, or to assume any responsibility for the management of the other Party's business.
- 36.6 The relationship of the Parties under this Agreement is a non-exclusive relationship.

37. Reservation of Rights

- 37.1 Notwithstanding anything to the contrary in this Agreement, neither Party waives, and each Party hereby expressly reserves, its rights: (a) to appeal or otherwise seek the reversal of and changes in any arbitration decision associated with this Agreement; (b) to challenge the lawfulness of this Agreement and any provision of this Agreement; (c) to seek changes in this Agreement (including, but not limited to, changes in rates, charges and the Services that must be offered) through changes in Applicable Law; and, (d) to challenge the lawfulness and propriety of, and to seek to change, any Applicable Law, including, but not limited to any rule, regulation, order or decision of the Commission, the FCC, or a court of applicable jurisdiction. Nothing in this Agreement shall be deemed to limit or prejudice any position a Party has taken or may take before the Commission, the FCC, any other state or federal regulatory or legislative bodies, courts of applicable jurisdiction, or industry fora. The provisions of this Section shall survive the expiration, cancellation or termination of this Agreement.
- 37.2 US LEC acknowledges US LEC has been advised by Verizon that it is Verizon's position that this Agreement contains certain provisions which are intended to reflect Applicable Law and Commission and/or FCC arbitration decisions.

38. Subcontractors

A Party may use a contractor of the Party (including, but not limited to, an Affiliate of the Party) to perform the Party's obligations under this Agreement; provided, that a Party's use of a contractor shall not release the Party from any duty or liability to fulfill the Party's obligations under this Agreement.

39. Successors and Assigns

This Agreement shall be binding on and inure to the benefit of the Parties and their respective legal successors and permitted assigns.

40. Survival

The rights, liabilities and obligations of a Party for acts or omissions occurring prior to the expiration, cancellation or termination of this Agreement, the rights, liabilities and obligations of a Party under any provision of this Agreement regarding confidential information (including but not limited to, Section 10, indemnification or defense (including, but not limited to, Section 20, or limitation or exclusion of liability (including, but not limited to, Section 25, and the rights, liabilities and obligations of a Party under any provision of this Agreement which by its terms or nature is intended to continue beyond or to be performed after the expiration, cancellation or termination of this Agreement, shall survive the expiration, cancellation or termination of this Agreement.

41. Taxes

- 41.1 In General. With respect to any purchase hereunder of Services, if any federal, state or local tax, fee, surcharge or other tax-like charge (a "Tax") is required or permitted by Applicable Law or a Tariff to be collected from the Purchasing Party

by the Providing Party, then (a) the Providing Party shall properly bill the Purchasing Party for such Tax, (b) the Purchasing Party shall timely remit such Tax to the Providing Party and (c) the Providing Party shall timely remit such collected Tax to the applicable taxing authority.

- 41.2 Taxes Imposed on the Providing Party. With respect to any purchase hereunder of Services, if any federal, state or local Tax is imposed by Applicable Law on the receipts of the Providing Party, and such Applicable Law permits the Providing Party to exclude certain receipts received from sales for resale to a public utility, distributor, telephone company, local exchange carrier, telecommunications company or other communications company ("Telecommunications Company"), such exclusion being based solely on the fact that the Purchasing Party is also subject to a tax based upon receipts ("Receipts Tax"), then the Purchasing Party (a) shall provide the Providing Party with notice in writing in accordance with Section 41.6 of this Agreement of its intent to pay the Receipts Tax and (b) shall timely pay the Receipts Tax to the applicable tax authority.
- 41.3 Taxes Imposed on Customers. With respect to any purchase hereunder of Services that are resold to a third party, if any federal, state or local Tax is imposed by Applicable Law on the subscriber, end-user, Customer or ultimate consumer ("Subscriber") in connection with any such purchase, which a Telecommunications Company is required to impose and/or collect from a Subscriber, then the Purchasing Party (a) shall be required to impose and/or collect such Tax from the Subscriber and (b) shall timely remit such Tax to the applicable taxing authority.
- 41.4 Liability for Uncollected Tax, Interest and Penalty. If the Providing Party has not received an exemption certificate from the Purchasing Party and the Providing Party fails to bill the Purchasing Party for any Tax as required by Section 41.1, then, as between the Providing Party and the Purchasing Party, (a) the Purchasing Party shall remain liable for such unbilled Tax and (b) the Providing Party shall be liable for any interest assessed thereon and any penalty assessed with respect to such unbilled Tax by such authority. If the Providing Party properly bills the Purchasing Party for any Tax but the Purchasing Party fails to remit such Tax to the Providing Party as required by Section 41.1, then, as between the Providing Party and the Purchasing Party, the Purchasing Party shall be liable for such uncollected Tax and any interest assessed thereon, as well as any penalty assessed with respect to such uncollected Tax by the applicable taxing authority. If the Providing Party does not collect any Tax as required by Section 41.1 because the Purchasing Party has provided such Providing Party with an exemption certificate that is later found to be inadequate by a taxing authority, then, as between the Providing Party and the Purchasing Party, the Purchasing Party shall be liable for such uncollected Tax and any interest assessed thereon, as well as any penalty assessed with respect to such uncollected Tax by the applicable taxing authority. If the Purchasing Party fails to pay the Receipts Tax as required by Section 41.2, then, as between the Providing Party and the Purchasing Party, (x) the Providing Party shall be liable for any Tax imposed on its receipts and (y) the Purchasing Party shall be liable for any interest assessed thereon and any penalty assessed upon the Providing Party with respect to such Tax by such authority. If the Purchasing Party fails to impose and/or collect any Tax from Subscribers as required by Section 41.3, then, as between the Providing Party and the Purchasing Party, the Purchasing Party shall remain liable for such uncollected Tax and any interest assessed thereon, as well as any penalty assessed with respect to such uncollected Tax by the applicable taxing authority. With respect to any Tax that the Purchasing Party has agreed to pay, or is required to impose on and/or collect from

Subscribers, the Purchasing Party agrees to indemnify and hold the Providing Party harmless on an after-tax basis for any costs incurred by the Providing Party as a result of actions taken by the applicable taxing authority to recover the Tax from the Providing Party due to the failure of the Purchasing Party to timely pay, or collect and timely remit, such Tax to such authority. In the event either Party is audited by a taxing authority, the other Party agrees to cooperate fully with the Party being audited in order to respond to any audit inquiries in a proper and timely manner so that the audit and/or any resulting controversy may be resolved expeditiously.

41.5 Tax exemptions and Exemption Certificates. If Applicable Law clearly exempts a purchase hereunder from a Tax, and if such Applicable Law also provides an exemption procedure, such as an exemption-certificate requirement, then, if the Purchasing Party complies with such procedure, the Providing Party shall not collect such Tax during the effective period of such exemption. Such exemption shall be effective upon receipt of the exemption certificate or affidavit in accordance with the terms set forth in Section 41.6. If Applicable Law clearly exempts a purchase hereunder from a Tax, but does not also provide an exemption procedure, then the Providing Party shall not collect such Tax if the Purchasing Party (a) furnishes the Providing Party with a letter signed by an officer requesting such an exemption and citing the provision in the Applicable Law which clearly allows such exemption and (b) supplies the Providing Party with an indemnification agreement, reasonably acceptable to the Providing Party (e.g., an agreement commonly used in the industry), which holds the Providing Party harmless on an after-tax basis with respect to its forbearing to collect such Tax.

41.6 All notices, affidavits, exemption-certificates or other communications required or permitted to be given by either Party to the other, for purposes of this Section 41, shall be made in writing and shall be delivered in person or sent by certified mail, return receipt requested, or registered mail, or a courier service providing proof of service, and sent to the addressees set forth in Section 29 as well as to the following:

To Verizon:

Tax Administration
Verizon Communications
1095 Avenue of the Americas
Room 3109
New York, NY 10036

To US LEC:

Telecommunications Tax Manager
US LEC Corporation
6801 Morrison Boulevard
Charlotte, NC 28211

Either Party may from time to time designate another address or other addressees by giving notice in accordance with the terms of this Section. Any notice or other communication shall be deemed to be given when received.

42. Technology Upgrades

Notwithstanding any other provision of this Agreement, Verizon shall have the right to deploy, upgrade, migrate and maintain its network at its discretion, and to the extent permitted by Applicable Law. The Parties acknowledge that Verizon, at its election, may deploy fiber throughout its network and that such fiber deployment may inhibit or facilitate US LEC's ability to provide service using certain technologies. Nothing in this Agreement shall limit Verizon's ability to modify its network through the incorporation of new equipment or software or otherwise. US LEC shall be solely responsible for the cost and activities associated with accommodating such changes in its own network.

43. Territory

43.1 This Agreement applies to the territory in which Verizon operates as an Incumbent Local Exchange Carrier in the Commonwealth of Pennsylvania.

43.2 Notwithstanding any other provision of this Agreement, Verizon may terminate this Agreement as to a specific operating territory or portion thereof if Verizon sells or otherwise transfers its operations in such territory or portion thereof to a third-person. Verizon shall provide US LEC with at least 90 calendar days prior written notice of such termination, which shall be effective upon the date specified in the notice. Verizon shall be obligated to provide Services under this Agreement only within this territory.

44. Third Party Beneficiaries

Except as expressly set forth in this Agreement, this Agreement is for the sole benefit of the Parties and their permitted assigns, and nothing herein shall create or be construed to provide any third-persons (including, but not limited to, Customers or contractors of a Party) with any rights (including, but not limited to, any third-party beneficiary rights) hereunder. Except as expressly set forth in this Agreement, a Party shall have no liability under this Agreement to the Customers of the other Party or to any other third person.

45. 251 and 271 Requirements

45.1 The Parties agree that the satisfactory and timely performance of the terms of this Agreement may be construed by an appropriate regulatory authority as satisfying Verizon's obligations under Section 251 of the Act.

45.2 The Parties understand and agree that this Agreement will be filed with the Commission and may thereafter be filed with the FCC as an integral part of an application by Verizon or an Affiliate of Verizon pursuant to Section 271(d) of the Act.

46. 252(i) Obligations

46.1 To the extent required by Applicable Law, each Party shall comply with Section 252(i) of the Act and Appendix D, Sections 30 through 32, of the Merger Order ("Merger Order MFN Provisions").

46.2 To the extent that the exercise by US LEC of any rights it may have under Section 252(i) or the Merger Order MFN Provisions results in the rearrangement of Services by Verizon, US LEC shall be solely liable for all costs associated therewith, as well as for any termination charges associated with the termination of existing Verizon Services.

47. Use of Service

Each Party shall make commercially reasonable efforts to ensure that its Customers comply with the provisions of this Agreement (including, but not limited to the provisions

of applicable Tariffs) applicable to the use of Services purchased by it under this Agreement.

48. Waiver

A failure or delay of either Party to enforce any of the provisions of this Agreement, or any right or remedy available under this Agreement or at law or in equity, or to require performance of any of the provisions of this Agreement, or to exercise any option which is provided under this Agreement, shall in no way be construed to be a waiver of such provisions, rights, remedies or options.

49. Warranties

EXCEPT AS EXPRESSLY STATED IN THIS AGREEMENT, NEITHER PARTY MAKES OR RECEIVES ANY WARRANTY, EXPRESS OR IMPLIED, WITH RESPECT TO THE SERVICES PROVIDED, OR TO BE PROVIDED, UNDER THIS AGREEMENT AND THE PARTIES DISCLAIM ANY OTHER WARRANTIES, INCLUDING BUT NOT LIMITED TO, WARRANTIES OF MERCHANTABILITY, WARRANTIES OF FITNESS FOR A PARTICULAR PURPOSE WARRANTIES AGAINST INFRINGEMENT, AND WARRANTIES ARISING BY TRADE CUSTOM, TRADE USAGE, COURSE OF DEALING OR PERFORMANCE, OR OTHERWISE.

50. Withdrawal of Services

50.1 Notwithstanding anything contained in this Agreement, except as otherwise required by Applicable Law and as specified in Section 4, Verizon may terminate its offering and/or provision of any Service under this Agreement upon ninety (90) days prior written notice to US LEC.

50.2 Notwithstanding anything contained in this Agreement, except as otherwise required by Applicable Law and as specified in Section 4, Verizon may with ninety (90) days prior written notice to US LEC terminate any provision of this Agreement that provides for the payment by Verizon to US LEC of compensation related to traffic, including, but not limited to, Reciprocal Compensation and other types of compensation for termination of traffic delivered by Verizon to US LEC. Following such termination, except as otherwise agreed in writing by the Parties, Verizon shall be obligated to provide compensation to US LEC related to traffic only to the extent required by Applicable Law. If Verizon exercises its right of termination under this Section, the Parties shall negotiate in good faith appropriate substitute provisions for compensation related to traffic; provided, however, that except as otherwise voluntarily agreed by Verizon in writing in its sole discretion, Verizon shall be obligated to provide compensation to US LEC related to traffic only to the extent required by Applicable Law. If within sixty (60) days after Verizon's notice of termination the Parties are unable to agree in writing upon mutually acceptable substitute provisions for compensation related to traffic, either Party may submit their disagreement to dispute resolution in accordance with Section 14 of this Agreement.

SIGNATURE PAGE

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed as of the Effective Date.

US LEC OF PENNSYLVANIA INC.

VERIZON PENNSYLVANIA INC.

By: _____

By: _____

Printed: Wanda G. Montano

Printed: Jeffrey A. Masoner

Title: Vice President, Regulatory and Industry
Affairs

Title: Vice President – Interconnection Policy and
Planning

GLOSSARY

1. General Rule

- 1.1 The provisions of Sections 1.2 through 1.4 and Section 2 apply with regard to the Principal Document. Terms used in a Tariff shall have the meanings stated in the Tariff.
- 1.2 Unless the context clearly indicates otherwise, when a term listed in this Glossary is used in the Principal Document, the term shall have the meaning stated in this Glossary. A defined term intended to convey the meaning stated in this Glossary is capitalized when used. Other terms that are capitalized, and not defined in this Glossary or elsewhere in the Principal Document, shall have the meaning stated in the Act. Additional definitions that are specific to the matters covered in a particular provision of the Principal Document may appear in that provision. To the extent that there may be any conflict between a definition set forth in this Glossary and any definition in a specific provision, the definition set forth in the specific provision shall control with respect to that provision.
- 1.3 Unless the context clearly indicates otherwise, any term defined in this Glossary which is defined or used in the singular shall include the plural, and any term defined in this Glossary which is defined or used in the plural shall include the singular.
- 1.4 The words "shall" and "will" are used interchangeably throughout the Principal Document and the use of either indicates a mandatory requirement. The use of one or the other shall not confer a different degree of right or obligation for either Party.

2. Definitions

- 2.1 Act.
The Communications Act of 1934 (47 U.S.C. §151 et seq.), as from time to time amended (including, but not limited to, by the Telecommunications Act of 1996).
- 2.2 ADSL (Asymmetrical Digital Subscriber Line).
A transmission technology on twisted pair copper Loop plant, which transmits an asymmetrical digital signal of up to 8 Mbps toward the Customer and up to 1 Mbps from the Customer, as specified in ANSI standards T1.413-1998 and Bell Atlantic Technical Reference TR-72575.
- 2.3 Affiliate.
Shall have the meaning set forth in the Act.
- 2.4 Agent.
An agent or servant.
- 2.5 Agreement.
This Agreement, as defined in Section 1 of the General Terms and Conditions.

- 2.6 Ancillary Traffic.
All traffic that is destined for ancillary services, or that may have special billing requirements, including but not limited to the following: Directory Assistance, 911/E911, Operator Services (IntraLATA call completion), IntraLATA third party, collect and calling card, 800/888 database query, LIDB, and Voice Information Services Traffic as described in Section 5 of the Additional Services Attachment.
- 2.7 ANI (Automatic Number Identification).
The signaling parameter that refers to the number transmitted through the network identifying the billing number of the calling party.
- 2.8 Applicable Law.
All effective laws, government regulations and government orders, applicable to each Party's performance of its obligations under this Agreement.
- 2.9 ASR (Access Service Request).
An industry standard form, which contains data elements and usage rules used by the Parties to add, establish, change or disconnect services or trunks for the purposes of interconnection.
- 2.10 BFR (Bona Fide Request).
The process described in the Network Element Attachment that prescribes the terms and conditions relating to a Party's request that the other Party provide a UNE that it is not otherwise required to provide under the terms of this Agreement.
- 2.11 Business Day.
Monday through Friday, except for holidays.
- 2.12 Calendar Quarter.
January through March, April through June, July through September, or October through December.
- 2.13 Calendar Year.
January through December.
- 2.14 CCS (Common Channel Signaling).
A method of transmitting call set-up and network control data over a digital signaling network separate from the public switched telephone network facilities that carry the actual voice or data content of the call.
- 2.15 Central Office.
A local switching system for connecting lines to lines, lines to trunks, or trunks to trunks for the purpose of originating/terminating calls over the public switched telephone network. A single Central Office may handle several Central Office codes ("NXX"). Sometimes this term is used to refer to a telephone company building in which switching systems and telephone equipment are installed.

- 2.16 Central Office Switch.
A switch used to provide Telecommunications Services, including, but not limited to, an End Office Switch or a Tandem Switch. A Central Office Switch may also be employed as a combination End Office/Tandem Office Switch.
- 2.17 Claims.
Any and all claims, demands, suits, actions, settlements, judgments, fines, penalties, liabilities, injuries, damages, losses, costs (including, but not limited to, court costs), and expenses (including, but not limited to, reasonable attorney's fees).
- 2.18 CLEC (Competitive Local Exchange Carrier).
Any Local Exchange Carrier other than Verizon that is operating as a Local Exchange Carrier in the territory in which Verizon operates as an ILEC in the Commonwealth of Pennsylvania. US LEC is or shortly will become a CLEC.
- 2.19 CLLI Codes.
Common Language Location Identifier Codes.
- 2.20 CMDS (Centralized Message Distribution System).
The billing record and clearing house transport system that LECs use to exchange out collects and in collects as well as Carrier Access Billing System (CABS) records.
- 2.21 Commission.
Pennsylvania Public Utility Commission
- 2.22 CPN (Calling Party Number).
A CCS parameter that identifies the calling party's telephone number.
- 2.23 CPNI (Customer Proprietary Network Information).
Shall have the meaning set forth in Section 222 of the Act, 47 U.S.C. § 222.
- 2.24 Cross Connection.
For a Collocation arrangement, the facilities between the collocating Party's equipment and the equipment or facilities of the housing Party (such as the housing Party's digital signal cross connect, Main Distribution Frame, or other suitable frame or panel).
- 2.25 Customer.
A third party residence or business end-user subscriber to Telephone Exchange Services provided by either of the Parties.
- 2.26 Digital Signal Level.
One of several transmission rates in the time-division multiplex hierarchy.

- 2.27 DS0 (Digital Signal Level 0).
The 64kbps zero-level signal in the time-division multiplex hierarchy.
- 2.28 DS1 (Digital Signal Level 1).
The 1.544 Mbps first-level signal in the time-division multiplex hierarchy.
- 2.29 DS3 (Digital Signal Level 3).
The 44.736 Mbps third-level signal in the time-division multiplex hierarchy.
- 2.30 EMI (Exchange Message Interface).
Standard used for the interexchange of telecommunications message information between local exchange carriers and interexchange carriers for billable, non-billable, sample, settlement and study data. Data is provided between companies via a unique record layout that contains Customer billing information, account summary and tracking analysis. EMI format is contained in document SR-320 published by the Alliance for Telcom Industry Solutions.
- 2.31 End Office Switch or End Office.
A switching entity that is used to terminate Customer station Loops for the purpose of interconnection to each other and to trunks.
- 2.32 Entrance Facility.
The facilities between a Party's designated premises and the Central Office serving that designated premises.
- 2.33 Exchange Access.
Shall have the meaning set forth in the Act.
- 2.34 Extended Local Calling Scope Arrangement.
An arrangement that provides a Customer a local calling scope (Extended Area Service, "EAS"), outside of the Customer's basic exchange serving area. Extended Local Calling Scope Arrangements may be either optional or non-optional. "Optional Extended Local Calling Scope Arrangement Traffic" is traffic that under an optional Extended Local Calling Scope Arrangement chosen by the Customer terminates outside of the Customer's basic exchange serving area.
- 2.35 FCC.
The Federal Communications Commission.
- 2.36 FCC Internet Order.
Order on Remand and Report and Order, *In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, Intercarrier Compensation for ISP Bound Traffic*, FCC 01-131, CC Docket Nos. 96-98 and 99-68, (adopted April 18, 2001).
- 2.37 FCC Regulations.

The final and unstayed, effective regulations promulgated by the FCC, as amended from time to time.

2.38 HDSL (High-Bit Rate Digital Subscriber Line).

A transmission technology that transmits up to a DS1 level signal, using any one of the following line codes: 2 Binary/1 Quaternary (2B1Q), Carrierless AM/PM, Discrete Multitone (DMT), or 3 Binary/1 Octal (3BO).

2.39 IDLC (Integrated Digital Loop Carrier).

A subscriber Loop carrier system that integrates within the switch at a DS1 level, which is twenty-four (24) Loop transmission paths combined into a 1.544 Mbps digital signal.

2.40 ILEC (Incumbent Local Exchange Carrier).

Shall have the meaning stated in the Act.

2.41 Inside Wire or Inside Wiring.

All wire, cable, terminals, hardware, and other equipment or materials, on the Customer's side of the Rate Demarcation Point.

2.42 Internet Traffic.

Any traffic that is transmitted to or returned from the Internet at any point during the duration of the transmission.

2.43 InterLATA Service.

Shall have the meaning set forth in the Act.

2.44 IntraLATA.

Telecommunications that originate and terminate within the same LATA.

2.45 IP (Interconnection Point).

Pursuant to the Opinions and Orders entered by the Commission on April 18, 2003 and October 7, 2003 in Docket A-310814F7000 (collectively, "Arbitration Order"), "Interconnection point" or "IP" means the technically feasible point on Verizon's network in a LATA at which the receiving Party applies Reciprocal Compensation rates or Intercarrier Compensation rates for Measured Internet Traffic. By way of example, IPs would include an applicable Verizon Tandem Wire Center or Verizon End Office Wire Center but, except as mutually agreed to by the Parties, would not include a US LEC Wire Center, US LEC switch or any portion of a transport facility provided by Verizon to US LEC or another party between (x) a Verizon Wire Center or switch and (y) the Wire Center or switch of US LEC or another party.

2.46 ISDN (Integrated Services Digital Network).

A switched network service providing end-to-end digital connectivity for the simultaneous transmission of voice and data. Basic Rate Interface-ISDN (BRI-ISDN) provides for digital transmission of two (2) 64 kbps bearer channels and one (1) 16 kbps data and signaling channel (2B+D). Primary Rate Interface-

ISDN (PRI-ISDN) provides for digital transmission of twenty-three (23) 64 kbps bearer channels and one (1) 64 kbps data and signaling channel (23B+D).

2.47 IXC (Interexchange Carrier).

A Telecommunications Carrier that provides, directly or indirectly, InterLATA or IntraLATA Telephone Toll Services.

2.48 LATA (Local Access and Transport Area).

Shall have the meaning set forth in the Act.

2.49 LEC (Local Exchange Carrier).

Shall have the meaning set forth in the Act.

2.50 LERG (Local Exchange Routing Guide).

A Telcordia Technologies reference containing NPA/NXX routing and homing information.

2.51 LIDB (Line Information Data Base).

Line Information databases which provide, among other things, calling card validation functionality for telephone line number cards issued by Verizon and other entities and validation data for collect and third number-billed calls (e.g., data for billed number screening).

2.52 Line Side.

An End Office Switch connection that provides transmission, switching and optional features suitable for Customer connection to the public switched network, including loop start supervision, ground start supervision and signaling for BRI-ISDN service.

2.53 Loop.

A transmission path that extends from a Main Distribution Frame, DSX-panel, or functionally comparable piece of equipment in a Customer's serving End Office, to the Rate Demarcation Point (or NID if installed at the Rate Demarcation Point) in or at the Customer's premises. The actual transmission facilities used to provide a Loop may utilize any of several technologies.

2.54 LSR (Local Service Request).

An industry standard form, which contains data elements and usage rules, used by the Parties to establish, add, change or disconnect resold Telecommunications Services and Network Elements.

2.55 MDF (Main Distribution Frame).

The primary point at which outside plant facilities terminate within a Wire Center, for interconnection to other Telecommunications facilities within the Wire Center. The distribution frame used to interconnect cable pairs and line trunk equipment terminating on a switching system.

2.56 Measured Internet Traffic.

Dial-up, switched Internet Traffic originated by a Customer of one Party on that Party's network at a point in a Verizon local calling area, and delivered to a Customer or an Internet Service Provider served by the other Party, on that other Party's network at a point in the same Verizon local calling area. Verizon local calling areas shall be as defined by Verizon. For the purposes of this definition, a Verizon local calling area includes a Verizon non-optional Extended Local Calling Scope Arrangement, but does not include a Verizon optional Extended Local Calling Scope Arrangement. Calls originated on a 1+ presubscription basis, or on a casual dialed (10XXX/101XXXX) basis, are not considered Measured Internet Traffic. Pursuant to the Arbitration Order, in the instance that: (1) the FCC modifies its rules so that the local exchange carriers' reciprocal compensation obligation, pursuant to Section 251(b)(5), will apply to ISP-bound traffic, or (2) the FCC determines that Internet calls terminate at the ISP, and are thus subject to reciprocal compensation, then the term "other Party", above, shall automatically be interpreted as "Terminating Party", or any appropriate substitute term that may be defined by the FCC to accomplish the spirit of the two conditions listed above in this paragraph, without formal amendment to this Agreement.

2.57 MECAB (Multiple Exchange Carrier Access Billing).

A document prepared by the Billing Committee of the Ordering and Billing Forum (OBF), which functions under the auspices of the Carrier Liaison Committee (CLC) of the Alliance for Telecommunications Industry Solutions (ATIS). The MECAB document, published by Telcordia Technologies as Special Report SR-BDS-000983, contains the recommended guidelines for the billing of an Exchange Access Service provided by two or more LECs, or by one LEC in two or more states, within a single LATA.

2.58 MECOD (Multiple Exchange Carriers Ordering and Design Guidelines for Access Services - Industry Support Interface).

A document developed by the Ordering/Provisioning Committee under the auspices of the Ordering and Billing Forum (OBF), which functions under the auspices of the Carrier Liaison Committee (CLC) of the Alliance for Telecommunications Industry Solutions (ATIS). The MECOD document, published by Telcordia Technologies as Special Report SR-STS-002643, establishes methods for processing orders for Exchange Access Service that is to be provided by two or more LECs.

2.59 Merger Order.

The FCC's ORDER "In re Application of GTE Corporation, Transferor, and Bell Atlantic Corporation, Transferee, For Consent to Transfer of Control of Domestic and International Section 214 and 310 Authorizations and Application to Transfer of a Submarine Cable Landing License", Memorandum Opinion and Order, FCC CC Docket No. 98-184, FCC 00-221 (June 16, 2000), as modified from time to time.

2.60 NANP (North American Numbering Plan).

The system of telephone numbering employed in the United States, Canada, Bermuda, Puerto Rico and certain Caribbean islands. The NANP format is a 10-digit number that consist of a 3-digit NPA Code (commonly referred to as the area code), followed by a 3-digit NXX code and 4 digit line number.

- 2.61 Network Element.
Shall have the meaning stated in the Act.
- 2.62 NID (Network Interface Device).
The Verizon provided interface terminating Verizon's Telecommunications network on the property where the Customer's service is located at a point determined by Verizon. The NID contains an FCC Part 68 registered jack from which Inside Wire may be connected to Verizon's network.
- 2.63 NPA (Numbering Plan Area).
Also sometimes referred to as an area code, is the first three-digit indicator of each 10-digit telephone number within the NANP. There are two general categories of NPA, "Geographic NPAs" and "Non-Geographic NPAs". A Geographic NPA is associated with a defined geographic area, and all telephone numbers bearing such NPA are associated with services provided within that geographic area. A Non-Geographic NPA, also known as a "Service Access Code" or "SAC Code" is typically associated with a specialized Telecommunications Service that may be provided across multiple geographic NPA areas. 500, 700, 800, 888 and 900 are examples of Non-Geographic NPAs.
- 2.64 NXX, NXX Code, Central Office Code or CO Code.
The three-digit switch entity indicator (i.e. the first three digits of a seven-digit telephone number).
- 2.65 Order.
An order or application to provide, change or terminate a Service (including, but not limited to, a commitment to purchase a stated number or minimum number of lines or other Services for a stated period or minimum period of time).
- 2.66 POI (Point of Interconnection).
The physical location where the one Party's facilities physically interconnect with the other Party's facilities for the purpose of exchanging traffic.
- 2.67 Port.
A line card (or equivalent) and associated peripheral equipment on an End Office Switch that interconnects individual Loops or individual Customer trunks with the switching components of an End Office Switch and the associated switching functionality in that End Office Switch. Each Port is typically associated with one (or more) telephone number(s) that serves as the Customer's network address. The Port is part of the provision of unbundled Local Switching Element.
- 2.68 Principal Document.
This document, including, but not limited to, the Title Page, the Table of Contents, the Preface, the General Terms and Conditions, the signature page, this Glossary, the Attachments, and the Appendices to the Attachments
- 2.69 Providing Party.

A Party offering or providing a Service to the other Party under this Agreement.

2.70 Purchasing Party.

A Party requesting or receiving a Service from the other Party under this Agreement.

2.71 Rate Center Area.

The geographic area that has been identified by a given LEC as being associated with a particular NPA-NXX code assigned to the LEC for its provision of Telephone Exchange Services. The Rate Center Area is the exclusive geographic area that the LEC has identified as the area within which it will provide Telephone Exchange Services bearing the particular NPA-NXX designation associated with the specific Rate Center Area.

2.72 Rate Center Point.

A specific geographic point, defined by a V&H coordinate, located within the Rate Center Area and used to measure distance for the purpose of billing for distance-sensitive Telephone Exchange Services and Toll Traffic. Pursuant to Telcordia Practice BR-795-100-100, the Rate Center Point may be an End Office location, or a "LEC Consortium Point Of Interconnection."

2.73 Rate Demarcation Point.

The physical point in a Verizon provided network facility at which Verizon's responsibility for maintaining that network facility ends and the Customer's responsibility for maintaining the remainder of the facility begins, as set forth in this Agreement, Verizon's applicable Tariffs, if any, or as otherwise prescribed under Applicable Law.

2.74 Reciprocal Compensation.

The arrangement for recovering, in accordance with Section 251(b)(5) of the Act, the FCC Internet Order, and other applicable FCC orders and FCC Regulations, costs incurred for the transport and termination of Reciprocal Compensation Traffic originating on one Party's network and terminating on the other Party's network (as set forth in Section 7 of the Interconnection Attachment).

2.75 Reciprocal Compensation Traffic.

Telecommunications traffic originated by a Customer of one Party on that Party's network and terminated to a Customer of the other Party on that other Party's network, except for Telecommunications traffic that is interstate or intrastate Exchange Access, Information Access, or exchange services for Exchange Access or Information Access. The determination of whether Telecommunications traffic is Exchange Access or Information Access shall be based upon Verizon's local calling areas as defined by Verizon. Reciprocal Compensation Traffic does not include: (1) any Internet Traffic; (2) traffic that does not originate and terminate within the same Verizon local calling area as defined by Verizon; (3) Toll Traffic, including, but not limited to, calls originated on a 1+ presubscription basis, or on a casual dialed (10XXX/101XXXX) basis; (4) Optional Extended Local Calling Scope Arrangement Traffic; (5) special access, private line, Frame Relay, ATM, or any other traffic that is not switched by the terminating Party; (6) Tandem Transit Traffic; or, (7) Voice Information Service

Traffic (as defined in Section 5 of the Additional Services Attachment). For the purposes of this definition, a Verizon *local calling area* includes a Verizon non-optional Extended Local Calling Scope Arrangement, but does not include a Verizon optional Extended Local Calling Scope Arrangement.

2.76 Retail Prices.

The prices at which a Service is provided by Verizon at retail to subscribers who are not Telecommunications Carriers.

2.77 Routing Point.

A specific geographic point identified by a specific V&H coordinate. The Routing Point is used to route inbound traffic to specified NPA-NXXs. The Routing Point *must be located within the LATA in which the corresponding NPA-NXX is located*. However, the Routing Point associated with each NPA-NXX need not be the same as the corresponding Rate Center Point, nor must it be located within the corresponding Rate Center Area, nor must there be a unique and separate Routing Point corresponding to each unique and separate Rate Center Area.

2.78 Service.

Any Interconnection arrangement, Network Element, Telecommunications Service, Collocation arrangement, or other service, facility or arrangement, offered by a Party under this Agreement.

2.79 SS7 (Signaling System 7).

The common *channel out-of-band* signaling protocol developed by the Consultative Committee for International Telephone and Telegraph (CCITT) and the American National Standards Institute (ANSI). Verizon and US LEC currently utilize this out-of-band signaling protocol.

2.80 Subsidiary.

A corporation or other person that is controlled by a Party.

2.81 Switched Access Detail Usage Data.

A category 1101XX record as defined in the EMI Telcordia Practice BR-010-200-010.

2.82 Switched Access Summary Usage Data.

A category 1150XX record as defined in the EMI Telcordia Practice BR-010-200-010.

2.83 Switched Exchange Access Service.

The offering of transmission and switching services for the purpose of the origination or termination of Toll Traffic. Switched Exchange Access Services include but may not be limited to: Feature Group A, Feature Group B, Feature Group D, 700 access, 800 access, 888 access and 900 access.

2.84 Tandem Switch.

A switching entity that has billing and recording capabilities and is used to connect and switch trunk circuits between and among End Office Switches and between and among End Office Switches and carriers' aggregation points, points of termination, or points of presence, and to provide Switched Exchange Access Services. Nothing contained in this definition waives either Party's rights with respect to the interpretation or applicability of 47 CFR Section 51.711(a)(3).

2.85 Tariff.

2.85.1 Any applicable Federal or state tariff of a Party, as amended from time-to-time; or

2.85.2 Any standard agreement or other document, as amended from time-to-time, that sets forth the generally available terms, conditions and prices under which a Party offers a Service.

The term "Tariff" does not include any Verizon statement of generally available terms (SGAT) which has been approved or is pending approval by the Commission pursuant to Section 252(f) of the Act.

2.86 Telcordia Technologies.

Telcordia Technologies, Inc., formerly known as Bell Communications Research, Inc. (Bellcore).

2.87 Telecommunications Carrier.

Shall have the meaning set forth in the Act.

2.88 Telecommunications Services.

Shall have the meaning set forth in the Act.

2.89 Telephone Exchange Service.

Shall have the meaning set forth in the Act.

2.90 Third Party Claim.

A Claim where there is (a) a claim, demand, suit or action by a person who is not a Party, (b) a settlement with, judgment by, or liability to, a person who is not a Party, or (c) a fine or penalty imposed by a person who is not a Party.

2.91 Toll Traffic.

Traffic that is originated by a Customer of one Party on that Party's network and terminates to a Customer of the other Party on that other Party's network and is not Reciprocal Compensation Traffic, Measured Internet Traffic, or Ancillary Traffic. Toll Traffic may be either "IntraLATA Toll Traffic" or "InterLATA Toll Traffic", depending on whether the originating and terminating points are within the same LATA.

2.92 Toxic or Hazardous Substance.

Any substance designated or defined as toxic or hazardous under any

"Environmental Law" or that poses a risk to human health or safety, or the environment, and products and materials containing such substance.
"Environmental Laws" means the Comprehensive Environmental Response, Compensation, and Liability Act, the Emergency Planning and Community Right-to-Know Act, the Water Pollution Control Act, the Air Pollution Control Act, the Toxic Substances Control Act, the Resource Conservation and Recovery Act, the Occupational Safety and Health Act, and all other Federal, State or local laws or governmental regulations or requirements, that are similar to the above-referenced laws or that otherwise govern releases, chemicals, products, materials or wastes that may pose risks to human health or safety, or the environment, or that relate to the protection of wetlands or other natural resources.

2.93 Traffic Factor 1.

For traffic exchanged via Interconnection Trunks, a percentage calculated by dividing the number of minutes of interstate traffic (excluding Measured Internet Traffic) by the total number of minutes of interstate and intrastate traffic. $(\{ \text{Interstate Traffic Total Minutes of Use (excluding Measured Internet Traffic Total Minutes of Use)} + \{ \text{Interstate Traffic Total Minutes of Use} + \text{Intrastate Traffic Total Minutes of Use} \} \times 100)$. Until the form of a Party's bills is updated to use the term "Traffic Factor 1," the term "Traffic Factor 1" may be referred to on the Party's bills and in billing related communications as "Percent Interstate Usage" or "PIU."

2.94 Traffic Factor 2.

For traffic exchange via Interconnection Trunks, a percentage calculated by dividing the combined total number of minutes of Reciprocal Compensation Traffic and Measured Internet Traffic by the total number of minutes of intrastate traffic. $(\{ \{ \text{Reciprocal Compensation Traffic Total Minutes of Use} + \text{Measured Internet Traffic Total Minutes of Use} \} \div \text{Intrastate Traffic Total Minutes of Use} \} \times 100)$. Until the form of a Party's bills is updated to use the term "Traffic Factor 2," the term "Traffic Factor 2" may be referred to on the Party's bills and in billing related communications as "Percent Local Usage" or "PLU."

2.95 Trunk Side.

A Central Office Switch connection that is capable of, and has been programmed to treat the circuit as, connecting to another switching entity, for example, to another carrier's network. Trunk side connections offer those transmission and signaling features appropriate for the connection of switching entities and cannot be used for the direct connection of ordinary telephone station sets.

2.96 UDLC (Universal Digital Loop Carrier).

UDLC arrangements consist of a Central Office Terminal and a Remote Terminal located in the outside plant or at a customer premises. The Central Office and the Remote Terminal units perform analog to digital conversions to allow the feeding facility to be digital. UDLC is deployed where the types of services to be provisioned by the systems cannot be integrated such as non-switched services and UNE Loops.

2.97 V and H Coordinates Method.

A method of computing airline miles between two points by utilizing an

established formula that is based on the vertical and horizontal coordinates of the two points.

2.98 Voice Grade.

Either an analog signal of 300 to 3000 Hz or a digital signal of 56/64 kilobits per second. When referring to digital Voice Grade service (a 56-64 kbps channel), the terms "DS0" or "sub-DS1" may also be used.

2.99 Wire Center.

A building or portion thereof which serves as the premises for one or more Central Office Switches and related facilities.

ADDITIONAL SERVICES ATTACHMENT

1. Alternate Billed Calls

- 1.1 The Parties will engage in settlements of intraLATA intrastate alternate-billed calls (*e.g.*, collect, calling card, and third-party billed calls) originated or authorized by their respective Customers in accordance with an arrangement mutually agreed to by the Parties.

2. Dialing Parity - Section 251(b)(3)

Each Party shall provide the other Party with nondiscriminatory access to such services and information as are necessary to allow the other Party to implement local Dialing Parity in accordance with the requirements of Section 251(b)(3) of the Act.

3. Directory Assistance (DA) and Operator Services (OS)

- 3.1 Either Party may request that the other Party provide the requesting Party with nondiscriminatory access to the other Party's directory assistance services (DA), IntraLATA operator call completion services (OS), and/or directory assistance listings database to the extent that such services are offered by a Party. If either Party makes such a request, the Parties shall enter into a mutually acceptable written agreement for such access.
- 3.2 US LEC shall arrange, at its own expense, the trunking and other facilities required to transport traffic to and from the designated DA and OS switch locations.

4. Directory Listing and Directory Distribution

To the extent required by Applicable Law, Verizon will provide directory services to US LEC. Such services will be provided in accordance with the terms set forth herein.

4.1 Listing Information.

As used herein, "Listing Information" means a US LEC Customer's primary name, address (including city, state and zip code), telephone number(s), the delivery address and number of directories to be delivered, and, in the case of a business Customer, the primary business heading under which the business Customer desires to be placed, and any other information Verizon deems necessary for the publication and delivery of directories.

4.2 Listing Information Supply.

US LEC shall provide to Verizon on a regularly scheduled basis, at no charge, and in a format required by Verizon or by a mutually agreed upon industry standard (*e.g.*, Ordering and Billing Forum developed), all Listing Information and the service address for each US LEC Customer whose service address location falls within the geographic area covered by the relevant Verizon directory. US LEC shall also provide to Verizon on a daily basis, (a) information showing US LEC Customers who have disconnected or terminated their service with US LEC; and (b) delivery information for each non-listed or non-published US LEC Customer to enable Verizon to perform its directory distribution responsibilities. Verizon shall promptly provide to US LEC, (normally within forty-eight (48) hours

of receipt by Verizon, excluding non-Business Days), a query on any listing that is not acceptable.

4.3 Listing Inclusion and Distribution.

Verizon shall include, on a nondiscriminatory basis and consistent with any obligations it may have under Applicable Law, each US LEC Customer's Primary Listing in all appropriate alphabetical directories (both print and electronic) and, for business Customers, in the appropriate classified (Yellow Pages) directories (both print and electronic) in accordance with the directory configuration, scope and schedules determined by Verizon in its sole discretion, and shall provide initial distribution of such directories to such US LEC Customers in the same manner it provides initial distribution of such directories to its own Customers. "Primary Listing" means a Customer's primary name, address, and telephone number. Listings of US LEC's Customers shall be interfiled with listings of Verizon's Customers and the Customers of other LECs included in the Verizon directories. US LEC shall pay Verizon's tariffed charges for additional and foreign alphabetical listings and other alphabetical services (e.g. caption arrangements) for US LEC's Customers. Verizon will not require a minimum number of listings per order.

4.4 Verizon Information.

Upon request by US LEC, Verizon shall make available to US LEC the following information to the extent that Verizon provides such information to its own business offices: a directory list of relevant NXX codes, directory and "Customer Guide" close dates, publishing data, and Yellow Pages headings. Verizon also will make available to US LEC, upon written request, a copy of Verizon's alphabetical listings standards and specifications manual.

4.5 Confidentiality of Listing Information.

Verizon shall accord US LEC Listing Information the same level of confidentiality that Verizon accords its own listing information, and shall use such Listing Information solely for the purpose of providing directory-related services; provided, however, that should Verizon elect to do so, it may use or license US LEC Listing Information for directory publishing, direct marketing, or any other purpose for which Verizon uses or licenses its own listing information, so long as US LEC Customers are not separately identified as such; and provided further that US LEC may identify those of its Customers who request that their names not be sold for direct marketing purposes, and Verizon shall honor such requests to the same extent it does so for its own Customers. Verizon shall not be obligated to compensate US LEC for Verizon's use or licensing of US LEC Listing Information.

4.6 Accuracy.

Both Parties shall use commercially reasonable efforts to ensure the accurate publication of US LEC Customer listings. At US LEC's request, Verizon shall provide US LEC with a report of all US LEC Customer listings normally no more than ninety (90) days and no less than thirty (30) days prior to the service order close date for the applicable directory. Verizon shall process any corrections made by US LEC with respect to its listings, provided such corrections are received prior to the close date of the particular directory.

4.7 Indemnification.

US LEC shall adhere to all practices, standards, and ethical requirements established by Verizon with regard to listings. By providing Verizon with Listing Information, US LEC warrants to Verizon that US LEC has the right to provide such Listing Information to Verizon on behalf of its Customers. US LEC shall make commercially reasonable efforts to ensure that any business or person to be listed is authorized and has the right (a) to provide the product or service offered, and (b) to use any personal or corporate name, trade name, trademark, service mark or language used in the listing. US LEC agrees to release, defend, hold harmless and indemnify Verizon from and against any and all claims, losses, damages, suits, or other actions, or any liability whatsoever, suffered, made, instituted, or asserted by any person arising out of Verizon's publication or dissemination of the Listing Information as provided by US LEC hereunder.

4.8 Liability.

Verizon's liability to US LEC in the event of a Verizon error in or omission of a listing shall not exceed the lesser of the amount of charges actually paid by US LEC for such listing or the amount by which Verizon would be liable to its own customer for such error or omission. US LEC agrees to take all reasonable steps, including, but not limited to, entering into appropriate contractual provisions with its Customers, to ensure that its and Verizon's liability to US LEC's Customers in the event of a Verizon error in or omission of a listing shall be subject to the same limitations of liability applicable between Verizon and its own Customers as set forth in Verizon's applicable tariffs.

4.9 Service Information Pages.

Verizon shall include all US LEC NXX codes associated with the geographic areas to which each directory pertains, to the extent it does so for Verizon's own NXX codes, in any lists of such codes that are contained in the general reference portion of each directory. US LEC's NXX codes shall appear in such lists in the same manner as Verizon's NXX information. In addition, when US LEC is authorized to, and is offering, local service to Customers located within the geographic area covered by a specific directory, at US LEC's request, Verizon shall include, at no charge, in the "Customer Guide" or comparable section of the applicable alphabetical directories, US LEC's critical contact information for US LEC's installation, repair and Customer service, as provided by US LEC, and such other essential local service oriented information as is agreed to in writing by the Parties, including appropriate identifying logo. Such critical contact information shall appear alphabetically by local exchange carrier and in accordance with Verizon's generally applicable policies. US LEC shall be responsible for providing the necessary information to Verizon by the applicable close date for each affected directory.

4.10 Directory Publication.

Nothing in this Agreement shall require Verizon to publish a directory where it would not otherwise do so.

4.11 Other Directory Services.

US LEC acknowledges that if US LEC desires directory services in addition to those described herein, such additional services must be obtained under separate agreement with Verizon's directory publishing company.

5. Voice Information Service Traffic

- 5.1 For purposes of this Section 5, (a) Voice Information Service means a service that provides [i] recorded voice announcement information or [ii] a vocal discussion program open to the public, and (b) Voice Information Service Traffic means intraLATA switched voice traffic, delivered to a Voice Information Service. Voice Information Service Traffic does not include any form of Internet Traffic. Voice Information Service Traffic also does not include 555 traffic or similar traffic with AIN service interfaces, which traffic shall be subject to separate arrangements between the Parties. Voice Information Service Traffic is not subject to Reciprocal Compensation charges under Section 7 the Interconnection Attachment.
- 5.2 If a US LEC Customer is served by resold Verizon dial tone line Telecommunications Service or a Verizon Local Switching UNE, to the extent reasonably feasible, Verizon will route Voice Information Service Traffic originating from such Service or UNE to the appropriate Voice Information Service connected to Verizon's network unless a feature blocking such Voice Information Service Traffic has been installed. For such Voice Information Service Traffic, US LEC shall pay to Verizon without discount any Voice Information Service provider charges billed by Verizon to US LEC. US LEC shall pay Verizon such charges in full regardless of whether or not US LEC collects such charges from its own Customer.
- 5.3 *Intentionally left blank pursuant to the Arbitration Order.*

6. Intercept and Referral Announcements

- 6.1 When a Customer changes its service provider from Verizon to US LEC, or from US LEC to Verizon, and does not retain its original telephone number, the Party formerly providing service to such Customer shall provide a referral announcement ("Referral Announcement") on the abandoned telephone number which provides the Customer's new number or other appropriate information, to the extent known to the Party formerly providing service. Notwithstanding the foregoing, a Party shall not be obligated under this Section to provide a Referral Announcement if the Customer owes the Party unpaid overdue amounts or the Customer requests that no Referral Announcement be provided.
- 6.2 Referral Announcements shall be provided, in the case of business Customers, for a period of not less than one hundred and twenty (120) days after the date the Customer changes its telephone number, and, in the case of residential Customers, not less than thirty (30) days after the date the Customer changes its telephone number; provided that if a longer time period is required by Applicable Law, such longer time period shall apply. Except as otherwise provided by Applicable Law, the period for a referral may be shortened by the Party formerly providing service if a number shortage condition requires reassignment of the telephone number.
- 6.3 This referral announcement will be provided by each Party at no charge to the other Party; provided that the Party formerly providing service may bill the Customer its standard Tariff charge, if any, for the referral announcement.

7. Originating Line Number Screening (OLNS)

Upon US LEC's request, Verizon will update its database used to provide originating line number screening (the database of information which indicates to an operator the acceptable billing methods for calls originating from the calling number (e.g., penal institutions, COCOTS).

8. Operations Support Systems (OSS) Services

8.1 Definitions.

The terms listed below shall have the meanings stated below:

- 8.1.1 Verizon Operations Support Systems: Verizon systems for pre-ordering, ordering, provisioning, maintenance and repair, and billing.
- 8.1.2 Verizon OSS Services: Access to Verizon Operations Support Systems functions. The term "Verizon OSS Services" includes, but is not limited to: (a) Verizon's provision of US LEC Usage Information to US LEC pursuant to Section 8.3 below; and, (b) "Verizon OSS Information", as defined in Section 8.1.4 below.
- 8.1.3 Verizon OSS Facilities: Any gateways, interfaces, databases, facilities, equipment, software, or systems, used by Verizon to provide Verizon OSS Services to US LEC.
- 8.1.4 Verizon OSS Information: Any information accessed by, or disclosed or provided to, US LEC through or as a part of Verizon OSS Services. The term "Verizon OSS Information" includes, but is not limited to: (a) any Customer Information related to a Verizon Customer or a US LEC Customer accessed by, or disclosed or provided to, US LEC through or as a part of Verizon OSS Services; and, (b) any US LEC Usage Information (as defined in Section 8.1.6 below) accessed by, or disclosed or provided to, US LEC.
- 8.1.5 Verizon Retail Telecommunications Service: Any Telecommunications Service that Verizon provides at retail to subscribers that are not Telecommunications Carriers. The term "Verizon Retail Telecommunications Service" does not include any Exchange Access service (as defined in Section 3(16) of the Act, 47 U.S.C. § 153(16)) provided by Verizon.
- 8.1.6 US LEC Usage Information: For a Verizon Retail Telecommunications Service purchased by US LEC pursuant to the Resale Attachment, the usage information that Verizon would record if Verizon was furnishing such Verizon Retail Telecommunications Service to a Verizon end-user retail Customer. For a Verizon Local Switching Network Element purchased by US LEC pursuant to the Network Element Attachment, the usage information that Verizon would record if Verizon was using such Local Switching Network Element to furnish a Verizon Retail Telecommunications Service to a Verizon end-user retail Customer.
- 8.1.7 Customer Information: CPNI of a Customer and any other non-public, individually identifiable information about a Customer or the purchase by a Customer of the services or products of a Party.

8.2 Verizon OSS Services.

- 8.2.1 Upon request by US LEC, Verizon shall provide to US LEC Verizon OSS Services. Such Verizon OSS Services will be provided in accordance with, but only to the extent required by, Applicable Law.
- 8.2.2 Subject to the requirements of Applicable Law, Verizon Operations Support Systems, Verizon Operations Support Systems functions,

Verizon OSS Facilities, Verizon OSS Information, and the Verizon OSS Services that will be offered by Verizon, shall be as determined by Verizon. Subject to the requirements of Applicable Law, Verizon shall have the right to change Verizon Operations Support Systems, Verizon Operations Support Systems functions, Verizon OSS Facilities, Verizon OSS Information, and the Verizon OSS Services, from time-to-time, without the consent of US LEC.

8.2.3 To the extent required by Applicable Law, in providing Verizon OSS Services to US LEC, Verizon will comply with Verizon's applicable OSS Change Management Guidelines, as such Guidelines are modified from time-to-time, including, but not limited to, the provisions of the Guidelines related to furnishing notice of changes in Verizon OSS Services. Verizon's OSS Change Management Guidelines will be set out on a Verizon website.

8.3 US LEC Usage Information.

8.3.1 Upon request by US LEC, Verizon shall provide to US LEC US LEC Usage Information. Such US LEC Usage Information will be provided in accordance with, but only to the extent required by, Applicable Law.

8.3.2 US LEC Usage Information will be available to US LEC through the following:

8.3.2.1 Daily Usage File on Data Tape.

8.3.2.2 Daily Usage File through Network Data Mover (NDM).

8.3.3 US LEC Usage Information will be provided in an Alliance for Telecommunications Industry Solutions EMI format.

8.3.4 Daily Usage File Data Tapes provided pursuant to Section 8.3.2.1 above will be issued each day, Monday through Friday, except holidays observed by Verizon.

8.3.5 Except as stated in this Section 8.3, subject to the requirements of Applicable Law, the manner in which, and the frequency with which, US LEC Usage Information will be provided to US LEC shall be determined by Verizon.

8.4 Access to and Use of Verizon OSS Facilities.

8.4.1 Verizon OSS Facilities may be accessed and used by US LEC only to the extent necessary for US LEC's access to and use of Verizon OSS Services pursuant to this Agreement.

8.4.2 Verizon OSS Facilities may be accessed and used by US LEC only to provide Telecommunications Services to US LEC Customers.

8.4.3 US LEC shall restrict access to and use of Verizon OSS Facilities to US LEC. This Section 8 does not grant to US LEC any right or license to grant sublicenses to other persons, or permission to other persons (except US LEC's employees, agents and contractors, in accordance with Section 8.4.7 below), to access or use Verizon OSS Facilities.

8.4.4 US LEC shall not (a) alter, modify or damage the Verizon OSS Facilities (including, but not limited to, Verizon software), (b) copy,

remove, derive, reverse engineer, or decompile, software from the Verizon OSS Facilities, or (c) obtain access through Verizon OSS Facilities to Verizon databases, facilities, equipment, software, or systems, which are not offered for US LEC's use under this Section 8.

8.4.5 US LEC shall comply with all practices and procedures established by Verizon for access to and use of Verizon OSS Facilities (including, but not limited to, Verizon practices and procedures with regard to security and use of access and user identification codes).

8.4.6 All practices and procedures for access to and use of Verizon OSS Facilities, and all access and user identification codes for Verizon OSS Facilities: (a) shall remain the property of Verizon; (b) shall be used by US LEC only in connection with US LEC's use of Verizon OSS Facilities permitted by this Section 8; (c) shall be treated by US LEC as Confidential Information of Verizon pursuant to Section 10 of the General Terms and Conditions; and, (d) shall be destroyed or returned by US LEC to Verizon upon the earlier of request by Verizon or the expiration or termination of this Agreement.

8.4.7 US LEC's employees, agents and contractors may access and use Verizon OSS Facilities only to the extent necessary for US LEC's access to and use of the Verizon OSS Facilities permitted by this Agreement. Any access to or use of Verizon OSS Facilities by US LEC's employees, agents, or contractors, shall be subject to the provisions of this Agreement, including, but not limited to, Section 10 of the General Terms and Conditions and Section 8.5.2.3 of this Attachment.

8.5 Verizon OSS Information.

8.5.1 Subject to the provisions of this Section 8, in accordance with, but only to the extent required by, Applicable Law, Verizon grants to US LEC a non-exclusive license to use Verizon OSS Information.

8.5.2 All Verizon OSS Information shall at all times remain the property of Verizon. Except as expressly stated in this Section 8, US LEC shall acquire no rights in or to any Verizon OSS Information.

8.5.2.1 The provisions of this Section 8.5.2 shall apply to all Verizon OSS Information, except (a) US LEC Usage Information, (b) CPNI of US LEC, and (c) CPNI of a Verizon Customer or a US LEC Customer, to the extent the Customer has authorized US LEC to use the CPNI.

8.5.2.2 Verizon OSS Information may be accessed and used by US LEC only to provide Telecommunications Services to US LEC Customers.

8.5.2.3 US LEC shall treat Verizon OSS Information that is designated by Verizon, through written or electronic notice (including, but not limited to, through the Verizon OSS Services), as "Confidential" or "Proprietary" as Confidential Information of Verizon pursuant to Section 10 of the General Terms and Conditions.

- 8.5.2.4 Except as expressly stated in this Section 8, this Agreement does not grant to US LEC any right or license to grant sublicenses to other persons, or permission to other persons (except US LEC's employees, agents or contractors, in accordance with Section 8.5.2.5 below), to access, use or disclose Verizon OSS Information.
- 8.5.2.5 US LEC's employees, agents and contractors may access, use and disclose Verizon OSS Information only to the extent necessary for US LEC's access to, and use and disclosure of, Verizon OSS Information permitted by this Section 8. Any access to, or use or disclosure of, Verizon OSS Information by US LEC's employees, agents or contractors, shall be subject to the provisions of this Agreement, including, but not limited to, Section 10 of the General Terms and Conditions and Section 8.5.2.3 above.
- 8.5.2.6 US LEC's license to use Verizon OSS Information shall expire upon the earliest of: (a) the time when the Verizon OSS Information is no longer needed by US LEC to provide Telecommunications Services to US LEC Customers; (b) termination of the license in accordance with this Section 8; or (c) expiration or termination of this Agreement.
- 8.5.2.7 All Verizon OSS Information received by US LEC shall be destroyed or returned by US LEC to Verizon, upon expiration, suspension or termination of the license to use such Verizon OSS Information.
- 8.5.3 Unless sooner terminated or suspended in accordance with this Agreement or this Section 8 (including, but not limited to, Section 2.2 of the General Terms and Conditions and Section 8.6.1 below), US LEC's access to Verizon OSS Information through Verizon OSS Services shall terminate upon the expiration or termination of this Agreement.
- 8.5.4 Audits.
 - 8.5.4.1 Verizon shall have the right (but not the obligation) to audit US LEC to ascertain whether US LEC is complying with the requirements of Applicable Law and this Agreement with regard to US LEC 's access to, and use and disclosure of, Verizon OSS Information.
 - 8.5.4.2 Without in any way limiting any other rights Verizon may have under this Agreement or Applicable Law, Verizon shall have the right (but not the obligation) to monitor US LEC 's access to and use of Verizon OSS Information which is made available by Verizon to US LEC pursuant to this Agreement, to ascertain whether US LEC is complying with the requirements of Applicable Law and this Agreement, with regard to US LEC 's access to, and use and disclosure of, such Verizon OSS Information. The foregoing right shall include, but not be limited to, the right (but not the obligation) to electronically monitor US LEC 's access to and use of Verizon OSS Information which is made

available by Verizon to US LEC through Verizon OSS Facilities.

8.5.4.3 Information obtained by Verizon pursuant to this Section 8.5.4 shall be treated by Verizon as Confidential Information of US LEC pursuant to Section 10 of the General Terms and Conditions; provided that, Verizon shall have the right (but not the obligation) to use and disclose information obtained by Verizon pursuant to this Section 8.5.4 to enforce Verizon's rights under this Agreement or Applicable Law.

8.5.5 US LEC acknowledges that the Verizon OSS Information, by its nature, is updated and corrected on a continuous basis by Verizon, and therefore that Verizon OSS Information is subject to change from time to time.

8.6 Liabilities and Remedies.

8.6.1 Any breach by US LEC, or US LEC's employees, agents or contractors, of the provisions of Sections 8.4 or 8.5 above shall be deemed a material breach of this Agreement. In addition, if US LEC or an employee, agent or contractor of US LEC at any time breaches a provision of Sections 8.4 or 8.5 above and such breach continues for more than ten (10) days after written notice thereof from Verizon, then, except as otherwise required by Applicable Law, Verizon shall have the right, upon notice to US LEC, to suspend the license to use Verizon OSS Information granted by Section 8.5.1 above and/or the provision of Verizon OSS Services, in whole or in part.

8.6.2 US LEC agrees that Verizon would be irreparably injured by a breach of Sections 8.4 or 8.5 above by US LEC or the employees, agents or contractors of US LEC, and that Verizon shall be entitled to seek equitable relief, including injunctive relief and specific performance, in the event of any such breach. Such remedies shall not be deemed to be the exclusive remedies for any such breach, but shall be in addition to any other remedies available under this Agreement or at law or in equity.

8.7 Relation to Applicable Law.

The provisions of Sections 8.4, 8.5 and 8.6 above with regard to the confidentiality of information shall be in addition to and not in derogation of any provisions of Applicable Law with regard to the confidentiality of information, including, but not limited to, 47 U.S.C. § 222, and are not intended to constitute a waiver by Verizon of any right with regard to protection of the confidentiality of the information of Verizon or Verizon Customers provided by Applicable Law.

8.8 Cooperation.

US LEC, at US LEC's expense, shall reasonably cooperate with Verizon in using Verizon OSS Services. Such cooperation shall include, but not be limited to, the following:

8.8.1 Upon request by Verizon, US LEC shall by no later than the fifteenth (15th) day of the last month of each Calendar Quarter submit to Verizon reasonable, good faith estimates of the volume of each type of

OSS transaction that US LEC anticipates submitting in each week of the next Calendar Quarter.

- 8.8.2 US LEC shall reasonably cooperate with Verizon in submitting orders for Verizon Services and otherwise using the Verizon OSS Services, in order to avoid exceeding the capacity or capabilities of such Verizon OSS Services.
- 8.8.3 US LEC shall participate in cooperative testing of Verizon OSS Services and shall provide assistance to Verizon in identifying and correcting mistakes, omissions, interruptions, delays, errors, defects, faults, failures, or other deficiencies, in Verizon OSS Services.

8.9 Verizon Access to Information Related to US LEC Customers.

- 8.9.1 Verizon shall have the right to access, use and disclose information related to US LEC Customers that is in Verizon's possession (including, but not limited to, in Verizon OSS Facilities) to the extent such access, use and/or disclosure has been authorized by the US LEC Customer in the manner required by Applicable Law.
- 8.9.2 Upon request by Verizon, US LEC shall negotiate in good faith and enter into a contract with Verizon, pursuant to which Verizon may obtain access to US LEC's fully implemented operations support systems (including, systems for pre-ordering, ordering, provisioning, maintenance and repair, and billing) and information contained in such systems, to permit Verizon to obtain information related to US LEC Customers (as authorized by the applicable US LEC Customer), to permit Customers to transfer service from one Telecommunications Carrier to another, and for such other purposes as may be permitted by Applicable Law. Such contract shall include protections for US LEC's intellectual property similar to those set forth for Verizon's intellectual property in Section 21.4 of the General Terms and Conditions.

8.10 Verizon Pre-OSS Services.

- 8.10.1 As used in this Section 8, "Verizon Pre-OSS Service" means a service which allows the performance of an activity which is comparable to an activity to be performed through a Verizon OSS Service and which Verizon offers to provide to US LEC prior to, or in lieu of, Verizon's provision of the Verizon OSS Service to US LEC. The term "Verizon Pre-OSS Service" includes, but is not limited to, the activity of placing orders for Verizon Services through a telephone facsimile communication.
- 8.10.2 Subject to the requirements of Applicable Law, the Verizon Pre-OSS Services that will be offered by Verizon shall be as determined by Verizon and Verizon shall have the right to change Verizon Pre-OSS Services, from time-to-time, without the consent of US LEC.
- 8.10.3 Subject to the requirements of Applicable Law, the prices for Verizon Pre-OSS Services shall be as determined by Verizon and shall be subject to change by Verizon from time-to-time.
- 8.10.4 The provisions of Sections 8.4 through 8.8 above shall also apply to Verizon Pre-OSS Services. For the purposes of this Section 8.10: (a)

references in Sections 8.4 through 8.8 above to Verizon OSS Services shall be deemed to include Verizon Pre-OSS Services; and, (b) references in Sections 8.4 through 8.8 above to Verizon OSS Information shall be deemed to include information made available to US LEC through Verizon Pre-OSS Services.

8.11 Cancellations.

Verizon may cancel orders for service which have had no activity within thirty-one (31) consecutive calendar days after the original service due date.

9. Poles, Ducts, Conduits and Rights-of-Way

9.1 Verizon shall afford US LEC non-discriminatory access to poles, ducts, conduits and rights-of-way owned or controlled by Verizon. Such access shall be provided in accordance with, but only to the extent required by, Applicable Law, pursuant to Verizon's applicable Tariffs, or, in the absence of an applicable Verizon Tariff, Verizon's generally offered form of license agreement, or, in the absence of such a Tariff and license agreement, a mutually acceptable agreement to be negotiated by the Parties.

9.2 US LEC shall afford Verizon non-discriminatory access to poles, ducts, conduits and rights-of-way owned or controlled by US LEC. Such access shall be provided pursuant to US LEC's applicable Tariffs, or, in the absence of an applicable US LEC Tariff, US LEC's generally offered form of license agreement, or, in the absence of such a Tariff and license agreement, a mutually acceptable agreement to be negotiated by the Parties. The terms, conditions and prices offered to Verizon by US LEC for such access shall be no less favorable than the terms, conditions and prices offered to US LEC by Verizon for access to poles, ducts, conduits and rights of way owned or controlled by Verizon.

10. Telephone Numbers

10.1 This Section applies in connection with US LEC Customers served by Telecommunications Services provided by Verizon to US LEC for resale or a Local Switching Network Element provided by Verizon to US LEC.

10.2 US LEC's use of telephone numbers shall be subject to Applicable Law the rules of the North American Numbering Council and the North American Numbering Plan Administrator, the applicable provisions of this Agreement (including, but not limited to, this Section 10), and Verizon's practices and procedures for use and assignment of telephone numbers, as amended from time-to-time.

10.3 Subject to Sections 10.2 and 10.4, if a Customer of either Verizon or US LEC who is served by a Verizon Telecommunications Service ("VTS") or a Verizon Local Switching Network Element ("VLSNE") changes the LEC that serves the Customer using such VTS or VLSNE (including a change from Verizon to US LEC, from US LEC to Verizon, or from US LEC to a LEC other than Verizon), after such change, the Customer may continue to use with such VTS or VLSNE the telephone numbers that were assigned to the VTS or VLSNE for the use of such Customer by Verizon immediately prior to the change.

10.4 Verizon shall have the right to change the telephone numbers used by a Customer if at any time: (a) the Customer requests service at a new location, that is not served by the Verizon switch and the Verizon rate center from which the Customer previously had service; (b) continued use of the telephone numbers is not technically feasible; or, (c) in the case of Telecommunications

Service provided by Verizon to US LEC for resale, the type or class of service subscribed to by the Customer changes.

- 10.5 If service on a VTS or VLSNE provided by Verizon to US LEC under this Agreement is terminated and the telephone numbers associated with such VTS or VLSNE have not been ported to a US LEC switch, the telephone numbers shall be available for reassignment by Verizon to any person to whom Verizon elects to assign the telephone numbers, including, but not limited to, Verizon, Verizon Customers, US LEC, or Telecommunications Carriers other than Verizon and US LEC.
- 10.6 US LEC may reserve telephone numbers only to the extent Verizon's Customers may reserve telephone numbers.

11. Routing for Operator Services and Directory Assistance Traffic

For a Verizon Telecommunications Service dial tone line purchased by US LEC for resale pursuant to the Resale Attachment, upon request by US LEC, Verizon will establish an arrangement that will permit US LEC to route the US LEC Customer's calls for operator and directory assistance services to a provider of operator and directory assistance services selected by US LEC. Verizon will provide this routing arrangement in accordance with, but only to the extent required by, Applicable Law. Verizon will provide this routing arrangement pursuant to an appropriate written request submitted by US LEC and a mutually agreed-upon schedule. This routing arrangement will be implemented at US LEC's expense, with charges determined on an individual case basis. In addition to charges for initially establishing the routing arrangement, US LEC will be responsible for ongoing monthly and/or usage charges for the routing arrangement. US LEC shall arrange, at its own expense, the trunking and other facilities required to transport traffic to US LEC's selected provider of operator and directory assistance services.

INTERCONNECTION ATTACHMENT

1. General

Each Party ("Providing Party") shall provide to the other Party, in accordance with this Agreement, the Providing Party's applicable Tariffs, and Applicable Law, interconnection with the Providing Party's network for the transmission and routing of Telephone Exchange Service and Exchange Access.

2. Methods for Interconnection and Trunk Types

2.1 Methods for Interconnection.

- 2.1.1 In accordance with, but only to the extent required by, Applicable Law, the Parties shall provide interconnection of their networks at any technically feasible point as specified in this Agreement.
- 2.1.2 Each Party ("Originating Party"), at its own expense, shall provide for delivery to the relevant IP of the other Party Reciprocal Compensation Traffic and Measured Internet Traffic that the Originating Party wishes to deliver to the other Party. Pursuant to the Arbitration Order, in the instance that: (1) the FCC modifies its rules so that the local exchange carriers' reciprocal compensation obligation, pursuant to Section 251(b)(5), will apply to ISP-bound traffic, or (2) the FCC determines that Internet calls terminate at the ISP, and are thus subject to reciprocal compensation, then the term "other Party", above, shall automatically be interpreted as "Terminating Party", or any appropriate substitute term that may be defined by the FCC to accomplish the spirit of the two conditions listed above in this paragraph, without formal amendment to this Agreement.
- 2.1.3 US LEC may use any of the following methods for interconnection with Verizon:
 - 2.1.3.1 a Collocation arrangement US LEC has established at the Verizon-IP pursuant to the Collocation Attachment; and/or
 - 2.1.3.2 a Collocation arrangement, or an Entrance Facility and transport arrangement, that has been established separately at the Verizon-IP by a third party and that is used by US LEC to interconnect with Verizon; and/or
 - 2.1.3.3 an Entrance Facility and transport obtained from Verizon (and any necessary multiplexing) pursuant to the applicable Verizon access Tariff or contractual arrangement, from the US LEC network to the Verizon-IP.
- 2.1.4 US LEC may order from Verizon, in accordance with the rates, terms and conditions set forth in this Agreement and applicable Verizon Tariff(s) (or in the absence of applicable rates, terms and conditions set forth in this Agreement and Verizon Tariff(s), in accordance with rates, terms and conditions to be negotiated by the Parties), any of the methods for interconnection specified in Section 2.1.3 above.

- 2.1.5 Verizon may use any of the following methods for interconnection with US LEC:
- 2.1.5.1 an arrangement Verizon has established at the US LEC-IP that is operationally equivalent to a Collocation arrangement (including, but not limited to, a Verizon provided Entrance Facility); and/or
 - 2.1.5.2 an arrangement that a third party has established at the US LEC-IP that is operationally equivalent to a Collocation arrangement and that is used by Verizon to interconnect with US LEC; and/or
 - 2.1.5.3 a non-distance sensitive Entrance Facility obtained from US LEC (and any necessary multiplexing), from the POI to the US LEC-IP (including, but not limited to, at Verizon's election, an Entrance Facility accessed by Verizon through interconnection at a Collocation arrangement that US LEC has established at a Verizon Wire Center pursuant to the Collocation Attachment, or through interconnection at a Collocation arrangement that has been established separately at a Verizon Wire Center by a third party and that is used by US LEC), or an Entrance Facility obtained from a third party that has established an interconnection arrangement with US LEC.
- 2.1.6 Verizon may order from US LEC, in accordance with the rates, terms and conditions set forth in this Agreement and applicable US LEC Tariff(s) (or in the absence of applicable rates, terms and conditions set forth in this Agreement and US LEC Tariff(s), in accordance with rates, terms and conditions to be negotiated by the Parties), any of the methods for interconnection specified in Section 2.1.5 above.

2.2 Trunk Types.

- 2.2.1 In interconnecting their networks pursuant to this Attachment, the Parties will use, as appropriate, the following separate and distinct trunk groups:
- 2.2.1.1 Interconnection Trunks for the transmission and routing of Reciprocal Compensation Traffic, translated LEC IntraLATA toll free service access code (e.g., 800/888/877) traffic, and IntraLATA Toll Traffic, between their respective Telephone Exchange Service Customers, Tandem Transit Traffic, and, Measured Internet Traffic, all in accordance with Sections 5 through 8 of this Attachment;
 - 2.2.1.2 Access Toll Connecting Trunks for the transmission and routing of Exchange Access traffic, including translated InterLATA toll free service access code (e.g., 800/888/877) traffic, between US LEC Telephone Exchange Service Customers and purchasers of Switched Exchange Access Service via a Verizon access Tandem in accordance with Sections 9 through 11 of this Attachment; and
 - 2.2.1.3 Miscellaneous Trunk Groups as mutually agreed to by the Parties, including, but not limited to: (a) choke trunks for

traffic congestion and testing; and, (b) untranslated IntraLATA/InterLATA toll free service access code (e.g. 800/888/877) traffic.

- 2.2.2 Other types of trunk groups may be used by the Parties as provided in other Attachments to this Agreement (e.g., 911/E911 Trunks; Information Services Trunks) or in other separate agreements between the Parties (e.g., Directory Assistance Trunks, Operator Services Trunks, BLV/BLVI Trunks).
- 2.2.3 Except as otherwise provided in this Agreement, the Parties will mutually agree upon where One-Way Interconnection Trunks (trunks with traffic going in one direction, including one-way trunks and *unidirectional two-way trunks*) and/or Two-Way Interconnection Trunks (trunks with traffic going in both directions) will be deployed.
- 2.2.4 In the event the volume of traffic between the Party's networks, which is carried by a Final Tandem Interconnection Trunk group, exceeds the Centium Call Second (Hundred Call Second) busy hour equivalent of one (1) DS-1 at any time and/or 200,000 minutes of use for a single month: (a) if One-Way Interconnection Trunks are used, the *originating* Party shall promptly establish new End Office One-Way Interconnection Trunk groups between the Verizon End Office and the US LEC network; or, (b) if Two-Way Interconnection Trunks are used, US LEC shall promptly submit an ASR to Verizon to establish new End Office Two-Way Interconnection Trunk group(s) between that Verizon *End Office* and the US LEC network.
- 2.2.5 Except as otherwise agreed in writing by the Parties, the total number of Tandem Interconnection Trunks between US LEC's network and a Verizon Tandem will be limited to a maximum of 240 trunks. In the event that the Parties have exhausted Tandem offload requirements, as stated in Section 2.2.4, then the Parties agree to exceed the 240 trunk limitation at the Verizon Tandem until such time as Verizon or US LEC exceeds 200,000 combined minutes of use to a specific end office as detailed in Section 2.2.4. US LEC shall promptly submit an ASR to Verizon to establish new or additional End Office Trunks to insure that the volume of traffic between US LEC's network and the Verizon Tandem does not exceed the capacity of the 240 trunks.

2.3 One-Way Interconnection Trunks.

- 2.3.1 Where the Parties have agreed to use One-Way Interconnection Trunks for the delivery of traffic from US LEC to Verizon, US LEC, at US LEC's own expense, shall:
 - 2.3.1.1 provide its own facilities for delivery of the traffic to the US LEC Collocation arrangement at the Verizon-IP or to the third-party Collocation arrangement used by US LEC at the Verizon-IP; and/or
 - 2.3.1.2 obtain transport for delivery of the traffic to the US LEC Collocation arrangement at the Verizon-IP or to the third-party Collocation arrangement used by US LEC at the Verizon-IP (a) from a third-party; or, (b) if Verizon offers such transport pursuant to this Agreement or an applicable Verizon Tariff, from Verizon; and/or

2.3.1.3 order the One-Way Trunks from Verizon in accordance with the rates, terms and conditions set forth in this Agreement and applicable Verizon Tariffs, for installation on an Entrance Facility obtained by US LEC from Verizon pursuant to Sections 2.1.3.3 and 2.1.4, and also order multiplexing and transport from Verizon pursuant to Sections 2.1.3.3 and 2.1.4.

2.3.1.3.1 For each Tandem One -Way Interconnection Trunk group provided by Verizon to US LEC with a utilization level of less than sixty percent (60%) for three consecutive months, unless the Parties agree otherwise, US LEC will promptly submit ASRs to disconnect a sufficient number of Interconnection Trunks to attain a utilization level of approximately sixty percent (60%). The minimum utilization level of sixty percent (60%) is not required until trunk group members have been in service for at least ninety (90) days.

2.3.2 Where the Parties have agreed to use One-Way Interconnection Trunks for the delivery of traffic from Verizon to US LEC, Verizon, at Verizon's own expense, shall:

2.3.2.1 provide its own facilities for delivery of the traffic to the Verizon Collocation arrangement or interconnection arrangement at the US LEC-IP or to the third-party Collocation arrangement used by Verizon at the US LEC-IP; or

2.3.2.2 obtain transport for delivery of the traffic to the Verizon Collocation arrangement or interconnection arrangement at the US LEC-IP or to the third-party Collocation arrangement used by Verizon at the US LEC-IP (a) from a third-party, or, (b) if US LEC offers such transport pursuant to this Agreement or an applicable US LEC Tariff, from US LEC; or

2.3.2.3 order the One-Way Trunks from US LEC in accordance with the rates, terms and conditions set forth in this Agreement and applicable US LEC Tariffs for installation on an Entrance Facility obtained by Verizon from US LEC pursuant to Sections 2.1.5.3 and 2.1.6, or obtain the One-Way Trunks from a third-party that has established an interconnection arrangement with US LEC.

2.4 Two-Way Interconnection Trunks.

2.4.1 Where the Parties have agreed to use Two-Way Interconnection Trunks for the exchange of traffic between Verizon and US LEC, US LEC shall order from Verizon, and Verizon shall provide, the Two-Way Interconnection Trunks and the Entrance Facility, on which such Trunks will ride, and transport and multiplexing, in accordance with the rates, terms and conditions set forth in this Agreement and Verizon's applicable Tariffs.

2.4.2 Prior to ordering any Two-Way Interconnection Trunks from Verizon, US LEC shall meet with Verizon to conduct a joint planning meeting

("Joint Planning Meeting"). At that Joint Planning Meeting, each Party shall provide to the other Party originating Centium Call Second (Hundred Call Second) information, and the Parties shall mutually agree on the appropriate initial number of Two-Way End Office and Tandem Interconnection Trunks and the interface specifications at the Point of Interconnection (POI). Where the Parties have agreed to convert existing One-Way Interconnection Trunks to Two-Way Interconnection Trunks, at the Joint Planning Meeting, the Parties shall also mutually agree on the conversion process and project intervals for conversion of such One-Way Interconnection Trunks to Two-Way Interconnection Trunks.

- 2.4.3 Two-Way Interconnection Trunks shall be from a Verizon End Office or Tandem to a mutually agreed upon POI.
- 2.4.4 On a semi-annual basis, US LEC shall submit a good faith forecast to Verizon of the number of End Office and Tandem Two-Way Interconnection Trunks that US LEC anticipates Verizon will need to provide during the ensuing two (2) year period to carry traffic from US LEC to Verizon and from Verizon to US LEC. US LEC's trunk forecasts shall conform to the Verizon CLEC trunk forecasting guidelines as in effect at that time.
- 2.4.5 The Parties shall meet (telephonically or in person) from time to time, as needed, to review data on End Office and Tandem Two-Way Interconnection Trunks to determine the need for new trunk groups and to plan any necessary changes in the number of Two-Way Interconnection Trunks.
- 2.4.6 Two-Way Interconnection Trunks shall have SS7 Common Channel Signaling. The Parties agree to utilize B8ZS and Extended Super Frame (ESF) DS1 facilities, where available.
- 2.4.7 With respect to End Office Two-Way Interconnection Trunks, both Parties shall use an economic Centium Call Second (Hundred Call Second) equal to five (5).
- 2.4.8 Two-Way Interconnection Trunk groups that connect to a Verizon access Tandem shall be engineered using a design blocking objective of Neal-Wilkenson B.005 during the average time consistent busy hour. Two-Way Interconnection Trunk groups that connect to a Verizon local Tandem shall be engineered using a design blocking objective of Neal-Wilkenson B.01 during the average time consistent busy hour. Verizon and US LEC shall engineer Two-Way Interconnection Trunks using BOC Notes on the LEC Networks SR-TSV-002275.
- 2.4.9 The performance standard for final Two-Way Interconnection Trunk groups shall be that no such Interconnection Trunk group will exceed its design blocking objective (B.005 or B.01, as applicable) for three (3) consecutive calendar traffic study months.
- 2.4.10 US LEC shall determine and order the number of Two-Way Interconnection Trunks that are required to meet the applicable design blocking objective for all traffic carried on each Two-Way Interconnection Trunk group. US LEC shall order Two-Way Interconnection Trunks by submitting ASRs to Verizon setting forth the

number of Two-Way Interconnection Trunks to be installed and the requested installation dates within Verizon's effective standard intervals or negotiated intervals, as appropriate. US LEC shall complete ASRs in accordance with OBF Guidelines as in effect from time to time.

- 2.4.11 Verizon may (but shall not be obligated to) monitor Two-Way Interconnection Groups using service results for the applicable design blocking objective. If Verizon observes blocking in excess of the applicable design objective on any Tandem Two-Way Interconnection Trunk group and US LEC has not notified Verizon that it has corrected such blocking, Verizon may submit to US LEC a Trunk Group Service Request directing US LEC to remedy the blocking. Upon receipt of a Trunk Group Service Request, US LEC will complete an ASR to augment the Two-Way Interconnection Trunk Group with excessive blocking and submit the ASR to Verizon within five (5) Business Days.
- 2.4.12 The Parties will review all Tandem Two-Way Interconnection Trunk groups that reach a utilization level of seventy percent (70%), or greater, to determine whether those groups should be augmented. US LEC will promptly augment all Tandem Two-Way Interconnection Trunk groups that reach a utilization level of eighty percent (80%) by submitting ASRs for additional trunks sufficient to attain a utilization level of approximately seventy percent (70%), unless the Parties agree that additional trunking is not required. For each Tandem Two-Way Interconnection Trunk group with a utilization level of less than sixty percent (60%), unless the Parties agree otherwise, US LEC will promptly submit ASRs to disconnect a sufficient number of Interconnection Trunks to attain a utilization level of approximately sixty percent (60%) for each respective group, unless the Parties agree that the Two-Way Interconnection Trunks should not be disconnected. In the event US LEC fails to submit an ASR for Two-Way Interconnection Trunks in conformance with this section, Verizon may bill US LEC for the excess Interconnection Trunks at the applicable Verizon rates.
- 2.4.13 Because Verizon will not be in control of when and how many Two-Way Interconnection Trunks are established between its network and US LEC's network, Verizon's performance in connection with these Two-Way Interconnection Trunk groups shall not be subject to any performance measurements and remedies under this Agreement, and, except as otherwise required by Applicable Law, under any FCC or Commission approved carrier-to-carrier performance assurance guidelines or plan.
- 2.4.14 Upon three (3) months prior written notice and with the mutual agreement of the Parties, either Party may withdraw its traffic from a Two-Way Interconnection Trunk group and install One-Way Interconnection Trunks to the other Party's relevant POI, provided that, if a Party has failed to comply with this Agreement with regard to Two-Way Interconnection Trunks, the other Party may upon three (3) months prior written notice and without mutual agreement of the non-complying Party, withdraw its traffic from a Two-Way Interconnection Trunk group and install One-Way Interconnection Trunks to the non-complying Party's relevant POI.

- 2.4.15 US LEC will route its traffic to Verizon over the End Office and Tandem Two-Way Interconnection Trunks in accordance with SR-TAP-000191, including but not limited to those standards requiring that a call from US LEC to a Verizon End Office will first be routed to the End Office Interconnection Trunk group between US LEC and the Verizon End Office.
- 2.4.16 When the Parties implement Two-Way Interconnection Trunks, the Parties will work cooperatively to calculate a Proportionate Percentage of Use ("PPU") factor for each facility on which the Two-Way Interconnection Trunks ride, based on the total number of minutes of traffic that each Party sends over the Two-Way Interconnection Trunks riding on that facility. US LEC will pay a percentage of Verizon's monthly recurring charges for each facility on which the Two-Way Interconnection Trunks ride equal to US LEC's percentage of use of that facility as shown by the PPU. The PPU shall not be applied to calculate the charges for any portion of a facility that is on US LEC's side of US LEC's-IP, which charges shall be solely the financial responsibility of US LEC. During the first full calendar quarter (and any partial calendar quarter preceding such first full calendar quarter) after the first Two-Way Interconnection Trunk is established on a facility, the PPU for that facility will be fifty percent (50%) for each Party. For each calendar quarter thereafter, the Parties shall recalculate the PPU using actual traffic usage data for the preceding calendar quarter.

Non-recurring charges for the facility on which the Two-Way Interconnection Trunks ride shall be apportioned as follows: (a) for the portion of the facility on Verizon's side of the US LEC-IP, US LEC shall pay fifty percent (50%) of the Verizon non-recurring charges; and, (b) for the portion of the facility on US LEC's side of the US LEC-IP, US LEC shall be solely responsible for the non-recurring charges.

Notwithstanding the foregoing provisions of this Section 2.4.16, if US LEC fails to provide US LEC-IPs in accordance with this Agreement, US LEC will be responsible for one hundred percent (100%) of all recurring and non-recurring charges associated with Two-Way Interconnection Trunk groups until US LEC establishes such US LEC-IPs.

3. Alternative Interconnection Arrangements

- 3.1 In addition to the foregoing methods of Interconnection, and subject to mutual agreement of the Parties, the Parties may agree to establish an End Point Fiber Meet arrangement, which may include a SONET backbone with an optical interface at the OC-n level in accordance with the terms of this Section. The Fiber Distribution Frame at the US LEC location shall be designated as the POI for both Parties.
- 3.2 The establishment of any End Point Fiber Meet arrangement is expressly conditioned upon the Parties' reaching prior written agreement on routing, appropriate sizing and forecasting, equipment, ordering, provisioning, maintenance, repair, testing, augment, and compensation, procedures and arrangements, reasonable distance limitations, and on any other arrangements necessary to implement the End Point Fiber Meet arrangement.

- 3.3 Except as otherwise agreed by the Parties, End Point Fiber Meet arrangements shall be used only for the termination of Reciprocal Compensation Traffic, Measured Internet Traffic, and IntraLATA Toll Traffic.

4. Initiating Interconnection

- 4.1 If US LEC determines to offer Telephone Exchange Services and to interconnect with Verizon in any LATA in which Verizon also offers Telephone Exchange Services and in which the Parties are not already interconnected pursuant to this Agreement, US LEC shall provide written notice to Verizon of the need to establish Interconnection in such LATA pursuant to this Agreement.
- 4.2 The notice provided in Section 4.1 shall include (a) the initial Routing Point(s); (b) the applicable US LEC-IPs to be established in the relevant LATA in accordance with this Agreement; (c) US LEC's intended Interconnection activation date; (d) a forecast of US LEC's trunking requirements conforming to Section 14.3; and (e) such other information as Verizon shall reasonably request in order to facilitate Interconnection.
- 4.3 The interconnection activation date in the new LATA shall be mutually agreed to by the Parties after receipt by Verizon of all necessary information as indicated above. Within ten (10) Business Days of Verizon's receipt of US LEC's notice provided for in Section 4.1, Verizon and US LEC shall confirm the Verizon-IP(s), the US LEC-IP(s) and the mutually agreed upon Interconnection activation date for the new LATA.

5. Transmission and Routing of Telephone Exchange Service Traffic

5.1 Scope of Traffic.

Section 5 prescribes parameters for Interconnection Trunks used for Interconnection pursuant to Sections 2 through 4 of this Attachment.

5.2 Trunk Group Connections and Ordering.

- 5.2.1 For One-Way or Two-Way Interconnection Trunks, both Parties shall use either a DS-1 or DS-3 facilities interface at the POI. When and where an STS-1 interface is available, the Parties may agree to use such an interface. Upon mutual agreement, the Parties may agree to use an optical interface (such as OC-n).
- 5.2.2 When One-Way or Two-Way Interconnection Trunks are provisioned using a DS-3 interface facility, then US LEC shall order the multiplexed DS-3 facilities to the Verizon Central Office that is designated in the NECA 4 Tariff as an Intermediate Hub location, unless otherwise agreed to in writing by Verizon. The specific NECA 4 Intermediate Hub location to be used for One-Way or Two-Way Interconnection Trunks shall be in the appropriate Tandem subtending area based on the LERG. In the event the appropriate DS-3 Intermediate Hub is not used, then US LEC shall pay 100% of the facility charges for the One-Way or Two-Way Interconnection Trunks.
- 5.2.3 Each Party will identify its Carrier Identification Code, a three or four digit numeric code obtained from Telcordia, to the other Party when ordering a trunk group.

5.2.4 Unless mutually agreed to by both Parties, each Party will outpulse ten (10) digits to the other Party.

5.2.5 Each Party will use commercially reasonable efforts to monitor trunk groups under its control and to augment those groups using generally accepted trunk engineering standards so as to not exceed blocking objectives. Each Party agrees to use modular trunk engineering techniques for trunks subject to this Attachment.

5.3 Switching System Hierarchy and Trunking Requirements.

For purposes of routing US LEC traffic to Verizon, the subtending arrangements between Verizon Tandem Switches and Verizon End Office Switches shall be the same as the Tandem/End Office subtending arrangements Verizon maintains for the routing of its own or other carriers' traffic. For purposes of routing Verizon traffic to US LEC, the subtending arrangements between US LEC Tandem Switches and US LEC End Office Switches shall be the same as the Tandem/End Office subtending arrangements that US LEC maintains for the routing of its own or other carriers' traffic.

5.4 Signaling.

Each Party will provide the other Party with access to its databases and associated signaling necessary for the routing and completion of the other Party's traffic in accordance with the provisions contained in the Unbundled Network Element Attachment or applicable access tariff.

5.5 Grades of Service.

The Parties shall initially engineer and shall monitor and augment all trunk groups consistent with the Joint Process as set forth in Section 14.1.

6. Traffic Measurement and Billing over Interconnection Trunks

6.1 For billing purposes, each Party shall pass Calling Party Number (CPN) information on calls carried over the Interconnection Trunks.

6.1.1 As used in this Section 6, "Traffic Rate" means the applicable Reciprocal Compensation Traffic rate, Measured Internet Traffic rate, intrastate Switched Exchange Access Service rate, interstate Switched Exchange Access Service rate, or intrastate/interstate Tandem Transit Traffic rate, as provided in the Pricing Attachment, an applicable Tariff, or, for Measured Internet Traffic, the FCC Internet Order.

6.1.2 If for any monthly period the originating Party passes CPN on ninety percent (90%) or more of its calls, the other Party ("Billing Party") may bill the originating Party the Local Traffic call completion rate, intrastate Switched Exchange Access Service rates, intrastate/interstate Tandem Transit Traffic rates, or interstate Switched Exchange Access Service rates applicable to each minute of traffic, as provided in Attachment A and applicable Tariffs, for which CPN is passed. For any remaining (up to 10%) calls without CPN information, the Billing Party may bill the originating Party for such traffic at the Reciprocal Compensation rate, intrastate Switched Exchange Access Service rates, intrastate/interstate Tandem Transit Traffic rates, or interstate Switched Exchange Access Service rates applicable to each minute of traffic, as provided in Attachment A and

applicable Tariffs, in direct proportion to the minutes of use of calls passed with CPN information. If for any monthly billing period the originating Party passes CPN on eighty percent (80%) or more of its calls and provides evidence that it passed CPN on ninety percent (90%) or more of its calls for which it was technically feasible to do so, the Billing Party may bill the originating Party for traffic without CPN information at the Local Traffic call completion rate, intrastate Switched Exchange Access rates, intrastate/interstate Tandem Transit Traffic rates, or interstate Switched Exchange Access rates, applicable to each minute of traffic, as provided in Attachment A and applicable Tariffs, in direct proportion to the minutes of use of calls passed with CPN information.

- 6.1.3 If the originating Party fails to pass CPN at the levels set forth in section 6.1.2 the Billing Party may bill the higher of its interstate Switched Exchange Access Service rates or its intrastate Switched Exchange Access Services rates for all traffic that is passed without CPN, unless the Parties agree that other rates should apply to such traffic.
- 6.2 At such time as a Billing Party has the capability, on an automated basis, to use such CPN to classify traffic delivered over Interconnection Trunks by the other Party by Traffic Rate type (e.g., Reciprocal Compensation Traffic/Measured Internet Traffic, intrastate Switched Exchange Access Service, interstate Switched Exchange Access Service, or intrastate/interstate Tandem Transit Traffic), such Billing Party may bill the originating Party the Traffic Rate applicable to each relevant minute of traffic for which CPN is passed. If the Billing Party lacks the capability, on an automated basis, to use CPN information on an automated basis to classify traffic delivered by the other Party by Traffic Rate type, the originating Party will supply Traffic Factor 1 and Traffic Factor 2. The Traffic Factors shall be supplied in writing by the originating Party within thirty (30) days of the Effective Date and shall be updated in writing by the originating Party quarterly. Measurement of billing minutes for purposes of determining terminating compensation shall be in conversation seconds (the time in seconds that the Parties equipment is used for a completed call, measured from the receipt of answer supervision to the receipt of disconnect supervision). Measurement of billing minutes for originating toll free service access code (e.g., 800/888/877) calls shall be in accordance with applicable Tariffs. Determinations as to whether traffic is Reciprocal Compensation Traffic or Measured Internet Traffic shall be made in accordance with Section 7.3.2.1 below.
- 6.3 Each Party, at its own expense, reserves the right to audit all Traffic, up to a maximum of two audits per calendar year, to ensure that rates are being applied appropriately; provided, however, that either Party shall have the right to conduct additional audit(s) if the preceding audit disclosed material errors or discrepancies. Each Party agrees to provide the necessary Traffic data in conjunction with any such audit in a timely manner.
- 6.4 Nothing in this Agreement shall be construed to limit either Party's ability to designate the areas within which that Party's Customers may make calls which that Party rates as "local" in its Customer Tariffs.

7. Reciprocal Compensation Arrangements Pursuant to Section 251(b)(5) of the Act

7.1 Reciprocal Compensation Traffic Interconnection Points.

- 7.1.1 Pursuant to the Arbitration Order, and except as otherwise agreed by the Parties, the Interconnection Points ("IPs") from which US LEC will provide transport and termination of Reciprocal Compensation Traffic to its Customers ("US LEC-IPs") shall be as follows:
- 7.1.1.1 Geographically Relevant Interconnection Points ("IPs"). In accordance with Applicable Law, for each LATA in which US LEC requests to interconnect with Verizon, US LEC will designate US LEC IP(s) at any technically feasible point(s) on Verizon's network within the LATA as defined in section 2.45 of the Glossary.
 - 7.1.1.1.1 *Intentionally left blank.*
 - 7.1.1.2 *Intentionally left blank.*
 - 7.1.1.3 In any LATA where the Parties are already interconnected prior to the effective date of this Agreement, the Parties may mutually agree to maintain existing POI(s) and IP(s).
- 7.1.2 Except as otherwise agreed by the Parties, the Interconnection Points ("IPs") from which Verizon will provide transport and termination of Reciprocal Compensation Traffic to its Customers ("Verizon-IPs") shall be as follows:
- 7.1.2.1 For Reciprocal Compensation Traffic delivered by US LEC to the Verizon Tandem subtended by the terminating End Office serving the Verizon Customer, the Verizon-IP will be the Verizon Tandem switch.
 - 7.1.2.2 For Reciprocal Compensation Traffic delivered by US LEC to the Verizon terminating End Office serving the Verizon Customer, the Verizon-IP will be Verizon End Office switch.
- 7.1.3 Should either Party offer additional IPs to any Telecommunications Carrier that is not a Party to this Agreement, the other Party may elect to deliver traffic to such IPs for the NXXs or functionalities served by those IPs. To the extent that any such US LEC-IP is not located at a Collocation site at a Verizon Tandem Wire Center or Verizon End Office Wire Center, then US LEC shall permit Verizon to establish physical interconnection through collocation or other operationally comparable arrangements acceptable to Verizon at the US LEC-IP.
- 7.1.4 Each Party is responsible for delivering its Reciprocal Compensation Traffic that is to be terminated by the other Party to the other Party's relevant IP.

7.2 Reciprocal Compensation.

The Parties shall compensate each other for the transport and termination of Reciprocal Compensation Traffic delivered to the terminating Party in accordance with Section 251(b)(5) of the Act at the rates stated in the Pricing Attachment. These rates are to be applied at the US LEC-IP for traffic delivered by Verizon for termination by US LEC, and at the Verizon-IP for traffic delivered by US LEC for termination by Verizon. Except as expressly specified in this Agreement, no

additional charges shall apply for the termination from the IP to the Customer of Reciprocal Compensation Traffic delivered to the Verizon-IP by US LEC or the US LEC-IP by Verizon. When such Reciprocal Compensation Traffic is delivered over the same trunks as Toll Traffic, any port or transport or other applicable access charges related to the delivery of Toll Traffic from the IP to an end user shall be prorated to be applied only to the Toll Traffic. The designation of traffic as Reciprocal Compensation Traffic for purposes of Reciprocal Compensation shall be based on the actual originating and terminating points of the complete end-to-end communication.

7.3 Traffic Not Subject to Reciprocal Compensation.

7.3.1 Reciprocal Compensation shall not apply to interstate or intrastate Exchange Access, Information Access, or exchange services for Exchange Access or Information Access.

7.3.2 Reciprocal Compensation shall not apply to Internet Traffic.

7.3.2.1 The determination of whether traffic is Reciprocal Compensation Traffic or Internet Traffic shall be performed in accordance with Paragraphs 8 and 79, and other applicable provisions, of the FCC Internet Order (including, but not limited to, in accordance with the rebuttable presumption established by the FCC Internet Order that traffic delivered to a carrier that exceeds a 3:1 ratio of terminating to originating traffic is Internet Traffic, and in accordance with the process established by the FCC Internet Order for rebutting such presumption before the Commission).

7.3.3 Reciprocal Compensation shall not apply to Toll Traffic, including, but not limited to, calls originated on a 1+ presubscription basis, or on a casual dialed (10XXX/101XXX) basis.

7.3.4 Reciprocal Compensation shall not apply to Optional Extended Local Calling Area Traffic.

7.3.5 Reciprocal Compensation shall not apply to special access, private line, or any other traffic that is not switched by the terminating Party.

7.3.6 Reciprocal Compensation shall not apply to Tandem Transit Traffic.

7.3.7 Reciprocal Compensation shall not apply to Voice Information Service Traffic (as defined in Section 5 of the Additional Services Attachment).

7.3.8 Pursuant to the Arbitration Order, Reciprocal Compensation shall not apply to Virtual Foreign Exchange Traffic (i.e., V/FX Traffic) and V/FX Traffic shall be exchanged on a "Bill and Keep" basis until a final compensation determination is made by the Commission regarding V/FX Traffic in the *Generic Investigation Regarding Virtual NXX Codes* in Docket I-00020093. As used in this Agreement, "Virtual Foreign Exchange Traffic" or "V/FX Traffic" is defined as call(s) originated by a Verizon Customer to a Customer of US LEC that has been assigned a telephone number with an NXX Code that is assigned to a rate center (as set forth in the LERG) that (i) is within the Verizon Customer's Local Calling Area (as set forth in Verizon's tariffs), and, (ii) where the actual physical location of the US LEC Customer (or relevant

equipment of the US LEC Customer) is outside the Local Calling Area of the Verizon Customer. "V/FX Traffic" also would include non-FX Traffic (as defined below) originated by a US LEC Customer to a Verizon Customer if Verizon had assigned its Customer a telephone number with a virtual NXX Code. Pursuant to the Arbitration Order, the compensation findings with regard to V/FX Traffic apply only to voice traffic; the Parties disagree as to the intercarrier compensation applicable under federal law to V/FX Internet Traffic. For avoidance of doubt, Reciprocal Compensation shall not apply to Foreign Exchange Traffic (i.e., FX Traffic) and FX Traffic shall be exchanged on a "Bill and Keep" basis unless otherwise determined by the Commission. As used in this Agreement, "Foreign Exchange Traffic" or "FX Traffic" is defined as calls in which exchange service is furnished to a Customer from an exchange (the "foreign exchange") other than the one from which the Customer would normally be served, and such service is provided via dedicated facilities from the Customer's premises to the foreign exchange office.

- 7.4 The Reciprocal Compensation rates (including, but not limited to, the Reciprocal Compensation per minute of use charges) billed by US LEC to Verizon shall not exceed the Reciprocal Compensation rates (including, but not limited to, Reciprocal Compensation per minute of use charges) billed by Verizon to US LEC.

8. Other Types of Traffic

- 8.1 Notwithstanding any other provision of this Agreement or any Tariff: (a) the Parties' rights and obligations with respect to any intercarrier compensation that may be due in connection with their exchange of Internet Traffic shall be governed by the terms of the FCC Internet Order and other applicable FCC orders and FCC Regulations; and, (b) a Party shall not be obligated to pay any intercarrier compensation for Internet Traffic that is in excess of the intercarrier compensation for Internet Traffic that such Party is required to pay under the FCC Internet Order and other applicable FCC orders and FCC Regulations.
- 8.2 Subject to Section 8.1 above, interstate and intrastate Exchange Access, Information Access, exchange services for Exchange Access or Information Access, and Toll Traffic, shall be governed by the applicable provisions of this Agreement and applicable Tariffs.
- 8.3 For any traffic originating with a third party carrier and delivered by US LEC to Verizon, US LEC shall pay Verizon the same amount that such third party carrier would have been obligated to pay Verizon for termination of that traffic at the location the traffic is delivered to Verizon by US LEC.
- 8.4 Any traffic not specifically addressed in this Agreement shall be treated as required by the applicable Tariff of the Party transporting and/or terminating the traffic.
- 8.5 Interconnection Points.
- 8.5.1 The IP for Measured Internet Traffic shall be the same as the IP for Reciprocal Compensation Traffic under Section 7.1 above.
- 8.5.2 Except as otherwise set forth in the applicable Tariff of a Party ("Terminating Party") that receives Toll Traffic from the other Party, the

IP of the Terminating Party for Toll Traffic delivered to the Terminating Party by the other Party shall be the same as the IP of the Terminating Party for Reciprocal Compensation Traffic under Section 7.1 above.

- 8.5.3 The IP for traffic exchanged between the Parties that is not Reciprocal Compensation Traffic, Measured Internet Traffic or Toll Traffic, shall be as specified in the applicable provisions of this Agreement or the applicable Tariff of the terminating Party, or in the absence of applicable provisions in this Agreement or a Tariff of the terminating Party, as mutually agreed by the Parties.

9. Transmission and Routing of Exchange Access Traffic

9.1 Scope of Traffic.

Section 9 prescribes parameters for certain trunks to be established over the Interconnections specified in Sections 2 through 5 of this Attachment for the transmission and routing of traffic between US LEC Telephone Exchange Service Customers and Interexchange Carriers ("Access Toll Connecting Trunks"), in any case where US LEC elects to have its End Office Switch subtend a Verizon Tandem. This includes casually-dialed (1010XXX and 101XXXX) traffic.

9.2 Access Toll Connecting Trunk Group Architecture.

- 9.2.1 If US LEC chooses to subtend a Verizon access Tandem, US LEC's NPA/NXX must be assigned by US LEC to subtend the same Verizon access Tandem that a Verizon NPA/NXX serving the same Rate Center Area subtends as identified in the LERG.
- 9.2.2 US LEC shall establish Access Toll Connecting Trunks pursuant to applicable access Tariffs by which it will provide Switched Exchange Access Services to Interexchange Carriers to enable such Interexchange Carriers to originate and terminate traffic to and from US LEC's Customers.
- 9.2.3 The Access Toll Connecting Trunks shall be two-way trunks. Such trunks shall connect the End Office US LEC utilizes to provide Telephone Exchange Service and Switched Exchange Access to its Customers in a given LATA to the Tandem Verizon utilizes to provide Exchange Access in such LATA.
- 9.2.4 Access Toll Connecting Trunks shall be used solely for the transmission and routing of Exchange Access to allow US LEC's Customers to connect to or be connected to the interexchange trunks of any Interexchange Carrier which is connected to a Verizon access tandem.

10. Meet-Point Billing Arrangements

- 10.1 US LEC and Verizon will establish Meet-Point Billing (MPB) arrangements in order to provide a common transport option to Switched Exchange Access Services customers via a Verizon access Tandem Switch in accordance with the Meet Point Billing guidelines contained in the OBF's MECAB and MECOD documents, except as modified herein, and in Verizon's applicable Tariffs. The arrangements described in this Section 10 are intended to be used to provide Switched Exchange Access Service where the transport component of the

Switched Exchange Access Service is routed through an access Tandem Switch that is provided by Verizon.

- 10.2 In each LATA, the Parties shall establish MPB arrangements for the applicable US LEC Routing Point/Verizon Serving Wire Center combinations.
- 10.3 Interconnection for the MPB arrangement shall occur at the Verizon access Tandems in the LATA, unless otherwise agreed to by the Parties.
- 10.4 US LEC and Verizon will use reasonable efforts, individually and collectively, to maintain provisions in their respective state access Tariffs, and/or provisions within the National Exchange Carrier Association (NECA) Tariff No. 4, or any successor Tariff sufficient to reflect the MPB arrangements established pursuant to this Agreement.
- 10.5 In general, there are four alternative Meet-Point Billing arrangements possible, which are: Single Bill/Single Tariff, Multiple Bill/Single Tariff, Multiple Bill/Multiple Tariff, and Single Bill/Multiple Tariff, as outlined in the OBF MECAB Guidelines.

Each Party shall implement the "Multiple Bill/Single Tariff" or "Multiple Bill/Multiple Tariff" option, as appropriate, in order to bill an IXC for the portion of the MPB arrangement provided by that Party. Alternatively, in former Bell Atlantic service areas, upon agreement of the Parties, each Party may use the New York State Access Pool on its behalf to implement the Single Bill/Multiple Tariff or Single Bill/Single Tariff option, as appropriate, in order to bill an IXC for the portion of the MPB arrangement provided by that Party.

- 10.6 The rates to be billed by each Party for the portion of the MPB arrangement provided by it shall be as set forth in that Party's applicable Tariffs, or other document that contains the terms under which that Party's access services are offered. For each US LEC Routing Point/Verizon Serving Wire Center combination, the MPB billing percentages for transport between the US LEC Routing Point and the Verizon Serving Wire Center shall be calculated in accordance with the formula set forth in Section 10.17.
- 10.7 Each Party shall provide the other Party with the billing name, billing address, and Carrier Identification Code (CIC) of the IXC, and identification of the Verizon Wire Center serving the IXC in order to comply with the MPB notification process as outlined in the MECAB document.
- 10.8 Verizon shall provide US LEC with the Switched Access Detail Usage Data (EMI category 1101XX records) on magnetic tape or via such other media as the Parties may agree to, no later than ten (10) Business Days after the date the usage occurred.
- 10.9 US LEC shall provide Verizon with the Switched Access Summary Usage Data (EMI category 1150XX records) on magnetic tape or via such other media as the Parties may agree to, no later than ten (10) Business Days after the date of its rendering of the bill to the relevant IXC, which bill shall be rendered no less frequently than monthly.
- 10.10 All usage data to be provided pursuant to Sections 10.8 and 10.9 shall be sent to the following addresses:

To US LEC:

Access Billing/IT Group

US LEC Corporation
6801 Morrison Boulevard
Charlotte, NC 28211

For Verizon:

New York State Access Pool
C/O ACM, Inc.
120 Erie Blvd.
Schenectady, N.Y. 12305
Attn: Mark Ferri

Either Party may change its address for receiving usage data by notifying the other Party in writing pursuant to Section 29 of the General Terms and Conditions.

- 10.11 US LEC and Verizon shall coordinate and exchange the billing account reference (BAR) and billing account cross reference (BACR) numbers or Operating Company Number ("OCN"), as appropriate, for the MPB arrangements described in this Section 10. Each Party shall notify the other if the level of billing or other BAR/BACR elements change, resulting in a new BAR/BACR number, or if the OCN changes.
- 10.12 Each Party agrees to provide the other Party with notification of any errors it discovers in MPB data within thirty (30) calendar days of the receipt of the original data. The other Party shall attempt to correct the error and resubmit the data within ten (10) Business Days of the notification. In the event the errors cannot be corrected within such ten- (10) Business-Day period, the erroneous data will be considered lost. In the event of a loss of data, whether due to uncorrectable errors or otherwise, both Parties shall cooperate to reconstruct the lost data and, if such reconstruction is not possible, shall accept a reasonable estimate of the lost data based upon prior usage data.
- 10.13 Either Party may request a review or audit of the various components of access recording up to a maximum of two (2) audits per calendar year. All costs associated with each review and audit shall be borne by the requesting Party. Such review or audit shall be conducted subject to Section 7 of the General Terms and Conditions and during regular business hours. A Party may conduct additional audits, at its expense, upon the other Party's consent, which consent shall not be unreasonably withheld.
- 10.14 Except as expressly set forth in this Agreement, nothing contained in this Section 10 shall create any liability for damages, losses, claims, costs, injuries, expenses or other liabilities whatsoever on the part of either Party.
- 10.15 MPB will apply for all traffic bearing the 500, 900, toll free service access code (e.g. 800/888/877) (to the extent provided by an IXC) or any other non-geographic NPA which may be designated for such traffic in the future.
- 10.16 In the event US LEC determines to offer Telephone Exchange Services in a LATA in which Verizon operates an access Tandem Switch, Verizon shall permit and enable US LEC to subtenant the Verizon access Tandem Switch(es) designated for the Verizon End Offices in the area where there are located US

LEC Routing Point(s) associated with the NPA NXX(s) to/from which the Switched Exchange Access Services are homed.

- 10.17 Except as otherwise mutually agreed by the Parties, the MPB billing percentages for each Routing Point/Verizon Serving Wire Center combination shall be calculated according to the following formula, unless as mutually agreed to by the Parties:

$$a / (a + b) = \text{US LEC Billing Percentage}$$

and

$$b / (a + b) = \text{Verizon Billing Percentage}$$

where:

a = the airline mileage between US LEC Routing Point and the actual point of interconnection for the MPB arrangement; and

b = the airline mileage between the Verizon Serving Wire Center and the actual point of interconnection for the MPB arrangement.

- 10.18 US LEC shall inform Verizon of each LATA in which it intends to offer Telephone Exchange Services and its calculation of the billing percentages which should apply for such arrangement. Within ten (10) Business Days of US LEC's delivery of notice to Verizon, Verizon and US LEC shall confirm the Routing Point/Verizon Serving Wire Center combination and billing percentages.

11. Toll Free Service Access Code (e.g., 800/888/877) Traffic

The following terms shall apply when either Party delivers toll free service access code (e.g., 800/877/888)("8YY") calls to the other Party. For the purposes of this Section 11, the terms "translated" and "untranslated" refers to those toll free service access code calls that have been queried ("translated") or have not been queried ("untranslated") to an 8YY database. Except as otherwise agreed to by the Parties, all then US LEC originating "untranslated" 8YY traffic will be routed over a separate one-way trunk group.

- 11.1 When US LEC delivers translated 8YY calls to Verizon for completion,

11.1.1 to an IXC, US LEC shall:

11.1.1.1 provide an appropriate EMI record to Verizon for processing and Meet Point Billing in accordance with Section 10 above; and

11.1.1.2 bill the IXC the US LEC query charge associated with the call.

11.1.2 to Verizon or another LEC that is a toll free service access code service provider in the LATA, US LEC shall:

11.1.2.1 provide an appropriate EMI record to the toll free service access code service provider; and

11.1.2.2 bill to the toll free service access code service provider the US LEC's Tariffed Feature Group D ("FGD") Switched

Exchange Access or Reciprocal Compensation charges, as applicable, and the US LEC query charge; and

- 11.1.2.3 Verizon shall bill applicable Tandem Transit Service charges and associated passthrough charges to US LEC.
- 11.2 When Verizon performs the query and delivers translated 8YY calls, originated by Verizon's or another LEC's Customer,
 - 11.2.1 to US LEC in it's capacity as a toll free service access code service provider, Verizon shall:
 - 11.2.1.1 bill US LEC the Verizon query charge associated with the call as specified in the Pricing Attachment; and
 - 11.2.1.2 provide an appropriate EMI record to US LEC; and
 - 11.2.1.3 bill US LEC Verizon's Tariffed FGD Switched Exchange Access or Reciprocal Compensation charges as applicable.
- 11.3 When US LEC: delivers untranslated 8YY calls to Verizon for completion,
 - 11.3.1 to an IXC, Verizon shall:
 - 11.3.1.1 query the call and route the call to the appropriate IXC; and
 - 11.3.1.2 provide an appropriate EMI record to US LEC to facilitate billing to the IXC; and
 - 11.3.1.3 bill the IXC the Verizon query charge associated with the call and any other applicable Verizon charges.
 - 11.3.2 to Verizon or another LEC that is a toll free service access code service provider in the LATA, Verizon shall:
 - 11.3.2.1 query the call and route the call to the appropriate LEC toll free service access code service provider; and
 - 11.3.2.2 provide an appropriate EMI record to US LEC; to facilitate billing to the LEC toll free service access code service provider; and
 - 11.3.2.3 bill the LEC toll free service access code service provider the query charge associated with the call and any other applicable Verizon charges.
- 11.4 Verizon will not direct untranslated toll free service access code call to US LEC.

12. Tandem Transit Traffic

- 12.1 As used in this Section 12, Tandem Transit Traffic is Telephone Exchange Service traffic that originates on US LEC's network, and is transported through a Verizon Tandem to the Central Office of a CLEC, ILEC other than Verizon, Commercial Mobile Radio Service (CMRS) carrier, or other LEC, that subtends the relevant Verizon Tandem to which US LEC delivers such traffic. Neither the originating nor terminating customer is a Customer of Verizon. Subtending Central Offices shall be determined in accordance with and as identified in the

Local Exchange Routing Guide (LERG). Switched Exchange Access Service traffic is not Tandem Transit Traffic.

- 12.2 Tandem Transit Traffic Service provides US LEC with the transport of Tandem Transit Traffic as provided below.
- 12.3 Tandem Transit Traffic may be routed over the Interconnection Trunks described in Sections 3 through 6. US LEC shall deliver each Tandem Transit Traffic call to Verizon with CCS and the appropriate Transactional Capabilities Application Part ("TCAP") message to facilitate full interoperability of CLASS Features and billing functions.
- 12.4 US LEC shall exercise its best efforts to enter into a reciprocal Telephone Exchange Service traffic arrangement (either via written agreement or mutual Tariffs) with any CLEC, ILEC, CMRS carrier, or other LEC, to which it delivers Telephone Exchange Service traffic that transits Verizon's Tandem Office.
- 12.5 US LEC shall pay Verizon for Transit Service that US LEC originates at the rate specified in the Pricing Attachment, plus any additional charges or costs the CLEC, ILEC, CMRS carrier, or other LEC, imposes or levies on Verizon for the delivery or termination of such traffic, including any Switched Exchange Access Service charges.
- 12.6 Verizon will not be required to provide Tandem Transit Traffic Services for local Tandem Transit Traffic to be delivered to a CLEC, ILEC, CMRS carrier, or other LEC, if the volume of local Tandem Transit Traffic to be delivered to the CLEC, ILEC, CMRS carrier, or other LEC exceeds one (1) DS-1 level volume of calls per CLEC, ILEC, CMRS carrier, or other LEC per Verizon tandem serving area for a period of three consecutive months. Prior to the threshold being reached, US LEC and the relevant 3rd party shall negotiate agreements to establish direct connections, so that these direct connections can be made available when the threshold has been exceeded for 60 days. Once the first directly connected DS-1 is installed to a CLEC, ILEC, CMRS carrier, or other LEC, overflow traffic may traverse the Verizon tandem to that entity until such time that the level of overflow traffic meets the requirements specified in this Section 12.6 addressing the need for an additional DS-1. Each subsequent need for an additional DS-1 will be handled in a like manner.
- 12.7 If or when a third party carrier's Central Office subtends a US LEC Central Office, then US LEC shall offer to Verizon a service arrangement equivalent to or the same as Tandem Transit Service provided by Verizon to US LEC as defined in this Section 12 such that Verizon may terminate calls to a Central Office of a CLEC, ILEC, CMRS carrier, or other LEC, that subtends a US LEC Central Office ("Reciprocal Tandem Transit Service"). US LEC shall offer such Reciprocal Transit Service arrangements under terms and conditions no less favorable than those provided in this Section 12.
- 12.8 Neither Party shall take any actions to prevent the other Party from entering into a direct and reciprocal traffic exchange agreement with any carrier to which it originates, or from which it terminates, traffic.

13. Number Resources, Rate Center Areas and Routing Points

- 13.1 Nothing in this Agreement shall be construed to limit or otherwise adversely affect in any manner either Party's right to employ or to request and be assigned any Central Office Codes ("NXX") pursuant to the Central Office Code Assignment Guidelines and any relevant FCC or Commission orders, as may be

amended from time to time, or to establish, by Tariff or otherwise, Rate Center Areas and Routing Points corresponding to such NXX codes.

- 13.2 It shall be the responsibility of each Party to program and update its own switches and network systems pursuant to information provided on ASRs as well as the LERG in order to recognize and route traffic to the other Party's assigned NXX codes. Except as expressly set forth in this Agreement, neither Party shall impose any fees or charges whatsoever on the other Party for such activities.
- 13.3 Unless otherwise required by Commission order, the Rate Center Areas will be the same for each Party. During the term of this Agreement, US LEC shall adopt the Rate Center Area and Rate Center Points that the Commission has approved for Verizon within the LATA and Tandem serving area. US LEC shall assign whole NPA-NXX codes to each Rate Center Area unless otherwise ordered by the FCC, the Commission or another governmental entity of appropriate jurisdiction, or the LEC industry adopts alternative methods of utilizing NXXs.
- 13.4 US LEC will also designate a Routing Point for each assigned NXX code. US LEC shall designate one location for each Rate Center Area in which the US LEC has established NXX code(s) as the Routing Point for the NPA-NXXs associated with that Rate Center Area, and such Routing Point shall be within the same LATA as the Rate Center Area but not necessarily within the Rate Center Area itself. Unless specified otherwise, calls to subsequent NXXs of US LEC will be routed in the same manner as calls to US LEC's initial NXXs.
- 13.5 *Notwithstanding anything to the contrary contained herein, nothing in this Agreement is intended, and nothing in this Agreement shall be construed, to in any way constrain US LEC's choices regarding the size of the local calling area(s) that US LEC may establish for its Customers, which local calling areas may be larger than, smaller than, or identical to Verizon's local calling areas.*

14. Joint Network Implementation and Grooming Process; and Installation, Maintenance, Testing and Repair

14.1 Joint Network Implementation and Grooming Process.

Upon request of either Party, the Parties shall jointly develop an implementation and grooming process (the "Joint Grooming Process" or "Joint Process") which may define and detail, inter alia:

- 14.1.1 standards to ensure that Interconnection Trunks experience a grade of service, availability and quality which is comparable to that achieved on interoffice trunks within Verizon's network and in accord with all appropriate relevant industry-accepted quality, reliability and availability standards. Except as otherwise stated in this Agreement, trunks provided by either Party for Interconnection services will be engineered using a design-blocking objective of B.01.
- 14.1.2 the respective duties and responsibilities of the Parties with respect to the administration and maintenance of the trunk groups, including, but not limited to, standards and procedures for notification and discoveries of trunk disconnects;
- 14.1.3 disaster recovery provision escalations;
- 14.1.4 additional technically feasible and geographically relevant IP(s) in a LATA as provided in Section 2; and

14.1.5 such other matters as the Parties may agree, including, e.g., End Office to End Office high usage trunks as good engineering practices may dictate.

14.2 Installation, Maintenance, Testing and Repair.

Unless otherwise agreed in writing by the Parties, to the extent required by Applicable Law, Interconnection provided by a Party shall be equal in quality to that provided by such Party to itself, any subsidiary, affiliates or third party. If either Party is unable to fulfill its obligations under this Section 14.2, it shall notify the other Party of its inability to do so and will negotiate alternative intervals in good faith. The Parties agree that to the extent required by Applicable Law, the standards to be used by a Party for isolating and clearing any disconnections and/or other outages or troubles shall be at parity with standards used by such Party with respect to itself, any subsidiary, affiliate or third party.

14.3 Forecasting Requirements for Trunk Provisioning.

Within ninety (90) days of executing this Agreement, US LEC shall provide Verizon a two (2) year traffic forecast. This initial forecast will provide the amount of traffic to be delivered to and from Verizon over each of the Interconnection Trunk groups over the next eight (8) quarters. The forecast shall be updated and provided to Verizon on an as-needed basis but no less frequently than semiannually. All forecasts shall comply with the Verizon CLEC Interconnection Trunking Forecast Guide and shall include, at a minimum, Access Carrier Terminal Location (ACTL), traffic type (Reciprocal Compensation Traffic/Toll Traffic, Operator Services, 911, etc.), code (identifies trunk group), A location/Z location (CLLI codes for US LEC-IPs and Verizon-IPs), interface type (e.g., DS1), and trunks in service each year (cumulative).

14.3.1 Initial Forecasts/Trunking Requirements. Because Verizon's trunking requirements will, at least during an initial period, be dependent on the Customer segments and service segments within Customer segments to whom US LEC decides to market its services, Verizon will be largely dependent on US LEC to provide accurate trunk forecasts for both inbound (from Verizon) and outbound (to Verizon) traffic. Verizon will, as an initial matter, provide the same number of trunks to terminate Reciprocal Compensation Traffic to US LEC as US LEC provides to terminate Reciprocal Compensation Traffic to Verizon. At Verizon's discretion, when US LEC expressly identifies particular situations that are expected to produce traffic that is substantially skewed in either the inbound or outbound direction, Verizon will provide the number of trunks US LEC suggests; provided, however, that in all cases Verizon's provision of the forecasted number of trunks to US LEC is conditioned on the following: that such forecast is based on reasonable engineering criteria, there are no capacity constraints, and US LEC's previous forecasts have proven to be reliable and accurate.

14.3.1.1 Monitoring and Adjusting Forecasts. Verizon will, for ninety (90) days, monitor traffic on each trunk group that it establishes at US LEC's suggestion or request pursuant to the procedures identified in Section 14.3. At the end of such ninety-(90) day period, Verizon may disconnect trunks that, based on reasonable engineering criteria and capacity constraints, are not warranted by the actual traffic volume experienced.

14.3.1.2 In subsequent periods, Verizon may also monitor traffic for ninety (90) days on additional trunk groups that US LEC suggests or requests Verizon to establish.

15. Number Portability - Section 251(B)(2)

15.1 Scope.

The Parties shall provide Number Portability (NP) in accordance with rules and regulations as from time to time prescribed by the FCC.

15.2 Procedures for Providing LNP ("Long-term Number Portability").

The Parties will follow the LNP provisioning process recommended by the North American Numbering Council (NANC) and adopted by the FCC. In addition, the Parties agree to follow the LNP ordering procedures established at the OBF. The Parties shall provide LNP on a reciprocal basis.

15.2.1 A Customer of one Party ("Party A") elects to become a Customer of the other Party ("Party B"). The Customer elects to utilize the original telephone number(s) corresponding to the Telephone Exchange Service(s) it previously received from Party A, in conjunction with the Telephone Exchange Service(s) it will now receive from Party B. After Party B has received authorization from the Customer in accordance with Applicable Law and sends an LSR to Party A, Parties A and B will work together to port the Customer's telephone number(s) from Party A's network to Party B's network.

15.2.2 When a telephone number is ported out of Party A's network, Party A will remove any non-proprietary line based calling card(s) associated with the ported number(s) from its Line Information Database (LIDB). Reactivation of the line-based calling card in another LIDB, if desired, is the responsibility of Party B or Party B's Customer.

15.2.3 When a Customer of Party A ports their telephone numbers to Party B and the Customer has previously secured a reservation of line numbers from Party A for possible activation at a future point, these reserved but inactive numbers may be ported along with the active numbers to be ported provided the numbers have been reserved for the Customer. Party B may request that Party A port all reserved numbers assigned to the Customer or that Party A port only those numbers listed by Party B. As long as Party B maintains reserved but inactive numbers ported for the Customer, Party A shall not reassign those numbers. Party B shall not reassign the reserved numbers to another Customer.

15.2.4 When a Customer of Party A ports their telephone numbers to Party B, in the process of porting the Customer's telephone numbers, Party A shall implement the ten-digit trigger feature where it is available. When Party A receives the porting request, the unconditional trigger shall be applied to the Customer's line before the due date of the porting activity. When the ten-digit unconditional trigger is not available, Party A and Party B must coordinate the disconnect activity.

15.2.5 The Parties shall furnish each other with the Jurisdiction Information Parameter (JIP) in the Initial Address Message (IAM), containing a Local Exchange Routing Guide (LERG)-assigned NPA-NXX (6 digits)

identifying the originating switch on calls originating from LNP capable switches.

- 15.2.6 Where LNP is commercially available, the NXXs in the office shall be defined as portable, except as noted in 14.2.7, and translations will be changed in the Parties' switches to open those NXXs for database queries in all applicable LNP capable offices within the LATA of the given switch(es). On a prospective basis, all newly deployed switches will be equipped with LNP capability and so noted in the LERG.
- 15.2.7 All NXXs assigned to LNP capable switches are to be designated as portable unless a NXX(s) has otherwise been designated as non-portable. Non-portable NXXs include NXX codes assigned to paging, cellular and wireless services; codes assigned for internal testing and official use and any other NXX codes required to be designated as non-portable by the rules and regulations of the FCC. NXX codes assigned to mass calling on a choked network may not be ported using LNP technology but are portable using methods established by the NANC and adopted by the FCC. On a prospective basis, newly assigned codes in switches capable of porting shall become commercially available for porting with the effective date in the network.
- 15.2.8 Both Parties' use of LNP shall meet the performance criteria specified by the FCC. Both Parties will act as the default carrier for the other Party in the event that either Party is unable to perform the routing necessary for LNP.

15.3 Procedures for Providing NP Through Full NXX Code Migration.

Where a Party has activated an entire NXX for a single Customer, or activated at least eighty percent (80%) of an NXX for a single Customer, with the remaining numbers in that NXX either reserved for future use by that Customer or otherwise unused, if such Customer chooses to receive Telephone Exchange Service from the other Party, the first Party shall cooperate with the second Party to have the entire NXX reassigned in the LERG (and associated industry databases, routing tables, etc.) to an End Office operated by the second Party. Such transfer will be accomplished with appropriate coordination between the Parties and subject to appropriate industry lead times for movements of NXXs from one switch to another. Neither Party shall charge the other in connection with this coordinated transfer.

15.4 Procedures for Providing INP (Interim Number Portability).

The Parties shall provide Interim Number Portability (INP) in accordance with rules and regulations prescribed from time to time by the FCC and state regulatory bodies, the Parties respective company procedures, and as set forth in this Section 15.4. The Parties shall provide INP on a reciprocal basis.

- 15.4.1 In the event that either Party, Party B, wishes to serve a Customer currently served at an End Office of the other Party, Party A, and that End Office is not LNP-capable, Party A shall make INP available only where LNP is not commercially available or not required by FCC orders and regulations. INP will be provided by remote call forwarding (RCF) and/or direct inward dialing (DID) technology, which will forward terminating calls to Party B's End Office. Party B shall provide Party A with an appropriate "forward-to" number.

- 15.4.2 Prices for INP and formulas for sharing Terminating access revenues associated with INP shall be provided where applicable, upon request by either Party.
- 15.4.3 Either Party wishing to use DID to provide for INP must request a dedicated trunk group from the End Office where the DID numbers are currently served to the new serving-End Office. If there are no existing facilities between the respective End Offices, the dedicated facilities and transport trunks will be provisioned as unbundled service through the ASR provisioning process. The requesting party will reroute the DID numbers to the pre-positioned trunk group using the LSR provisioning process. DID trunk rates are contained in the Parties' respective tariffs.
- 15.4.4 The Parties Agree that, per FCC 98-275, Paragraph 16, effective upon the date LNP is available at any End Office of one Party, Party A, providing INP for Customers of the other Party, Party B, no further orders will be accepted for new INP at that End Office. Orders for new INP received prior to that date, and change orders for existing INP, shall be worked by Party A. Orders for new INP received by Party A on or after that date shall be rejected. Existing INP will be grandfathered, subject to Section 15.4.5, below.
- 15.4.5 In offices equipped with LNP prior to September 1, 1999 for former Bell Atlantic offices and October 1, 2000 for former GTE offices, the Parties agree to work together to convert all existing INP-served Customers to LNP by December 31, 2000 in accordance with a mutually agreed to conversion process and schedule. If mutually agreed to by the Parties, the conversion period may be extended one time by no more than 90 days from December 31, 2000.
- 15.4.6 Upon availability of LNP after October 1, 2000 at an End Office of either Party, both Parties agree to work together to convert the existing INP-served Customers to LNP by no later than 90 days from the date of LNP availability unless otherwise agreed to by the Parties.
- 15.4.7 When Verizon offers LNP to US LEC but US LEC has not converted to LNP at the end of the agreed to conversion period, then the remaining INPs will be changed to a functionally equivalent tariff service and billed to US LEC at the tariff rate(s) for the subject jurisdiction.

15.5 Procedures for LNP Request.

The Parties shall provide for the requesting of End Office LNP capability on a reciprocal basis through a written request. The Parties acknowledge that Verizon has deployed LNP throughout its network in compliance with FCC 96-286 and other applicable FCC rules.

- 15.5.1 If Party B desires to have LNP capability deployed in an End Office of Party A, which is not currently capable, Party B shall issue a LNP request to Party A. Party A will respond to the Party B, within ten (10) days of receipt of the request, with a date for which LNP will be available in the requested End Office. Party A shall proceed to provide for LNP in compliance with the procedures and timelines set forth in FCC 96-286, Paragraph 80, and FCC 97-74, Paragraphs 65 through 67.

15.5.2 The Parties acknowledge that each can determine the LNP-capable End Offices of the other through the Local Exchange Routing Guide (LERG). In addition the Parties shall make information available upon request showing their respective LNP-capable End Offices, as set forth in this Section 15.5.

RESALE ATTACHMENT

1. General

Verizon shall provide to US LEC, in accordance with this Agreement (including, but not limited to, Verizon's applicable Tariffs) and the requirements of Applicable Law, Verizon's Telecommunications Services for resale by US LEC; provided, that notwithstanding any other provision of this Agreement, Verizon shall be obligated to provide Telecommunications Services to US LEC only to the extent required by Applicable Law and may decline to provide a Telecommunications Service to US LEC to the extent that provision of such Telecommunications Service is not required by Applicable Law.

2. Use of Verizon Telecommunications Services

2.1 Verizon Telecommunications Services may be purchased by US LEC under this Resale Attachment only for the purpose of resale by US LEC as a Telecommunications Carrier. Verizon Telecommunications Services to be purchased by US LEC for other purposes (including, but not limited to, US LEC's own use) must be purchased by US LEC pursuant to other applicable Attachments to this Agreement (if any), or separate written agreements, including, but not limited to, applicable Verizon Tariffs.

2.2 US LEC shall not resell:

2.2.1 Residential service to persons not eligible to subscribe to such service from Verizon (including, but not limited to, business or other nonresidential Customers);

2.2.2 Lifeline, Link Up America, or other means-tested service offerings, to persons not eligible to subscribe to such service offerings from Verizon;

2.2.3 Grandfathered or discontinued service offerings to persons not eligible to subscribe to such service offerings from Verizon; or

2.2.4 Any other Verizon service in violation of a restriction stated in this Agreement (including, but not limited to, a Verizon Tariff) that is not prohibited by Applicable Law.

2.2.5 In addition to any other actions taken by US LEC to comply with this Section 2.2, US LEC shall take those actions required by Applicable Law to determine the eligibility of US LEC Customers to purchase a service, including, but not limited to, obtaining any proof or certification of eligibility to purchase Lifeline, Link Up America, or other means-tested services, required by Applicable Law. US LEC shall indemnify Verizon from any Claims resulting from US LEC's failure to take such actions required by Applicable Law.

2.2.6 Verizon may perform audits to confirm US LEC's conformity to the provisions of this Section 2.2. Such audits may be performed twice per calendar year and shall be performed in accordance with Section 7 of the General Terms and Conditions.

- 2.3 US LEC shall be subject to the same limitations that Verizon's Customers are subject to with respect to any Telecommunications Service that Verizon grandfathers or discontinues offering. Without limiting the foregoing, except to the extent that Verizon follows a different practice for Verizon Customers in regard to a grandfathered Telecommunications Service, such grandfathered Telecommunications Service: (a) shall be available only to a Customer that already has such Telecommunications Service; (b) may not be moved to a new service location; and, (c) will be furnished only to the extent that facilities continue to be available to provide such Telecommunications Service.
- 2.4 US LEC shall not be eligible to participate in any Verizon plan or program under which Verizon Customers may obtain products or services which are not Verizon Telecommunications Services, in return for trying, agreeing to purchase, purchasing, or using, Verizon Telecommunications Services.
- 2.5 In accordance with 47 CFR § 51.617(b), Verizon shall be entitled to all charges for Verizon Exchange Access services used by interexchange carriers to provide service to US LEC Customers.

3. Availability of Verizon Telecommunications Services

- 3.1 Verizon will provide a Verizon Telecommunications Service to US LEC for resale pursuant to this Attachment where and to the same extent, but only where and to the same extent, that such Verizon Telecommunications Service is provided to Verizon's Customers.
- 3.2 Verizon shall apply a wholesale discount to promotions in accordance with the requirements set forth in 47 CFR 51.613 to the extent such requirements remain Applicable Law.
- 3.3 To the extent required by Applicable Law, the Verizon Telecommunications Services to be provided to US LEC for resale pursuant to this Attachment will include a Verizon Telecommunications Service customer-specific contract service arrangement ("CSA") (such as a customer specific pricing arrangement or individual case based pricing arrangement) that Verizon is providing to a Verizon Customer at the time the CSA is requested by US LEC.

4. Responsibility for Charges

US LEC shall be responsible for and pay all charges for any Verizon Telecommunications Services provided by Verizon pursuant to this Resale Attachment.

5. Operations Matters

5.1 Facilities.

- 5.1.1 Verizon and its suppliers shall retain all of their right, title and interest in all facilities, equipment, software, information, and wiring, used to provide Verizon Telecommunications Services.
- 5.1.2 Verizon shall have access at all reasonable times to US LEC Customer locations for the purpose of installing, inspecting, maintaining, repairing, and removing, facilities, equipment, software, and wiring, used to provide the Verizon Telecommunications Services. US LEC shall, at US LEC's expense, obtain any rights and authorizations necessary for such access.

5.1.3 Except as otherwise agreed to in writing by Verizon, Verizon shall not be responsible for the installation, inspection, repair, maintenance, or removal, of facilities, equipment, software, or wiring, provided by US LEC or US LEC Customers for use with Verizon Telecommunications Services.

5.2 Branding.

5.2.1 Except as stated in Section 5.2.2, in providing Verizon Telecommunications Services to US LEC, Verizon shall have the right (but not the obligation) to identify the Verizon Telecommunications Services with Verizon's trade names, trademarks and service marks ("Verizon Marks"), to the same extent that these Services are identified with Verizon's Marks when they are provided to Verizon's Customers. Any such identification of Verizon's Telecommunications Services shall not constitute the grant of a license or other right to US LEC to use Verizon's Marks.

5.2.2 To the extent required by Applicable Law, upon request by US LEC and at prices, terms and conditions to be negotiated by US LEC and Verizon, Verizon shall provide Verizon Telecommunications Services for resale that are identified by US LEC's trade name, or that are not identified by trade name, trademark or service mark.

5.2.3 If Verizon uses a third-party contractor to provide Verizon Operator Services or Verizon Directory Assistance Services, US LEC will be responsible for entering into a direct contractual arrangement with the third-party contractor at US LEC's expense (a) to obtain identification of *Verizon Operator Services or Verizon Directory Assistance Services* purchased by US LEC for resale with US LEC's trade name, or (b) to obtain removal of trade name, trademark or service mark identification from *Verizon Operator Services or Verizon Directory Assistance Services* purchased by US LEC for resale.

6. Rates and Charges

The rates and charges for Verizon Telecommunication Services purchased by US LEC for resale pursuant to this Attachment shall be as provided in this Attachment and the *Pricing Attachment*.

NETWORK ELEMENTS ATTACHMENT

1. General

- 1.1 Verizon shall provide to US LEC, in accordance with this Agreement (including, but not limited to, Verizon's applicable Tariffs) and the requirements of Applicable Law and as specified in Section 4 of the General Terms and Conditions, access to Verizon's Network Elements on an unbundled basis and in combinations (Combinations); provided, however, that notwithstanding any other provision of this Agreement, Verizon shall be obligated to provide unbundled Network Elements (UNEs) and Combinations to US LEC only to the extent required by Applicable Law and may decline to provide UNEs or Combinations to US LEC to the extent that provision of such UNEs or Combinations is not required by Applicable Law. The Parties agree to work cooperatively to develop an orderly and efficient transition process for discontinuation of provisioning of such UNE or Combination. Unless otherwise agreed to by the Parties (or required by Applicable Law), the transition period shall be at most three (3) months from the date that the FCC, Commission or court of competent jurisdiction issues public notice that Verizon is not required to provide such UNE or Combination. The parties may agree to migrate UNEs or Combinations discontinued pursuant to this section to comparable services at rates, terms and conditions agreed to by the Parties provided that comparable services are available and offered generally by Verizon. Any such migration shall occur in an orderly and efficient manner designed to minimize service interruption or discontinuation.
- 1.2 Except as otherwise required by Applicable Law: (a) Verizon shall be obligated to provide a UNE or Combination pursuant to this Agreement only to the extent such UNE or Combination, and the equipment and facilities necessary to provide such UNE or Combination, are available in Verizon's network; (b) Verizon shall have no obligation to construct or deploy new facilities or equipment to offer any UNE or Combination; and, (c) Verizon shall not be obligated to combine Network Elements that are not already combined in Verizon's network. Except as otherwise required by Applicable Law, Verizon shall not be obligated, and may decline, to provide a UNE or Combination to US LEC, if US LEC, either itself or through a third party (e.g., US LEC's Customer), has ordered Telecommunications Services from Verizon in order to impose on Verizon an obligation to provide such UNE or a Combination. For example, except as otherwise required by Applicable Law, Verizon shall not be obligated, and may decline, to provide a UNE or Combination to US LEC if US LEC ordered Telecommunications Services or advised its Customer to order Telecommunications Services where the UNE or Combination desired by US LEC was not available in order to permit US LEC to subsequently convert the Telecommunications Services to the UNE or Combination desired by US LEC.
- 1.3 US LEC may use a UNE or Combination only for those purposes for which Verizon is required by Applicable Law to provide such UNE or Combination to US LEC. Without limiting the foregoing, US LEC may use a UNE or Combination (a) only to provide a Telecommunications Service and (b) to provide Exchange Access services only to the extent that Verizon is required by Applicable Law to provide such UNE or Combination to US LEC in order to allow US LEC to provide such Exchange Access services.
- 1.4 Notwithstanding any other provision of this Agreement:

- 1.4.1 To the extent Verizon is required by a change in Applicable Law to provide to US LEC a UNE or Combination that is not offered under this Agreement to US LEC as of the Effective Date, the terms, conditions and prices for such UNE or Combination (including, but not limited to, the terms and conditions defining the UNE or Combination and stating when and where the UNE or Combination will be available and how it will be used, and terms, conditions and prices for pre-ordering, ordering, provisioning, repair, maintenance and billing) shall be as provided in an applicable Verizon Tariff, or, in the absence of an applicable Verizon Tariff, as mutually agreed in writing by the Parties.
- 1.4.2 Verizon shall not be obligated to provide to US LEC, and US LEC shall not request from Verizon, access to a proprietary advanced intelligent network service.
- 1.5 Without limiting Verizon's rights pursuant to Applicable Law or any other section of this Agreement to terminate its provision of a UNE or a Combination, if Verizon provides a UNE or Combination to US LEC, and the Commission, the FCC, a court or other governmental body of appropriate jurisdiction determines or has determined that Verizon is not required by Applicable Law to provide such UNE or Combination, Verizon may terminate its provision of such UNE or Combination to US LEC. If Verizon terminates its provision of a UNE or a Combination to US LEC pursuant to this Section 1.5 and US LEC elects to purchase other services offered by Verizon in place of such UNE or Combination, then: (a) Verizon shall reasonably cooperate with US LEC to coordinate the termination of such UNE or Combination and the installation of such services to minimize the interruption of service to Customers of US LEC; and, (b) US LEC shall pay all applicable charges for such services, including, but not limited to, all applicable installation charges.
- 1.6 Nothing contained in this Agreement shall be deemed to constitute an agreement by Verizon that any item identified in this Agreement as a Network Element is (i) a Network Element under Applicable Law, or (ii) a Network Element Verizon is required by Applicable Law to provide to US LEC on an unbundled basis or in combination with other Network Elements.
- 1.7 Except as otherwise expressly stated in this Agreement, or as otherwise stated in the "combo requirements" incorporated by reference into Section 16 of this Network Elements Attachment, US LEC shall access Verizon's UNEs specifically identified in this Agreement via *Collocation in accordance with the Collocation Attachment* at the Verizon Wire Center where those UNEs exist, and each Loop or Port shall, in the case of Collocation, be delivered to US LEC's Collocation node by means of a Cross Connection.
- 1.8 If as the result of US LEC Customer actions (i.e., Customer Not Ready ("CNR")), Verizon cannot complete requested work activity when a technician has been dispatched to the US LEC Customer premises, US LEC will be assessed a non-recurring charge associated with this visit. This charge will be the sum of the applicable Service Order charge as provided in the Pricing Attachment and the Premises Visit Charge as provided in Verizon's applicable retail or wholesale Tariff.

2. Verizon's Provision of Network Elements

Subject to the conditions set forth in Section 1, in accordance with, but only to the extent required by, Applicable Law, Verizon shall provide US LEC access to the following:

- 2.1 Loops, as set forth in Section 3;
- 2.2 Line Sharing, as set forth in Section 4;
- 2.3 Line Splitting, as set forth in Section 5;
- 2.4 Sub-Loops, as set forth in Section 6;
- 2.5 Inside Wire, as set forth in Section 7;
- 2.6 Dark Fiber, as set forth in Section 8;
- 2.7 Network Interface Device, as set forth in Section 9;
- 2.8 Switching Elements, as set forth in Section 10;
- 2.9 Interoffice Transmission Facilities (IOF), as set forth in Section 11;
- 2.10 Signaling Networks and Call-Related Databases, as set forth in Section 12;
- 2.11 Operations Support Systems, as set forth in Section 13; and
- 2.12 Other UNEs in accordance with Section 14.

3. Loop Transmission Types

Subject to the conditions set forth in Section 1, Verizon shall allow US LEC to access Loops unbundled from local switching and local transport, in accordance with this Section 3 and the rates and charges provided in the Pricing Attachment. Verizon shall allow US LEC access to Loops in accordance with, but only to extent required by, Applicable Law. The available Loop types are as set forth below:

- 3.1 "2 Wire Analog Voice Grade Loop" or "Analog 2W" provides an effective 2-wire channel with 2-wire interfaces at each end that is suitable for the transport of analog Voice Grade (nominal 300 to 3000 Hz) signals and loop-start signaling. This Loop type is more fully described in Verizon TR-72565, as revised from time-to-time. If "Customer-Specified Signaling" is requested, the Loop will operate with one of the following signaling types that may be specified when the Loop is ordered: loop-start, ground-start, loop-reverse-battery, and no signaling. Customer specified signaling is more fully described in Verizon TR-72570, as revised from time-to-time.
- 3.2 "4-Wire Analog Voice Grade Loop" or "Analog 4W" provides an effective 4-wire channel with 4-wire interfaces at each end that is suitable for the transport of analog Voice Grade (nominal 300 to 3000 Hz) signals. This Loop type will operate with one of the following signaling types that may be specified when the Loop is ordered: loop-start, ground-start, loop-reverse-battery, duplex, and no signaling. This Loop type is more fully described in Verizon TR-72570, as revised from time-to-time.
- 3.3 "2-Wire ISDN Digital Grade Loop" or "BRI ISDN" provides a channel with 2-wire interfaces at each end that is suitable for the transport of 160 kbps digital services using the ISDN 2B1Q line code. This Loop type is more fully described in ANSI T1.601-1998 and Verizon TR 72575, (as revised from time-to-time. In some cases loop extension equipment may be necessary to bring the line loss within acceptable levels. Verizon will provide loop extension equipment only upon request. A separate charge will apply for loop extension equipment.

- 3.4 "2-Wire ADSL-Compatible Loop" or "ADSL 2W" provides a channel with 2-wire interfaces at each end that is suitable for the transport of digital signals up to 8 Mbps toward the Customer and up to 1 Mbps from the Customer. This Loop type is more fully described in Verizon TR-72575, as revised from time-to-time. ADSL-Compatible Loops will be available only where existing copper facilities are available and meet applicable specifications. Verizon will not build new copper facilities. The upstream and downstream ADSL power spectral density masks and dc line power limits in Verizon TR 72575, as revised from time-to-time, must be met.
- 3.5 "2-Wire HDSL-Compatible Loop" or "HDSL 2W" consists of a single 2-wire non-loaded, twisted copper pair that meets the carrier serving area design criteria. This Loop type is more fully described in Verizon TR-72575, as revised from time-to-time. The HDSL power spectral density mask and dc line power limits referenced in Verizon TR 72575, as revised from time-to-time, must be met. 2-wire HDSL-compatible local loops will be provided only where existing facilities are available and can meet applicable specifications. Verizon will not build new copper facilities. The 2-wire HDSL-compatible loop is available only in Bell Atlantic Service Areas.
- 3.6 "4-Wire HDSL-Compatible Loop" or "HDSL 4W" consists of two 2-wire non-loaded, twisted copper pairs that meet the carrier serving area design criteria. This Loop type is more fully described in Verizon TR-72575, as revised from time-to-time. The HDSL power spectral density mask and dc line power limits referenced in Verizon TR 72575, as revised from time-to-time, must be met. 4-Wire HDSL-compatible local loops will be provided only where existing facilities are available and can meet applicable specifications. Verizon will not build new copper facilities.
- 3.7 "4-Wire DS1-compatible Loop" provides a channel with 4-wire interfaces at each end. Each 4-wire channel is suitable for the transport of 1.544 Mbps digital signals simultaneously in both directions using PCM line code. This Loop type is more fully described in ANSI T1.403 and Verizon TR 72575, as revised from time-to-time. DS-1-compatible Loops will be available only where existing facilities can meet the specifications in ANSI T1.403 and Verizon TR 72575, as revised from time-to-time.
- 3.8 "2-Wire IDSL-Compatible Metallic Loop" consists of a single 2-wire non-loaded, twisted copper pair that meets revised resistance design criteria. This UNE Loop is intended to be used with very-low band symmetric DSL systems that meet the Class 1 signal power limits and other criteria in the draft T1E1.4 loop spectrum management standard (T1E1.4/2000-002R3) and are not compatible with 2B1Q 160 kbps ISDN transport systems. The actual data rate achieved depends upon the performance of CLEC-provided modems with the electrical characteristics associated with the loop. This Loop type is more fully described in T1E1.4/2000-002R3. This loop cannot be provided via UDLC. IDLC-compatible local loops will be provided only where facilities are available and can meet applicable specifications. Verizon will not build new copper facilities.
- 3.9 "2-Wire SDSL-Compatible Loop", is intended to be used with low band symmetric DSL systems that meet the Class 2 signal power limits and other criteria in the draft T1E1.4 loop spectrum management standard (T1E1.4/2000-002R3). This UNE loop consists of a single 2-wire non-loaded, twisted copper pair that meets Class 2 length limit in T1E1.4/2000-002R3. The data rate achieved depends on the performance of the CLEC-provided modems with the electrical characteristics associated with the loop. This Loop type is more fully described in T1E1.4/2000-002R3. SDSL-compatible local loops will be provided only where facilities are

available and can meet applicable specifications. Verizon will not build new copper facilities.

- 3.10 "4-Wire 56 kbps Loop" is a 4-wire Loop that provides a transmission path that is suitable for the transport of digital data at a synchronous rate of 56 kbps in opposite directions on such Loop simultaneously. A 4-Wire 56 kbps Loop consists of two pairs of non-loaded copper wires with no intermediate electronics or it consists of universal digital loop carrier with 56 kbps DDS dataport transport capability. Verizon shall provide 4-Wire 56 kbps Loops to US LEC in accordance with, and subject to, the technical specifications set forth in Verizon Technical Reference TR72575, Issue 2, as revised from time-to-time.
- 3.11 "DS-3 Loops" will support the transmission of asynchronous bipolar serial data at a rate of 44.736 Mbps or the equivalent of 28 DS-1 channels. This Loop type is more fully described in Verizon TR 72575, as revised from time to time. The DS-3 Loop includes the electronics necessary to provide the DS-3 transmission rate. A DS-3 Loop will only be provided where the electronics are at the requested installation date currently available for the requested loop. Verizon will not install new electronics.
- 3.12 "Digital Designed Loops" are comprised of designed loops that meet specific US LEC requirements for metallic loops over 18k ft. or for conditioning of ADSL, HDSL, SDSL, IDSL, or BRI ISDN Loops. "Digital Designed Loops" may include requests for:
 - 3.12.1 a 2W Digital Designed Metallic Loop with a total loop length of 18k to 30k ft., unloaded, with the option to remove bridged tap;
 - 3.12.2 a 2W ADSL Loop of 12k to 18k ft. with an option to remove bridged tap;
 - 3.12.3 a 2W ADSL Loop of less than 12k ft. with an option to remove bridged tap;
 - 3.12.4 a 2W HDSL Loop of less than 12k ft. with an option to remove bridged tap;
 - 3.12.5 a 4W HDSL Loop of less than 12k ft with an option to remove bridged tap;
 - 3.12.6 a 2 W Digital Designed Metallic Loop with Verizon-placed ISDN loop extension electronics;
 - 3.12.7 a 2W SDSL Loop with an option to remove bridged tap; and
 - 3.12.8 a 2W IDSL Loop of less than 18k ft. with an option to remove bridged tap;
- 3.13 Verizon shall make Digital Designed Loops available to US LEC at the rates as set forth in the Pricing Attachment.
- 3.14 The following ordering procedures shall apply to the xDSL Loops and Digital Designed Loops:
 - 3.14.1 US LEC shall place orders for xDSL Loops and Digital Designed Loops by delivering to Verizon a valid electronic transmittal service order or other mutually agreed upon type of service order. Such service order shall be provided in accordance with industry format and

specifications or such format and specifications as may be agreed to by the Parties.

- 3.14.2 Verizon is conducting a mechanized survey of existing Loop facilities, on a Central Office by Central Office basis, to identify those Loops that meet the applicable technical characteristics established by Verizon for compatibility with ADSL, HDSL, IDSL, SDSL and BRI ISDN signals. The results of this survey will be stored in a mechanized database and made available to US LEC as the process is completed in each Central Office. US LEC must utilize this mechanized loop qualification database, where available, in advance of submitting a valid electronic transmittal service order for an ADSL, HDSL, IDSL, SDSL or BRI ISDN Loop. Charges for mechanized loop qualification information are set forth in the Pricing Attachment.
- 3.14.3 If the Loop is not listed in the mechanized database described in Section 3.14.2, US LEC must request a manual loop qualification prior to submitting a valid electronic service order for an ADSL, HDSL, SDSL, IDSL, or BRI ISDN Loop. The rates for manual loop qualification are set forth in the Pricing Attachment. In general, Verizon will complete a manual loop qualification request within three Business Days, although Verizon may require additional time due to poor record conditions, spikes in demand, or other unforeseen events.
- 3.14.4 If a query to the mechanized loop qualification database or manual loop qualification indicates that a Loop does not qualify (e.g., because it does not meet the applicable technical parameters set forth in the Loop descriptions above), US LEC may request an Engineering Query, as described in Section 3.14.6, to determine whether the result is due to characteristics of the loop itself (e.g., specific number and location of bridged taps, the specific number of load coils, or the gauge of the cable).
- 3.14.5 If US LEC submits a service order for an ADSL, HDSL, SDSL, IDSL, or BRI ISDN Loop that has not been prequalified, Verizon will query the service order back to US LEC for qualification and will not accept such service order until the Loop has been prequalified on a mechanized or manual basis. If US LEC submits a service order for an ADSL, HDSL, SDSL, IDSL, or BRI ISDN Loop that is, in fact, not compatible with such services in its existing condition, Verizon will respond back to US LEC with a "Nonqualified" indicator and with information showing whether the non-qualified result is due to the presence of load coils, presence of digital loop carrier, or loop length (including bridged tap).
- 3.14.6 Where US LEC has followed the prequalification procedure described above and has determined that a Loop is not compatible with ADSL, HDSL, SDSL, IDSL, or BRI ISDN service in its existing condition, it may either request an Engineering Query to determine whether conditioning may make the Loop compatible with the applicable service; or if US LEC is already aware of the conditioning required (e.g., where US LEC has previously requested a qualification and has obtained loop characteristics), US LEC may submit a service order for a Digital Designed Loop. Verizon will undertake to condition or extend the Loop in accordance with this Section 3.14 upon receipt of US LEC's valid, accurate and pre-qualified service order for a Digital Designed Loop.

- 3.15 The Parties will make reasonable efforts to coordinate their respective roles in order to minimize provisioning problems. In general, where conditioning or loop extensions are requested by US LEC, an interval of eighteen (18) Business Days will be required by Verizon to complete the loop analysis and the necessary construction work involved in conditioning and/or extending the loop as follows:
- 3.15.1 Three (3) Business Days will be required following receipt of US LEC's valid, accurate and pre-qualified service order for a Digital Designed Loop to analyze the loop and related plant records and to create an Engineering Work Order.
- 3.15.2 Upon completion of an Engineering Work Order, Verizon will initiate the construction order to perform the changes/modifications to the Loop requested by US LEC. Conditioning activities are, in most cases, able to be accomplished within fifteen (15) Business Days. Unforeseen conditions may add to this interval.

After the engineering and conditioning tasks have been completed, the standard Loop provisioning and installation process will be initiated, subject to Verizon's standard provisioning intervals.

- 3.16 If US LEC requires a change in scheduling, it must contact Verizon to issue a supplement to the original service order. If US LEC cancels the request for conditioning after a loop analysis has been completed but prior to the commencement of construction work, US LEC shall compensate Verizon for an Engineering Work Order charge as set forth in the Pricing Attachment. If US LEC cancels the request for conditioning after the loop analysis has been completed and after construction work has started or is complete, US LEC shall compensate Verizon for an Engineering Work Order charge as well as the charges associated with the conditioning tasks performed as set forth in the Pricing Attachment.
- 3.17 Conversion of Live Telephone Exchange Service to Analog 2W Loops.
- 3.17.1 The following coordination procedures shall apply to "live" cutovers of Verizon Customers who are converting their Telephone Exchange Services to US LEC Telephone Exchange Services provisioned over Analog 2W unbundled Local Loops ("Analog 2W Loops") to be provided by Verizon to US LEC:
- 3.17.1.1 Coordinated cutover charges shall apply to conversions of live Telephone Exchange Services to Analog 2W Loops. When an outside dispatch is required to perform a conversion, additional charges may apply. If US LEC does not request a coordinated cutover, Verizon will process US LEC's order as a new installation subject to applicable standard provisioning intervals.
- 3.17.1.2 US LEC shall request Analog 2W Loops for coordinated cutover from Verizon by delivering to Verizon a valid electronic Local Service Request ("LSR"). Verizon agrees to accept from US LEC the date and time for the conversion designated on the LSR ("Scheduled Conversion Time"), provided that such designation is within the regularly scheduled operating hours of the Verizon Regional CLEC Control Center ("RCCC") and subject to the availability of Verizon's work force. In the event that Verizon's work force

is not available, US LEC and Verizon shall mutually agree on a New Conversion Time, as defined below. US LEC shall designate the Scheduled Conversion Time subject to Verizon standard provisioning intervals as stated in the Verizon CLEC Handbook, as may be revised from time to time. Within three (3) Business Days of Verizon's receipt of such valid LSR, or as otherwise required by Applicable Law, Verizon shall provide US LEC the scheduled due date for conversion of the Analog 2W Loops covered by such LSR.

- 3.17.1.3 US LEC shall provide dial tone at the US LEC Collocation site at least forty-eight (48) hours prior to the Scheduled Conversion Time.
- 3.17.1.4 Either Party may contact the other Party to negotiate a new Scheduled Conversion Time (the "New Conversion Time"); provided, however, that each Party shall use commercially reasonable efforts to provide four (4) business hours' advance notice to the other Party of its request for a New Conversion Time. Any Scheduled Conversion Time or New Conversion Time may not be rescheduled more than one (1) time in a business day, and any two New Conversion Times for a particular Analog 2W Loop shall differ by at least eight (8) hours, unless otherwise agreed to by the Parties.
- 3.17.1.5 If the New Conversion Time is more than one (1) business hour from the original Scheduled Conversion Time or from the previous New Conversion Time, the Party requesting such New Conversion Time shall be subject to the following:
 - 3.17.1.5.1 If Verizon requests to reschedule outside of the one (1) hour time frame above, the Analog 2W Loops Service Order Charge for the original Scheduled Conversion Time or the previous New Conversion Time shall be waived upon request from US LEC; and
 - 3.17.1.5.2 If US LEC requests to reschedule outside the one (1) hour time frame above, US LEC shall be charged an additional Analog 2W Loops Service Order Charge for rescheduling the conversion to the New Conversion Time.
- 3.17.1.6 If US LEC is not ready to accept service at the Scheduled Conversion Time or at a New Conversion Time, as applicable, an additional Service Order Charge shall apply. If Verizon is not available or ready to perform the conversion within thirty (30) minutes of the Scheduled Conversion Time or New Conversion Time, as applicable, Verizon and US LEC will reschedule and, upon request from US LEC, Verizon will waive the Analog 2W Loop Service Order Charge for the original Scheduled Conversion Time.
- 3.17.1.7 The standard time interval expected from disconnection of a live Telephone Exchange Service to the connection of the

Analog 2W Loops to US LEC is fifteen (15) minutes per Analog 2W Loop for all orders consisting of twenty (20) Analog 2W Loops or less. Orders involving more than twenty (20) Loops will require a negotiated interval.

- 3.17.1.8 Conversions involving LNP will be completed according to North American Numbering Council ("NANC") standards, via the regional Number Portability Administration Center ("NPAC").
 - 3.17.1.9 If US LEC requires Analog 2W Loop conversions outside of the regularly scheduled Verizon RCCC operating hours, such conversions shall be separately negotiated. Additional charges (e.g. overtime labor charges) may apply for desired dates and times outside of regularly scheduled RCCC operating hours.
- 3.18 Verizon shall provide US LEC access to its Loops at each of Verizon's Wire Centers for Loops terminating in that Wire Center. In addition, if US LEC orders one or more Loops provisioned via Integrated Digital Loop Carrier or Remote Switching technology deployed as a Loop concentrator, Verizon shall, where available, move the requested Loop(s) to a spare physical Loop, if one is existing and available, at no additional charge to US LEC. If, however, no spare physical Loop is available, Verizon shall within three (3) Business Days of US LEC's request notify US LEC of the lack of available facilities. US LEC may then at its discretion make a Network Element Bona Fide Request pursuant to Section 14.3 to Verizon to provide the unbundled Local Loop through the demultiplexing of the integrated digitized Loop(s). US LEC may also make a Network Element Bona Fide Request pursuant to Section 14.3 for access to Unbundled Local Loops at the Loop concentration site point. Notwithstanding anything to the contrary in this Agreement, standard provisioning intervals shall not apply to Loops provided under this Section 3.18.

4. Line Sharing

- 4.1 "Line Sharing" is an arrangement by which Verizon facilitates US LEC's provision of ADSL (in accordance with T1.413), Splitterless ADSL (in accordance with T1.419), RADSL (in accordance with TR # 59), Multiple Virtual Line (MVL) (a proprietary technology), or any other xDSL technology that is presumed to be acceptable for shared line deployment in accordance with FCC rules, to a particular Customer location over an existing copper Loop that is being used simultaneously by Verizon to provide analog circuit-switched voice grade service to that Customer by making available to US LEC, solely for US LEC's own use, the frequency range above the voice band on the same copper Loop required by US LEC to provide such services. This Section 4 addresses line sharing over loops that are entirely copper loops.
- 4.2 Subject to the conditions set forth in Section 1, Verizon shall provide Line Sharing to US LEC for US LEC's provision of ADSL (in accordance with T1.413), Splitterless ADSL (in accordance with T1.419), RADSL (in accordance with TR # 59), MVL (a proprietary technology), or any other xDSL technology that is presumed to be acceptable for shared line deployment in accordance with FCC rules, in accordance with this Section 4 and the rates and charges provided in the Pricing Attachment. Verizon shall provide Line Sharing to US LEC in accordance with, but only to the extent required by, Applicable Law. In order for a Loop to be eligible for Line Sharing, the following conditions must be satisfied for the duration of the Line Sharing arrangement: (i) the Loop must consist of a

copper loop compatible with an xDSL service that is presumed to be acceptable for shared-line deployment in accordance with FCC rules; (ii) Verizon must be providing simultaneous circuit-switched analog voice grade service to the Customer served by the Loop in question; (iii) the Verizon Customer's dial tone must originate from a Verizon End Office Switch in the Wire Center where the Line Sharing arrangement is being requested; and (iv) the xDSL technology to be deployed by US LEC on that Loop must not significantly degrade the performance of other services provided on that Loop.

- 4.3 Verizon shall make Line Sharing available to US LEC at the rates and charges set forth in the Pricing Attachment. In addition to the recurring and nonrecurring charges shown in the Pricing Attachment for Line Sharing itself, the following rates shown in the Pricing Attachment and in Verizon's applicable Tariffs are among those that may apply to a Line Sharing arrangement: (i) prequalification charges to determine whether a Loop is xDSL compatible (i.e., compatible with an xDSL service that is presumed to be acceptable for shared-line deployment in accordance with FCC rules); (ii) engineering query charges, engineering work order charges, or Loop conditioning (Digital Designed Loop) charges; (iii) charges associated with Collocation activities requested by US LEC; and (iv) misdirected dispatch charges, charges for installation or repair, manual intervention surcharges, trouble isolation charges, and pair swap/line and station transfer charges.
- 4.4 The following ordering procedures shall apply to Line Sharing:
- 4.4.1 To determine whether a Loop qualifies for Line Sharing, the Loop must first be prequalified to determine if it is xDSL compatible. US LEC must utilize the Loop qualification processes described in the terms applicable to xDSL and Digital Designed Loops to make this determination.
- 4.4.2 US LEC shall place orders for Line Sharing by delivering to Verizon a valid electronic transmittal service order or other mutually agreed upon type of service order. Such service order shall be provided in accordance with industry format and specifications or such format and specifications as may be agreed to by the Parties.
- 4.4.3 If the Loop is prequalified by US LEC through the Loop prequalification database, and if a positive response is received and followed by receipt of US LEC's valid, accurate and pre-qualified service order for Line Sharing, Verizon will return an LSR confirmation within twenty-four (24) hours (weekends and holidays excluded) for LSRs with less than six (6) loops and within 72 hours (weekends and holidays excluded) for LSRs with six (6) or more loops.
- 4.4.4 If the Loop requires qualification manually or through an Engineering Query, three (3) additional Business Days will generally be required to obtain Loop qualification results before an order confirmation can be returned following receipt of US LEC's valid, accurate request. Verizon may require additional time to complete the Engineering Query where there are poor record conditions, spikes in demand, or other unforeseen events.
- 4.4.5 If conditioning is required to make a Loop capable of supporting Line Sharing and US LEC orders such conditioning, then Verizon shall provide such conditioning in accordance with the terms of this Agreement pertaining to Digital Designed Loops; or if this Agreement

does not contain provisions pertaining to Digital Designed Loops, then in accordance with Verizon's generally available rates, terms and conditions applicable to Digital Design Loops; provided, however, that Verizon shall not be obligated to provide Loop conditioning if Verizon establishes, in the manner required by Applicable Law, that such conditioning is likely to degrade significantly the voice-grade service being provided to Verizon's Customers over such Loops.

- 4.4.6 The standard Loop provisioning and installation process will be initiated for the Line Sharing arrangement only once the requested engineering and conditioning tasks have been completed on the Loop. Scheduling changes and charges associated with order cancellations after conditioning work has been initiated are addressed in the terms pertaining to Digital Designed Loops, as referenced in Section 4.4.5, above. The standard provisioning interval for the Line Sharing arrangement shall be as set out in the Verizon Product Interval Guide; provided that the standard provisioning interval for the Line Sharing arrangement shall not exceed the shortest of the following intervals: (a) six (6) business days; (b) the standard provisioning interval for the Line Sharing arrangement that is stated in an applicable Verizon Tariff; or, (c) the standard provisioning interval for the Line Sharing arrangement that is required by Applicable Law. The standard provisioning interval for the Line Sharing arrangement shall commence only once any requested engineering and conditioning tasks have been completed. Line Sharing arrangements that require pair swaps or line and station transfers in order to free-up facilities may have a provisioning interval that is longer than the standard provisioning interval for the Line Sharing arrangement. In no event shall the Line Sharing interval offered to US LEC be longer than the interval offered to any similarly situated Affiliate of Verizon.
- 4.4.7 US LEC must provide all required Collocation, CFA, Special Bill Number (SBN) and NC/NCI information when a Line Sharing Arrangement is ordered. Collocation augments required, either at the Point of Termination (POT) Bay, Collocation node, or for splitter placement, must be ordered using standard collocation applications and procedures, unless otherwise agreed to by the Parties or specified in this Agreement.
- 4.4.8 The Parties recognize that Line Sharing is an offering that requires both Parties to make reasonable efforts to coordinate their respective roles in order to minimize provisioning problems and facility issues. US LEC will provide reasonable, timely, and accurate forecasts of its Line Sharing requirements, including splitter placement elections and ordering preferences. These forecasts are in addition to projections provided for other stand-alone unbundled Loop types.
- 4.5 To the extent required by Applicable Law, US LEC shall provide Verizon with information regarding the type of xDSL technology that it deploys on each shared Loop. Where any proposed change in technology is planned on a shared Loop, US LEC must provide this information to Verizon in order for Verizon to update Loop records and anticipate effects that the change may have on the voice grade service and other Loops in the same or adjacent binder groups.
- 4.6 As described more fully in Verizon Technical Reference 72575, the xDSL technology used by US LEC for Line Share Arrangements shall operate within the Power Spectral Density (PSD) limits set forth in T1.413-1998 (ADSL),

T1.419-2000 (Splitterless ADSL), or TR59-1999 (RADSL), and MVL (a proprietary technology) shall operate within the 0 to 4 kHz PSD limits of T1.413-1998 and within the transmit PSD limits of T1.601-1998 for frequencies above 4 kHz, provided that the MVL PSD associated with audible frequencies above 4 kHz shall be sufficiently attenuated to preclude significantly degrading voice services. US LEC's deployment of additional Advanced Services shall be subject to the applicable FCC Rules.

- 4.7 US LEC may only access the high frequency portion of a Loop in a Line Sharing arrangement through an established Collocation arrangement at the Verizon Serving Wire Center that contains the End Office Switch through which voice grade service is provided to Verizon's Customer. US LEC is responsible for providing, through one of the splitter options described below, a splitter at that Wire Center that complies with ANSI specification T1.413, employs Direct Current (DC) blocking capacitors or equivalent technology to assist in isolating high bandwidth trouble resolution and maintenance to the high frequency portion of the frequency spectrum, and operates so that the analog voice "dial tone" stays active when the splitter card is removed for testing or maintenance. US LEC is also responsible for providing its own Digital Subscriber Line Access Multiplexer (DSLAM) equipment in the Collocation arrangement and any necessary Customer Provided Equipment (CPE) for the xDSL service it intends to provide (including CPE splitters, filters and/or other equipment necessary for the end user to receive separate voice and data services across the shared Loop).

Two splitter configurations are available. In both configurations, the splitter must be provided by US LEC and must satisfy the same NEBS requirements that Verizon imposes on its own splitter equipment or the splitter equipment of any Verizon Affiliate. US LEC must designate which splitter option it is choosing on the Collocation application or augment. Regardless of the option selected, the splitter arrangements must be installed before US LEC submits an order for Line Sharing.

Splitter Option A (Splitter Option 1): Splitter in US LEC Collocation Area

In this configuration, the US LEC-provided splitter (ANSI T1.413 or MVL compliant) is provided, installed and maintained by US LEC in its own Collocation space within the Customer's serving End Office. The Verizon-provided dial tone is routed through the splitter in the US LEC Collocation area. Any rearrangements will be the responsibility of US LEC.

Splitter Option C (Splitter Option 2): Splitter in Verizon Area

In this configuration, Verizon inventories and maintains a US LEC-provided splitter (ANSI T1.413 or MVL compliant) in Verizon space within the Customer's serving End Office. The splitters will be installed shelf-at-a-time.

In those serving End Offices where Verizon employs the use of a POT Bay for interconnection of US LEC's Collocation arrangement with Verizon's network, the splitter will be installed (mounted) in a relay rack between the POT Bay and the MDF. The demarcation point is at the splitter end of the cable connecting the POT Bay and the splitter. Installation of the splitter will be performed by Verizon or, at US LEC's election, by a Verizon-approved vendor designated by US LEC.

In those serving End Offices where Verizon does not employ a POT Bay for

interconnection of US LEC's Collocation arrangement with Verizon's network, the US LEC provided splitter will be installed (mounted) in a relay rack between the US LEC Collocation arrangement and the MDF. The demarcation point is at the splitter end of the cable connecting the US LEC Collocation arrangement and the splitter. Installation of the splitter will be performed by Verizon, or, at US LEC's election, by a Verizon-approved vendor designated by US LEC.

In either scenario, Verizon will control the splitter and will direct any required activity. Where a POT Bay is employed, Verizon will also perform all POT Bay work required in this configuration. Verizon will provide a splitter inventory to US LEC upon completion of the required work.

- 4.7.1 Where a new splitter is to be installed as part of an initial Collocation implementation, the splitter installation may be ordered as part of the initial Collocation application. Associated Collocation charges (application and engineering fees) apply. US LEC must submit a new Collocation application, with the application fee, to Verizon detailing its request. Except as otherwise required by Applicable Law, standard Collocation intervals will apply.
- 4.7.2 Where a new splitter is to be installed as part of an existing Collocation arrangement, or where the existing Collocation arrangement is to be augmented (e.g., with additional terminations at the POT Bay or US LEC's collocation arrangement to support Line Sharing), the splitter installation or augment may be ordered via an application for Collocation augment. Associated Collocation charges (application and engineering fees) apply. US LEC must submit the application for Collocation augment, with the application fee, to Verizon. Unless a longer interval is stated in Verizon's applicable Tariff, an interval of seventy-six (76) business days shall apply.

4.8 US LEC will have the following options for testing shared Loops:

- 4.8.1 In serving End Offices where Verizon employs a POT Bay for interconnection of US LEC Collocation arrangement with Verizon's network, the following options shall be available to US LEC.
 - 4.8.1.1 Under Splitter Option A, US LEC may conduct its own physical tests of the shared Loop from US LEC's collocation area. If it chooses to do so, US LEC may supply and install a test head to facilitate such physical tests, provided that:
 - (a) the test head satisfies the same NEBS requirements that Verizon imposes on its own test head equipment or the test head equipment of any Verizon Affiliate; and
 - (b) the test head does not interrupt the voice circuit to any greater degree than a conventional MLT test. Specifically, the US LEC-provided test equipment may not interrupt an in-progress voice connection and must automatically restore any circuits tested in intervals comparable to MLT. This optional US LEC-provided test head will be installed in US LEC's Collocaton area between the "line" port of the splitter and the POT Bay in order to conduct remote physical tests of the shared Loop.
 - 4.8.1.2 Under Splitter Option C, upon request by US LEC, either Verizon or, at US LEC's election, a Verizon-approved

vendor selected by US LEC will install a US LEC-provided test head to enable US LEC to conduct remote physical tests of the shared Loop. This optional US LEC-provided test head will be installed at a point between the "line" port of the splitter and the Verizon-provided test head that is used by Verizon to conduct its own Loop testing. The US LEC-provided test head must satisfy the same NEBS requirements that Verizon imposes on its own test head equipment or the test head equipment of any Verizon Affiliate, and may not interrupt the voice circuit to any greater degree than a conventional MLT test. Specifically, the US LEC-provided test equipment may not interrupt an in-progress voice connection and must automatically restore any circuits tested in intervals comparable to MLT. Verizon will inventory, control and maintain the US LEC-provided test head, and will direct all required activity.

- 4.8.1.3 Under either Splitter Option, if Verizon has installed its own test head, Verizon will conduct tests of the shared Loop using a Verizon-provided test head, and, upon request, will provide these test results to US LEC during normal trouble isolation procedures in accordance with reasonable procedures.
- 4.8.1.4 Under either Splitter Option, upon request by US LEC, Verizon will make MLT access available to US LEC via RETAS after the service order has been completed. US LEC will utilize the circuit number to initiate a test.
- 4.8.2 In those serving End Offices where Verizon has not employed a POT Bay for interconnection of US LEC's Collocation arrangement with Verizon's network, US LEC will not be permitted to supply its own test head. Instead, Verizon will make a testing system available to US LEC through use of the on-line computer interface test system at www.verizon.com/wise.
- 4.8.3 The Parties will continue to work cooperatively on testing procedures. To this end, in situations where US LEC has attempted to use one or more of the foregoing testing options but is still unable to resolve the error or trouble on the shared Loop, Verizon and US LEC will each dispatch a technician to an agreed-upon point to conduct a joint meet test to identify and resolve the error or trouble. Verizon may assess a charge for a misdirected dispatch only if the error or trouble is determined to be one that US LEC should reasonably have been able to isolate and diagnose through one of the testing options available to US LEC above. The Parties will mutually agree upon the specific procedures for conducting joint meet tests.
- 4.8.4 Verizon and US LEC each have a responsibility to educate the Customer regarding which service provider should be called for problems with their respective service offerings. Verizon will retain primary responsibility for voice band trouble tickets, including repairing analog voice grade services and the physical line between the NID at the Customer premise and the point of demarcation in the Central Office. US LEC will be responsible for repairing services it offers over the Line Sharing arrangement. Each Party will be responsible for maintaining its own equipment. If a splitter or test head that US LEC

has provided to Verizon malfunctions, US LEC shall provide a replacement splitter or test head to Verizon. Before either Party initiates any activity on a shared Loop that may cause a disruption of the service of the other Party, that Party shall first make a good faith effort to notify the other Party of the possibility of a service disruption. Verizon and US LEC will work together to address Customer initiated repair requests and to prevent adverse impacts to the Customer.

- 4.8.5 When Verizon provides Inside Wire maintenance services to the Customer, Verizon will only be responsible for testing and repairing the Inside Wire for voice-grade services. Verizon will not test, dispatch a technician, repair, or upgrade Inside Wire to clear trouble calls associated with US LEC's Advanced Services. Verizon will not repair any CPE provided by US LEC. Before a trouble ticket is issued to Verizon, US LEC shall validate whether the Customer is experiencing a trouble that arises from US LEC's service. If the problem reported is isolated to the analog voice-grade service provided by Verizon, a trouble ticket may be issued to Verizon.
- 4.8.6 In the case of a trouble reported by the Customer on its voice-grade service, if Verizon determines the reported trouble arises from US LEC's equipment, splitter problems, or US LEC's activities, Verizon will:
 - 4.8.6.1 Notify US LEC and request that US LEC immediately test the trouble on US LEC's service.
 - 4.8.6.2 If the Customer's voice grade service is so degraded that the Customer cannot originate or receive voice grade calls, and US LEC has not cleared its trouble within a reasonable time frame, Verizon may take unilateral steps to temporarily restore the Customer's voice grade service if Verizon determines in good faith that the cause of the voice interruption is US LEC's service.
 - 4.8.6.3 Upon completion of the steps in 4.8.6.1 and 4.8.6.2, above, Verizon may temporarily remove the US LEC-provided splitter from the Customer's Loop and switch port if Verizon determines in good faith that the cause of the voice interruption is US LEC's service.
 - 4.8.6.4 Upon notification from US LEC that the malfunction in US LEC's service has been cleared, Verizon will restore US LEC's service by restoring the splitter on the Customer's Loop.
 - 4.8.6.5 Upon completion of the above steps, US LEC will be charged a Trouble Isolation Charge (TIC) to recover Verizon's costs of isolating and temporarily removing the malfunctioning US LEC service from the Customer's line if the cause of the voice interruption was US LEC's service.
 - 4.8.6.6 Verizon shall not be liable to US LEC, the Customer, or any other person, for damages of any kind for disruptions to US LEC's service that are the result of the above steps taken in good faith to restore the end user's voice-grade POTS

service, and US LEC shall indemnify Verizon from any Claims that result from such steps.

5. Line Splitting

Subject to the conditions set forth in Section 1 of this Attachment, Verizon shall provide US LEC with access to a Line Splitting (as such term is hereinafter defined) in accordance with, and subject to, the rates, terms and conditions set forth in Verizon's P.U.C. Tariff No. 216, as amended from time to time, that relate to or concern Line Splitting, and Verizon shall do so regardless of whether or not such rates, terms and conditions are effective. "Line Splitting" is the ability by which Verizon facilitates one or more CLECs ability to provision both voice and data over the same unbundled analog copper cable loop (ADSL) facility in order to offer an integrated voice and data service to the same end user Customer with each provider employing different analog frequencies to transport voice and data on that line. Line Splitting consists of an xDSL-based service provisioned by a data CLEC (DLEC), utilizing the high frequency portion of the loop, and the voiceband service provisioned by the CLEC also considered the Voice Local Exchange Carrier (VLEC). Verizon shall provide US LEC with access to Line Splitting in accordance with, but only to the extent required by, Applicable Law.

6. Sub-Loop

6.1 Sub-Loop – Distribution (USLA)

Subject to the conditions set forth in Section 1 and upon request by US LEC, Verizon shall provide US LEC with access to a Sub-Loop Distribution Facility (as such term is hereinafter defined) in accordance with, and subject to, the terms and provisions of this Section 6, the rates set forth in the Pricing Attachment, and the rates, terms and conditions set forth in Verizon's applicable Tariffs. A "Distribution Sub-Loop" means a two-wire or four-wire metallic distribution facility in Verizon's network between a Verizon feeder distribution interface (an FDI) and the rate demarcation point for such facility (or network interface device (NID) if the NID is located at such rate demarcation point). Verizon shall provide US LEC with access to a Sub-Loop Distribution Facility in accordance with, but only to the extent required by, Applicable Law.

6.1.1 US LEC may request that Verizon reactivate (if available) an unused drop and NID or provide US LEC with access to a drop and NID that, at the time of US LEC's request, Verizon is using to provide service to the Customer (as such term is hereinafter defined).

6.1.2 US LEC may obtain access to a Sub-Loop Distribution Facility only at an FDI and only from a Telecommunications outside plant interconnection cabinet (TOPIC) or, if US LEC is collocated at a remote terminal equipment enclosure and the FDI for such Sub-Loop Distribution Facility is located in such enclosure, from the collocation arrangement of US LEC at such terminal. To obtain access to a Sub-Loop Distribution Facility, US LEC shall install a TOPIC on an easement or Right of Way obtained by US LEC within 100 feet of the Verizon FDI to which such Distribution Sub-Loop is connected. A TOPIC must comply with applicable industry standards. Subject to the terms of applicable Verizon easements, Verizon shall furnish and place an interconnecting cable between a Verizon FDI and a US LEC TOPIC and Verizon shall install a termination block within such TOPIC. Verizon shall retain title to and maintain the interconnecting cable. Verizon shall not be responsible for building, maintaining or

servicing the TOPIC and shall not provide any power that might be required by US LEC for any electronics in the TOPIC. US LEC shall provide any easement, Right of Way or trenching or supporting structure required for any portion of an interconnecting cable that runs beyond a Verizon easement.

- 6.1.3 US LEC may request from Verizon by submitting a loop make-up engineering query to Verizon, and Verizon shall provide to US LEC, the following information regarding a Sub-Loop Distribution Facility that serves an identified Customer: the Sub-Loop Distribution Facility's length and gauge; whether Sub-Loop Distribution Facility has loading and bridged tap; the amount of bridged tap (if any) on the Sub-Loop Distribution Facility; and, the location of the FDI to which the Sub-Loop Distribution Facility is connected.
- 6.1.4 To order access to a Sub-Loop Distribution Facility, US LEC must first request that Verizon connect the Verizon FDI to which the Sub-Loop Distribution Facility is connected to a US LEC TOPIC. To make such a request, US LEC must submit to Verizon an application (a "Sub-Loop Distribution Facility Interconnection Application") that identifies the FDI at which US LEC wishes to access the Sub-Loop Distribution Facility. A Sub-Loop Distribution Facility Interconnection Application shall state the location of the TOPIC, the size of the interconnecting cable and a description of the cable's supporting structure. A Sub-Loop Distribution Facility Interconnection Application shall also include a five-year forecast of US LEC's demand for access to Sub-Loop Distribution Facilities at the requested FDI. US LEC must submit the application fee set forth in the Pricing Attachment attached hereto and Verizon's applicable Tariffs (a "Sub-Loop Distribution Facility Application Fee") with Sub-Loop Distribution Facility Interconnection Application. US LEC must submit Sub-Loop Interconnection Applications to:

US LEC's Account Manager

- 6.1.5 Within sixty (60) days after it receives a complete Sub-Loop Distribution Facility Interconnection Application for access to a Sub-Loop Distribution Facility and the Sub-Loop Distribution Facility Application Fee for such application, Verizon shall provide to US LEC a work order that describes the work that Verizon must perform to provide such access (a "Sub-Loop Distribution Facility Work Order") and a statements of the cost of such work (a "Sub-Loop Distribution Facility Interconnection Cost Statement").
- 6.1.6 US LEC shall pay to Verizon fifty percent (50%) of the cost set forth in a Sub-Loop Distribution Facility Interconnection Cost Statement within sixty (60) days of US LEC's receipt of such statement and the associated Sub-Loop Distribution Facility Work Order, and Verizon shall not be obligated to perform any of the work set forth in such order until Verizon has received such payment. A Sub-Loop Distribution Facility Interconnection Application shall be deemed to have been withdrawn if US LEC breaches its payment obligation under this Section. Upon Verizon 's completion of the work that Verizon must perform to provide US LEC with access to a Distribution Sub-Loop, Verizon shall bill US LEC, and US LEC shall pay to Verizon, the

balance of the cost set forth in the Sub-Loop Distribution Facility Interconnection Cost Statement for such access.

- 6.1.7 After Verizon has completed the installation of the interconnecting cable to a US LEC TOPIC and US LEC has paid the full cost of such installation, US LEC can request the connection of Verizon Sub-Loop Distribution Facilities to the US LEC TOPIC. At the same time, US LEC shall advise Verizon of the services that US LEC plans to provide over the Sub-Loop Distribution Facility, request any conditioning of the Sub-Loop Distribution Facility and assign the pairs in the interconnecting cable. US LEC shall run any crosswires within the TOPIC.
- 6.1.8 If US LEC requests that Verizon reactivate an unused drop and NID, then US LEC shall provide dial tone (or its DSL equivalent) on the US LEC side of the applicable Verizon FDI at least twenty-four (24) hours before the due date. On the due date, a Verizon technician will run the appropriate cross connection to connect the Verizon Sub-Loop Distribution Facility to the US LEC dial tone or equivalent from the TOPIC. If US LEC requests that Verizon provide US LEC with access to a Sub-Loop Distribution Facility that, at the time of US LEC's request, Verizon is using to provide service to a Customer, then, after US LEC has looped two interconnecting pairs through the TOPIC and at least twenty four (24) hours before the due date, a Verizon technician shall crosswire the dial tone from the Verizon central office through the Verizon side of the TOPIC and back out again to the Verizon FDI and Verizon Sub-Loop Distribution Facility using the "loop through" approach. On the due date, US LEC shall disconnect Verizon's dial tone, crosswire its dial tone to the Sub-Loop Distribution Facility and submit US LEC's long-term number portability request.
- 6.1.9 Verizon will not provide access to a Sub-Loop Distribution Facility if Verizon is using the loop of which the Sub-Loop Distribution Facility is a part to provide line sharing service to another CLEC or a service that uses derived channel technology to a Customer unless such other CLEC first terminates the Verizon-provided line sharing or such Customer first disconnects the service that utilizes derived channel technology.
- 6.1.10 Verizon shall provide US LEC with access to a Sub-Loop Distribution Facility in accordance with negotiated intervals
- 6.1.11 Verizon shall repair and maintain a Sub-Loop Distribution Facility at the request of US LEC and subject to the time and material rates set forth in *Pricing Attachment and the rates, terms and conditions of Verizon's applicable Tariffs*. US LEC accepts responsibility for initial trouble isolation for Sub-Loop Distribution Facilities and providing Verizon with appropriate dispatch information based on its test results. If (a) US LEC reports to Verizon a Customer trouble, (b) US LEC requests a dispatch, (c) Verizon dispatches a technician, and (d) such trouble was not caused by Verizon Sub-Loop Distribution Facility facilities or equipment in whole or in part, US LEC shall pay Verizon the charges set forth in the *Pricing Attachment and Verizon's applicable Tariffs* for time associated with said dispatch. In addition, these charges also apply when the Customer contact as designated by US LEC is not available at the appointed time. If as the result of US LEC instructions, Verizon is erroneously requested to dispatch to a

site on Verizon company premises ("dispatch in"), the charges set forth in Pricing Attachment and Verizon's applicable Tariffs will be assessed per occurrence to US LEC by Verizon. If as the result of US LEC instructions, Verizon is erroneously requested to dispatch to a site outside of Verizon company premises ("dispatch out"), the charges set forth in Pricing Attachment and Verizon's applicable Tariffs will be assessed per occurrence to US LEC by Verizon.

6.2 Sub-Loop – Feeder (UFSE).

- 6.2.1 Subject to the conditions set forth in Section 1 of this agreement and upon request by US LEC, Verizon shall provide US LEC with access to a Feeder Sub-Loop (as such term is hereinafter defined) in accordance with, and subject to, the terms and provisions of this Section 6.2, the rates and charges provided in the Pricing Attachment and the rates, terms and conditions of Verizon's applicable Tariffs. A "Feeder Sub-Loop" means a DS1 or DS3 transmission path over a feeder facility in Verizon's network between a Verizon end office and either a Verizon remote terminal equipment enclosure (an "RTEE") that subtends such end office or a Verizon feeder distribution interface (such an interface, an "FDI") that subtends the end office.
- 6.2.2 US LEC may obtain access to a Feeder Sub-Loop only from a US LEC collocation arrangement in the Verizon end office where such Feeder Sub-Loop originates and Verizon shall terminate a Feeder Sub-Loop in an RTEE that subtends such end office only if US LEC has a collocation arrangement in such RTEE. Upon US LEC's request, Verizon will connect a Feeder Sub-Loop to a US LEC collocation arrangement in the Verizon end office where the Feeder Sub-Loop originates and to either a US LEC collocation arrangement in the Verizon RTEE that subtends such end office or a Telecommunications Carrier Outside Plant Cabinet (such a cabinet, a "TOPIC") located within 100 feet of the FDI that subtends the end office and that US LEC has established in accordance with, and subject to the terms and provisions of, an agreement between Verizon and US LEC that governs the establishment of such TOPIC. Verizon shall connect a Feeder Sub-Loop to the point of termination bay of a US LEC collocation arrangement in a Verizon Central Office or to a US LEC TOPIC, by installing appropriate cross connections and Verizon shall be solely responsible for installing such cross connections. US LEC may obtain access to a Feeder Sub-Loop between an end office and an RTEE or an FDI only if DS1 or DS3-capable transmission facilities are available and not in use between such office and RTEE or FDI.
- 6.2.3 US LEC shall run any crosswires within a US LEC physical collocation arrangement and a US LEC TOPIC and US LEC will have sole responsibility for identifying to Verizon where a Feeder Sub-Loop should be connected to a US LEC collocation arrangement. US LEC shall be solely responsible for providing power and space for any cross connects and other equipment that Verizon installs in a TOPIC, and US LEC shall not bill Verizon, and Verizon shall not pay US LEC, for providing such power and space.
- 6.2.4 Verizon shall not be obligated to provide to US LEC any multiplexing at an RTEE or at a TOPIC or to combine a Feeder Sub-Loop with a Distribution Sub-Loop. If US LEC requests access to a Feeder Sub-Loop and a Distribution Sub-Loop that are already combined, such

combination shall be deemed to be a loop and Verizon shall provide such loop to US LEC in accordance with, but only to the extent required by, the terms, provisions and rates in this Agreement that govern loops, if any.

- 6.2.5 Verizon shall provide US LEC with access to a Feeder Sub-Loop in accordance with negotiated intervals.
- 6.2.6 Verizon shall repair and maintain a Feeder Sub-Loop at the request of US LEC and subject to the time and material rates set forth in the Pricing Attachment and the rates, terms and conditions of Verizon's applicable Tariffs. US LEC may not rearrange, disconnect, remove or attempt to repair or maintain any Verizon equipment or facilities without the prior written consent of Verizon. US LEC accepts responsibility for initial trouble isolation for Feeder Sub-Loops and providing Verizon with appropriate dispatch information based on its test results. If (a) US LEC reports to Verizon a trouble, (b) US LEC requests a dispatch, (c) Verizon dispatches a technician, and (d) such trouble was not caused by Feeder Sub-Loop facilities or equipment in whole or in part, then US LEC shall pay Verizon the charges set forth in Pricing Attachment and Verizon's applicable Tariffs for time associated with said dispatch. In addition, these charges also apply when a US LEC contact as designated by US LEC is not available at the appointed time. If as the result of US LEC instructions, Verizon is erroneously requested to dispatch to a site on Verizon company premises ("dispatch in"), the charges set forth in Pricing Attachment and Verizon's applicable Tariffs will be assessed per occurrence to US LEC by Verizon. If as the result of US LEC instructions, Verizon is erroneously requested to dispatch to a site outside of Verizon company premises ("dispatch out"), the charges set forth in Pricing Attachment and Verizon's applicable Tariffs will be assessed per occurrence to US LEC by Verizon.

6.3 Collocation in Remote Terminals.

To the extent required by Applicable Law, Verizon shall allow US LEC to collocate equipment in a Verizon remote terminal equipment enclosure in accordance with, and subject to, the rates, terms and conditions set forth in the Collocation Attachment and the Pricing Attachment.

7. Inside Wire

7.1 [This section intentionally left blank.]

8. Dark Fiber

- 8.1 Subject to the conditions set forth in Section 1 and upon request, Verizon shall provide US LEC with access to unbundled Dark Fiber Loops, Dark Fiber Sub-loops and Dark Fiber IOF (as such terms are hereinafter defined) in accordance with, and subject to, the rates, terms and conditions provided in the Pricing Attachment and rates, terms and conditions of Verizon's applicable Tariffs. Access to unbundled Dark Fiber Loops, Dark Fiber Sub-Loops and Dark Fiber IOF will be provided by Verizon only where existing facilities are available at the requested availability date. Access to Dark Fiber Loops, Dark Fiber Sub-Loops and Dark Fiber IOF will be provided in accordance with, but only to the extent required by, Applicable Law. Except as otherwise required by Applicable Law, the following terms and conditions apply to Verizon's Dark Fiber offerings.

- 8.1.1 A "Dark Fiber Loop" consists of continuous fiber optic strand(s) in a Verizon fiber optic cable between Verizon's Accessible Terminal, such as the fiber distribution frame, or its functional equivalent, located within a Verizon Wire Center, and Verizon's main termination point at a Customer premise, such as the fiber patch panel located within a Customer premise, and that has not been activated through connection to electronics that "light" it and render it capable of carrying Telecommunications Services.
- 8.1.2 A "Dark Fiber Sub Loop" consists of continuous fiber optic strand(s) in a Verizon fiber optic cable (a) between Verizon's Accessible Terminal located within a Verizon Wire Center, and Verizon's Accessible Terminal at a Verizon remote terminal equipment enclosure, (b) between Verizon's Accessible Terminal at a Verizon remote terminal equipment enclosure and Verizon's main termination point located within a Customer premise, or (c) between Verizon's Accessible Terminals at Verizon remote terminal equipment enclosures, and that in all cases has not been activated through connection to electronics that "light" it and render it capable of carrying Telecommunications Services.
- 8.1.3 A "Dark Fiber IOF" consists of continuous fiber strand(s) that are located within a fiber optic cable between either (a) Accessible Terminals in two Verizon Central Offices or (b) an Accessible Terminal in a Verizon Central Office and a US LEC Central Office, but, in either case, that has not been activated through connection to multiplexing, aggregation or other electronics that "light it" and thereby render it capable of carrying Telecommunications Services.
- 8.2 *In addition to the other terms and conditions of this Agreement, the following terms and conditions shall apply to Dark Fiber Loops, Dark Fiber Sub-Loops and Dark Fiber IOF:*
- 8.2.1 Verizon shall be required to provide a Dark Fiber Loop only where one end of the Dark Fiber Loop terminates at a Verizon Accessible Terminal in Verizon's Central Office that can be cross-connected to US LEC's collocation arrangement located in that same Verizon Central Office and the other end terminates at the Customer premise. Verizon shall be required to provide a Dark Fiber Sub-Loop only where (1) one end of the Dark Fiber Sub-Loop terminates at Verizon's Accessible Terminal in Verizon's Central Office that can be cross-connected to US LEC's collocation arrangement located in that same Verizon Central Office and the other end terminates at Verizon's Accessible Terminal at a Verizon remote terminal equipment enclosure that can be cross-connected to US LEC's collocation arrangement or adjacent structure, or (2) one end of the Dark Fiber Sub-Loop terminates at Verizon's main termination point located within the Customer premise and the other end terminates at Verizon's Accessible Terminal at a Verizon remote terminal equipment enclosure that can be cross-connected to US LEC's collocation arrangement or adjacent structure, or (3) one end of the Dark Fiber Sub-Loop terminates at Verizon's Accessible Terminal at a Verizon remote terminal equipment enclosure that can be cross-connected to US LEC's collocation arrangement or adjacent structure and the other end terminates at Verizon's Accessible Terminal at another Verizon remote terminal equipment enclosure that can be cross-connected to US LEC's

collocation arrangement or adjacent structure. A US LEC demarcation point at a Customer premise shall be established in the main telco room of the Customer premise if Verizon is located in that room or, if the building does not have a main telco room or if Verizon is not located in that room, then at a location to be determined by Verizon. A US LEC demarcation point at a Customer premise shall be established at a location that is no more than 30 feet from Verizon's Accessible Terminal on which the Dark Fiber Loop or Dark Fiber Sub-Loop terminates. Verizon shall connect a Dark Fiber Loop or Dark Fiber Sub-Loop to the US LEC demarcation point by installing a fiber jumper no greater than 30 feet in length

- 8.2.2 US LEC may access a Dark Fiber Loop, a Dark Fiber Sub-Loop, or Dark Fiber IOF only at a pre-existing Verizon Accessible Terminal of such Dark Fiber Loop, Dark Fiber Sub-Loop or Dark Fiber IOF, and US LEC may not access a Dark Fiber Loop, Dark Fiber Sub-Loop or Dark Fiber IOF at any other point, including, but not limited to, a splice point or case. Dark Fiber Loops, Dark Fiber Sub-Loops and Dark Fiber IOF are not available US LEC unless such Dark Fiber Loops, Dark Fiber Sub-Loops or Dark Fiber IOF already are terminated on a Verizon Accessible Terminal. Except where required by Applicable Law, Verizon will not introduce additional splice points or open existing splice points or cases to accommodate US LEC's request. Unused fibers located in a cable vault or a controlled environment vault, manhole or other location outside the Verizon Wire Center, and not terminated to a fiber patch panel, are not available to US LEC.
- 8.2.3 A strand shall not be deemed to be continuous if splicing is required to provide fiber continuity between two locations. Dark Fiber Loops, Dark Fiber Sub-Loops and Dark Fiber IOF will only be offered on a route-direct basis where facilities exist (i.e., no intermediate offices).
- 8.2.4 Verizon shall perform all work necessary to install (1) a cross connect or a fiber jumper from a Verizon Accessible Terminal to a US LEC collocation arrangement or (2) from a Verizon Accessible Terminal to US LEC's demarcation point at a Customer premise or US LEC Central Office.
- 8.2.5 A Dark Fiber Inquiry must be submitted prior to submitting an ASR. Upon receipt of the completed Dark Fiber Inquiry, Verizon will initiate a review of its cable records to determine whether Dark Fiber Loop, Dark Fiber Sub-Loop or Dark Fiber IOF may be available between the locations and in the quantities specified. Verizon will respond within fifteen (15) Business Days from receipt of the US LEC's request, indicating whether Dark Fiber Loop, Dark Fiber Sub-Loop or Dark Fiber IOF may be available based on the records search except that for voluminous requests or large, complex projects, Verizon reserves the right to negotiate a different interval. The Dark Fiber Inquiry is a record search and does not guarantee the availability of Dark Fiber Loops, Dark Fiber Sub-Loops or Dark Fiber IOF.
- 8.2.6 US LEC shall order Dark Fiber Loops, Dark Fiber Sub-Loops or Dark Fiber IOF by sending to Verizon a separate ASR for each A to Z route.
- 8.2.7 Access to Dark Fiber Loops, Dark Fiber Sub-Loops and Dark Fiber IOF that terminate in a Verizon premise must be accomplished via a collocation arrangement in that premise. In circumstances where

collocation cannot be accomplished in the premises, the Parties agree to negotiate for possible alternative arrangements.

- 8.2.8 A Dark Fiber Loop, Dark Fiber Sub-Loop or Dark Fiber IOF will be offered to US LEC in the condition that it is available in Verizon's network at the time that US LEC submits its request (i.e., "as is"). In addition, Verizon shall not be required to convert lit fiber to a Dark Fiber Loop, Dark Fiber Sub-Loop or Dark Fiber IOF for US LEC's use.
- 8.2.9 Spare wavelengths on fiber strands, where Wave Division Multiplexing (WDM) or Dense Wave Division Multiplexing (DWDM) equipment is deployed, are not considered to be Dark Fiber Loops, Dark Fiber Sub-Loops or Dark Fiber IOF, and, therefore, will not be offered to US LEC as Dark Fiber Loops, Dark Fiber Sub-Loops or Dark Fiber IOF.
- 8.2.10 Fiber that has been assigned to fulfill a Customer order or for maintenance purposes will not be offered to US LEC as Dark Fiber Loops, Dark Fiber Sub-Loops or Dark Fiber IOF.
- 8.2.11 US LEC shall be responsible for providing all transmission, terminating and regeneration equipment necessary to light and use Dark Fiber Loops, Dark Fiber Sub-Loops, or Dark Fiber IOF.
- 8.2.12 US LEC may not resell Dark Fiber Loops, Dark Fiber Sub-Loops or Dark Fiber IOF, purchased pursuant to this Agreement to third parties.
- 8.2.13 Except to the extent that Verizon is required by Applicable Law to provide Dark Fiber Loops, Dark Fiber Sub-Loops or Dark Fiber IOF to US LEC for use for Special or Switched Exchange Access Services, US LEC shall not use Dark Fiber Loops, Dark Fiber Sub-Loops or Dark Fiber IOF, for Special or Switched Exchange Access Services.
- 8.2.14 In order to preserve the efficiency of its network, Verizon will limit US LEC to leasing up to a maximum of twenty-five percent (25%) of the Dark Fiber Loops, Dark Fiber Sub-Loops or Dark Fiber IOF in any given segment of Verizon's network. In addition, except as otherwise required by Applicable Law, Verizon may take any of the following actions, notwithstanding anything to the contrary in this Agreement:
 - 8.2.14.1 Revoke Dark Fiber Loops, Dark Fiber Sub-Loops or Dark Fiber IOF leased to US LEC upon a showing of need to the Commission and twelve (12) months' advance written notice to US LEC; and
 - 8.2.14.2 Revoke Dark Fiber Loops, Dark Fiber Sub-Loops or Dark Fiber IOF leased to US LEC upon a showing to the Commission that US LEC underutilized fiber within any twelve (12) month period;
 - 8.2.14.3 Verizon reserves and shall not waive, Verizon's right to claim before the Commission that Verizon should not have to fulfill a US LEC order for Dark Fiber Loops, Dark Fiber Sub-Loops, or Dark Fiber IOF because that request would strand an unreasonable amount of fiber capacity, disrupt or degrade service to Customers or carriers other than US LEC, or impair Verizon's ability to meet a legal obligation.

- 8.2.15 US LEC may not reserve Dark Fiber Loops, Dark Fiber Sub-Loops, or Dark Fiber IOF.
- 8.2.16 US LEC shall be solely responsible for: (a) determining whether or not the transmission characteristics of the Dark Fiber Loop, Dark Fiber Sub-Loop or Dark Fiber IOF accommodate the requirements of US LEC; (b) obtaining any Rights of Way, governmental or private property permit, easement or other authorization or approval required for access to the Dark Fiber Loop, Dark Fiber Sub-Loop or Dark Fiber IOF; (c) installation of fiber optic transmission equipment needed to power the Dark Fiber Loop, Dark Fiber Sub-Loop or Dark Fiber IOF to transmit Telecommunications Services traffic; (d) installation of a demarcation point in a building where a Customer is located; and (e) US LEC's collocation arrangements with any proper optical cross connects or other equipment that US LEC needs to access Dark Fiber Loop, Dark Fiber Sub-Loop or Dark Fiber IOF before it submits an order for such access. US LEC hereby represents and warrants that it shall have all such rights of way, authorizations and the like applicable to the geographic location at which it wishes to establish a demarcation point for dark fiber, on or before the date that US LEC places an order for the applicable dark fiber, and that it shall maintain the same going forward.
- 8.2.17 US LEC is responsible for trouble isolation before reporting trouble to Verizon. Verizon will restore continuity to Dark Fiber Loops, Dark Fiber Sub-Loops and Dark Fiber IOF that have been broken. Verizon will not repair a Dark Fiber Loop, Dark Fiber Sub-Loop or Dark Fiber IOF that is capable of transmitting light, even if the transmission characteristics of the Dark Fiber Loop, Dark Fiber Sub-Loop or Dark Fiber IOF have changed.
- 8.2.18 US LEC is responsible for all work activities at the Customer premises. Except as otherwise required by Applicable Law, all negotiations with the premises owner are solely the responsibility of US LEC.

9. Network Interface Device

- 9.1 Subject to the conditions set forth in Section 1, at US LEC's request, Verizon shall permit US LEC to connect a US LEC Loop to the Inside Wiring of a Customer through the use of a Verizon NID in accordance with this Section 9 and the rates and charges provided in the Pricing Attachment. Verizon shall provide US LEC with access to NIDs in accordance with, but only to the extent required by, Applicable Law. US LEC may access a Verizon NID either by means of a connection (but only if the use of such connection is technically feasible) from an adjoining US LEC NID deployed by US LEC or, if an entrance module is available in the Verizon NID, by connecting a US LEC Loop to the Verizon NID. In all cases, Verizon shall perform this connection. When necessary, Verizon will rearrange its facilities to provide access to an existing Customer's Inside Wire. An entrance module is available only if facilities are not connected to it.
- 9.2 In no case shall US LEC access, remove, disconnect or in any other way rearrange, Verizon's Loop facilities from Verizon's NIDs, enclosures, or protectors.
- 9.3 In no case shall US LEC access, remove, disconnect or in any other way rearrange, a Customer's Inside Wiring from Verizon's NIDs, enclosures, or

protectors where such Customer Inside Wiring is used in the provision of ongoing Telecommunications Service to that Customer.

- 9.4 In no case shall US LEC remove or disconnect ground wires from Verizon's NIDs, enclosures, or protectors.
- 9.5 In no case shall US LEC remove or disconnect NID modules, protectors, or terminals from Verizon's NID enclosures.
- 9.6 Maintenance and control of premises Inside Wiring is the responsibility of the Customer. Any conflicts between service providers for access to the Customer's Inside Wiring must be resolved by the person who controls use of the wiring (e.g., the Customer).
- 9.7 When US LEC is connecting a US LEC-provided Loop to the Inside Wiring of a Customer's premises through the Customer's side of the Verizon NID, US LEC does not need to submit a request to Verizon and Verizon shall not charge US LEC for access to the Verizon NID. In such instances, US LEC shall comply with the provisions of Sections 9.2 through 9.7 of this Agreement and shall access the Customer's Inside Wire in the manner set forth in Section 9.8 of this Agreement.
- 9.8 Due to the wide variety of NIDs utilized by Verizon (based on Customer size and environmental considerations), US LEC may access the Customer's Inside Wiring, acting as the agent of the Customer by any of the following means:
 - 9.8.1 Where an adequate length of Inside Wiring is present and *environmental conditions permit*, US LEC may remove the Inside Wiring from the Customer's side of the Verizon NID and connect that Inside Wiring to US LEC's NID.
 - 9.8.2 Where an adequate length of Inside Wiring is not present or environmental conditions do not permit, US LEC may enter the Customer side of the Verizon NID enclosure for the purpose of removing the Inside Wiring from the terminals of Verizon's NID and connecting a connectorized or spliced jumper wire from a suitable "punch out" hole of such NID enclosure to the Inside Wiring within the space of the Customer side of the Verizon NID. Such connection shall be electrically insulated and shall not make any contact with the connection points or terminals within the Customer side of the Verizon NID.
 - 9.8.3 US LEC may request Verizon to make other rearrangements to the Inside Wiring terminations or terminal enclosure on a time and materials cost basis to be charged to the requesting party (i.e. US LEC, its agent, the building owner or the Customer). If US LEC accesses the Customer's Inside Wiring as described in this Section 9.8.3, time and materials charges will be billed to the requesting party (i.e. US LEC, its agent, the building owner or the Customer).

10. Unbundled Switching Elements

- 10.1 Subject to the conditions set forth in Section 1, Verizon shall make available to US LEC the Local Switching Element and Tandem Switching Element unbundled from transport, local Loop transmission, or other services, in accordance with this Section 10 and the rates and charges provided in the Pricing Attachment. Verizon shall provide US LEC with access to the Local Switching Element and

the Tandem Switching Element in accordance with, but only to the extent required by, Applicable Law.

10.2 Local Switching.

10.2.1 The unbundled Local Switching Element includes line side and trunk side facilities (e.g. line and trunk side Ports such as analog and ISDN line side Ports and DS1 trunk side Ports), plus the features, functions, and capabilities of the switch. It consists of the line-side Port (including connection between a Loop termination and a switch line card, telephone number assignment, basic intercept, one primary directory listing, presubscription, and access to 911, operator services, and directory assistance), line and line group features (including all vertical features and line blocking options that the switch and its associated deployed switch software is capable of providing and are currently offered to Verizon's local exchange Customers), usage (including the connection of lines to lines, lines to trunks, trunks to lines, and trunks to trunks), and trunk features (including the connection between the trunk termination and a trunk card).

10.2.2 Verizon shall offer, as an optional chargeable feature, usage tapes in accordance with Section 8 of the Additional Services Attachment.

10.2.3 US LEC may request activation or deactivation of features on a per-port basis at any time, and shall compensate Verizon for the non-recurring charges associated with processing the order. US LEC may submit a Bona Fide Request in accordance with Section 14.3 for other switch features and functions that the switch is capable of providing, but which Verizon does not currently provide, or for customized routing of traffic other than operator services and/or directory assistance traffic. Verizon shall develop and provide these requested services where technically feasible with the agreement of US LEC to pay the recurring and non-recurring costs of developing, installing, updating, providing and maintaining these services.

10.3 Network Design Request (NDR).

Prior to submitting any order for unbundled Local Switching (as a UNE or in combination with other UNEs), US LEC shall complete the NDR process. As part of the NDR process, US LEC shall request standardized or customized routing of its Customer traffic in conjunction with the provision of unbundled Local Switching.

If US LEC selects customized routing, US LEC shall define the routing plan and Verizon shall implement such plan, subject to technical feasibility constraints. Time and Material Charges may apply.

10.4 Tandem Switching.

The unbundled Tandem Switching Element includes trunk-connect facilities, the basic switching function of connecting trunks to trunks, and the functions that are centralized in Tandem Switches. Unbundled Tandem switching creates a temporary transmission path between interoffice trunks that are interconnected at a Verizon access Tandem for the purpose of routing a call or calls.

11. Unbundled Interoffice Facilities

Subject to the conditions set forth in Section 1, where facilities are available, at US LEC's request, Verizon shall provide US LEC with IOF unbundled from other Network Elements at the rates set forth in the Pricing Attachment; provided, however, that Verizon shall offer unbundled shared IOF only to the extent that US LEC also purchases unbundled Local Switching capability from Verizon in accordance with Section 10 of this Attachment. Verizon shall provide US LEC with such IOF in accordance with, but only to the extent required by, Applicable Law.

12. Signaling Networks and Call-Related Databases

- 12.1 Subject to the conditions set forth in Section 1, Verizon shall provide US LEC with access to databases and associated signaling necessary for call routing and completion by providing SS7 Common Channel Signaling ("CCS") Interconnection, and Interconnection and access to toll free service access code (e.g., 800/888/877) databases, LIDB, and any other necessary databases, in accordance with this Section 12 and the rates and charges provided in the Pricing Attachment. Such access shall be provided by Verizon in accordance with, but only to the extent required by, Applicable Law.
- 12.2 US LEC shall provide Verizon with CCS Interconnection required for call routing and completion, and the billing of calls which involve US LEC's Customers, at non-discriminatory rates (subject to the provisions of the Pricing Attachment and applicable tariff(s)), terms and conditions, provided further that if the US LEC information Verizon requires to provide such call-related functionality is resident in a database operated by a third party, US LEC will provide Verizon with the authorization to query US LEC's information in the databases within which it is stored.
- 12.3 Alternatively, either Party ("Purchasing Party") may secure CCS Interconnection from a commercial SS7 hub provider (third party signaling provider) to transport signaling messages to and from the Verizon CCS network, and in that case the other Party will permit the Purchasing Party to access the same databases as would have been accessible if the Purchasing Party had connected directly to the other Party's CCS network. If a third party signaling provider is selected by US LEC to transport signaling messages, that third party provider must present a letter of agency to Verizon, prior to the testing of the interconnection, authorizing the third party to act on behalf of US LEC.
- 12.4 Regardless of the manner in which US LEC obtains CCS Interconnection, US LEC shall comply with Verizon's SS7 certification process prior to establishing CCS Interconnection with Verizon.
- 12.5 The Parties will provide CCS Signaling to each other, where and as available, in conjunction with all Reciprocal Compensation Traffic, Toll Traffic, Meet Point Billing Traffic, and Transit Traffic. The Parties will cooperate on the exchange of TCAP messages to facilitate interoperability of CCS-based features between their respective networks, including all CLASS Features and functions, to the extent each Party offers such features and functions to its Customers. All CCS Signaling parameters will be provided upon request (where available), including called party number, Calling Party Number, originating line information, calling party category, and charge number. All privacy indicators will be honored as required under applicable law.
- 12.6 The Parties will follow all OBF-adopted standards pertaining to CIC/OZZ codes.
- 12.7 Where CCS Signaling is not available, in-band multi-frequency ("MF") wink start signaling will be provided. Any such MF arrangement will require a separate

local trunk circuit between the Parties' respective switches in those instances where the Parties have established End Office to End Office high usage trunk groups. In such an arrangement, each Party will out pulse the full ten-digit telephone number of the called Party to the other Party.

- 12.8 The Parties acknowledge that there is a network security risk associated with interconnection with the public Internet Protocol network, including, but not limited to, the risk that interconnection of US LEC signaling systems to the public Internet Protocol network may expose US LEC and Verizon signaling systems and information to interference by third parties. US LEC shall notify Verizon in writing sixty (60) days in advance of installation of any network arrangement that may expose signaling systems or information to access through the public Internet Protocol network. US LEC shall take commercially reasonable efforts to protect its signaling systems and Verizon's signaling systems from interference by unauthorized persons.
- 12.9 Each Party shall provide trunk groups, where available and upon reasonable request, that are configured utilizing the B8ZS ESF protocol for 64 kbps clear channel transmission to allow for ISDN interoperability between the Parties' respective networks.
- 12.10 The following publications describe the practices, procedures and specifications generally utilized by Verizon for signaling purposes and are listed herein to assist the Parties in meeting their respective Interconnection responsibilities related to Signaling:
 - 12.10.1 Telcordia Generic Requirements, GR-905-CORE, Issue 1, March, 1995, and subsequent issues and amendments; and
 - 12.10.2 Where applicable, Verizon Supplement Common Channel Signaling Network Interface Specification (Verizon-905).
- 12.11 Each Party shall charge the other Party mutual and reciprocal rates for any usage-based charges for CCS Signaling, toll free service access code (e.g., 800/888/877) database access, LIDB access, and access to other necessary databases, as follows: Verizon shall charge US LEC in accordance with the Pricing Attachment and the terms and conditions in applicable Tariffs. US LEC shall charge Verizon rates equal to the rates Verizon charges US LEC, unless US LEC's Tariffs for CCS signaling provide for lower generally available rates, in which case US LEC shall charge Verizon such lower rates. Notwithstanding the foregoing, to the extent a Party uses a third party vendor for the provision of CCS Signaling, such charges shall apply only to the third party vendor.

13. Operations Support Systems

Subject to the conditions set forth in Section 1 above and in Section 8 of the Additional Services Attachment, Verizon shall provide US LEC with access via electronic interfaces to databases required for pre-ordering, ordering, provisioning, maintenance and repair, and billing. Verizon shall provide US LEC with such access in accordance with, but only to the extent required by, Applicable Law. All such transactions shall be submitted by US LEC through such electronic interfaces.

14. Availability of Other Network Elements on an Unbundled Basis

- 14.1 Any request by US LEC for access to a Verizon Network Element that is not already available and that Verizon is required by Applicable Law to provide on an unbundled basis shall be treated as a Network Element Bona Fide Request

pursuant to Section 14.3, below. US LEC shall provide Verizon access to its Network Elements as mutually agreed by the Parties or as required by Applicable Law.

- 14.2 Notwithstanding anything to the contrary in this Section 14, a Party shall not be required to provide a proprietary Network Element to the other Party under this Section 14 except as required by Applicable Law.
- 14.3 Network Element Bona Fide Request (BFR).
- 14.3.1 Each Party shall promptly consider and analyze access to a new unbundled Network Element in response to the submission of a Network Element Bona Fide Request by the other Party hereunder. The Network Element Bona Fide Request process set forth herein does not apply to those services requested pursuant to Report & Order and Notice of Proposed Rulemaking 91-141 (rel. Oct. 19, 1992) ¶ 259 and n.603 or subsequent orders.
- 14.3.2 A Network Element Bona Fide Request shall be submitted in writing and shall include a technical description of each requested Network Element.
- 14.3.3 The requesting Party may cancel a Network Element Bona Fide Request at any time, but shall pay the other Party's reasonable and demonstrable costs of processing and/or implementing the Network Element Bona Fide Request up to the date of cancellation.
- 14.3.4 Within ten (10) Business Days of its receipt, the receiving Party shall acknowledge receipt of the Network Element Bona Fide Request.
- 14.3.5 Except under extraordinary circumstances, within thirty (30) days of its receipt of a Network Element Bona Fide Request, the receiving Party shall provide to the requesting Party a preliminary analysis of such Network Element Bona Fide Request. The preliminary analysis shall confirm that the receiving Party will offer access to the Network Element or will provide a detailed explanation that access to the Network Element is not technically feasible and/or that the request does not qualify as a Network Element that is required to be provided by Applicable Law.
- 14.3.6 If the receiving Party determines that the Network Element Bona Fide Request is technically feasible and access to the Network Element is required to be provided by Applicable Law, it shall promptly proceed with developing the Network Element Bona Fide Request upon receipt of written authorization from the requesting Party. When it receives such authorization, the receiving Party shall promptly develop the requested services, determine their availability, calculate the applicable prices and establish installation intervals. Unless the Parties otherwise agree, the Network Element requested must be priced in accordance with Section 252(d)(1) of the Act.
- 14.3.7 As soon as feasible, but not more than ninety (90) days after its receipt of authorization to proceed with developing the Network Element Bona Fide Request, the receiving Party shall provide to the requesting Party a Network Element Bona Fide Request quote which will include, at a minimum, a description of each Network Element, the availability, the applicable rates, and the installation intervals.

- 14.3.8 Within thirty (30) days of its receipt of the Network Element Bona Fide Request quote, the requesting Party must either confirm its order for the Network Element Bona Fide Request pursuant to the Network Element Bona Fide Request quote or seek arbitration by the Commission pursuant to Section 252 of the Act.
- 14.3.9 If a Party to a Network Element Bona Fide Request believes that the other Party is not requesting, negotiating or processing the Network Element Bona Fide Request in good faith, or disputes a determination, or price or cost quote, or is failing to act in accordance with Section 251 of the Act, such Party may seek mediation or arbitration by the Commission pursuant to Section 252 of the Act.

15. Maintenance of Network Elements

If (a) US LEC reports to Verizon a Customer trouble, (b) US LEC requests a dispatch, (c) Verizon dispatches a technician, and (d) such trouble was not caused by Verizon's facilities or equipment in whole or in part, then US LEC shall pay Verizon a charge set forth in the Pricing Attachment for time associated with said dispatch. In addition, this charge also applies when the Customer contact as designated by US LEC is not available at the appointed time. US LEC accepts responsibility for initial trouble isolation and providing Verizon with appropriate dispatch information based on its test results. If, as the result of US LEC instructions, Verizon is erroneously requested to dispatch to a site on Verizon company premises ("dispatch in"), a charge set forth in the Pricing Attachment will be assessed per occurrence to US LEC by Verizon. If as the result of US LEC instructions, Verizon is erroneously requested to dispatch to a site outside of Verizon company premises ("dispatch out"), a charge set forth in the Pricing Attachment will be assessed per occurrence to US LEC by Verizon. Verizon agrees to respond to US LEC trouble reports on a non-discriminatory basis consistent with the manner in which it provides service to its own retail Customers or to any other similarly situated Telecommunications Carrier.

16. Combinations

16.1 Subject to the conditions set forth in Section 1, Verizon shall be obligated to provide a combination of Network Elements (a "Combination") only to the extent provision of such Combination is required by Applicable Law. To the extent Verizon is required by Applicable Law to provide a Combination to US LEC, Verizon shall provide such Combination in accordance with, and subject to, requirements established by Verizon that are consistent with Applicable Law (such requirements, the "Combo Requirements"). Verizon shall make the Combo Requirements publicly available in an electronic form.

17. Rates and Charges

The rates and charges for UNEs, Combinations and other services, facilities and arrangements, offered under this Attachment shall be as provided in this Attachment and the Pricing Attachment.

COLLOCATION ATTACHMENT

1. Verizon's Provision of Collocation

Verizon shall provide to US LEC, in accordance with this Agreement (including, but not limited to, Verizon's applicable Tariffs) and the requirements of Applicable Law, Collocation for the purpose of facilitating US LEC's interconnection with facilities or services of Verizon or access to Unbundled Network Elements of Verizon; provided, that notwithstanding any other provision of this Agreement, Verizon shall be obligated to provide Collocation to US LEC only to the extent required by Applicable Law and may decline to provide Collocation to US LEC to the extent that provision of Collocation is not required by Applicable Law. Subject to the foregoing, Verizon shall provide Collocation to US LEC in accordance with the rates, terms and conditions set forth in Verizon's Collocation tariff, and Verizon shall do so regardless of whether or not such rates, terms and conditions are effective.

2. US LEC's Provision of Collocation

Upon request by Verizon, US LEC shall provide to Verizon collocation of facilities and equipment for the purpose of facilitating Verizon's interconnection with facilities or services of US LEC. US LEC shall provide collocation on a non-discriminatory basis in accordance with US LEC's applicable Tariffs, or in the absence of applicable US LEC Tariffs, in accordance with terms, conditions and prices to be negotiated by the Parties. The terms, conditions and prices offered to Verizon by US LEC for collocation shall be no less favorable than the terms, conditions and prices offered to US LEC by Verizon for collocation.

911 ATTACHMENT

1. 911/E-911 Arrangements

- 1.1 US LEC may, at its option, interconnect to the Verizon 911/E-911 Selective Router or 911 Tandem Offices, as appropriate, that serve the areas in which US LEC provides Telephone Exchange Services, for the provision of 911/E-911 services and for access to all subtending Public Safety Answering Points (PSAP). In such situations, Verizon will provide US LEC with the appropriate CLLI codes and specifications of the Tandem Office serving area. In areas where E-911 is not available, US LEC and Verizon will negotiate arrangements to connect US LEC to the 911 service in accordance with applicable state law.
- 1.2 Path and route diverse Interconnections for 911/E-911 shall be made at the US LEC-IP, the Verizon-IP, or other points as necessary and mutually agreed, and as required by law or regulation.
- 1.3 Within thirty (30) days of its receipt of a complete and accurate request from US LEC, to include all required information and applicable forms, and to the extent authorized by the relevant federal, state, and local authorities, Verizon will provide US LEC, where Verizon offers 911 service, with the following at a reasonable fee, if applicable:
 - 1.3.1 a file via electronic medium containing the Master Street Address Guide ("MSAG") for each county within the LATA(s) where US LEC is providing, or represents to Verizon that it intends to provide within sixty (60) days of US LEC's request, local exchange service, which MSAG shall be updated as the need arises and a complete copy of which shall be made available on an annual basis. A letter is required from the PSAP director before the release of the MSAG by Verizon to US LEC;
 - 1.3.2 a list of the address and CLLI code of each 911/E-911 selective router or 911 Tandem office(s) in the area in which US LEC plans to offer Telephone Exchange Service;
 - 1.3.3 a list of geographical areas, e.g., LATAs, counties or municipalities, with the associated 911 tandems, as applicable.
 - 1.3.4 a list of Verizon personnel who currently have responsibility for 911/E-911 requirements, including a list of escalation contacts should the primary contacts be unavailable.
 - 1.3.5 any special 911 trunking requirements for each 911/E-911 selective router or 911 Tandem Office, where available, and;
 - 1.3.6 prompt return of any US LEC 911/E-911 data entry files containing errors, so that US LEC may ensure the accuracy of the Customer records.

2. Electronic Interface

US LEC shall use, where available, the appropriate Verizon electronic interface, through which US LEC shall input and provide a daily update of 911/E-911 database information related to appropriate US LEC Customers. In those areas where an electronic interface

is not available, US LEC shall provide Verizon with all appropriate 911/E-911 information such as name, address, and telephone number via facsimile for Verizon's entry into the 911/E-911 database system. Any 911/E-911-related data exchanged between the Parties prior to the availability of an electronic interface shall conform to Verizon standards, whereas 911/E-911-related data exchanged electronically shall conform to the National Emergency Number Association standards (NENA). US LEC may also use the electronic interface, where available, to query the 911/E-911 database to verify the accuracy of US LEC Customer information.

3. 911 Interconnection

Verizon and US LEC will use commercially reasonable efforts to facilitate the prompt, robust, reliable and efficient interconnection of US LEC systems to the 911/E-911 platforms and/or systems.

4. 911 Facilities

US LEC shall be responsible for providing facilities from the US LEC End Office to the 911 Tandem or selective router. US LEC shall deploy diverse routing of 911 trunk pairs to the 911 tandem or selective router.

5. Local Number Portability for use with 911

The Parties acknowledge that until Local Number Portability (LNP) with full 911/E-911 compatibility is utilized for all ported telephone numbers, the use of Interim Number Portability ("INP") creates a special need to have the Automatic Location Identification (ALI) screen reflect two numbers: the "old" number and the "new" number assigned by US LEC. Therefore, for those ported telephone numbers using INP, US LEC will provide the 911/E-911 database with both the forwarded number and the directory number, as well as all other required information including the appropriate address information for the customer for entry into the 911/E-911 database system. Further, US LEC will outpulse the telephone number to which the call has been forwarded (that is, the Customer's ANI) to the 911 Tandem office or selective router. US LEC will include their NENA five character Company Identification ("COID") for inclusion in the ALI display.

5.1 US LEC is required to enter data into the 911/E-911 database under the NENA Standards for LNP. This includes, but is not limited to, using US LEC's NENA COID to lock and unlock records and the posting of US LEC's NENA COID to the ALI record where such locking and migrating feature for 911/E-911 records are available or as defined by local standards.

6. PSAP Coordination

Verizon and US LEC will work cooperatively to arrange meetings with PSAPs to answer any technical questions the PSAPs, or county or municipal coordinators may have regarding the 911/E-911 arrangements.

7. 911 Compensation

US LEC will compensate Verizon for connections to its 911/E-911 platform and/or system pursuant to the rate schedule included in the Pricing Attachment.

8. 911 Rules and Regulations

US LEC and Verizon will comply with all applicable rules and regulations (including 911 taxes and surcharges as defined by local requirements) pertaining to the provision of 911/E-911 services in Pennsylvania.

PRICING ATTACHMENT

1. General

- 1.1 As used in this Attachment, the term "Charges" means the rates, fees, charges and prices for a Service.
- 1.2 Except as stated in Section 2 or Section 3, below, Charges for Services shall be as stated in this Section 1.
- 1.3 The Charges for a Service shall be the Charges for the Service stated in the Providing Party's applicable Tariff.
- 1.4 In the absence of Charges for a Service established pursuant to Section 1.3, the Charges shall be as stated in Appendix A of this Pricing Attachment.
- 1.5 The Tariff Charges stated in Appendix A of this Pricing Attachment shall be automatically superseded by any applicable Tariff Charges. The non-Tariff Charges stated in Appendix A of this Pricing Attachment also shall be *automatically superseded by any new Charge(s) when such new Charge(s) are required by Applicable Law, provided such new Charge(s) are not subject to a stay issued by any court of competent jurisdiction.*
- 1.6 In the absence of Charges for a Service established pursuant to Sections 1.3 through 1.5, if Charges for a Service are otherwise expressly provided for in this Agreement, such Charges shall apply.
- 1.7 In the absence of Charges for a Service established pursuant to Sections 1.3 through 1.6, the Charges for the Service shall be the Providing Party's FCC or Commission approved Charges.
- 1.8 In the absence of Charges for a Service established pursuant to Sections 1.3 through 1.7, the Charges for the Service shall be mutually agreed to by the Parties in writing.

2. Verizon Telecommunications Services Provided to US LEC for Resale Pursuant to the Resale Attachment

- 2.1 Verizon Telecommunications Services for which Verizon is Required to Provide a Wholesale Discount Pursuant to Section 251(c)(4) of the Act.
 - 2.1.1 The Charges for a Verizon Telecommunications Service purchased by US LEC for resale for which Verizon is required to provide a wholesale discount pursuant to Section 251(c)(4) of the Act shall be the Retail Price for such Service set forth in Verizon's applicable Tariffs (or, if there is no Tariff Retail Price for such Service, Verizon's Retail Price for the Service that is generally offered to Verizon's Customers), less, to the extent required by Applicable Law: (a) the applicable wholesale discount stated in Verizon's Tariffs for Verizon Telecommunications Services purchased for resale pursuant to Section 251(c)(4) of the Act; or, (b) in the absence of an applicable Verizon Tariff wholesale discount for Verizon Telecommunications Services purchased for resale pursuant to Section 251(c)(4) of the Act, the applicable wholesale discount stated in Appendix A for Verizon

Telecommunications Services purchased for resale pursuant to Section 251(c)(4) of the Act.

- 2.1.2 The Charges for a Verizon Telecommunications Service Customer Specific Arrangement ("CSA") purchased by US LEC for resale pursuant to Section 3.3 of the Resale Attachment for which Verizon is required to provide a wholesale discount pursuant to Section 251(c)(4) of the Act, shall be the Retail Price for the CSA, less, to the extent required by Applicable Law: (a) the applicable wholesale discount stated in Verizon's Tariffs for Verizon Telecommunications Services purchased for resale pursuant to Section 251(c)(4) of the Act; or, (b) in the absence of an applicable Verizon Tariff wholesale discount for Verizon Telecommunications Services purchased for resale pursuant to Section 251(c)(4) of the Act, the applicable discount stated in Appendix A for Verizon Telecommunications Services purchased for resale pursuant to Section 251(c)(4) of the Act. Notwithstanding the foregoing, in accordance with, and to the extent permitted by Applicable Law, Verizon may establish a wholesale discount for a CSA that differs from the wholesale discount that is generally applicable to Telecommunications Services provided to US LEC for resale pursuant to Section 251(c)(4) of the Act.
- 2.1.3 Notwithstanding Sections 2.1 and 2.2, in accordance with, and to the extent permitted by Applicable Law, Verizon may at any time establish a wholesale discount for a Telecommunications Service (including, but not limited to, a CSA) that differs from the wholesale discount that is generally applicable to Telecommunications Services provided to US LEC for resale pursuant to Section 251(c)(4) of the Act.
- 2.1.4 The wholesale discount stated in Appendix A shall be automatically superseded by any new wholesale discount when such new wholesale discount is required by any order of the Commission or the FCC, approved by the Commission or the FCC, or otherwise allowed to go into effect by the Commission or the FCC, provided such new wholesale discount is not subject to a stay issued by any court of competent jurisdiction.
- 2.1.5 The wholesale discount provided for in Sections 2.1.1 through 2.1.3 shall not be applied to:
 - 2.1.5.1 Short term promotions as defined in 47 CFR § 51.613;
 - 2.1.5.2 Except as otherwise provided by Applicable Law, Exchange Access services;
 - 2.1.5.3 Subscriber Line Charges, Federal Line Cost Charges, end user common line Charges, taxes, and government Charges and assessment (including, but not limited to, 9-1-1 Charges and Dual Party Relay Service Charges).
 - 2.1.5.4 Any other service or Charge that the Commission, the FCC, or other governmental entity of appropriate jurisdiction determines is not subject to a wholesale rate discount under Section 251(c)(4) of the Act.

2.2 Verizon Telecommunications Services for which Verizon is Not Required to Provide a Wholesale Discount Pursuant to Section 251(c)(4) of the Act.

- 2.2.1 The Charges for a Verizon Telecommunications Service for which Verizon is not required to provide a wholesale discount pursuant to Section 251(c)(4) of the Act shall be the Charges stated in Verizon's Tariffs for such Verizon Telecommunications Service (or, if there are no Verizon Tariff Charges for such Service, Verizon's Charges for the Service that are generally offered by Verizon).
- 2.2.2 The Charges for a Verizon Telecommunications Service customer specific contract service arrangement ("CSA") purchased by US LEC pursuant to Section 3.3 of the Resale Attachment for which Verizon is not required to provide a wholesale discount pursuant to Section 251(c)(4) of the Act shall be the Charges provided for in the CSA and any other Charges that Verizon could bill the person to whom the CSA was originally provided (including, but not limited to, applicable Verizon Tariff Charges).

2.3 Other Charges.

- 2.3.1 US LEC shall pay, or collect and remit to Verizon, without discount, all Subscriber Line Charges, Federal Line Cost Charges, and end user common line Charges, associated with Verizon Telecommunications Services provided by Verizon to US LEC.

3. US LEC Prices

Notwithstanding any other provision of this Agreement, the Charges that US LEC bills Verizon for US LEC's Services shall not exceed the Charges for Verizon's comparable Services, except to the extent that US LEC's cost to provide such US LEC Services to Verizon exceeds the Charges for Verizon's comparable Services and US LEC has demonstrated such cost to Verizon, or to the Commission or the FCC.

4. Section 271

If Verizon is a Bell Operating Company (as defined in the Act) and in order to comply with Section 271(c)(2)(B) of the Act provides a Service under this Agreement that Verizon is not required to provide by Section 251 of the Act, Verizon shall have the right to establish Charges for such Service in a manner that differs from the manner in which under Applicable Law (including, but not limited to, Section 252(d) of the Act) Charges must be set for Services provided under Section 251; provided, however, that the Charges set for such services shall comply with Applicable Law; and, provided further, that this provision shall not remove any obligation on Verizon to provide a Service required by Section 251 of the Act at Charges set in the manner required for Services provided under Section 251 (including, but not limited to, Section 252(d)).

5. Regulatory Review of Prices

Notwithstanding any other provision of this Agreement, each Party reserves its respective rights to institute an appropriate proceeding with the FCC, the Commission or other governmental body of appropriate jurisdiction: (a) with regard to the Charges for its Services (including, but not limited to, a proceeding to change the Charges for its services, whether provided for in any of its Tariffs, in Appendix A, or otherwise); and (b) with regard to the Charges of the other Party (including, but not limited to, a proceeding in which the FCC, the Commission or other governmental body with appropriate jurisdiction is asked to reduce such Charges and to order a refund of any amounts paid in excess of any Charges that are reduced).

APPENDIX A TO THE PRICING ATTACHMENT

VERIZON PENNSYLVANIA and US LEC OF PENNSYLVANIA INC.

V1.2

A. INTERCONNECTION¹

<u>Service or Element Description</u> ² :	<u>Recurring Charges:</u>	<u>Non-Recurring Charge:</u>
I. Reciprocal Compensation Traffic Termination³		
Reciprocal Compensation Traffic End Office Rate	\$.001723/MOU	Not Applicable
Reciprocal Compensation Traffic Tandem Rate	\$.002814/MOU	Not Applicable

¹ All rates and charges specified herein are pertaining to the Interconnection Attachment.

² Unless a citation is provided to a generally applicable Verizon tariff, all listed rates and services are available only to US LEC when purchasing these services for use in the provision of Telephone Exchange Service, and apply only to Reciprocal Compensation Traffic and local Ancillary Traffic. Verizon rates and services for use by US LEC in the carriage of Toll Traffic shall be subject to Verizon's tariffs for Exchange Access Service. Adherence to these limitations is subject to a reasonable periodic audit by Verizon.

As applied to wholesale discount rates, unbundled Network Elements or call transport and/or termination of Reciprocal Compensation Traffic purchased for the provision of Telephone Exchange Service or Exchange Access, the rates and charges set forth in Appendix A shall apply until such time as they are replaced by new rates as may be approved or allowed into effect by the Commission from time to time pursuant to the FCC Regulations, subject to a stay or other order issued by any court of competent jurisdiction.

³ See the last page regarding measurement and calculation of Reciprocal Compensation Traffic termination charges.

Service or Element Description:

Recurring Charges:

Non-Recurring Charge:

II. Entrance Facilities and Transport for Interconnection

A. Entrance facilities, and transport, as appropriate, for Interconnection at Verizon End Office, Tandem Office, or other Point of Interconnection

Per interstate [Verizon FCC 1 Sec. 6 access tariff for Feature Group D service as amended from time to time

Per interstate [Verizon FCC 1 Sec. 6] access tariff for Feature Group D service as amended from time to time

Per intrastate [Verizon PA PUC. – PA – No. 302 Sec. 6] access tariff for Feature Group D service as amended from time to time

Per intrastate [Verizon PA PUC. – PA – No. 302 Sec. 6] access tariff for Feature Group D service as amended from time to time

III. Exchange Access Service

Interstate

Per Verizon FCC tariff number 1, as amended from time to time

Intrastate

Per Verizon tariff number 302, as amended from time to time

Service or Element Description:

Recurring Charges:

Non-Recurring Charge:

IV. End Point Fiber Meet

To be charged in accordance with the requirements of the Interconnection Attachment.

V. Tandem Transit arrangements for Reciprocal Compensation Traffic between US LEC and carriers other than Verizon that subtend a Verizon Tandem Switch. (Not applicable to Toll Traffic when Meet Point Billing Arrangement applies; Separate trunks required for IXC subtending trunks)

Tandem Switching	\$.000795/MOU	Per Section II. above, as applicable
Switched Transport	\$.000144/MOU	
Transit Service Billing Fee	\$.000003/MOU/Mile	
Transit Service Trunking Charge	Five (5) percent of the Tandem Switching charges and the Tandem-Switched Transport charges assessed during the billing period for traffic exchanged with the relevant third party carrier. The rate for Dedicated DS1 Meet Point B (Tandem) trunk port, as set forth in the Verizon FCC Interstate Tariff No. 1 for the relevant third party carrier.	

B. UNBUNDLED NETWORK ELEMENTS⁴

I. Dedicated Transport⁵

As applicable per Verizon PA PUC 216 as amended from time to time.

II. Common Transport

As applicable per Verizon PA PUC 216 as amended from time to time.

III. Digital Cross-Connect System

As applicable per Verizon PA PUC 216 as amended from time to time.

IV. Entrance Facilities

As applicable per Verizon PA PUC 216 as amended from time to time.

V. Unbundled Switching⁶

As applicable per Verizon PA PUC 216 as amended from time to time.

VI. Unbundled Loops

With the exception of 2 Wire HDSL, SDSL and IDSL, as applicable per Verizon PA PUC 216 as amended from time to time.

2 Wire HDSL compatible Loops
2 Wire SDSL compatible Loops
2 Wire IDSL compatible Loops

Density Cell:
1 - \$10.25/Month
2 - \$11.00/Month
3 - \$14.00/Month
4 - \$16.75/Month

Service Order: \$1.06
Installation:
If premises visit not required - \$3.01 initial and each additional loop; Not Applicable if existing loop & port together

If premises visit required - \$67.66, initial loop; \$22.86, additional loop

Disconnect:
\$1.34 per loop

⁴ All rates and charges specified herein are pertaining to the Network Elements Attachment.

⁵ Verizon's proposed UNEs, UNE combinations, and UNE pricing methodology reflect the FCC's current rules. Verizon does not agree that UNE prices must be based solely on forward-looking costs, and Verizon reserves the right to seek to change its UNE offerings and UNE prices if the FCC's rules are vacated or modified by the FCC or by a final, non-appealable judicial decision.

⁶ In addition to the recurring and non-recurring rates set forth herein for unbundled switching elements, Verizon may levy upon purchaser of such elements any access charges (or portion thereof) permitted by Applicable Laws.

VII. Intrastate Collocation

As Applicable Per Verizon PA PUC No. 218 as amended from time to time

VIII. Line Sharing

As applicable per Verizon PA PUC 216 and PA PUC 218 as amended from time to time.

IX. Line Splitting

Rates for Line Splitting are as set forth in Verizon's PA PUC No. 216 Tariff, Section 3B, as amended from time to time.

X. EEL

As applicable per Verizon PA PUC 216 as amended from time to time.

XI. UNE Platform Conversion

As applicable per Verizon PA PUC 216 as amended from time to time.

<u>Service or Element Description:</u>	<u>Recurring Charges:</u>	<u>Non-Recurring Charge:</u>
XII. DARK FIBER		
Records Review, per inquiry		\$116.16
Dark Fiber – IOF		
Verizon C.O. to Verizon C.O		
Service Order		\$55.22
Serving Wire Center ("SWC") Charge/SWC/Pair	\$5.33	\$42.59
IOF Mileage/Pair/mile	\$51.77	
IOF Mileage Installation Charge/Pair		\$204.94
Expedited Handling		\$94.34
Verizon C.O. to CLEC C.O.		
Service Order		\$55.22
SWC Charge/SWC/Pair	\$5.33	\$42.59
Channel Termination Charge/CLEC C.O.	\$53.69	\$353.23
Expedited Handling		\$94.34
Dark Fiber – LOOP		
Service Order		\$55.22
SWC Charge/SWC/Pair	\$5.33	\$38.53
Loop Charge/Pair		
Rate Group A1	\$34.70	\$566.97
Rate Group A2	\$64.06	\$566.97
Rate Group B1	\$93.79	\$566.97
Rate Group B2	\$119.26	\$566.97
Expedited Handling		\$317.43
Dark Fiber Sub-Loop	TBD	TBD

XIII. UNBUNDLED SUBLOOP ARRANGEMENT (USLA)	As applicable per Verizon PA PUC 216 as amended from time to time.
XIV. Unbundled Feeder Sub-Loop (UFSE)	As applicable per Verizon PA PUC 216 as amended from time to time.
XVI. Unbundled Drop Sub-Element (UDSE)	As applicable per Verizon PA PUC 216 as amended from time to time.

XIV. Signaling and Databases	As applicable per Verizon PA PUC 216 as amended from time to time.
XV. Network Interface Device (NID)	Except as below for NID-to-NID as applicable per Verizon PA PUC 216 as amended from time to time.
NID - 2 Wire per NID/month - NID-to-NID	\$0.64
NID - 4 Wire per NID/month - NID-to-NID	\$0.64

C. RESALE⁷

I. Wholesale Discount for Resale of Retail Telecommunications Services⁸

Resale of retail services if US LEC provides own operator services platform	25.69% (Inclusive of PA gross receipts tax)
Resale of retail services if US LEC uses Verizon operator services platform	23.43% (Inclusive of PA gross receipts tax)

⁷ All rates and charges specified herein are pertaining to the Resale Attachment.

In compliance with the FCC Order approving the Merger of GTE Corporation and Bell Atlantic (CC Docket No. 98-1840), Verizon will offer limited duration promotional discounts on resold residential exchange access lines. The terms and conditions on which these promotional discounts are being made available can be found on Verizon's web site, at <http://www.verizon.com/wise> for former GTE service areas and former Bell Atlantic service areas.

⁸ Excludes telecommunications services designed primarily for wholesale, such as switched and special exchange access service, and, subject to the provisions of the Resale Attachment, the following additional arrangements that are not subject to resale: limited duration (90 days or less) promotional offerings, public coin telephone service, and technical and market trials. Taxes shall be collected and remitted by the reseller and Verizon in accordance with legal requirements and as agreed between the Parties. Surcharges (e.g., 911, telecommunications relay service, universal service fund) shall be collected by the reseller and either remitted to the recipient agency or NECA, or passed through to Verizon for remittance to the recipient agency or NECA, as appropriate and agreed between the Parties. End user common line charges shall be collected by the reseller and remitted to Verizon.

D. OPERATIONS SUPPORT SYSTEM

As applicable per Verizon PA PUC 216 as amended from time to time.

E. 911/E911

Transport
Data Entry and Maintenance

Access pass-through to number portability purchaser
Per section B. above.
No Charge

F. TIME AND MATERIALS

As applicable per Verizon PA PUC 216 as amended from time to time.

G. CUSTOMIZED ROUTING

As applicable per Verizon PA PUC 216 as amended from time to time.

H. DIRECTORY LISTINGS & BOOKS

Primary Listing (on initial UNE service order).
For each residence telephone number, two (2) listings in the White Page directory are provided.
For each business telephone number listed (except numbers of Centrex or Centrex-like services or indialing service station lines) one (1) listing is provided in the White Page Directory and one (1) listing in the Yellow Page directory of the type provided to Verizon-PA end user business customers for which no specific charge applies.

Not Applicable

Not Applicable

Other Tariffed Listing Services (For listings ordered in excess of the primary listings provided or other listing types, or listings ordered at a time other than initial UNE service order, or listings ordered not associated with a UNE service order.)

Retail rates less wholesale discount. For retail rates see Verizon-PA tariff No. 1 sec. 5.B.

Books & delivery (annual home area directories only)

No charge for normal numbers of books delivered to end users; bulk deliveries to US LEC per separate arrangement

RECIPROCAL COMPENSATION TRAFFIC TERMINATION RATES

A. Charges by Verizon

- (a) Traffic delivered to Verizon Tandem: Tandem Rate.
- (b) Traffic delivered directly to terminating Verizon End Office: End Office Rate.

B. Charges by US LEC

1. Single-tiered interconnection structure:

US LEC's rates for the termination of Verizon's Reciprocal Compensation Traffic under the single-tiered interconnection structure shall be recalculated once each year on each anniversary of the Effective Date (the "Rate Determination Date"). The methodology for recalculating the rates is as follows:

Tandem Minutes = Total minutes of use of Reciprocal Compensation Traffic delivered by US LEC to the Verizon Tandem for most recent billed quarter.

End Office Minutes = Total minutes of use Reciprocal Compensation Traffic delivered by US LEC directly to the terminating Verizon End Office for most recent billed quarter.

Total Minutes = Total minutes of use of Reciprocal Compensation Traffic delivered by US LEC to Verizon for most recent billed quarter.

US LEC Charge at the US LEC-IP =

$$\frac{(\textit{Tandem Minutes} \times \textit{Tandem Rate}) + (\textit{End Office Minutes} \times \textit{End Office Rate})}{\textit{Total Minutes}}$$

For the first year after the Effective Date, the US LEC charge shall be calculated based on the traffic data of the quarter immediately preceding such Effective Date, or if no such traffic exists, on the proportion of Reciprocal Compensation Traffic termination trunks to Verizon End Offices and to Verizon Tandems.

2. Multiple-tiered interconnection structure (if offered by US LEC to any carrier)

- (a) Reciprocal Compensation Traffic delivered to US LEC Tandem: Tandem Rate
- (b) Reciprocal Compensation Traffic delivered to terminating US LEC End Office/node: End Office Rate

C. Miscellaneous Notes

1. The US LEC termination rate under the single-tiered interconnection structure set forth above is intended to be a Reciprocal Compensation Traffic termination rate for Interconnection to the US LEC-IP within each LATA that is reciprocal and equal to the actual rates that will be charged by Verizon to US LEC under the two-tiered Reciprocal Compensation Traffic termination rate structure described above that will apply after the first anniversary of the Effective Date. The single US LEC termination rate is also intended to provide financial incentives to US LEC to deliver traffic directly to Verizon's terminating End Offices once US LEC's traffic volumes reach an appropriate threshold.